Washington State
Liquor and Cannabis Board

Date: July 17, 2024

To: David Postman, Board Chair
Ollie Garrett, Board Member
Jim Vollendroff, Board Member

From: Daniel Jacobs, Policy and Rules Coordinator

Copy: Will Lukela, Agency Director
Toni Hood, Agency Deputy Director
Becky Smith, Director of Licensing and Regulations
Chandra Wax, Director of Enforcement and Education
Justin Nordhorn, Policy and External Affairs Director
Cassidy West, Policy and Rules Manager

Subject: **Board approval of proposed rules (CR 102) on Implementing Substitute House Bill (SHB) 1453 regarding the medical cannabis patient excise tax exemption.**

The Policy and Rules Coordinator requests approval to file a rule proposal (CR 102) to amend existing rules and create a new rule to implement SHB 1453 (chapter 79, Laws of 2024), as described in the CR 102 Memorandum attached to this order and presented at the Board meeting on July 17, 2024. If approved for filing, the tentative timeline for this rule proposal is as follows:

July 17, 2024	Board is asked to approve filing proposed rules (CR 102). CR 102 filed with the Office of the Code Reviser. LCB webpage updated, and notice circulated by GovDelivery distribution list. Formal comment period begins.
August 7, 2024	Notice published in the Washington State Register under WSR 24-15.
August 28, 2024	Public hearing held and formal comment period ends.
No earlier than September 11, 2024	Board is asked to adopt rules if no substantive changes are made (CR 103). Concise Explanatory Statement provided to individuals who offered written or oral comment at the public hearing or during the formal comment period, consistent with RCW 34.05.325. CR 103 and adopted rules are filed with the Office of the Code Reviser. LCB webpage updated, and notice circulated by GovDelivery distribution list.

October 12, 2024	Rules are effective 31 days after filing, unless otherwise specified. See RCW 34.05.380(2).

__X__ Approve _____ Disapprove

David Postman, Chair — 7.172024 Date

__X__ Approve _____ Disapprove

Ollie Garrett, Board Member — 7.17.2024 Date

__X__ Approve _____ Disapprove

Jim Vollendroff, Board Member — 7.17.2024 Date

Attachment: CR 102 Memorandum

Washington State
Liquor and Cannabis Board

CR 102 Memorandum

Implementing Substitute House Bill (SHB) 1453 Regarding Medical Cannabis Patient Excise Tax Exemption

Date: July 17, 2024
Presented by: Daniel Jacobs, Policy and Rules Coordinator

Background

Following the 2024 legislative session, Substitute House Bill 1453 (chapter 79, Laws of 2024) was signed by the Governor, and went into effect on June 6, 2024. The CR 101 was filed on April 24, 2024 (WSR 24-10-042), and 4 comments were received during the informal comment period following the filing of the CR 101 and ending May 29, 2024. Those comments are attached as Attachment A.

SHB 1453 provides an exemption to the 37% excise tax levied on all cannabis purchases in RCW 69.50.375(1) under the following conditions:

1) The sale is at a cannabis retailer holding a medical cannabis endorsement;
2) The sale is to a qualifying patient or designated provider issued a recognition card by the Department of Health;
3) The sale is of cannabis concentrates, useable cannabis, or cannabis-infused products, identified by the Department of Health as a compliant cannabis product in chapter 246-70 WAC and tested to the standards in WAC 246-70-040.

The excise tax exemption is currently in effect until June 30, 2029. Additionally, the Liquor & Cannabis Board (LCB) is required to provide a separate tax reporting line on the excise tax form for exemption amounts. Lastly, the retailers are instructed to preserve records in the form and manner required by the LCB.

In May, an infographic explaining the tax exemption was published, as was interim guidance for retailers on what records they should preserve following the June 6 effective date of SHB 1453 and before formal rules are in place.

Stakeholder Engagement

The project team consists of representation from the Attorney General's Office, Enforcement & Education division, Licensing division, Finance division, and the Public Health Liaison. Two virtual stakeholder engagement sessions were scheduled for Monday, June 3 and Thursday, June 6, 2024. Draft rule language was posted to the LCB website and sent out with the invitation to the stakeholder engagements via Gov

delivery on May 29, 2024. Following the June 6 stakeholder engagement session, the PowerPoint presentation was posted to the rules webpage.

Following the stakeholder engagement sessions, feedback received was incorporated into the draft rule language.

During the second stakeholder engagement session, a question was presented regarding what the consequences would be for a retailer that failed to properly provide the excise tax exemption where it should have done so. The answer is provided in existing rule in WAC 314-55-089(4)(d) which states that "excise tax collected in error must either be returned to the customer(s) or remitted to the WSLCB if returning to the customer(s) is not possible." This rule applies to the question presented, and similarly, if a retailer fails to provide the excise tax exemption, they are collecting excise tax in error, and are subject to this provision of rule.

PART 1: Proposed New Rule Language – WAC 314-55-090 – Medical Cannabis Patient Excise Tax Exemption

Section 1: Prerequisites for Excise Tax Exemption

Consistent with section 1(2)(a), chapter 79, Laws of 2024, the prerequisites for offering the excise tax exemption are identified. While the bill language says that a retailer must have a medical cannabis endorsement, because RCW 69.50.375 and WAC 314-55-080 identify the requirements for holding that endorsement, specific reference is made to them. Otherwise, the rule language closely mirrors the bill language.

Section 2: Record Requirements

Consistent with section 1(2)(b), chapter 79, Laws of 2024, the LCB has the authority to identify what information retailers need to preserve in the event of future audits to establish that each sale to which the excise tax is exempted qualifies for the excise tax exemption. As such, and identified in more detail in the table below, the following data points are required to be preserved for each sale where the excise tax is exempted:

- Date of sale;
- From the patient recognition card, the unique patient identifier and the effective and expiration dates of the recognition card;
- Stock keeping unit (SKU) or unique product identifier of the cannabis product to which the excise tax is being exempted from; and
- Sales price of the item(s) to which the excise tax is being exempted from.

Each of these items is necessary to establish that the prerequisites identified in section 1 above are satisfied, except for the sales price, which is required to determine how much tax is being exempted.
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Section 3: Taxability Presumption

RCW 69.50.535(1) identifies the collection of the 37% excise tax as the default. The very name and phrasing used in this legislation of an "exemption" indicates that this is the exception, not the rule. Therefore, it follows that the party claiming the exception should, in the event of a dispute, bear the burden of demonstrating that the exception applies, rather than the LCB bear the burden of demonstrating that the general rule applies. As such, this section makes clear that the burden is on the retailer to preserve the required records demonstrating the propriety of every single excise tax exemption that is provided. In the event of a dispute, if a retailer is unable to produce the required documentation, the default presumption of RCW 69.50.535(1), that a 37% excise tax shall be collected, applies. Consistent with other instances where a retailer fails to properly pay its excise taxes, the same principles apply here, including any penalties.

Section 4: Definitions

The terms defined are mostly taken directly from RCW 69.51A, and more specifically from the definitions identified in RCW 69.51A.010. The exceptions are for "department" which refers to the Washington State Department of Health, "unique patient identifier" which refers to the randomly generated and unique identifying number placed on recognition cards as described in RCW 69.51A.230, and "unique product identifier", referring to the product identifier used consistent with LCB's traceability requirements identified in WAC 314-55-083(4).

Section 5: Statutory Expiration Date

As specified in section 1(2)(a), chapter 79, Laws of 2024, this excise tax exemption is scheduled to expire on June 30, 2029.

PART 2: Changes to Existing Parts of Chapter 314-55 WAC

Other than cross-references to the new rule at WAC 314-55-090, and changing the acronym "WSLCB" to "LCB" consistent with WSR #24-11-037, the following additional changes were made:

WAC 314-55-087(1)(r) – adding a requirement to keep detailed sale records including but not limited to, date of sale, sale price, item sold and taxes assessed. This record-keeping requirement is added to sales records regardless of whether excise taxes or collected to provide a baseline to understand the records provided where excise taxes are exempted. To understand how the records provided reflect an exempted excise tax, records need to be provided that demonstrate where an excise tax is not exempted.

WAC 314-55-089(1)(c) – replacing "listing" with "summarizing". This reflects a relaxing of record requirements to ease some regulatory burden on licensees and is provided to reflect business records needed and preserved by licensees. Considering increasing

record requirements issued as part of this rulemaking, this was viewed as a likely desirable reprieve.

WAC 314-55-089(1)(e) – changing three years to five years. This rule explicitly cites WAC 314-55-087, which requires all records to be preserved for five years, and the use of the word "three" was a typographical error that needed to be addressed.

WAC 314-55-089(5) – removing the mailing address and the reference to paying online "through the traceability system." These changes are being done to provide greater flexibility for future potential payment system modernization. The PO box mail address identified currently is out of date, and rather than replace it with another one that may become out of date at some point in the future, leaving the language to simply state that it should be mailed to the LCB allows licensees to find LCB's mailing address and mail it themselves.

The reference to paying through the traceability system specifically is removed to allow for future potential modernization of the traceability system, and a future potential modernization of the tax payment system.

Estimated Costs of Compliance

Under the Regulatory Fairness Act (RFA) in chapter 19.85 RCW, agencies are required to consider the costs that complying with the proposed rules will impose on businesses, unless the proposed rules are subject to an exemption to this requirement. The CR 102 form describes these exemptions in more detail. None of the exemptions apply to this rulemaking.

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 estimate is a very generous estimate for costs affiliated with any additional required record-keeping and additional time that will accommodate any sale where the excise tax will be exempted under the new rule. This cost was estimated to be $2,000.00. This is well below the minor cost calculated to be $3,940.88, which is explained in great deal in the Small Business Economic Impact Statement (SBEIS) section of the CR 102 form filed today.

Rule Necessity

These rule changes are needed to implement the language in SHB 1453 and provide internal consistency with other sections of chapter 314-55 WAC. The rule necessity for each individual change is identified in the explanation above and the tables provided below.

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Description of Rule Changes

WAC 314-55-090 Medical cannabis patient excise tax exemption		
Section	**Proposed rule Language**	**Rule Necessity**
(1)	Pursuant to RCW 69.50.535(2), the excise tax levied in RCW 69.50.535(1) does not apply to sales of cannabis that satisfy all the following conditions:	Consistent with section (1)(2)(a), chapter 79, Laws of 2024, proposed WAC 314-55-090(1) identifies the necessary criteria for eligibility to offer the excise tax exemption.
(1)(a)	The sale is made by a cannabis retailer holding a valid medical cannabis endorsement issued pursuant to RCW 69.50.375 and compliant with WAC 314-55-080;	Consistent with section (1)(2)(a), chapter 79, Laws of 2024, the retailer offering the excise tax exemption must have a medical cannabis endorsement, and to have a medical cannabis endorsement, a retailer needs to satisfy the statutory requirements at RCW 69.50.375 and regulatory requirements of WAC 314-55-080.
(1)(b)	The sale is made to a qualifying patient or designated provider who has a valid recognition card issued pursuant to RCW 69.51A.230, and is in the database;	Consistent with section (1)(2)(a), chapter 79, Laws of 2024, which specifically states that the qualifying patient or designated provider must have been issued a recognition card, a recognition card can only be issued after a patient is entered into the database per RCW 69.51A.230(2).
(1)(c)	The sale is of cannabis concentrates, useable cannabis, or cannabis-infused products identified by the department as a compliant cannabis product in chapter 246-70 WAC and tested to the standards in chapter 246-70 WAC;	Language is nearly identical with section (1)(2)(a), chapter 79, Laws of 2024.
(2)	Cannabis licensees must retain the following information for five years, consistent with WAC 314-55-087, for every sale where the excise tax is exempted per RCW 69.50.535(2):	Consistent with section 1(2)(b), chapter 79, Laws of 2024, the LCB has the authority to identify what information retailers need to preserve to establish eligibility for the excise tax exemption.
(2)(a)	Date of sale;	To ensure that, if audited, LCB can confirm that the retailer held a medical cannabis endorsement at the time the sale occurred.
(2)(b)	From the recognition card: (i) The unique patient identifier, and (ii) The effective date and expiration date of the recognition card;	To ensure that, if audited, LCB can confirm that the patient or the designated provider purchasing the cannabis satisfied the requirements of WAC 314-55-090(1)(b) and section 1(2)(a), chapter 79, Laws of 2024 at the time of purchase.
(2)(c)	Stock keeping unit (SKU) or unique product identifier of cannabis concentrates, useable cannabis, or cannabis-infused products identified by the department as a compliant cannabis product in chapter 246-70 WAC and tested to the standards in chapter 246-70 WAC;	To ensure that, if audited, LCB can confirm that the cannabis product purchased meets the requirements of WAC 314-55-090(1)(c) and section 1(2)(a), chapter 79, Laws of 2024 at the time of purchase.
(2)(d)	Sales price of cannabis concentrates, useable cannabis, or cannabis-infused products identified by the department as a compliant cannabis product in chapter 246-70 WAC and tested to the standards in chapter 246-70 WAC.	To enable LCB to determine how much excise tax would have been collected had it not been exempted.

(3)	For any sale where the excise tax was not collected, if a cannabis licensee cannot produce the documentation identified in subsection (2) of this section when requested by the LCB, such excise tax shall be presumed to have been incorrectly exempted, and the retailer shall be responsible for remitting to the LCB the amount of excise tax that should have been collected. Penalties may apply to any incorrectly exempted excise tax payments that need to be remitted as described in this subsection, consistent with WAC 314-55-092.	To clarify that the medical cannabis patient excise tax exemption is the exception to the general rule that the 37% excise tax shall be collected on all cannabis sales per RCW 69.50.535(1). In the event of a dispute, the burden shall be on the retailer to demonstrate that they correctly exempted the purchase from the excise tax, not on the LCB to demonstrate that the retailer was incorrect in doing so.
(4)	Definitions:	Definitions of terms used are provided, all from terms used in Chapter 69.51A RCW.
(4)(a)	"Database" means the medical cannabis authorization database as defined in RCW 69.51A.010.	
(4)(b)	"Department" means the Washington state department of health.	
(4)(c)	"Designated provider" has the same meaning provided in RCW 69.51A.010.	
(4)(d)	"Qualifying patient" has the same meaning provided in RCW 69.51A.010.	
(4)(e)	"Recognition card" has the same meaning provided in RCW 69.51A.010.	
(4)(f)	"Unique patient identifier " refers to the randomly generated and unique identifying number described in RCW 69.51A.230.	
(4)(g)	“Unique product identifier” refers to the unique identifier provided to the LCB consistent with the traceability requirements in WAC 314-55-083.	This is the only term without a definition in RCW 69.51A. This term is described and repeatedly referenced in WAC 314-55-083(4).
(5)	The excise tax exemption described in this section is effective until June 30, 2029, pursuant to RCW 69.50.535(2).	Consistent with section 1(2)(a), chapter 79, Laws of 2024, identifies the expiration date of the medical cannabis patient excise tax exemption.

