



**Washington State  
Liquor and Cannabis Board**

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**Date:** September 11, 2024

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

**From:** Daniel Jacobs, Rules Coordinator

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

**Subject: Request for approval of final rules (CR 103) implementing Substitute House Bill (SHB) 1453 regarding the medical cannabis patient excise tax exemption.**

The Rules Coordinator requests that the Board adopt the final rules and approve the CR 103 to amend existing rules and create a new rule to implement [SHB 1453 \(chapter 79, Laws of 2024\)](#), which creates an exemption to the cannabis excise tax for medical cannabis patients under certain conditions.

The Board has been briefed on the rule development background and public comment received for this rulemaking project. A CR 103 memorandum, CR 103 form, concise explanatory statement, and rule text are attached.

If approved, the concise explanatory statement will be sent to everyone who provided public comment or testimony, the CR 103 form and rule text will be filed with the Code Reviser, and the amended rule will be effective October 12, 2024.

<input type="checkbox"/> Approve	<input type="checkbox"/> Disapprove	_____	_____
		David Postman, Chair	Date
<input type="checkbox"/> Approve	<input type="checkbox"/> Disapprove	_____	_____
		Ollie Garrett, Board Member	Date
<input type="checkbox"/> Approve	<input type="checkbox"/> Disapprove	_____	_____
		Jim Vollendroff, Board Member	Date

**Attachments:** CR 103 Memorandum  
Concise Explanatory Statement



## CR 103 Memorandum

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

Date: September 11, 2024  
Presented by: Daniel Jacobs, Rules Coordinator

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#### 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. In July, [packaging approval guidance](#) was provided for medically compliant cannabis.

#### 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 held

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 [ ]LCB 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.

The CR 102 was filed on July 17, 2024 ([WSR 24-15-066](#)) with the proposed rule changes identified in the table below. Two written comments were submitted following the filing of the CR 102 and prior to the public hearing held on August 28, 2024. The comments were largely supportive and are responded to in detail in the Concise Explanatory Statement.

One person testified at the public hearing held on August 28, 2024. Based on the testimony provided, an additional provision reinforcing the statutory confidentiality and exemption from public disclosure of personally identifiable information of medical cannabis patients in [RCW 69.51A.230](#) is added.

### Rule Necessity & Description of Rule Changes

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 <a href="#">WAC 314-55-090</a> ;	Adding language to state that the records newly required for retention in <a href="#">WAC 314-55-090</a> must also be kept up to date in the traceability system.
	Replaced instances of “WSLCB” with “LCB”		Consistent with <a href="#">WSR #24-16-064</a>
314-55-087 Recordkeeping requirements for cannabis licensees.	<p style="text-align: center;"><b>New Rule Language</b></p> (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.

		<b>New Rule Language</b>	
		(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 <a href="#">WSR #24-16-064</a>
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) <u>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;</u>	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 <u>summarizing</u> 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 <u>five</u> -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, <u>except as identified in WAC 314-55-090 and RCW 69.50.535(2).</u> (ii) <u>Records of medical patient cannabis excise tax exemptions provided must be maintained as required in WAC 314-55-087 and WAC 314-55-090.</u>	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 <a href="#">WSR #24-16-064</a>

<b>WAC 314-55-090 Medical cannabis patient excise tax exemption</b>		
<b>Section</b>	<b>Proposed rule Language</b>	<b>Rule Necessity</b>
(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 RCW 69.50.535(2)(a), 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 RCW 69.50.535(2)(a), 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 RCW 69.50.535(2)(a), 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 RCW 69.50.535(2)(a).
(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 RCW 69.50.535(2)(b), 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 RCW 69.50.535(2)(a) at the time of purchase.
	(i) The unique patient identifier, and (ii) The effective date and expiration date of the recognition card;	
(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 RCW 69.50.535(2)(a) 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 RCW 69.50.535(2)(a), identifies the expiration date of the medical cannabis patient excise tax exemption.

**Variance between proposed rule (CR 102) and final rule:**

The following change has been made to the proposed rule language (CR 102):

Section	Proposed Rule Language	Final Rule Language	Rule Necessity
(5)	The excise tax exemption described in this section is effective until June 30, 2029, pursuant to RCW 69.50.535(2).	Requirements in this section comply with the confidentiality and exemption provisions for personally identifiable information of qualifying patients and designated providers included in the medical cannabis authorization database as described in RCW 69.51A.230.	Responding to testimony received during public hearing held on August 28, 2024.
(6)	[N/A]	The excise tax exemption described in this section is effective until June 30, 2029, pursuant to RCW 69.50.535(2).	Was previously at Subsection 5.

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

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

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

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

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

LCB will promote and assist voluntary compliance through technical assistance.

