



**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.

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: 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: Patient Information Confidentiality per RCW 69.51A.230

Following stakeholder feedback received during the public hearing described below, the rule language reaffirms the confidentiality and exemption from public disclosure of personally identifiable information of qualifying patients and designated providers included in the medical cannabis authorization database, as stated in [RCW 69.51A.230\(9\)](#).

Section 6: Statutory Expiration Date

As specified in RCW 69.50.535(2)(a), this excise tax exemption is scheduled to expire on June 30, 2029.

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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.