Amendments to Existing Sections of Chapter 314-55 WAC			
WAC Section	**Current Rule Language**	**Proposed New Language**	**Rule Necessity**
314-55-083 Security and traceability requirements for cannabis licensees.	(4)(j) Cannabis excise tax records;	(4)(j) Cannabis excise tax records, including records required for medical cannabis patient excise tax exemptions in WAC 314-55-090;	Adding language to state that the records newly required for retention in WAC 314-55-090 must also be kept up to date in the traceability system.
	Replaced instances of “WSLCB” with “LCB”		Consistent with WSR #24-11-037
314-55-087 Recordkeeping requirements for cannabis licensees.	**New Rule Language** (1)(r) Detailed sale records including but not limited to, date of sale, sale price, item sold, and taxes assessed;		To understand the records for auditing the medical cannabis patient excise tax exemption, baseline records where the excise tax is collected must be preserved for use in comparison.
	New Rule Language (1)(s) Records for medical cannabis patient excise tax exemptions as required in WAC 314-55-090;		Adding language to state that the records required in WAC 314-55-090 must be kept for five years, along with all other required records in WAC 314-55-087.

	Replaced instances of "WSLCB" with "LCB"		Consistent with WSR #24-11-037
314-55-089 Tax and reporting requirements for cannabis licensees.	(1) Cannabis retailer licensees must submit monthly report(s) and payments to the WSLCB. The required monthly reports must be: […] (b) Filed every month, including months with no activity or payment due;	(1) Cannabis retailer licensees must submit monthly report(s) and payments to the LCB. The required monthly reports must be: […] (b)(i) Filed every month, including months with no activity or payment due; (ii) Each report will identify total product sales and total medical product sales where the excise tax was exempted pursuant to RCW 69.50.535(2) and WAC 314-55-090, in the form and manner required by the LCB;	Consistent with section (1)(2)(b) and (c), chapter 79, Laws of 2024, requiring the monthly payment reports to include records of total product sales and total sales where the excise tax is exempted is consistent with the requirements identified in WAC 314-55-090.
	(1)(c) Submitted, with payment due, to the WSLCB on or before the 20th day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) …	(1)(c) Submitted, with payment due, to the LCB on or before the 20th day of each month, for the previous month. (For example, a report summarizing transactions for the month of January is due by February 20th.) …	Replacing "listing" with "summarizing" to lighten the regulatory burden on licensees.
	(1)(e) All records must be maintained and available for review for a three-year period on licensed premises. (See WAC 314-55-087)	(1)(e) All records must be maintained and available for review for a five-year period on licensed premises. (See WAC 314-55-087)	Technical change for internal consistency. WAC 314-55-087(1) required records to be kept for five years. The reference to three years was a typographical error.
	(4)(b) A cannabis retailer licensee must collect from the buyer and remit to the WSLCB a cannabis excise tax of 37 percent of the selling price on each retail sale of useable cannabis, cannabis concentrates, and cannabis-infused products.	(4)(b)(i) A cannabis retailer licensee must collect from the buyer and remit to the LCB a cannabis excise tax of 37 percent of the selling price on each retail sale of useable cannabis, cannabis concentrates, and cannabis-infused products, except as identified in WAC 314-55-090 and RCW 69.50.535(2). (ii) Records of medical patient cannabis excise tax exemptions provided must be maintained as required in WAC 314-55-087 and WAC 314-55-090.	Reference added to WAC 314-55-090 and RCW 69.50.535(2), where the medical cannabis patient excise tax exemption are referenced, as well as cross-reference added to reinforce record retention requirements.
	(5) … Licensees must submit cannabis 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;	(5) … Licensees must submit cannabis excise tax payments to the board by one of the following means: (a) By mail to LCB;	Fixing an incorrect address and replacing with generic mailing instructions in case of future move of physical mailing address or Post Office Box.

	(5)(b) By paying through online access through the WSLCB traceability system; or	(5)(b) By paying through online access; or	Removing specific reference to the traceability system to allow for potential future changes in online payment systems.
	Replaced instances of “WSLCB” with “LCB”		Consistent with WSR #24-11-037

Attachments:
Attachment A: CR 101 Informal Comment Table
Attachment B: Stakeholder Engagement PowerPoint
Attachment C: Stakeholder Engagement Session Teams Chat Logs
Attachment D: Post Stakeholder Engagement Comments

CODE REVISER USE ONLY

PROPOSED RULE MAKING

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

Agency: Washington State Liquor and Cannabis Board

☒ **Original Notice**

☐ **Supplemental Notice to WSR _____**

☐ **Continuance of WSR _____**

☒ **Preproposal Statement of Inquiry was filed as WSR** 24-10-042 **; 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) Rulemaking to Implement Substitute House Bill (SHB) 1453 (chapter 79, Laws of 2024) which exempts qualifying patients or designated providers issued a recognition card, purchasing cannabis identified by the Washington State Department of Health in chapter 246-70 WAC, from a cannabis retailer issued a medical cannabis endorsement, from the cannabis excise tax until June 30, 2029, and to make other technical changes to chapter 314-55 WAC as necessary for internal consistency.

The following existing sections of WAC are proposed for amendment, as well as the creation of a new section at WAC 314-55-090:

SHB 1453	
Amended	WAC 314-55-083 “Security and traceability requirements for cannabis licensees.”
Amended	WAC 314-55-087 “Recordkeeping requirements for cannabis licensees.”
Amended	WAC 314-55-089 “Tax and reporting requirements for cannabis licensees.”
New	WAC 314-55-090 “Medical cannabis patient excise tax exemption.”

Hearing location(s):

Date:	**Time:**	**Location:** (be specific)	**Comment:**
August 28, 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 11, 2024 (Note: This is **NOT** the **effective** date)

Submit written comments to:	**Assistance for persons with disabilities:**
Name Daniel Jacobs, Rules & Policy Coordinator	Contact Anita Bingham, ADA Coordinator, Human Resources
Address PO Box 48030, Olympia WA 98504-3080	Phone 360 664 1739
Email rules@lcb.wa.gov	Fax 360 664 9689
Fax 360-704-5027	TTY 7-1-1 or 1-800-833-6388
Other	Email anita.bingham@lcb.wa.gov
Beginning (date and time) July 17, 2024, 12:00 PM	Other
By (date and time) August 28, 2024, 12:00 PM	By (date) August 21, 2024

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of these proposed rules it to implement Substitute House Bill 1453, chapter 79, Laws of 2024, and provide internal consistency to rules around recordkeeping and excise tax payment with other portions of chapter 314-55 WAC.

PART 1: WAC 314-55-090 Medical Cannabis Patient Excise Tax Exemption

Section 1: Prerequisites for Excise Tax Exemption
Consistent with section 1(2)(a), chapter 79, Laws of 2024, the prerequisites for offering the excise tax exemption are identified. While the bill language says that a retailer must have a medical cannabis endorsement, because RCW 69.50.375 and WAC 314-55-080 identify the requirements for holding that endorsement, specific reference is made to them. Otherwise, the rule language closely mirrors the bill language.

Section 2: Record Requirements
Consistent with section 1(2)(b), chapter 79, Laws of 2024, the LCB has the authority to identify what information retailers need to preserve in the event of future audits to establish that each sale to which the excise tax is exempted qualifies for the excise tax exemption. As such, and identified in more detail in the tables below, the following data points are required to be preserved for each sale where the excise tax is exempted:

- Date of sale;
- From the patient recognition card, the unique patient identifier and the effective and expiration dates of the recognition card;
- Stock keeping unit (SKU) or unique product identifier of the cannabis product to which the excise tax is being exempted from; and
- Sales price of the item(s) to which the excise tax is being exempted from.

Each of these items is necessary to establish that the prerequisites identified in section 1 above are satisfied, except for the sales price, which is required to determine how much tax is being exempted.

Section 3: Taxability Presumption
RCW 69.50.535(1) identifies the collection of the 37% excise tax as the default. The very name and phrasing used in this legislation of an “exemption” indicates that this is the exception, not the rule. Therefore, it follows that the party claiming the exception should, in the event of a dispute, bear the burden of demonstrating that the exception applies, rather than the LCB bear the burden of demonstrating that the general rule applies. As such, this section makes clear that the burden is on the retailer to preserve the required records demonstrating the propriety of every single excise tax exemption that is provided. In the event of a dispute, if a retailer is unable to produce the required documentation, the default presumption of RCW 69.50.535(1), that a 37% excise tax shall be collected, applies. Consistent with other instances where a retailer fails to properly pay its excise taxes, the same principles apply here, including any penalties.

Section 4: Definitions
The terms defined are mostly taken directly from RCW 69.51A, and more specifically from the definitions identified in RCW 69.51A.010. The exceptions are for “department” which refers to the Washington State Department of Health, “unique patient identifier” which refers to the randomly generated and unique identifying number placed on recognition cards as described in RCW 69.51A.230, and “unique product identifier”, referring to the product identifier used consistent with LCB’s traceability requirements identified in WAC 314-55-083(4).

Section 5: Statutory Expiration Date
As specified in section 1(2)(a), chapter 79, Laws of 2024, this excise tax exemption is scheduled to expire on June 30, 2029.

PART 2: Changes to Existing Parts of Chapter 314-55 WAC

Other than cross-references to the new rule at WAC 314-55-090, and changing the acronym “WSLCB” to “LCB” consistent with WSR #24-11-037, the following additional changes were made:

WAC 314-55-087(1)(r) – adding a requirement to keep detailed sale records including but not limited to, date of sale, sale price, item sold and taxes assessed. This record-keeping requirement is added to sales records regardless of whether excise taxes or collected to provide a baseline to understand the records provided where excise taxes are exempted. To understand how the records provided reflect an exempted excise tax, records need to be provided that demonstrate where an excise tax is not exempted.

WAC 314-55-089(1)(c) – replacing "listing" with "summarizing". This reflects a relaxing of record requirements to ease some regulatory burden on licensees and is provided to reflect business records needed and preserved by licensees. Considering increasing record requirements issued as part of this rulemaking, this was viewed as a likely desirable reprieve.

WAC 314-55-089(1)(e) – changing three years to five years. This rule explicitly cites WAC 314-55-087, which requires all records to be preserved for five years, and the use of the word "three" was a typographical error that needed to be addressed.

WAC 314-55-089(5) – removing the mailing address and the reference to paying online "through the traceability system." These changes are being done to provide greater flexibility for future potential payment system modernization. The PO box mail address identified currently is out of date, and rather than replace it with another one that may become out of date at some point in the future, leaving the language to simply state that it should be mailed to the LCB allows licensees to find LCB's mailing address and mail it themselves.

The reference to paying through the traceability system specifically is removed to allow for future potential modernization of the traceability system, and a future potential modernization of the tax payment system.

Reasons supporting proposal: The reasons supporting these proposed rules, in addition to that described above, are identified in the tables herein:

WAC 314-55-090 Medical cannabis patient excise tax exemption		
Section	**Proposed rule Language**	**Rule Necessity**
(1)	Pursuant to RCW 69.50.535(2), the excise tax levied in RCW 69.50.535(1) does not apply to sales of cannabis that satisfy all the following conditions:	Consistent with section (1)(2)(a), chapter 79, Laws of 2024, proposed WAC 314-55-090(1) identifies the necessary criteria for eligibility to offer the excise tax exemption.
(1)(a)	The sale is made by a cannabis retailer holding a valid medical cannabis endorsement issued pursuant to RCW 69.50.375 and compliant with WAC 314-55-080;	Consistent with section (1)(2)(a), chapter 79, Laws of 2024, the retailer offering the excise tax exemption must have a medical cannabis endorsement, and to have a medical cannabis endorsement, a retailer needs to satisfy the statutory requirements at RCW 69.50.375 and regulatory requirements of WAC 314-55-080.
(1)(b)	The sale is made to a qualifying patient or designated provider who has a valid recognition card issued pursuant to RCW 69.51A.230, and is in the database;	Consistent with section (1)(2)(a), chapter 79, Laws of 2024, which specifically states that the qualifying patient or designated provider must have been issued a recognition card, a recognition card can only be issued after a patient is entered into the database per RCW 69.51A.230(2).
(1)(c)	The sale is of cannabis concentrates, useable cannabis, or cannabis-infused products identified by the department as a compliant cannabis product in chapter 246-70 WAC and tested to the standards in chapter 246-70 WAC;	Language is nearly identical with section (1)(2)(a), chapter 79, Laws of 2024.
(2)	Cannabis licensees must retain the following information for five years, consistent with WAC 314-55-087, for every sale where the excise tax is exempted per RCW 69.50.535(2):	Consistent with section 1(2)(b), chapter 79, Laws of 2024, the LCB has the authority to identify what information retailers need to preserve to establish eligibility for the excise tax exemption.
(2)(a)	Date of sale;	To ensure that, if audited, LCB can confirm that the retailer held a medical cannabis endorsement at the time the sale occurred.
(2)(b)	From the recognition card:	To ensure that, if audited, LCB can confirm that the patient or the designated provider purchasing the cannabis satisfied the requirements of WAC 314-55-090(1)(b) and
	(i) The unique patient identifier, and	