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

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

### Training and Informing LCB Staff

Several LCB staff responsible for implementing these adopted rules work directly with impacted parties and are already familiar with the nuances of the rule changes. Additional internal guidance documents may be prepared as necessary. The LCB will also consider:

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

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

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

- Monitoring questions received after the effective date of this rule, and adjusting training and guidance accordingly;
- Monitoring the number of enforcement actions, including type, resolution, and the outcome;
- Monitoring the number of requests for rule language revisions or changes;

- Monitoring the number of requests for rule interpretation;
- Monitoring licensee feedback including, but not limited to, the number of requests for assistance.





**RULE-MAKING ORDER  
PERMANENT RULE ONLY**

**CR-103P (December 2017)  
(Implements RCW 34.05.360)**

**Agency:** Washington State Liquor and Cannabis Board

**Effective date of rule:**

**Permanent Rules**

- 31 days after filing.
- Other (specify) \_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

- Yes  No If Yes, explain: .

**Purpose:** The Washington State Liquor and Cannabis Board (Board) has amended three existing sections of Chapter 314-55 WAC (WAC 314-55-083, WAC 314-55-087, and WAC 314-55-089) and created one section of Chapter 314-55 WAC (WAC 314-55-090) to implement Substitute House Bill 1453 (chapter 79, Laws of 2024) codified at RCW 69.50.535(2).

The amendments to WAC 314-55-083 are to ensure that new record requirements align with traceability requirements.

The amendments to WAC 314-55-087 are to ensure that new record requirements for applying the excise tax exemption are incorporated into existing record requirements.

The amendments to WAC 314-55-089 are to ensure that the rule language there is consistent with new record requirements at WAC 314-55-090, and to make some slight housekeeping changes.

WAC 314-55-090 is created to identify what records need to be preserved by retailers to demonstrate they are correctly applying the medical cannabis excise tax exemption as identified in RCW 69.50.535.

**Citation of rules affected by this order:**

- New: WAC 314-55-090
- Repealed:
- Amended: WAC 314-55-083; WAC 314-55-087; WAC 314-55-089
- Suspended:

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

**Other authority:**

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 24-15-066 on July 17, 2024 (date).

Describe any changes other than editing from proposed to adopted version: Changes are described in the table below:

Section	Proposed Rule Language	Final Rule Language	Rule Necessity
(5)	The excise tax exemption described in this section is effective until June 30, 2029, pursuant to RCW 69.50.535(2).	Requirements in this section comply with the confidentiality and exemption provisions for personally identifiable information of qualifying patients and designated providers included in the medical cannabis authorization database as described in RCW 69.51A.230.	Responding to testimony received during public hearing held on August 28, 2024.
(6)	[N/A]	The excise tax exemption described in this section is effective until June 30, 2029, pursuant to RCW 69.50.535(2).	Was previously at Subsection 5.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: Daniel Jacobs, Rules & Policy Coordinator  
Address: 1025 Union Avenue SE, Olympia WA 98501

Phone: 360-480-1238  
 Fax: 360-664-3208  
 TTY:  
 Email: rules@lcb.wa.gov  
 Web site: www.lcb.wa.gov  
 Other:

**Note: If any category is left blank, it will be calculated as zero.  
 No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
 A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	1	Amended	3	Repealed	

**The number of sections adopted at the request of a nongovernmental entity:**

New	___	Amended		Repealed	___
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**The number of sections adopted on the agency's own initiative:**

New	<u>1</u>	Amended	3	Repealed	
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	___	Amended	___	Repealed	___
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**The number of sections adopted using:**

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	1	Amended	3	Repealed	

**Date Adopted:** September 11, 2024

**Name:** David Postman

**Title:** Chair

**Signature:**

Place signature here

**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) Requirements in this section comply with the confidentiality and exemption provisions for personally identifiable information of qualifying patients and designated providers included in the medical cannabis authorization database as described in RCW 69.51A.230.

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



**Notice of Permanent Rules**  
**SHB 1453 - Medical Cannabis Excise Tax Exemption**

**Concise Explanatory Statement**

This concise explanatory statement concerns the Washington State Liquor and Cannabis Board's (LCB) adoption of rule amendments that amend three sections of Chapter 314-55 WAC and create one new section (WAC 314-55-090) to implement Substitute House Bill 1453 ([chapter 79, Laws of 2024](#)) which created an excise tax exemption for medical cannabis patients under certain conditions.

The Administrative Procedure Act (RCW 34.05.325(6)) requires agencies to complete a concise explanatory statement before filing adopted rules with the Office of the Code Reviser. The concise explanatory statement must be provided to any person upon request, or from whom the LCB received comment.

The LCB appreciates and encourages your involvement in the rule making process. If you have questions, please e-mail at [rules@lcb.wa.gov](mailto:rules@lcb.wa.gov).

**Background and reasons for adopting these rules:**

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.

