



PROPOSED RULE MAKING

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

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FILED

DATE: July 17, 2024

TIME: 11:17 AM

WSR 24-15-066

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:

Name Daniel Jacobs, Rules & Policy Coordinator
Address PO Box 48030, Olympia WA 98504-3080
Email rules@lcb.wa.gov
Fax 360-704-5027
Other

Beginning (date and time) July 17, 2024, 12:00 PM
By (date and time) August 28, 2024, 12:00 PM

Assistance for persons with disabilities:

Contact Anita Bingham, ADA Coordinator, Human Resources
Phone 360 664 1739
Fax 360 664 9689
TTY 7-1-1 or 1-800-833-6388
Email anita.bingham@lcb.wa.gov
Other
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 is 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 <u>medical cannabis patient excise tax exemptions in WAC 314-55-090</u> ;	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		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.
	(1)(r) Detailed sale records including but not limited to, date of sale, sale price, item sold, and taxes assessed;		

	New Rule Language		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
	(1)(s) Records for medical cannabis patient excise tax exemptions as required in WAC 314-55-090;		
	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) <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.

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?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

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	Becky Smith, Director of Licensing	1025 Union Avenue, Olympia WA, 98504	360-664-1753
Enforcement	Chandra Wax, Director of Enforcement & Education	1025 Union Avenue, Olympia WA, 98504	360-664-1726

Is a school district fiscal impact statement required under [RCW 28A.305.135](#)? Yes No

If yes, insert statement here:

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

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

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

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

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

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

Regulatory Fairness Act and Small Business Economic Impact Statement
 Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

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

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

Citation and description:

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

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

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

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

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

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

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

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

- The rule proposal: Is fully exempt. (*Skip section 3.*) Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal: Is partially exempt. (*Complete section 3.*) The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- The rule proposal: Is not exempt. (*Complete section 3.*) No exemptions were identified above.

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

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

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

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 LCB 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.

<u>2022 Industry NAICS Code</u>	<u>Estimated Cost of Compliance</u>	<u>Industry Description</u>	<u>NAICS Code Title</u>	<u>Minor Cost Estimate</u>	<u>1% of Avg Annual Payroll (Threshold)</u>	<u>0.3% of Avg Annual Gross Business Income (Threshold)</u>
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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
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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&Sumbly=n6&SicNaics=2&Format=HTML>

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

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

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

Date: July 17, 2024	Signature: 
Name: David Postman	
Title: Chair	

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).