	(ii) The effective date and expiration date of the recognition card;	section 1(2)(a), chapter 79, Laws of 2024 at the time of purchase.
(2)(c)	Stock keeping unit (SKU) or unique product identifier of cannabis concentrates, useable cannabis, or cannabis-infused products identified by the department as a compliant cannabis product in chapter 246-70 WAC and tested to the standards in chapter 246-70 WAC;	To ensure that, if audited, LCB can confirm that the cannabis product purchased meets the requirements of WAC 314-55-090(1)(c) and section 1(2)(a), chapter 79, Laws of 2024 at the time of purchase.
(2)(d)	Sales price of cannabis concentrates, useable cannabis, or cannabis-infused products identified by the department as a compliant cannabis product in chapter 246-70 WAC and tested to the standards in chapter 246-70 WAC.	To enable LCB to determine how much excise tax would have been collected had it not been exempted.
(3)	For any sale where the excise tax was not collected, if a cannabis licensee cannot produce the documentation identified in subsection (2) of this section when requested by the LCB, such excise tax shall be presumed to have been incorrectly exempted, and the retailer shall be responsible for remitting to the LCB the amount of excise tax that should have been collected. Penalties may apply to any incorrectly exempted excise tax payments that need to be remitted as described in this subsection, consistent with WAC 314-55-092.	To clarify that the medical cannabis patient excise tax exemption is the exception to the general rule that the 37% excise tax shall be collected on all cannabis sales per RCW 69.50.535(1). In the event of a dispute, the burden shall be on the retailer to demonstrate that they correctly exempted the purchase from the excise tax, not on the LCB to demonstrate that the retailer was incorrect in doing so.
(4)	Definitions:	Definitions of terms used are provided, all from terms used in Chapter 69.51A RCW.
(4)(a)	"Database" means the medical cannabis authorization database as defined in RCW 69.51A.010.	
(4)(b)	"Department" means the Washington state department of health.	
(4)(c)	"Designated provider" has the same meaning provided in RCW 69.51A.010.	
(4)(d)	"Qualifying patient" has the same meaning provided in RCW 69.51A.010.	
(4)(e)	"Recognition card" has the same meaning provided in RCW 69.51A.010.	
(4)(f)	"Unique patient identifier " refers to the randomly generated and unique identifying number described in RCW 69.51A.230.	
(4)(g)	“Unique product identifier” refers to the unique identifier provided to the LCB consistent with the traceability requirements in WAC 314-55-083.	This is the only term without a definition in RCW 69.51A. This term is described and repeatedly referenced in WAC 314-55-083(4).
(5)	The excise tax exemption described in this section is effective until June 30, 2029, pursuant to RCW 69.50.535(2).	Consistent with section 1(2)(a), chapter 79, Laws of 2024, identifies the expiration date of the medical cannabis patient excise tax exemption.

Amendments to Existing Sections of Chapter 314-55 WAC			
WAC Section	**Current Rule Language**	**Proposed New Language**	**Rule Necessity**
314-55-083 Security and traceability requirements for cannabis licensees.	(4)(j) Cannabis excise tax records;	(4)(j) Cannabis excise tax records, including records required for medical cannabis patient excise tax exemptions in WAC 314-55-090;	Adding language to state that the records newly required for retention in WAC 314-55-090 must also be kept up to date in the traceability system.
	Replaced instances of “WSLCB” with “LCB”		Consistent with WSR #24-11-037
314-55-087 Recordkeeping requirements for cannabis licensees.	**New Rule Language** (1)(r) Detailed sale records including but not limited to, date of sale, sale price, item sold, and taxes assessed;		To understand the records for auditing the medical cannabis patient excise tax exemption, baseline records where the excise tax is collected must be preserved for use in comparison.

	New Rule Language (1)(s) Records for medical cannabis patient excise tax exemptions as required in WAC 314-55-090;		Adding language to state that the records required in WAC 314-55-090 must be kept for five years, along with all other required records in WAC 314-55-087
	Replaced instances of "WSLCB" with "LCB"		Consistent with WSR #24-11-037
314-55-089 Tax and reporting requirements for cannabis licensees.	(1) Cannabis retailer licensees must submit monthly report(s) and payments to the WSLCB. The required monthly reports must be: […] (b) Filed every month, including months with no activity or payment due;	(1) Cannabis retailer licensees must submit monthly report(s) and payments to the LCB. The required monthly reports must be: […] (b)(i) Filed every month, including months with no activity or payment due; (ii) Each report will identify total product sales and total medical product sales where the excise tax was exempted pursuant to RCW 69.50.535(2) and WAC 314-55-090, in the form and manner required by the LCB;	Consistent with section (1)(2)(b) and (c), chapter 79, Laws of 2024, requiring the monthly payment reports to include records of total product sales and total sales where the excise tax is exempted is consistent with the requirements identified in WAC 314-55-090.
	(1)(c) Submitted, with payment due, to the WSLCB on or before the 20th day of each month, for the previous month. (For example, a report listing transactions for the month of January is due by February 20th.) …	(1)(c) Submitted, with payment due, to the LCB on or before the 20th day of each month, for the previous month. (For example, a report summarizing transactions for the month of January is due by February 20th.) …	Replacing "listing" with "summarizing" to lighten the regulatory burden on licensees.
	(1)(e) All records must be maintained and available for review for a three-year period on licensed premises. (See WAC 314-55-087)	(1)(e) All records must be maintained and available for review for a five-year period on licensed premises. (See WAC 314-55-087)	Technical change for internal consistency. WAC 314-55-087(1) required records to be kept for five years. The reference to three years was a typographical error.
	(4)(b) A cannabis retailer licensee must collect from the buyer and remit to the WSLCB a cannabis excise tax of 37 percent of the selling price on each retail sale of useable cannabis, cannabis concentrates, and cannabis-infused products.	(4)(b)(i) A cannabis retailer licensee must collect from the buyer and remit to the LCB a cannabis excise tax of 37 percent of the selling price on each retail sale of useable cannabis, cannabis concentrates, and cannabis-infused products, except as identified in WAC 314-55-090 and RCW 69.50.535(2). (ii) Records of medical patient cannabis excise tax exemptions provided must be maintained as required in WAC 314-55-087 and WAC 314-55-090.	Reference added to WAC 314-55-090 and RCW 69.50.535(2), where the medical cannabis patient excise tax exemption are referenced, as well as cross-reference added to reinforce record retention requirements.
	(5) … Licensees must submit cannabis 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;	(5) … Licensees must submit cannabis excise tax payments to the board by one of the following means: (a) By mail to LCB;	Fixing an incorrect address and replacing with generic mailing instructions in case of future move of physical mailing address or Post Office Box.
	(5)(b) By paying through online access through the WSLCB traceability system; or	(5)(b) By paying through online access; or	Removing specific reference to the traceability system to allow for potential future changes in online payment systems.

	Replaced instances of “WSLCB” with “LCB”	Consistent with WSR #24-11-037

Statutory authority for adoption: RCW 69.50.342, RCW 69.50.345, RCW 69.50.535

Statute being implemented: RCW 69.50.535; Substitute House Bill 1453, chapter 79, Laws of 2024.

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:

- ☐ RCW 34.05.310 (4)(b) (Internal government operations)
- ☐ RCW 34.05.310 (4)(c) (Incorporation by reference)
- ☐ RCW 34.05.310 (4)(d) (Correct or clarify language)
- ☐ RCW 34.05.310 (4)(e) (Dictated by statute)
- ☐ RCW 34.05.310 (4)(f) (Set or adjust fees)
- ☐ 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.

LCB applied the North American Industry Classification System (NAICS) code 459991 for marijuana stores, recreational or medical. This is defined by the NAICS as follows: This U.S. industry comprises establishments primarily engaged in retailing cigarettes, electronic cigarettes, cigars, tobacco, pipes, and other smokers' supplies. The industry description for this code is presented in the table below, and can be accessed at https://www.census.gov/naics/?input=marijuana&year=2022&details=459991

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 $2,000.00 for every cannabis retailer with an existing medical cannabis endorsement to familiarize themselves with the new record-keeping requirements in WAC 314-55-090, and to take the extra time to preserve the records required for the required five years.

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.

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)

459991	$2,000.00	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 tobacco, electronic cigarette, and other smoking supplies retailers, which according to the NAICS website above, includes cannabis retailers with medical cannabis endorsements. 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. DOR data available at https://apps.dor.wa.gov/ResearchStats/Content/GrossBusinessIncome/Results.aspx?Year=2023Q4,2023Q3,2023Q2,2023Q1,&Code1=450000&Code2=460000&Sumby=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:

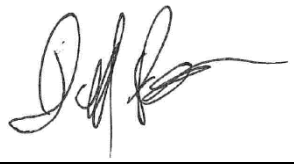
Name Daniel Jacobs, Rules & Policy Coordinator
Address PO Box 43080, Olympia WA 98504-3080
Phone 360-480-1238
Fax 360 704 5027
TTY
Email rules@lcb.wa.gov
Other

Date: July 17, 2024

Name: David Postman

Title: Chair

Signature:



AMENDATORY SECTION (Amending WSR 22-14-111, filed 7/6/22, effective 8/6/22)

WAC 314-55-083 Security and traceability requirements for cannabis licensees. The security requirements for a cannabis licensee are as follows:

(1) **Display of identification badge.** All licensees and employees on the licensed premises shall be required to hold and properly display an identification badge issued by the licensed employer at all times while on the licensed premises and engaged in the transportation of cannabis. The identification badge must list the licensee's trade name and include the person's full and legal name and photograph. All licensees and employees must have their state issued identification available to verify the information on their badge is correct.

(a) All nonemployee visitors to the licensed premises, other than retail store customers, shall be required to hold and properly display an identification badge issued by the licensee at all times while on the licensed premises.

(b) A log must be kept and maintained showing the full name of each visitor entering the licensed premises, badge number issued, the time of arrival, time of departure, and the purpose of the visit.

(c) All log records must be maintained on the licensed premises for a period of three years and are subject to inspection by any ((~~WSLCB~~)) LCB employee or law enforcement officer, and must be copied and provided to the ((~~WSLCB~~)) LCB or law enforcement officer upon request.

(d) Employees, visitors, and other persons at a cannabis licensed premises, including persons engaged in the transportation of cannabis, must provide identification to a ((~~WSLCB~~)) LCB enforcement officer upon request.

(2) **Alarm systems.** At a minimum, each licensed premises must have a security alarm system on all perimeter entry points and perimeter windows. Motion detectors, pressure switches, duress, panic, and hold-up alarms may also be used.

(3) **Surveillance system.** At a minimum, a licensed premises must have a complete video surveillance system with minimum camera resolution of 640 x 470 pixels or pixel equivalent for analog. The surveillance system storage device and/or the cameras must be internet protocol (IP) compatible. All cameras must be fixed and placement must allow for the clear and certain identification of any person and activities in controlled areas of the licensed premises. All entrances and exits to an indoor facility must be recorded from both indoor and outdoor, or ingress and egress vantage points. All cameras must record continuously 24 hours per day and at a minimum of 10 frames per second. The surveillance system storage device must be secured on the licensed premises in a lockbox, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft. All surveillance recordings must be kept for a minimum of 45 days on the licensee's recording device. All videos are subject to inspection by any ((~~WSLCB~~)) LCB employee or law enforcement officer, and must be copied and provided to the ((~~WSLCB~~)) LCB or law enforcement officer upon request. All recorded images must clearly and accurately display the time and date. Time is to be measured in accordance with the U.S. National Institute Standards and Technology standards. Controlled areas include:

(a) Any area within an indoor, greenhouse or outdoor room or area where cannabis is grown, or cannabis or cannabis waste is being moved within, processed, stored, or destroyed. Rooms or areas where cannabis or cannabis waste is never present are not considered control areas and do not require camera coverage.

(b) All point-of-sale (POS) areas.

(c) Twenty feet of the exterior of the perimeter of all required fencing and gates enclosing an outdoor grow operation. Any gate or other entry point that is part of the required enclosure for an outdoor growing operation must be lighted in low-light conditions. A motion detection lighting system may be employed to light the gate area in low-light conditions.

(d) Any room or area storing a surveillance system storage device.

(4) **Traceability:** To prevent diversion and to promote public safety, cannabis licensees must track cannabis from seed to sale. Licensees must provide the required information on a system specified by the ((~~WSLCB~~)) LCB. All costs related to the reporting requirements are borne by the licensee. Cannabis seedlings, clones, plants, lots of useable cannabis or trim, leaves, and other plant matter, batches of extracts, cannabis-infused products, samples, and cannabis waste must be traceable from production through processing, and finally into the retail environment including being able to identify which lot was used as base material to create each batch of extracts or infused products. The following information is required and must be kept completely up-to-date in a system specified by the ((~~WSLCB~~)) LCB:

(a) Key notification of "events," such as when a plant enters the system (moved from the seedling or clone area to the vegetation production area at a young age);

(b) When plants are to be partially or fully harvested or destroyed;

(c) When a lot or batch of cannabis, cannabis extract, cannabis concentrates, cannabis-infused product, or cannabis waste is to be destroyed;

(d) When useable cannabis, cannabis concentrates, or cannabis-infused products are transported;

(e) Any theft of useable cannabis, cannabis seedlings, clones, plants, trim or other plant material, extract, infused product, seed, plant tissue or other item containing cannabis;

(f) All cannabis plants eight or more inches in height or width must be physically tagged and tracked individually;

(g) A complete inventory of all cannabis, seeds, plant tissue, seedlings, clones, all plants, lots of useable cannabis or trim, leaves, and other plant matter, batches of extract, cannabis concentrates, cannabis-infused products, and cannabis waste;

(h) All cannabis, useable cannabis, cannabis-infused products, cannabis concentrates, seeds, plant tissue, clone lots, and cannabis waste must be physically tagged with the unique identifier generated by the traceability system and tracked;

(i) All point-of-sale records;

(j) Cannabis excise tax records, including records required for medical cannabis patient excise tax exemptions in WAC 314-55-090;

(k) All samples sent to an independent testing lab, any sample of unused portion of a sample returned to a licensee, and the quality assurance test results;

(l) All vendor samples provided to another licensee for purposes of education or negotiating a sale;

(m) All samples used for testing for quality by the producer or processor;

(n) Samples containing useable cannabis provided to retailers;

(o) Samples provided to the ((~~WSLCB~~)) LCB or their designee for quality assurance compliance checks; and

(p) Other information specified by the board.