Two virtual stakeholder engagement sessions were held on 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 RCW 69.50.535(2)(a), 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 RCW 69.50.535(2)(b), 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.

### 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 RCW 69.50.535(2)(a), 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 #24-16-064](#), 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.

Rulemaking history for this adopted rule:

**CR 101** – filed April 24, 2024, as [WSR #24-10-042](#)

**CR 102** – filed July 17, 2024, as [WSR #24-15-066](#)

Public hearing held August 28, 2024

**The effective date of these amended rules and the new rule is October 12, 2024.**

Two public comments were submitted on the rule proposal in the time leading up to the public hearing:

1. John Kingsbury, August 21, 2024 via Letter attached to Email

Dear Board Member,

I wanted to make a couple of public statements during Board meetings, but sometimes you do not have Wednesday meetings, and sometimes I am not available, so I wanted to at least give you a heads-up. I do feel it is important to express my thoughts publicly, but I wanted to memorialize my concerns to you writing.

There are two subject areas that I have been wanting to speak about publicly: test samples and what LCB, along with others, has accomplished for the medical cannabis system during the last year.

### **Testing samples**

I have a concern about some parties submitting samples for testing that do not actually come from the harvests that those tests are supposed to represent. One of my challenges is that my budget does not allow me to test a broad range of representative samples, but even with the few test results that I am able to pay for, along with those that I am able to have donated from others, patterns do become clear.

For example, I doubt that anyone would disagree that lab shopping is a real thing. Just from my body of test results, it is clear that THC inflation is a common, normalized thing. Over time, it has become clear who those labs are. The patterns are clear.

But beyond that, I have begun seeing examples, not of just THC inflation, not just of consistent patterns tied to the same labs, but also of discrepancies in results that do not fit that pattern. Again, my budget has kept my sample variety small, but, even so, I have encountered a number of examples in which there seems to be no relationship between what is on the label of a product, what the store-provided COA looks like, and the test results of the products that I have tested myself. The patterns and discrepancies are different from what simple lab shopping or THC inflation look like, and the only explanation that makes sense to me that accounts for that is simple sampling fraud.

I have a vague memory in the back of my head that legislation was passed last session which mandated LCB study THC potency. If my memory is accurate, I hope that LCB will draw its research from product that it has had tested, rather than from what potencies were reported on product labels or licensee-provided COAs; otherwise, those studies may have no relationship to the real world.

### **Real progress in Washington medical cannabis access**

The second subject I would like to address publicly is the progress that has been made during the past 15 months or so toward realizing real, dignified, useable medical cannabis access. Every year around March, I have written to you, and to other LCB staff members, asking what progress you feel has been made in medical cannabis access during the past year. Inevitably, every year, I have received a disappointing response –usually, “What would you like to happen?” –which is a question that I had already answered many times before. Over the years, it has been extremely disheartening.

You may have been too busy to notice that you did not receive that email from me this year.

The reason for this is obvious: the amount of significant, impactful progress that is made toward improving dignified, useful access during the past year and half has been remarkable. And, for all of the deep frustration that I have felt during the past years, I feel enormously grateful for the staff-hours and thoughtfulness and commitment that staff has contributed, and has still to do, toward that progress.

I do not feel it is enough to simply publicly acknowledge, and express gratitude for, the work and progress that LCB has committed to this project, because, when I sit and write a list of what those specific gains and projects are, honestly I am a little stunned by that list. Merely just publicly acknowledging my appreciation to LCB staff, it feels important to list, specifically what that progress has been, and the real work involved.

Thank you. I hope I will have an opportunity to acknowledge LCB’s work publicly, and specifically, in the near future. Let’s see if I can get it all in within three minutes.

Thank you.

John Kingsbury

**LCB response:** The comments on testing samples are beyond the scope of this rulemaking. The LCB appreciates positive feedback from stakeholders about hard work put into rulemaking towards meaningful change.

**Was the comment reflected in the adopted rule?** No.

2. John Kingsbury, August 27, 2024 via email

Dear Board Member,

While I will not be able to attend the rulemaking hearing tomorrow (August 28, 2024) for 1453 rulemaking, I would like to offer the following comments. Generally, I support the language as written. It represents very thoughtful work. Creating a separate section (090) makes good sense.

With one exception, it provides for the guardrails and accountability that have concerned me. That one significant exception has to do with being explicit that COA (testing), including heavy metal testing results, must be included in CCRS, or the product for which the retailers is claiming an exemption does not qualify for an exemption. Caitlein Ryan will likely speak to that serious concern during the hearing.

Otherwise, NICE JOB! Thank you,

John Kingsbury.

**LCB response:** This type of requirement is something best suggested for cannabis producers and processors, not cannabis retailers.