AMENDATORY SECTION (Amending WSR 22-14-111, filed 7/6/22, effective 8/6/22)

WAC 314-55-087 Recordkeeping requirements for cannabis licensees. (1) Cannabis licensees are responsible to keep records that clearly reflect all financial transactions and the financial condition of the business. The following records must be kept and maintained on the licensed premises for a five-year period and must be made available for inspection if requested by an employee of the ((~~WSLCB~~)) LCB:

(a) Purchase invoices and supporting documents, to include the items and/or services purchased, from whom the items were purchased, and the date of purchase;

(b) Bank statements and canceled checks for any accounts relating to the licensed business;

(c) Accounting and tax records related to the licensed business and each true party of interest;

(d) Records of all financial transactions related to the licensed business, including contracts and/or agreements for services performed or received that relate to the licensed business;

(e) All employee records to include, but not limited to, training, payroll, and date of hire;

(f) Records of each daily application of pesticides applied to the cannabis plants or growing medium. For each application, the producer shall record the following information on the same day the application is made:

(i) Full name of each employee who applied the pesticide;

(ii) The date the pesticide was applied;

(iii) The name of the pesticide or product name listed on the registration label which was applied;

(iv) The concentration and total amount of pesticide per plant; and

(v) For outdoor production, the concentration of pesticide that was applied to the field. Liquid applications may be recorded as, but are not limited to, amount of product per 100 gallons of liquid spray, gallons per acre of output volume, ppm, percent product in tank mix (e.g., one percent). For chemigation applications, record "inches of water applied" or other appropriate measure.

(g) Soil amendment, fertilizers, or other crop production aids applied to the growing medium or used in the process of growing cannabis;

(h) Production and processing records, including harvest and curing, weighing, destruction of cannabis, creating batches of cannabis-infused products and packaging into lots and units;

(i) Records of each batch of extracts or infused cannabis products made, including at a minimum, the lots of useable cannabis or trim, leaves, and other plant matter used (including the total weight of the base product used), any solvents or other compounds utilized,

and the product type and the total weight of the end product produced, such as hash oil, shatter, tincture, infused dairy butter, etc.;

(j) Transportation records as described in WAC 314-55-085;

(k) Inventory records;

(l) All samples sent to an independent testing lab and the quality assurance test results;

(m) All free samples provided to another licensee for purposes of negotiating a sale;

(n) All samples used for testing for quality by the producer or processor;

(o) Sample jars containing useable cannabis provided to retailers; ((~~and~~))

(p) Records of any theft of cannabis seedlings, clones, plants, trim or other plant material, extract, cannabis-infused product, or other item containing cannabis((~~.~~));

(q) Records of any cannabis product provided free of charge to qualifying patients or designated providers;

(r) Detailed sale records including, but not limited to, date of sale, sale price, item sold, and taxes assessed;

(s) Records for medical cannabis patient excise tax exemptions as required in WAC 314-55-090.

(2) If the cannabis licensee keeps records within an automated data processing (ADP) and/or point-of-sale (POS) system, the system must include a method for producing legible records that will provide the same information required of that type of record within this section. The ADP and/or POS system is acceptable if it complies with the following guidelines:

(a) Provides an audit trail so that details (invoices and vouchers) underlying the summary accounting data may be identified and made available upon request.

(b) Provides the opportunity to trace any transaction back to the original source or forward to a final total. If printouts of transactions are not made when they are processed, the system must have the ability to reconstruct these transactions.

(c) Has available a full description of the ADP and/or POS portion of the accounting system. This should show the applications being performed, the procedures employed in each application, and the controls used to ensure accurate and reliable processing.

(3) The provisions contained in subsections (1) and (2) of this section do not eliminate the requirement to maintain source documents, but they do allow the source documents to be maintained in some other location.

AMENDATORY SECTION (Amending WSR 22-14-111, filed 7/6/22, effective 8/6/22)

WAC 314-55-089 Tax and reporting requirements for cannabis licensees. (1) Cannabis retailer licensees must submit monthly report(s) and payments to the ((~~WSLCB~~)) LCB. The required monthly reports must be:

(a) On a form or electronic system designated by the ((~~WSLCB~~)) LCB;

(b)(i) Filed every month, including months with no activity or payment due;

(ii) Each report will identify total product sales and total medical product sales where the excise tax was exempted pursuant to RCW 69.50.535(2) and WAC 314-55-090, in the form and manner required by the LCB;

(c) Submitted, with payment due, to the ((~~WSLCB~~)) LCB on or before the 20th day of each month, for the previous month. (For example, a report ((~~listing~~)) summarizing transactions for the month of January is due by February 20th.) When the 20th 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 cannabis license held; and

(e) All records must be maintained and available for review for a ((~~three~~)) five-year period on licensed premises (see WAC 314-55-087).

(2) **Cannabis producer licensees:** On a monthly basis, cannabis producers must maintain records and report purchases from other licensed cannabis producers, current production and inventory on hand, sales by product type, and lost and destroyed product in a manner prescribed by the ((~~WSLCB~~)) LCB. The act of keeping data completely up-to-date in the state traceability system fulfills the monthly reporting requirement.

(3) **Cannabis processor licensees:** On a monthly basis, cannabis processors must maintain records and report purchases from licensed cannabis producers, other cannabis processors, production of cannabis-infused products, sales by product type to cannabis retailers, and lost and/or destroyed product in a manner prescribed by the ((~~WSLCB~~)) LCB. The act of keeping data completely up-to-date in the state traceability system fulfills the monthly reporting requirement.

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

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

(b)(i) A cannabis retailer licensee must collect from the buyer and remit to the ((~~WSLCB~~)) LCB a cannabis excise tax of 37 percent of the selling price on each retail sale of useable cannabis, cannabis concentrates, and cannabis-infused products, except as identified in WAC 314-55-090 and RCW 69.50.535(2).

(ii) Records of medical cannabis patient excise tax exemptions provided must be maintained as required in WAC 314-55-087 and 314-55-090.

(c) Product inventory reductions that are not adequately documented will be deemed to be sales and will be assessed the excise tax.

(d) Excise tax collected in error must either be returned to the customer(s) or remitted to the ((~~WSLCB~~)) LCB if returning to the customer(s) is not possible.

(5) **Payment methods:** Cannabis excise tax payments are payable only by check, cashier's check, money order, or electronic payment or electronic funds transfer. Licensees must submit cannabis 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~~)) LCB;

(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. If a licensee uses a money transmitter service, the licensee must remit payments in U.S. dollars.

(6) Payments transmitted to the board electronically under this section will be deemed received when received by the ((~~WSLCB's~~)) LCB's receiving account. All other payments transmitted to the ((~~WSLCB~~)) LCB 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~~)) LCB 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~~)) LCB's judgment, prevents the licensee from complying with the requirements of subsection (5) of this section.

(8) If a licensee tenders payment of the cannabis excise tax in cash without applying for and receiving a waiver or after denial of a waiver, the licensee may be assessed a 10 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).

NEW SECTION

WAC 314-55-090 Medical cannabis patient excise tax exemption. (1) Pursuant to RCW 69.50.535(2), the excise tax levied in RCW 69.50.535(1) does not apply to sales of cannabis that satisfy all the following conditions:

(a) The sale is made by a cannabis retailer holding a valid medical cannabis endorsement issued pursuant to RCW 69.50.375 and compliant with WAC 314-55-080;

(b) The sale is made to a qualifying patient or designated provider who has a valid recognition card issued pursuant to RCW 69.51A.230, and is in the database;

(c) The sale is of cannabis concentrates, useable cannabis, or cannabis-infused products identified by the department as a compliant cannabis product in chapter 246-70 WAC and tested to the standards in chapter 246-70 WAC;

(2) Cannabis licensees must retain the following information for five years, consistent with WAC 314-55-087, for every sale where the excise tax is exempted per RCW 69.50.535(2):

(a) Date of sale;

(b) From the recognition card:

(i) The unique patient identifier; and

(ii) The effective date and expiration date of the recognition card;

(c) Stock keeping unit (SKU) or unique product identifier of cannabis concentrates, useable cannabis, or cannabis-infused products identified by the department as a compliant cannabis product in chapter 246-70 WAC and tested to the standards in chapter 246-70 WAC;

(d) Sales price of cannabis concentrates, useable cannabis, or cannabis-infused products identified by the department as a compliant cannabis product in chapter 246-70 WAC and tested to the standards in chapter 246-70 WAC.

(3) For any sale where the excise tax was not collected, if a cannabis licensee cannot produce the documentation identified in subsection (2) of this section when requested by the LCB, such excise tax shall be presumed to have been incorrectly exempted, and the retailer shall be responsible for remitting to the LCB the amount of excise tax that should have been collected. Penalties may apply to any incorrectly exempted excise tax payments that need to be remitted as described in this subsection, consistent with WAC 314-55-092.

(4) Definitions.

(a) "Database" means the medical cannabis authorization database as defined in RCW 69.51A.010.

(b) "Department" means the Washington state department of health.

(c) "Designated provider" has the same meaning provided in RCW 69.51A.010.

(d) "Qualifying patient" has the same meaning provided in RCW 69.51A.010.

(e) "Recognition card" has the same meaning provided in RCW 69.51A.010.

(f) "Unique patient identifier" refers to the randomly generated and unique identifying number described in RCW 69.51A.230.

(g) "Unique product identifier" refers to the unique identifier provided to the LCB consistent with the traceability requirements in WAC 314-55-083.

(5) The excise tax exemption described in this section is effective until June 30, 2029, pursuant to RCW 69.50.535(2).

Washington State
Liquor and Cannabis Board

NOTICE OF PROPOSED RULES
WSR 24-15-xxx

The Washington State Liquor and Cannabis Board (LCB) invites your input on proposed rules (CR 102) to amend several sections of Title 314 WAC and create a new rule at WAC 314-55-090 to implement Substitute House Bill (SHB) 1453 (chapter 79, Laws of 2024), which creates an exemption to the cannabis excise tax for cannabis compliant with Department of Health rules sold to a registered medical cannabis patient at a retailer holding a medical cannabis endorsement.

This notice and other relevant rulemaking materials can be found at https://lcb.wa.gov/laws/current-rulemaking-activity

The LCB encourages your participation in the rulemaking process by providing feedback and comments on the proposed rules. The LCB will hold a public hearing before the rules are adopted.

Public Comment
Please send your comments to the LCB through mail, email, or fax by **August 28, 2024.**

By mail:	Rules Coordinator Liquor and Cannabis Board P.O. Box 43080 Olympia, WA 98504-3080	**By email:**	**By fax:**
		rules@lcb.wa.gov	360-704-5027

Public Hearing: **August 28, 2024**
10:00 a.m.
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.

CR 101 Public Feedback Table – Implementing SHB 1453 – Medical Cannabis Excise Tax Exemptions
Public feedback received April 24, 2024 through May 29, 2024 on the Medical Cannabis Excise Tax Exemption rulemaking presented as CR 101 on April 24, 2024, filed as WSR 24-10-042. As noted in Notice to Stakeholders, public comment open until May 29, 2024.

Name	Feedback	Response
Shellies4@netzero.com	4/23/24, 9:34 PM Good morning Board. Thank you very much for all you do! I don't remember seeing anything before NOW on any additional taxes for Cannabis. We already pay the most taxes of anyone anywhere! Any increase in taxes should be approved by a vote of the people. When exactly will the rule making process be done? You cannot continue to make rules forever. There HAS to be an END. Also, WHEN the federal government removes cannabis from the schedule, a lot of these rules will no longer be necessary. Please remember that this is a cottage industry and people will follow the rules as long as you keep it SIMPLE! It's a PLANT! It's NOT complicated, please don't make it that way! We DO NOT need any more taxes on something we ALREADY pay taxes on. Those taxes are supposed to go to free lunch and free healthcare for anyone under 18. That's what we AGREED to when 502 was passed! Thank you very much! Have a great day!	4/25/24, 1:04 PM Dear shellies4@netzero.com Thank you so much for providing your comment on the CR 101 on Implementing Substitute House Bill 1453 on Medical Cannabis Excise Tax Exemptions. Your input is valuable and we look forward to reviewing your feedback. If we have any questions we will follow up by email. The Washington State Liquor and Cannabis Board (LCB) relies on public feedback, and welcomes the opportunity to hear more from you! Public participation helps LCB develop inclusive, transparent, and accountable policies and rules that serve the public interest. Please visit the LCB's website for more information about Medical Cannabis Excise Tax Exemption rulemaking and other current rulemaking activities. To get timely updates from LCB, please sign up to be on our GovDelivery email distribution list (select the Rulemaking option along with any other topic of interest). The LCB Board holds public meetings on Wednesdays at 10 a.m., twice monthly. Held both virtually and in-person, the meetings provide an opportunity for members of the public to address Board members during the Public Comment agenda item, or during scheduled Public Hearings held during the Board meetings. Board meetings are also broadcast live on the state's public access TV station TVW. Please visit LCB's Board meeting schedule and information webpage to learn more about observing or participating in a Board meeting. The next Board meeting will be held on May 8, 2024.

		Thank you again for reaching out! *LCB Policy & Rules Coordinators*
Michael Lowery Mikelower01@gmail.com	4/24/24, 2:43 PM As a customer in regard to CR102 I seen the local cannabis stores put limits on staff where it took up to 2-3 weeks to get authorized and they mailed it in. I always get my card authorized out of town and I never purchase from most local stores. We just had 2 cannabis stores servicing an area of 300,000 people out here in the Tri Cities. But we're slowly getting better. I do see it very beneficial to post hours, thanks. In reading CR 101 it looks like the state is doing away with the tax exempt for Card holders after 6/29. If this is true you may erase that medical card down to just growers card because there would be little reason for you to offer a medical cards. Then why even keep medical cards in hands of Cannabis board? Because now it becomes an agricultural issue with volume rules. I think this is a real question because I can buy/make enough booze to cause alcohol poisoning. We can legally buy enough alcohol to kill ourselves and many do! Yet you have buy/make limits on cannabis regulated by the same board? That is very contradictive from your mission statement, to "Promote Public Saftey and Trust….." Cannabis doesn't share the characteristic of acute poisoning as alcohol does to its users. Your board has volume limits on the wrong product. In fact alcohol is the only product you regulate that can cause acute poisoning yet the board doesn't have limits on it. Has anyone ever taken your rules and asked that question or a court of law perhaps? What would they say? If my son died at a neighbors house all because the one 21 yo bought 5 half gallons of booze. How can you not	4/24/24, 4:00 PM Dear Michael: Thank you so much for providing your comment on the CR 102 on Medical Cannabis Endorsements, and the CR 101 on Implementing Substitute House Bill 1453 on Medical Cannabis Excise Tax Exemptions.. Your input is valuable and we look forward to reviewing your feedback. If we have any questions we will follow up by email. The Washington State Liquor and Cannabis Board (LCB) relies on public feedback, and welcomes the opportunity to hear more from you! Public participation helps LCB develop inclusive, transparent, and accountable policies and rules that serve the public interest. The proposed rule language on Medical Cannabis Endorsements can be found here, and the public hearing on these proposed rules is scheduled to occur during the Board meeting on June 5, 2024 regarding the Medical Cannabis Endorsement rulemaking. Please visit the LCB's website for more information about Medical Cannabis Endorsements Rulemaking and SHB 1453 Medical Cannabis Excise Tax Exemption rulemaking and other current rulemaking activities. To get timely updates from LCB, please sign up to be on our GovDelivery email distribution list (select the Rulemaking option along with any other topic of interest). The LCB Board holds public meetings on Wednesdays at 10 a.m., twice monthly. Held both virtually and in-person, the meetings provide an opportunity for members of the public to address Board members during the Public Comment agenda item, or during scheduled Public Hearings held during the Board

	regulate the volume of alcohol purchase based on the fact that you know it can kill you in one setting? Specially if you never drank it and was peer pressured. Your board refuses to protect the Public Safety from alcohol but justify limits on cannabis for the sake of Public Safety, that's not a normal way a board for Safety should think. To me the lack of Volume Laws on alcohol, really stands out now that we have volume limits on cannabis. My Mom died of consumption to me. It caused a heat attack but Doctors never call it alcohol poisoning at time of death because it creates so many issues with insurances. I mean you never really die of the drug, the body kills you because of the amount of drug intake. The city even puts limits on hard drug use before conviction because small doses do less harm. Alcohol should be regulated the same way. I believe u need to answer this to all cannabis card holders. Just imagine how many lives would be saved if you limited alcohol sales to just one six pack or a fifth per person. I mean really…..People die from these big booze parties by direct ingestion of alcohol. I don't know of a way to die by smoking or vaping or eating THC. I will say it will cause brain issues but that's just one of the stages to death with alcohol not THC. Maybe you guys could be real leaders and greatly reduce alcoholism in our state by imposing limits on amount of alcohol sold to a single person during a purchase. I mean really with that mindset in our consumerism it would really change our whole personal perspective on alcohol in just a few years and greatly reduce alcoholism. It's practical just like limits on THC. Thanks for reading this far, Mike Lowery. 509-554-2261	meetings. Board meetings are also broadcast live on the state's public access TV station TVW. Please visit LCB's Board meeting schedule and information webpage to learn more about observing or participating in a Board meeting. The next Board meeting will be held on May 8, 2024. Thank you again for reaching out! *LCB Policy & Rules Coordinators*
Scott Atkison	5/20/2024, 2:09 PM	5/20/2024, 2:26 PM Dear Scott:

scottatkison@mac.com Via email	I am affiliated with Zips Cannabis and Canna4Life, and we operate medically endorsed retail stores in the State of Washington. I was also at one time issued a prescription for medical cannabis from my Doctor to assist with chemotherapy related nausea and pain from cancer related bone metastasis. I have never been registered into the DOH system in Washington as I did not think it was worth the hassle when I first visited a dispensary with my prescription and was informed that all of the products could be purchased without a medical card and the savings was at that time pretty minimal for having a card. With the passage of HB 1453 this is changing as the savings are now a combined 47% between the Excise tax and regular State DOR tax. My concern as a retailer is to ensure we properly document these transactions. Please provide us with detailed instructions on what documentation will be required to support that a sale was made in accordance with the rules and will pass muster in the event of an audit. To this end, please let us know of the source documents the LCB and/or DOR will be requesting in the event of an audit of tax exempt sales. The rules here should be explicit so if a retailer follows a prescriptive set of guidelines they will know with certainty that they can pass an audit. There should be no grey area for interpretation. In addition, please consider a system where a retailer can upload a set of files on a monthly basis which document their tax exempt sales in order to create a safe harbor for retailers to shelter as this potential liability could easily sink a business if the rules were inadvertently followed and sales were not correctly documented. We need to know how to quickly take corrective action on our documentation. Thank you for this consideration,	Thank you so much for providing your comment on the CR 101 on Implementing Substitute House Bill 1453 on Medical Cannabis Excise Tax Exemptions. Your input is valuable and we look forward to reviewing your feedback. If we have any questions we will follow up by email. The Washington State Liquor and Cannabis Board (LCB) relies on public feedback, and welcomes the opportunity to hear more from you! Public participation helps LCB develop inclusive, transparent, and accountable policies and rules that serve the public interest. Please visit the LCB's website for more information about Medical Cannabis Excise Tax Exemption rulemaking and other current rulemaking activities. To get timely updates from LCB, please sign up to be on our GovDelivery email distribution list (select the Rulemaking option along with any other topic of interest). Earlier this afternoon, additional guidance was circulated to the Cannabis gov delivery listserv regarding implementation on SHB 1453. The LCB Board holds public meetings on Wednesdays at 10 a.m., twice monthly. Held both virtually and in-person, the meetings provide an opportunity for members of the public to address Board members during the Public Comment agenda item, or during scheduled Public Hearings held during the Board meetings. Board meetings are also broadcast live on the state's public access TV station TVW. Please visit LCB's Board meeting schedule and information webpage to learn more about observing or participating in a Board meeting. The next Board meeting will be held on Wednesday, May 22, 2024. Thank you again for reaching out!

	Scott Atkison 509 990-3124	*LCB Policy & Rules Coordinators*
John Kingsbury Homegrow2018@gmail.com Via email	5/27/2024 Being mindful of the upcoming deadline for informal comments, I would like to provide the following comments. These are my own personal comments. I would be happy to rephrase my comments in terms of draft language suggestions. -retailers must maintain easily auditable records of excise tax exemptions -retailers must be able to demonstrate that all retail staff has a reliable method to differentiate, at the time of sale, between WAC 246-70 product that qualifies for the excise tax exemption and non-246-70, that does not qualify. -It should be made explicit in 314-55 that LCB is responsible for educating and enforcing conformance to the labeling and QA requirements of 246-70. (see attached example) --it should be made explicit that, along with the requirement that retailers provide COAs to consumers, on demand, within the store, that requirement also must include providing a copy of the original COA of heavy metal testing results, which cannot be substituted by a vouch from a contracting lab, in cases where the heavy metal testing results have been subcontracted. Thank you John Kingsbury	5/28/2024 John: Thanks so much for getting this in, I'll be sure to include it in the rule file, Sincerely,
MAY 29, 2024 **INFORMAL COMMENT DEADLINE**		

Washington State
Liquor and Cannabis Board

SHB 1453 Draft Rules Discussion

Monday, June 3, 10 a.m. – Noon

Thursday, June 6, 1 p.m. – 3 p.m.

Daniel Jacobs, Policy & Rules Coordinator
Daniel.Jacobs@lcb.wa.gov
rules@lcb.wa.gov

Objective

To obtain public feedback on draft rule language to implement SHB 1453.

For feedback or questions, contact rules@lcb.wa.gov

Notes

During the meeting please keep the following in mind:

- While the Teams chat feature will be ON, any written questions submitted in chat will be saved in the rulemaking file and are **subject to public disclosure**.
- Questions and comments in the session's Team chat will not be responded to in real time, but will be **addressed at the end of the session**.
- Participants will be muted and will only be unmuted when the session's leader enables their microphone.
- To ask questions during the sessions, participants must **use the raise hand** function and they will then be unmuted to ask their question.
- If you would like to submit questions before, during or after the engagement session, feel free to email the rules team at rules@lcb.wa.gov.

Washington State
Liquor and Cannabis Board

SHB 1453 Rulemaking Project Timeline

Date		Stage
April 24, 2024		CR 101 Filed – Rulemaking officially begins, filed as WSR 24-10-043
June 3 & 6, 2024	**WE ARE HERE**	Stakeholder Engagements
June 6, 2024		SHB 1453 Effective Date
June 18, 2024	Tentative	CR 102 Filed – Draft Rules Proposed
June 18 – July 31, 2024	Tentative	Public Feedback Period on Draft Rules
July 31, 2024	Tentative	Public Hearing
August 14, 2024	Tentative	CR 103 Filed – Final Rules filed
September 14, 2024	Tentative	Rules effective

Washington State
Liquor and Cannabis Board

Substitute House Bill 1453 – adding to RCW 69.50.535

(2)(a) Until June 30, 2029, the tax levied by subsection (1) of this section does not apply to sales by a cannabis retailer with a medical cannabis endorsement to qualifying patients or designated providers who have been issued a recognition card, of cannabis concentrates, useable cannabis, or cannabis-infused products, identified by the department as a compliant cannabis product in chapter 246-70 WAC and tested to the standards in WAC 246-70-040.

(b) Each seller making exempt sales under this subsection (2) must maintain information establishing eligibility for the exemption in the form and manner required by the board.

(c) The board must provide a separate tax reporting line on the excise tax form for exemption amounts claimed under this subsection (2).

SHB 1453 – Broken Down

(2)(a) Until June 30, 2029, the tax levied by subsection (1) of this section does not apply to sales by a cannabis retailer with a medical cannabis endorsement to qualifying patients or designated providers who have been issued a recognition card, of cannabis concentrates, useable cannabis, or cannabis-infused products, identified by the department as a compliant cannabis product in chapter 246-70 WAC and tested to the standards in WAC 246-70-040.

(b) Each seller making exempt sales under this subsection (2) must maintain information establishing eligibility for the exemption in the form and manner required by the board.

1. Expires June 30, 2029
2. Retailer holds medical cannabis endorsement
3. Purchaser must be qualified patient or designated provider
4. DOH compliant product as identified in WAC 246-70
5. Retailers must keep records for eligibility as prescribed by Board

Interim Guidance

- Because there will be a gap between SHB 1453 effective date 6/6/24 and tentative rules effective date 9/14/24, Board has issued interim guidance via gov delivery on 5/29/24
- Can be found here.
- Recommends keeping documents mostly consistent with rule language to be previewed later.

WAC Changes

Status	WAC	Description
New	314-55-090	New rule section for new temporary excise tax exemption including recording keeping and definitions
Amended	314-55-083	Adds reference to WAC 314-55-090.
Amended	314-55-087	Record requirements and adds reference WAC 314-55-090
Amended	314-55-089	Record requirements, technical changes and adds reference to WAC 314-55-090
Consistent with WSR 24-11-037, changing “WSLCB” to “LCB”		

WAC 314-55-090 – NEW RULE

- In order to address issues and compliance with new excise tax exemption, in addition to amending current rules around reporting and recordkeeping, the Board is proposing to create a new rule dedicated solely to this new temporary excise tax exemption
- If the tax exemption expires in June 2029, the rule will be repealed then. If it is extended, the rule can be extended.

WAC 314-55-090(1) – Elements to apply Excise Tax Exemption

(1) Pursuant to RCW 69.50.535(2), the excise tax levied in RCW 69.50.535(1) does not apply to sales of cannabis that satisfy all of the following conditions:

(a) The sale is made by a cannabis retailer holding a valid medical cannabis endorsement issued pursuant to RCW 69.50.375, and compliant with WAC 314-55-080;
(b) The sale is made to a qualifying patient or designated provider who has a valid recognition card issued pursuant to RCW 69.51A.230, and is in the database;
(c) The sale is of cannabis concentrates, useable cannabis, or cannabis-infused products identified by the department as a compliant cannabis product in chapter 246-70 WAC and tested to the standards in chapter 246-70 WAC;

WAC 314-55-090(2) – Record Keeping Requirements

(2) Cannabis licensees must retain the following information for five years, consistent with WAC 314-55-087, for every sale where the excise tax is exempted per RCW 69.50.535(2):

(a) Date of sale;
(b) Unique identifying number of qualifying patient making purchase;
(c) Stock keeping unit (SKU) of cannabis concentrates, useable cannabis, or cannabis-infused products identified by the department as a compliant cannabis product in chapter 246-70 WAC and tested to the standards in chapter 246-70 WAC;
(d) Sales price of cannabis concentrates, useable cannabis, or cannabis-infused products identified by the department as a compliant cannabis product in chapter 246-70 WAC and tested to the standards in chapter 246-70 WAC.

WAC 314-55-090(3) Taxability Presumption

(3) For any sale where the excise tax was not collected, if a cannabis licensee cannot produce the documentation identified in subsection (2) of this section when requested by the LCB, such excise tax shall be presumed to have been incorrectly exempted, and the retailer shall be responsible for remitting to the LCB the amount of excise tax that should have been collected. Penalties may apply to any incorrectly exempted excise tax payments that need to be remitted as described in this subsection, consistent with WAC 314-55-092.

(emphasis added)

WAC 314-55-090(4) Definitions

(a) "Database" means the medical cannabis authorization database as defined in RCW 69.51A.010.

(b) "Department" means the Washington state department of health.

(c) "Designated provider" has the same meaning provided in RCW 69.51A.010.

(d) "Qualifying patient" has the same meaning provided in RCW 69.51A.010.

(e) "Recognition card" has the same meaning provided in RCW 69.51A.010.

(f) "Unique identifying number" refers to the unique identifying number described in RCW 69.51A.230.

Other Changes – WAC 314-55-083(4)(j)

(4) … The following information is required and must be kept completely up-to-date in a system specified by the ~~WSLCB~~ LCB:

…

(j) Cannabis excise tax records, including records required for medical cannabis patient excise tax exemptions in WAC 314-55-090;

Other Changes – WAC 314-55-087(1)

(1)… [records that have to be kept for five years include]…

…

(r) Detailed sale records including, but not limited to, date of sale, sale price, item sold, and taxes assessed;

(s) Records for medical cannabis patient excise tax exemptions as required in WAC 314-55-090.