Implementing Substitute House Bill 1453 solely deals with the excise tax in [RCW 69.50.535](#), which is only the responsibility of the retailer to collect and remit to the LCB. Any failure to properly exempt the excise tax where it should be, or an exemption where it should not have been applied, is only born by the retailer.

Responsibility for quality control sampling, and thereafter testing, falls on licensed cannabis processors, producers certified labs and certified lab employees as described in [WAC 314-55-101](#) and [WAC 314-55-102](#). Per [WAC 246-70-050\(1\)\(a\)](#), quality assurance testing such as heavy metal testing as required by the Department of Health is in addition to the testing requirements in WAC 314-55-102. Quality testing results are already required to be entered in CCRS per [WAC 314-55-083\(4\)\(k\)](#). Creating a requirement for Certificates of Analysis or testing results to be uploaded to CCRS for that product to qualify for a retail tax exemption would be placing a requirement on the production tier of cannabis to enable the retail tier to provide a tax exemption that only the retail tier interacts with.

That being said, cannabis retailers are encouraged in [recently-issued guidance](#) to double check Certificates of Analysis (COA) for any incoming medically complaint product they have purchased to ensure heavy metal testing has been conducted.



One of the threshold requirements for eligibility for the excise tax exemption is that the product is “identified by the department as a compliant cannabis product in chapter 246-70 WAC and tested to the standards in WAC 246-70-040.” See [RCW 69.50.535\(2\)\(a\)](#). By statute, a product that is not tested to these standards does not qualify for the exemption.

**Was the comment reflected in the adopted rule? No.**

During the public hearing held August 28, 2024, Caitlein Ryan provided the following testimony:

So, good morning. Thank you for letting me speak this morning. Umm Glad to see all of you. I have a couple of comments that I just want to call attention to. That's not necessarily a recommendation for a change. And then I do actually have one change that I don't believe would be substantive, so, I believe it can be attended to without slowing things down a bit.

Daniel, we want to say thank you for continuing to move on this quickly so, that we have these rules in place. One thing I wanted to point out in (2)(c) of the CR102 in the new section, there's mention of the SKUs maintaining that SKU number. And I just want to sort of highlight that sometimes store the SKU numbers often utilized for stock, keeping stock and isn't necessarily in alignment with the traceability number. So, just ensuring that retailers, if that is the case, that if their SKU is not the same as the seed to sale barcode, that they're just being able to they know that that there's a difference there and that they're making sure that they're retaining those records properly.

The other thing I wanted to share with you that we're just hearing from some folks is, kind of speaks to the question that you were asking David regarding the test results in traceability. Some folks are struggling to get the labs, some labs to get the test results in to CCRS. So, it's not that the results don't exist, when asked for them they're being supplied. However, if the rule is saying that they need to be in traceability, I'm just making sure that there's good education with folks so that they understand the T's that need to be crossed and the I's that need to be dotted in there.

Then finally, I do have one request of the new section. We appreciate all of the language of ensuring that LCB has what they need to have in order to audit, which I know also goes along with the legislation that's potentially coming up. We would also like to see part of the RCW, which refers to 69.51A.235, talking about patient's confidentiality, that that be reiterated in the rule as well, that there be some note that all of this is in alignment with patient confidentiality as laid out in RCW. And then like I said, that's 69.51.235.

I think it just bears repeating and we've done that a couple of times for other parts within this rule set and I think it would be worthwhile here as well. And that's all, thank you all for your time this morning. Okay, I'm done.

**LCB Response:** Regarding the use of SKU versus traceability number as referenced in proposed WAC 314-55-090(2)(c), the proposed rule language states that either a SKU or the unique traceability number can be kept. The decision to use both SKU and the unique traceability number is based on feedback received during the stakeholder engagement sessions held in June.



Regarding confidentiality, assuming that the testimony meant to refer to [RCW 69.51A.230\(9\)](#), which states that personally identifiable information of qualifying patients and designated providers included in the medical cannabis authorization database is confidential, the point is well taken. The rule language is being amended to include a clarifying point that this new rule is consistent with existing statutory confidentiality and exemption from public disclosure.

**Was the comment reflected in the adopted rule?** Yes, in part. See below.

**Were any changes made between the proposed and final adopted rules?** Yes. Please see the table below reflecting the changes between the proposed rules filed on July 17, and the final rules:

Section	Proposed Rule Language	Final Rule Language	Rule Necessity
(5)	The excise tax exemption described in this section is effective until June 30, 2029, pursuant to RCW 69.50.535(2).	Requirements in this section comply with the confidentiality and exemption provisions for personally identifiable information of qualifying patients and designated providers included in the medical cannabis authorization database as described in RCW 69.51A.230.	Responding to testimony received during public hearing held on August 28, 2024.
(6)	[N/A]	The excise tax exemption described in this section is effective until June 30, 2029, pursuant to RCW 69.50.535(2).	Was previously at Subsection 5.