Other Changes – WAC 314-55-089(1)

[regarding retailer monthly required reports]…

(b)(ii) Each report will identify total product sales and total medical product sales where the excise tax was exempted, in the form and manner required by the LCB;

(c) … a report ~~listing~~ summarizing transactions for the month…

…

(e) All records must be maintained and available for review for a ~~three~~ five-year period on licensed premises (see WAC 314-55-087).

Other Changes – WAC 314-55-089(4)

(b)(i) A cannabis retailer licensee must collect from the buyer and remit to the ((~~WSLCB~~)) LCB a cannabis excise tax of 37 percent of the selling price on each retail sale of useable cannabis, cannabis concentrates, and cannabis-infused products, except as identified in WAC 314-55-090 and RCW 69.50.535(2).

(ii) Records of medical cannabis excise tax exemptions provided must be maintained as required in WAC 314-55-087 and 314-55-090.

Other Changes – WAC 314-55-089(5)

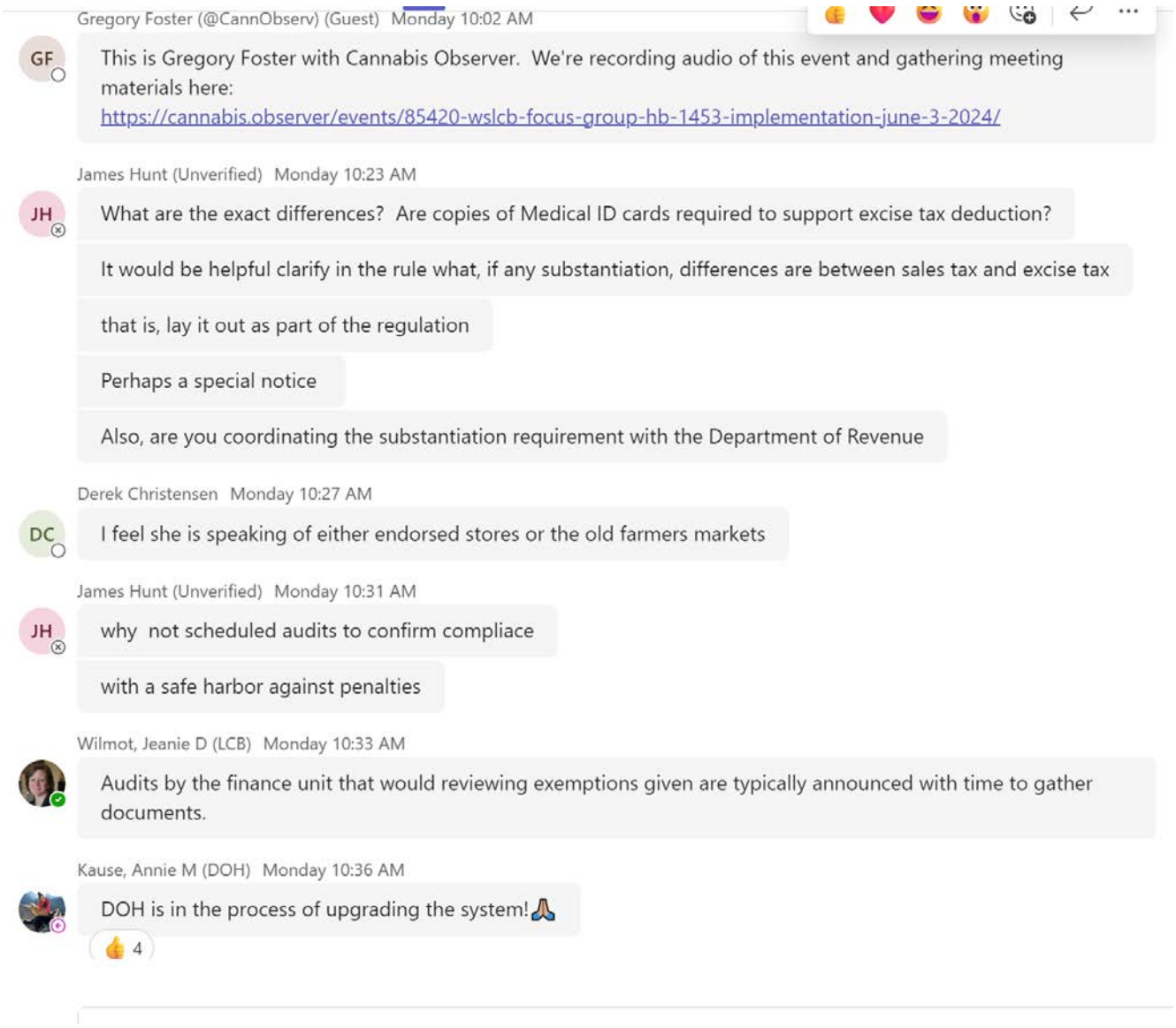
[Streamlining language around payment methods for excise tax payments]

(a) By mail to ((~~WSLCB, Attention: Accounts Receivable, P.O. Box 43085, Olympia, WA 98504~~)) LCB;
(b) By paying through online access ((~~through the WSLCB traceability system~~)); or

Thank You!

For any questions or feedback, please contact Policy & Rules at rules@lcb.wa.gov

6.3.24 Chat



Gregory Foster (@CannObserv) (Guest) Monday 10:02 AM

GF This is Gregory Foster with Cannabis Observer. We're recording audio of this event and gathering meeting materials here: https://cannabis.observer/events/85420-wslcb-focus-group-hb-1453-implementation-june-3-2024/

James Hunt (Unverified) Monday 10:23 AM

JH What are the exact differences? Are copies of Medical ID cards required to support excise tax deduction?

It would be helpful clarify in the rule what, if any substantiation, differences are between sales tax and excise tax

that is, lay it out as part of the regulation

Perhaps a special notice

Also, are you coordinating the substantiation requirement with the Department of Revenue

Derek Christensen Monday 10:27 AM

DC I feel she is speaking of either endorsed stores or the old farmers markets

James Hunt (Unverified) Monday 10:31 AM

JH why not scheduled audits to confirm compliace

with a safe harbor against penalties

Wilmot, Jeanie D (LCB) Monday 10:33 AM

Audits by the finance unit that would reviewing exemptions given are typically announced with time to gather documents.

Kause, Annie M (DOH) Monday 10:36 AM

DOH is in the process of upgrading the system!🙏

👍 4

Gregory Foster (@CannObserv) (Guest) Monday 10:37 AM

GF

Ms. Kause, has an RFP been issued for the replacement to AirLift?

👍 2

Melanie Lankhaar (Unverified) Monday 10:39 AM

ML

I agreed I use DOH/Airlift site daily and it's a mess.

We have it up on our screens for budtenders use to confirm cards and it is very time consuming.

Johnson, Tholo J (DOH) Monday 10:41 AM

We hear ya... 🙄

💔 3

Michelle Gipson Monday 10:43 AM

MG

lists of farmers markets are provided by ou healthcare practitioners and should continue to be available in my view

Kyla (Guest) Monday 10:43 AM

K

Agreed with everything being said. Airlift is a mess and very hard to know who to talk to when certain problems come about. Medical patients when either getting issued a card or just verifying a card and then going through with a transaction take a very long time and can create medical patients to not want to go back to the store because of how long it takes to get medicine. We would love to get our medical patients dealt with quickly and efficiently so they can get home and have their medicine.

Michelle Gipson Monday 10:46 AM

MG

In Colorado, there are distinct operations for medical cannabis which are separate from retail. It seems the most efficient way of ensuring that the tax exemption applies only to medical cannaabis. Hence, the need for farmer's markets.

😜 1

Wong, Johnny (DOH) Monday 10:48 AM

Melannie- can you provide details on this product? I am not aware of testing for "parent lots"

👍 1

Michelle Gipson Monday 10:49 AM

MG

why did WA decide to lump patients into the same retail space as recreational useers?

West, Cassidy (LCB) Monday 10:50 AM

Melanie Lankhaar (Unverified) If you would like to leave your email, I would be happy to follow-up with you about the COA concerns. Thanks!

💔 1 👍 1

Michelle Gipson Monday 10:52 AM

MG

I think a lot of this difficulty could be resolved by simply keping medical separate from recreational sellers.

💔 1

Johnson, Tholo J (DOH) Monday 10:54 AM

Hi Melanie Lankhaar, we're working on a testing guidance document as we speak and are hoping to put it out ASAP. The testing for DOH-compliant products (heavy metals) are in addition to the LCB tests. The LCB tests are required based on product type found here: WAC 314-55-102: beginning at (4) and at the specified times. For DOH compliance on heavy metals, if the final product is flower then HM testing is done on the flower. If it's getting processed into anything else, HM testing is done on the concentrate after extraction.

👍 3

James Hunt (Unverified) Monday 10:54 AM

JH

Why not follow the sales tax requiredment- must keep copy of medical id card

Melanie Lankhaar (Unverified) Monday 10:55 AM

ML

> Melanie Lankhaar (Unverified) If you would like to leave your email, I would be happy to follow-up with you about the COA concerns. Thanks!

Melanie.lankhaar@pomcannabis.com

Guest (Potential Patient) Monday 10:55 AM

G

The proposal to have Retailers track DOH-Compliant product status via their specific SKU defeats the purpose of TRACEABILITY, n'est ce pas?

👍 1

Johnson, Tholo J (DOH) Monday 10:55 AM

and yes, as Mr Kingsbury may have mentioned, DOH currently requires a larger sample volume be submitted for testing than LCB does.

👍 1

James Hunt (Unverified) Monday 10:57 AM

JH

What about emergency regulations so there is a safe harbor

I agree that substantiation with sales tax should be the same as for excise tax

Johnson, Tholo J (DOH) Monday 10:58 AM

> James Hunt (Unverified) 6/3/2024 10:54 AM
> Why not follow the sales tax requiredment- must keep copy of medical id card

A copy of this card on file may violate HIPPA laws, whereas documenting only the ID # may not.

👍 1

James Hunt (Unverified) Monday 10:59 AM

JH change the statute

Shawn DeNae (Unverified) Monday 11:00 AM

SD Parent lot: my understanding by example is if flower and kief are separately tested for DOH, the 2 products can then be blended to create a separate product that then only has to test for regular COA (sans pesticide and heavy metals) and maintain the DOH qualification. The tertiary product would then not have the pesticide and heavy metal information of the 'parent lot' on the COA.

James Hunt (Unverified) Monday 11:03 AM

JH do not assume airlift has that data.

LCB and DOH should sort this out as part of this process

Melanie Lankhaar (Unverified) Monday 11:03 AM

ML

> Parent lot: my understanding by example is if flower and kief are separately tested for DOH, the 2 products can then be blended to create a separate product that then only has to test for regular COA (sans...

Yes thank you, sorry I was working on typing that out also helping on the sales floor at work at the same time lol.

💔 1

James Hunt (Unverified) Monday 11:03 AM

JH Greenbits did not keep historic id numbers

bad surprize

Guest (Potential Patient) Monday 11:07 AM

G With respect. NO ability to track patient purchases across time should be enabled by the rules you write.

Guest (Potential Patient) Monday 11:07 AM

G

With respect. NO ability to track patient purchases across time should be enabled by the rules you write.

Given the performance of the current database provider (and keeper), the sanctity of patient ID to patient identifying information should not be presupposed.

Why are we not having this all figured out by Thursday, when this is going live?

👍 1

Michelle Gipson Monday 11:11 AM

MG

Perhaps this was resolved earlier in your rulemaking and I apologize if I'm repeating earlier work, but I have experienced that not even allowing a non-medical customer in the door at a medical facility both ensures patient privacy better and avoids the issue of retail taxes which are only applicable to recreational facilities. Providing separate facilities for medical and recreational works in other states and could be good for washington as well.

Guest (Potential Patient) Monday 11:13 AM

G

Emergency Rulemaking? It worked for Heavy Metals a few years back.

Katrina Fisher (Unverified) Monday 11:13 AM

KF

I'm struggling with the responsibility of verifying DOH compliance products falling onto the retailors. Shouldn't the consequences for false "DOH compliant" marked products fall onto the producers? I do completely understand verification of the qualifying patient information falling onto the retailors however - that makes sense.

👍 1

Guest (Potential Patient) Monday 11:20 AM

G

Can't the agency get these data from CCRS?

Can any of the 20 LCB Staff on the meeting answer the CCRS question?

Crista Monday 11:25 AM

C

Will the LCB be sending a new sheet for retailers to use for their tax payments?

Perfect, thank you

Aldaghestani, Reem (DOH) Monday 11:32 AM

Thank you all

Guest (Potential Patient) Monday 11:32 AM

G

Thank-you. Useful session!

Caitlein Ryan - The Cannabis Alliance Monday 11:32 AM

CR

Thank you

James Hunt (Unverified) Monday 11:33 AM

JH

thanks for the session

Shawn DeNae (Unverified) Monday 11:33 AM

SD

Thank you!

Angell, Shannon C (DOH) Monday 11:33 AM

Thank you Daniel!

Michelle Gipson Monday 11:33 AM

MG

thank you

Laflamme, Denise M (LCB) Monday 11:37 AM

Thanks everyone. Today's session has ended. 2nd session for SHB 1453 rulemaking is Thursday June 6, 1-3. The same material will be presented.

1453 Stakeholder Engagement Chat 6/6/24

Gregory Foster (@CannObserv) (Unverified) 1:01 PM

GF

This is Gregory Foster with Cannabis Observer. We're recording audio of this event and we're gathering meeting materials here:
https://cannabis.observer/events/85425-wslcb-focus-group-hb-1453-implementation-june-6-2024/

👍 1

Celia Curran (Unverified) 1:02 PM

CC

Thank you Greg!

👍 1

Kyla Degrandpre (Unverified) 1:07 PM

KD

I have a question about what products exactly we can give our customers the excise tax taken off of the purchase. We as a store have talked to an LCB consultant. There are 3 Stickers as far as we understand that are for DOH compliant products. 1.) General Use

2.) high cbd

3.) high thc and we are under the conclusion that only the high thc labeled products can have the excise tax taken off for medical patients is this correct?

Lara Kaminsky (Unverified) 1:10 PM

LK

all can get the exemption

👍 1

Walker, Loralei M (DOH) 1:16 PM

Yes, that's right 🙂

Kyla Degrandpre (Unverified) 1:16 PM

KD

Thank you so much! That really helps

Matthew-Skagit Organics (Unverified) 1:17 PM

MO

I don't think there are many High THC-compliant products on the market. Most of the products are currently labeled as General Use and High CBD.

👍 1

Walker, Loralei M (DOH) 1:18 PM

We are working on guidance and infographics to help explain when which tax exemption applies. They will go out through our GovDelivery list when they're ready.

👍 3

Johnson, Tholo J (DOH) 1:18 PM Edited

Sales tax exemption: all products purchased by card holders @medical endorsed store.

Excise tax exemption: any DOH-logoed product (tested and sampled to DOH standards) for card holders only @medical endorsed stores.

👍 3

Celia Curran (Unverified) 1:21 PM

CC

So, a qualifying medical patient could have both excise and sales tax waived from one single transaction?

👍 2

Walker, Loralei M (DOH) 1:23 PM

That's right. And just to reinforce, they must be registered in the DOH database and have a recognition card. In this case, the single transaction would have to be for a DOH-complaint medical product.

👍 1

Johnson, Tholo J (DOH) 1:23 PM

> Celia Curran (Unverified) 6/6/2024 1:21 PM
> So, a qualifying medical patient could have both excise and sales tax waived from one single transaction?

The patient/designated provider must be in the database.

👍 1

Celia Curran (Unverified) 1:23 PM

CC

Thank you!

Tom - Treeline (Unverified) 1:25 PM

T

Does a P/P have to send in an additional 3 gram sample per lot for the heavy metals test? Or, when testing a 50lb lot for example, can we use part of the 19 grams for the heavy metals test?

John Kingsbury (Unverified) 1:28 PM

JK

> Tom - Treeline (Unverified) 6/6/2024 1:25 PM
> Does a P/P have to send in an additional 3 gram sample per lot for the heavy metals test? Or, when testing a 50lb lot for example, can ...

The requirements for DOH testing are under WAC 314-55-050

Walker, Loralei M (DOH) 1:29 PM

John, I think you have a typo, it's WAC 246-70-050: Chapter 246-70 WAC:

John Kingsbury (Unverified) 1:29 PM

JK

LOL Yes. Thank for catching that, Loralei

👍 1

Johnson, Tholo J (DOH) 1:29 PM

> Tom - Treeline (Unverified) 6/6/2024 1:25 PM
> Does a P/P have to send in an additional 3 gram sample per lot for the heavy metals test? Or, when testing a 50lb lot for example, can ...

Thank you for bringing this up!

The sample submitted to the lab needs to follow DOH sampling requirements (3gm/3lb flower)(2gm per batch of concentrate). This sample should be used for all required tests (LCB tests and heavy metals).

Tom - Treeline (Unverified) 1:30 PM

T

(i) For screening at harvest, three grams for every three pounds of harvested product. Harvest amounts will be rounded up to the next three-pound interval. For example, a harvest of less than three pounds requires at least three grams for testing; a harvest of three or more pounds but less than six pounds requires at least six grams for testing.
(ii) For screening a lot, three grams per lot.

👍 1

Roy Sherwood | Compliance Analyst (Unverified) 1:30 PM

RS

I think flexibility in the recordkeeping requirement would be beneficial in section (c) , From the Point of Sale standpoint, we often see SKU's that are unique from location to location. Thank you for your consideration.

Tom - Treeline (Unverified) 1:30 PM

T

> Johnson, Tholo J (DOH) 6/6/2024 1:29 PM
> Thank you for bringing this up! The sample submitted to the lab needs to follow DOH sampling requirements (3gm/3lb flower)(2gm...

Thanks TJ! It also looks like instead of doing 3g per 3lb, we can also do 3g per lot?

👍 2

Christine (Unverified) 1:31 PM

C Does the lot number or barcode number suffice as the 'stock keeping unit'?

James G Hunt (Unverified) 1:31 PM

JH Is it LCB/DOH position that they are not entitled to identify name of patient?

Johnson, Tholo J (DOH) 1:31 PM

Because DOH requires a larger representative sample currently, the P/P would need to submit more sample to the lab prior to the lab's homogenization step.

Nick (Unverified) 1:32 PM

N Alternatively stated, the sample size for DOH is one gram per pound in increments of three.

Cait B (Unverified) 1:33 PM

CB I was also wondering this

artie (Guest) (Unverified) 1:33 PM

A i am a PP... and i have DOH tested products... and i know the benefits of cannabis for patients, but I am not a doctor... my question is labeling... can i say on my packaging, "This product is known to help..." (lets say pain management, or sleep aid)

👍 2

Johnson, Tholo J (DOH) 1:33 PM

> Tom - Treeline (Unverified) 6/6/2024 1:30 PM
> Thanks TJ! It also looks like instead of doing 3g per 3lb, we can also do 3g per lot?

The 3gm per lot is outdated because the definition of lot points to LCB, and the lot sizes of LCB have since been updated and changed. So, 3 gm/lb, and 2 gm/batch of intermediate or finished concentrate.

Tom - Treeline (Unverified) 1:33 PM

T

> Johnson, Tholo J (DOH) 6/6/2024 1:33 PM
> The 3gm per lot is outdated because the definition of lot points to LCB, and the lot sizes of LCB have since been updated and changed....

Thank you for the clarification!

👍 1

Walker, Loralei M (DOH) 1:36 PM

> artie (Guest) (Unverified) 6/6/2024 1:33 PM
> i am a PP... and i have DOH tested products... and i know the benefits of cannabis for patients, but I am not a doctor... my question is...

Take a look at our DOH labeling requirements: Chapter 246-70 WAC:
part of that rule is that label must not (b) State or imply any specific medical or therapeutic benefit;...

💔 2

Johnson, Tholo J (DOH) 1:36 PM

> artie (Guest) (Unverified) 6/6/2024 1:33 PM
> i am a PP... and i have DOH tested products... and i know the benefits of cannabis for patients, but I am not a doctor... my question is...

I believe there's language specifically saying that those claims can not be made (some WAC or RCW). I'm looking for it and will share if I find it...

Gregory Foster (@CannObserv) (Unverified) 1:36 PM

GF

FYI, the WA Cannabis Integrators Association updated their B2B inventory transfer specification to ensure products can be marked "is_medical"; so if you're P/P clients are using it, the data is there; here's a summary of the spec change:
https://docs.google.com/document/d/1WFF7hOf_v-JJvykd5ygtYWJaSQsJ1s7bgjU-fuSV6zI/edit?usp=sharing

💔 1

Kyla Degrandpre (Unverified) 1:36 PM

KD The barcode is the sku of the product yes.

Johnson, Tholo J (DOH) 1:36 PM

Walker, Loralei M (DOH), you're awesome

😊 1 👍 1 ❤️ 1

Justin (Unverified) 1:37 PM

J the barcodes as they appear on a manifest are used as the SKU of a product

Johnson, Tholo J (DOH) 1:38 PM

WAC 246-70-060: (2)(b)

Christine (Unverified) 1:38 PM

C Because each individual lot must be tested to determine whether it is DOH compliant, there technically could be a mix of DOH compliant lots and non-DOH compliant lots under the same 'SKU'. In practice, we don't expect this to be the norm, but there is nothing mandating that all lots under a SKU must be DOH compliant.

👍 1

Jason Jaques (Unverified) 1:39 PM

JJ Maybe this is something either Tom @ Treeline, DOH, or LCB can answer for me -- So if we, as a retailer, are trying to verify the correct testing is done -- on a product like a tincture -- the COA we receive doesn't always say the testing was done. For instance, we get tinctures from big brands that show "Heavy Metals: N/E" Etc. We have no access to the COAs of the parent lot that was tested before the product was titrated into other products. How do we track those down?

👍 4

Walker, Loralei M (DOH) 1:39 PM

Yes, DOH wants to underscore the very stringent privacy requirements that go with the patient registry. We are working on solutions related to the excise tax exemption that strictly follow those privacy requirements.

John Kingsbury (Unverified) 1:39 PM

JK

> artie (Guest) (Unverified) 6/6/2024 1:33 PM
> i am a PP... and i have DOH tested products... and i know the benefits of cannabis for patients, but I am not a doctor... my question is...

Structure function claims are not allowed.

👍 1

Owen (Unverified) 1:40 PM

O

Why couldn't the patient just present their recommendation.

Matthew-Skagit Organics (Unverified) 1:41 PM

MO

I think the barcode number on the package itself as it arrives to retail store should be used for tracking.

👍 1

artie (Guest) (Unverified) 1:41 PM

A

> Walker, Loralei M (DOH) 6/6/2024 1:36 PM
> Take a look at our DOH labeling requirements: Chapter 246-70 WAC: part of that rule is that label must not (b) State or imply any specific...

hi tholo... after this meeting, is there a phone number i may call you to ask a few questions... artie 360.930.4996 / artie@ftsfarms.com

👍 2

Tricia (Unverified) 1:41 PM

T

For retailer we need the date the item the patient name and the retail price including the excise tax for our records

Johnson, Tholo J (DOH) 1:42 PM

> Christine (Unverified) 6/6/2024 1:38 PM
> Because each individual lot must be tested to determine whether it is DOH compliant, there technically could be a mix of DOH compliant...

I believe that if a DOH compliant lot got mixed with a non-compliant lot, this product would become "cannabix mix" under LCB rules and would need new testing.

John Kingsbury (Unverified) 1:42 PM

JK

> Tricia (Unverified) 6/6/2024 1:41 PM
> For retailer we need the date the item the patient name and the retail price including the excise tax for our records

My understanding is it is not the patient name, but rather the Patient Identification Number

👍 1

Tom - Treeline (Unverified) 1:43 PM

T

> Jason Jaques (Unverified) 6/6/2024 1:39 PM
> Maybe this is something either Tom @ Treeline, DOH, or LCB can answer for me -- So if we, as a retailer, are trying to verify the correc...

That's a great question, Jason! We have thought of one workaround. But I'm interested to hear what the LCB/DOH/WSDA has to say.

💔 1

Jason Jaques (Unverified) 1:44 PM Edited

JJ

> Tom - Treeline (Unverified) 6/6/2024 1:43 PM
> That's a great question, Jason! We have thought of one workaround. But I'm interested to hear what the LCB/DOH/WSDA has to say.

I have some thoughts on it, as well. I just want clear answers so the LCB doesn't come knocking, or a customer comes in, and asks for a COA (as we are required to have on hand presentable to both) and I can't prove that the product is truly compliant. I'm not comfortable giving that tax exemption if i can't prove it in an audit. Taxability Presumption is my exact worry!

👍 6

Johnson, Tholo J (DOH) 1:46 PM

> artie (Guest) (Unverified) 6/6/2024 1:41 PM
> hi tholo... after this meeting, is there a phone number i may call you to ask a few questions... artie 360.930.4996 / artie@ftsfarms.com

I can give you a call afterwards, Artie

Jason Jaques (Unverified) 1:47 PM

JJ

As that is your response: Should we report brands that are claiming DOH compliance (Via sticker or label) if they can't prove it to me as a retailer?

👍 1

Owen (Unverified) 1:47 PM

O

Does that not violate the patients right to tax free medicine

👍 2

John Kingsbury (Unverified) 1:47 PM

JK

Will a logo on a package serve as prima facia evidence of Compliance?

👍 1

Melanie Lankhaar (Unverified) 1:48 PM Edited

ML

Yes but these products have the label DOH sticker on them and the retailer can not prove they are compliant.

Jason Jaques (Unverified) 1:48 PM

JJ

> John Kingsbury (Unverified) 6/6/2024 1:47 PM
> Will a logo on a package serve as prima facia evidence of Compliance?

I was told by the LCB verbally yesterday that no one approves the putting of the logo on the packaging. The proof is the COA.

Amber Wise (Unverified) 1:48 PM

AW

I (testing lab) has been advising clients that it's up to them to provide BOTH COAs to the store if there are two sets of results associated with a product.

💔 8

Jason Jaques (Unverified) 1:49 PM

JJ

> Amber Wise (Unverified) 6/6/2024 1:48 PM
> I (testing lab) has been advising clients that it's up to them to provide BOTH COAs to the store if there are two sets of results associated wi...

Thank you, Amber. This is what I have a large brand tracking down for me. This I believe is the only way to go currently.

Other than testing facilities linking parents to sub-lots for retailers and vendors. Such as putting a QR code to the parent (tested for DOH compliance) COA or something of that nature.

Celia Curran (Unverified) 1:50 PM

CC

> Jason Jaques (Unverified) 6/6/2024 1:48 PM
> I was told by the LCB verbally yesterday that no one approves the putting of the logo on the packaging. The proof is the COA.

I'm worried that as an edible processor, we'll have to order all new compliant packaging if the LCB requires the "medically compliant" sticker to be on there. Can't we add that text into the variable text we put on the barcode that gets added to every product? Wouldn't that be easier and more cost-effective?

👍 1

Tom - Treeline (Unverified) 1:50 PM

T

Agreed, supplying the upstream CoA's is the only way to prove DOH compliance on final products, assuming the Inventory ID's are traceable to the parent lots

👍 1

Nick (Unverified) 1:50 PM

N

Problem remains: you have two COAs, with two sample IDs, two lot IDs and what documentation do you have that they are appropiately chained together?

❤️ 1 👍 1

Tom - Treeline (Unverified) 1:51 PM

T

> Nick (Unverified) 6/6/2024 1:50 PM
> Problem remains: you have two COAs, with two sample IDs, two lot IDs and what documentation do you have that they are appropiately...

Does this call for a traceability system? 😳

😆 2

Jason Jaques (Unverified) 1:51 PM

JJ

> Nick (Unverified) 6/6/2024 1:50 PM
> Problem remains: you have two COAs, with two sample IDs, two lot IDs and what documentation do you have that they are appropiately...

Agreed, this has been a problem for YEARS. YEARS AND YEARS. And the DOR is going to come wondering where all this tax money is going... and that might be the only way we get some of it locked down.

Celia Curran (Unverified) 1:52 PM

CC

> Nick (Unverified) 6/6/2024 1:50 PM
> Problem remains: you have two COAs, with two sample IDs, two lot IDs and what documentation do you have that they are appropiately...

Which means our teams have twice the amount of work to do to pull the appropriate COAs and then label them correctly and send them as an addition to our retailers.

Amber Wise (Unverified) 1:52 PM

AW

It's crazy difficult because no one has any visibility into CCRS, so there's no way to "prove" an intermediate has been tested except the honor system of the licensee. I have been asking clients that have 'final products' tested with us which intermediate product they used to infuse that product and we are combining the old COA with the new COA into one document for easier traceability. However, we are getting MANY samples sub-contracted from other labs for metals testing only, so we have no way of knowing what the other testing results show.

👍 4 😮 3 💔 1

Jason Jaques (Unverified) 1:55 PM

JJ

Half hour quicker than monday!

😆 1

Johnson, Tholo J (DOH) 1:55 PM

DOH is considering requiring a QR code on the packaging linked to the COA. Would this help the above COA discussion?

👍 4 ❤️ 2

Celia Curran (Unverified) 1:55 PM

CC

So... what's to stop a high school medical patient from purchasing a bunch of stuff and then turning around and reselling it to their friends?

Amber Wise (Unverified) 1:55 PM

AW

one QR code = one COA, so if there are two COAs associated with the product, still doesn't solve the visiblity issue.

👍 2

Jason Jaques (Unverified) 1:55 PM

JJ

> Johnson, Tholo J (DOH) 6/6/2024 1:55 PM
> DOH is considering requiring a QR code on the packaging linked to the COA. Would this help the above COA discussion?

Only if they have the QR code that proves compliance. Even if that means requiring them to attach both COAs for their product.

👍 2

Justin (Unverified) 1:56 PM

J

you could always attach multiple coa pdfs into a single multi page document and then link that - we have done this at our p/p when testing on a product was done in parts

❤️ 1

Craft Elixirs (Unverified) 1:56 PM

CE The DOH sticker is equal to a discount sticker for Medical patients. This should not be prominent on a package.

Jason Jaques (Unverified) 1:57 PM

JJ The sticker feels like us, as a retailer, are false advertising if we can't prove it.

👍 1

Johnson, Tholo J (DOH) 1:57 PM

> Amber Wise (Unverified) 6/6/2024 1:55 PM
> one QR code = one COA, so if there are two COAs associated with the product, still doesn't solve the visiblity issue.

Is there a way to link the first COA (intermediate product) to the second (end product)?

in 1 code?

Celia Curran (Unverified) 1:57 PM

CC

> Justin (Unverified) 6/6/2024 1:56 PM
> you could always attach multiple coa pdfs into a single multi page document and then link that - we have done this at our p/p when...

Which still requires so much more work for p/p's to then pull and create outside of our integrator software.

Tom - Treeline (Unverified) 1:58 PM

T

> Johnson, Tholo J (DOH) 6/6/2024 1:57 PM
> in 1 code?

What if the intermediate product is tested at a different lab than the final product?

Jason Jaques (Unverified) 1:58 PM

JJ

Present the need to the integrator software. The develop their product based on the needs of their customers. It's mutually beneficial.

👍 2

John Kingsbury (Unverified) 1:59 PM

JK

> Craft Elixirs (Unverified) 6/6/2024 1:56 PM
> The DOH sticker is equal to a discount sticker for Medical patients.
> This should not be prominent on a package.

I am not sure how you mean this, but as a consumer, the DOH sticker is also a quality assurance sticker.

👍 2

Celia Curran (Unverified) 1:59 PM

CC

> Tom - Treeline (Unverified) 6/6/2024 1:58 PM
> What if the intermediate product is tested at a different lab than the final product?

It would be up to the p/p to create somewhere for those certs to live in order to link them to a qr code

👍 1

Craft Elixirs (Unverified) 1:59 PM

CE

What if Medical patients don't want to be IDENTIFIED by a sticker and remain anonymous?

Amber Wise (Unverified) 1:59 PM

AW

> Johnson, Tholo J (DOH) 6/6/2024 1:57 PM
> Is there a way to link the first COA (intermediate product) to the second (end product)?

in theory, yes but only if both the intermediate and final product were tested in the same lab.

👍 3

Jason Jaques (Unverified) 1:59 PM

JJ

> Craft Elixirs (Unverified) 6/6/2024 1:59 PM
> What if Medical patients don't want to be IDENTIFIED by a sticker and remain anonymous?

It's not an identifier. Anyone can buy DOH certified product, other than HIGH THC labeled.

👍 1

Tom - Treeline (Unverified) 2:00 PM

T

> Amber Wise (Unverified) 6/6/2024 1:59 PM
> in theory, yes but only if both the intermediate and final product were tested in the same lab.

Traceability system would be great...

😆 2 👍 1 ❤️ 1

Jason Jaques (Unverified) 2:00 PM

JJ

> Celia Curran (Unverified) 6/6/2024 1:55 PM
> So... what's to stop a high school medical patient from purchasing a bunch of stuff and then turning around and reselling it to their...

The same things as current: Nothing.

John Kingsbury (Unverified) 2:00 PM

JK

> Tom - Treeline (Unverified) 6/6/2024 2:00 PM
> Traceability system would be great...

Remember when Garza was always pitching "seed to sale" traceability?

1 1

Amber Wise (Unverified) 2:01 PM

AW

> Amber Wise (Unverified) 6/6/2024 1:59 PM
> in theory, yes but only if both the intermediate and final product were tested in the same lab.

it's also very difficult/time consuming to do this at least the way we have our software set up. The way we have our software set up is that we cannot have two cannabinoid tests display on the same report, the pdfs have to be combined manually, then the QR will only go to one result.

1

WE NEED REAL TRACEABILITY

8 1

Owen (Unverified) 2:02 PM

O

Is that not the spirit of the law?

Craft Elixirs (Unverified) 2:04 PM

CE

Where's the APP so a Medical Patient can easily register online? Then the LCB can track and limit products purchased.

1

Owen (Unverified) 2:05 PM

O

Fundamentally this law is about providing financial relief to patient

💔 1 👍 1

Johnson, Tholo J (DOH) 2:06 PM

> Craft Elixirs (Unverified) 6/6/2024 2:04 PM
> Where's the APP so a Medical Patient can easily register online? Then the LCB can track and limit products purchased.

RCW mandates that the initial visit must be in-person, so there's not much DOH/medical cannabis program folks can do about that.

Craft Elixirs (Unverified) 2:06 PM

CE

The package is about keeping the community safe. Please keep this in mind.

Justin (Unverified) 2:06 PM

J

this may have been answered already and I missed it, but is the doh sticker itself a requirement on a product for doh compliance? or is the testing and coa attachments sufficient?

👍 1

Esia Delena (Unverified) 2:06 PM

ED

Q's regarding: "Recording keeping requirements" for a retailer giving exemption for excise tax does LCB require we keep a copy of their medical recognition card? The topic has come up storing customer privacy rules HIPPA. there is a slight contradiction since medical endorsement requires keeping a copy of patient or designated provider

Robert Adams (Unverified) 2:07 PM

RA

I would like a complete walk through of this rule in action for a retailer. Example:

💔 2

Store x:

Walker, Loralei M (DOH) 2:07 PM

Anyone can purchase DOH compliant product, EXCEPT High THC classification. We've heard there are not many of these products, if any, but just to be clear

Johnson, Tholo J (DOH) 2:09 PM

a copy of the card would not be suggested as it would have patient name/HIPPA info

1

Jason Jaques (Unverified) 2:10 PM

JJ

> Johnson, Tholo J (DOH) 6/6/2024 2:09 PM
> a copy of the card would not be suggested as it would have patient name/HIPPA info

A recognition card is on'y identifying their name and that they have a "Qualifying condition" and the amount of plants they are allotted. Is identifying someone by, for example, their license plate number and having a handicap placard against HIPPA as well...? Just for my own understanding.

Johnson, Tholo J (DOH) 2:13 PM

> Jason Jaques (Unverified) 6/6/2024 2:10 PM
> A recognition card is on'y identifying their name and that they have a "Qualifying condition" and the amount of plants they are allotted. Is...

Having a copy of the card is identifying a patients name w/their medication (cannabis). Only keeping a record of the ID# does not

1

Lara Kaminsky (Unverified) 2:15 PM

LK Yes, the medical system has been on life support. Glad there is so much interest in providing products to patients!

💔 3

artie (Guest) (Unverified) 2:16 PM

A how many patients to date are in the DOH database ?

Craft Elixirs (Unverified) 2:18 PM

CE Where does the sticker go?

John Kingsbury (Unverified) 2:18 PM

JK

> artie (Guest) (Unverified) 6/6/2024 2:16 PM
> how many patients to date are in the DOH database ?

my understanding is that about 9,500 patients and 2,000 designated providers,

artie (Guest) (Unverified) 2:19 PM

A

> John Kingsbury (Unverified) 6/6/2024 2:18 PM
> my understanding is that about 9,500 patients and 2,000 designated providers,

where do i locate the designated providers list

Owen (Unverified) 2:20 PM

O So to be clear if a retail license holder has a medical endorsement they must provide the discount on doh compliant product to registered card holders

Is that correct

Tax exemption not discount

Jason Jaques (Unverified) 2:21 PM

JJ

artie (Guest) (Unverified) there isn't a list of designated providers, designated providers refer to someone that is designated by the doctor and the patient to obtain medicine for them. For example, if you have a condition that doesn't allow you mobility, if you are a minor below the age you can come into the shop, etc.

Walker, Loralei M (DOH) 2:21 PM

Please reach out to us with DOH-specific questions! medicalcannabis@doh.wa.gov

👍 5

Cait B (Unverified) 2:21 PM

CB

Sunny on the east side!

John Kingsbury (Unverified) 2:21 PM

JK

👏

👍 1

2:22 PM

Any questions please email the rules team at rules@lcb.wa.gov

👍 1

2:23 PM Meeting ended: **2h 53s**

Attendance

June 12, 2024

RE: WSR 24-10-042

WSLCB Rules:

I would like to submit the following comments and requests concerning rulemaking about the implementation of HB 1453, in addition to the comments I have already submitted.

Concern

In my view, HB 1453 presents a unique and critical opportunity to finally realize the commitment made by the Washington State Legislature to provide reliable, appropriate access to Washington State's qualifying medical cannabis patients. HB 1453 is designed and intended to be a single, yet comprehensive, initiative to resolve multiple deficiencies in our medical cannabis system. HB1453 also includes a five-year sunset and JLARC study. Because so much is riding on a successful implementation of HB 1453, its implementation must go well.

Toward that end, I am concerned that, along with this opportunity will comes the incentives for abuse. I am concerned that abuses of this opportunity could result in a failure and sacrifice of the needed reforms and long-overdue benefits that HB 1453 could provide.

I am deeply concerned about the backroom comments I have heard from some licensees, along with the normalized pattern of 'fudging' QA testing procedures. Therefore, I am urging that additional guardrails be written into rules to deter these harms.

Deterrence.

Retailers.

There are a variety of ways that retailers could intentionally, or unintentionally, misapply the excise tax exemption. For the most part, the threat of being liable for reimbursing the State for any misapplied tax exemption seems like a substantial deterrence for deliberate misapplication of the exemption.

This liability also provides adequate incentive to assure that stores assume responsibility for understanding, practicing, and properly training their employees on the proper application of the exemption.

While no additional penalties for misapplication of the exemption may be necessary, LCB may want to at least consider whether some sanctions against non-complying stores' eligibility for medical cannabis endorsements are appropriate. I suggest at least considering giving LCB the option to revoking a store's privilege to hold a medical cannabis endorsement for up to two years.

Producer/Processors

While most p/p's should be assumed to be properly educating themselves about the required application of 246-70 rules, and should be assumed to be acting properly, over the years, I have noticed a disturbing amount of improper behavior, including:

- lab shopping
- blending tested product with untested product (sometimes including inversion)
- providing COA's to retailers that do not match the batch of product
- making 246-70 claims on packaging where there is no evidence that the products have been tested to 246-70 standards

Given what is at stake, given the disturbing degree of normalization of circumventing some rules, I am urging LCB to adopt harsh deterrents to misapplication of 246-70 claims and requirements, as they apply to producer/processors, including:

1. the ability for LCB to order recalls of improperly labeled and improperly tested product.
2. sanctions for mislabeling that greatly exceed those penalties for mislabeling that are already in rule
3. the option for LCB to deny a producer/processor from exercising the privilege of selling, or making claims for 246-70 product for up to two years.

Because circumventing testing and labeling rules has become so normalized, because the survival of any real medical cannabis program may depend upon proper compliance, and because the incentives to cheat may be so attractive to some licensees, LCB should consider the harshest of penalties for collusion with labs to circumvent the requirements of HB1463.

Labs

In view of the transition of lab accreditation from LCB to WSDA, this layer of monitoring compliance and deterrence of abuse feels trickier. I admit that I am not versed in what jurisdiction of lab practices will look like after the transition. Still, LCB will retain jurisdiction over proper labeling and whether products fit the standards required.

In addition to establishing the ability to recall medical-grade product that does not meet QA or labeling requirements, LCB should consider whether it has an avenue to deny a given labs right to test for 246-70 product for up to two years.

As always I appreciate the seriousness that LCB has taken this critically important task. I agree with the statement of Daniel Jacobs that it is better to do rulemaking well, rather than doing it quickly. Nowhere is that approach more important than it is here.
I appreciate your work.

Sincerely,
John Kingsbury

*reference*s:
WAC 314-55-102. Quality assurance and quality control.

WAC 314-55-1035 Laboratory certification—Suspension and revocation

WAC 314-55-509 Penalty structure

WAC 314-55-523 Category IV.Violations that are significant regulatory violations.
Packaging and labeling. per WAC 314-55-105

WAC 314-55-105 Cannabis product packaging and labeling