

WSR 24-19-040
PERMANENT RULES
LIQUOR AND CANNABIS
BOARD

[Filed September 11, 2024, 10:30 a.m., effective October 12, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The Washington state liquor and cannabis board (board) has amended three existing sections of chapter 314-55 WAC (WAC 314-55-083, 314-55-087, and 314-55-089) and created one section of chapter 314-55 WAC (WAC 314-55-090) to implement SHB 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; and amending WAC 314-55-083, 314-55-087, and 314-55-089.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345, 69.50.535.

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

Changes Other than Editing from Proposed to Adopted Version: Changes are described in the table below:

Table with 4 columns: Section, Proposed Rule Language, Final Rule Language, Rule Necessity. Row (5) describes excise tax exemption changes for confidentiality. Row (6) shows a change from [N/A] to a specific exemption rule.

A final cost-benefit analysis is available by contacting Daniel Jacobs, Rules and Policy Coordinator, 1025 Union Avenue S.E., Olympia, WA 98501, phone 360-480-1238, fax 360-664-3208, email rules@lcb.wa.gov, website www.lcb.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 3, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 3, Repealed 0.

Date Adopted: September 11, 2024.

David Postman
Chair

OTS-5420.9

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

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

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

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

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

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

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

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

(3) **Surveillance system.** At a minimum, a licensed premises must have a complete video surveillance system with minimum camera resolution of 640 x 470 pixels or pixel equivalent for analog. The surveillance system storage device and/or the cameras must be internet protocol (IP) compatible. All cameras must be fixed and placement must allow for the clear and certain identification of any person and activities in controlled areas of the licensed premises. All entrances and exits to an indoor facility must be recorded from both indoor and outdoor, or ingress and egress vantage points. All cameras must record continuously 24 hours per day and at a minimum of 10 frames per second. The surveillance system storage device must be secured on the licensed premises in a lockbox, cabinet, closet, or secured in another

manner to protect from employee tampering or criminal theft. All surveillance recordings must be kept for a minimum of 45 days on the licensee's recording device. All videos are subject to inspection by any ((WSLCB)) LCB employee or law enforcement officer, and must be copied and provided to the ((WSLCB)) LCB or law enforcement officer upon request. All recorded images must clearly and accurately display the time and date. Time is to be measured in accordance with the U.S. National Institute Standards and Technology standards. Controlled areas include:

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

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

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

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

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

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

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

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

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

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

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

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

(h) All cannabis, useable cannabis, cannabis-infused products, cannabis concentrates, seeds, plant tissue, clone lots, and cannabis

waste must be physically tagged with the unique identifier generated by the traceability system and tracked;

- (i) All point-of-sale records;
- (j) Cannabis excise tax records, including records required for medical cannabis patient excise tax exemptions in WAC 314-55-090;
- (k) All samples sent to an independent testing lab, any sample of unused portion of a sample returned to a licensee, and the quality assurance test results;
- (l) All vendor samples provided to another licensee for purposes of education or negotiating a sale;
- (m) All samples used for testing for quality by the producer or processor;
- (n) Samples containing useable cannabis provided to retailers;
- (o) Samples provided to the ((WSLCB)) LCB or their designee for quality assurance compliance checks; and
- (p) Other information specified by the board.

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

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

- (a) Purchase invoices and supporting documents, to include the items and/or services purchased, from whom the items were purchased, and the date of purchase;
- (b) Bank statements and canceled checks for any accounts relating to the licensed business;
- (c) Accounting and tax records related to the licensed business and each true party of interest;
- (d) Records of all financial transactions related to the licensed business, including contracts and/or agreements for services performed or received that relate to the licensed business;
- (e) All employee records to include, but not limited to, training, payroll, and date of hire;
- (f) Records of each daily application of pesticides applied to the cannabis plants or growing medium. For each application, the producer shall record the following information on the same day the application is made:
 - (i) Full name of each employee who applied the pesticide;
 - (ii) The date the pesticide was applied;
 - (iii) The name of the pesticide or product name listed on the registration label which was applied;
 - (iv) The concentration and total amount of pesticide per plant;and
- (v) For outdoor production, the concentration of pesticide that was applied to the field. Liquid applications may be recorded as, but are not limited to, amount of product per 100 gallons of liquid spray, gallons per acre of output volume, ppm, percent product in tank mix (e.g., one percent). For chemigation applications, record "inches of water applied" or other appropriate measure.

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

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

(i) Records of each batch of extracts or infused cannabis products made, including at a minimum, the lots of useable cannabis or trim, leaves, and other plant matter used (including the total weight of the base product used), any solvents or other compounds utilized, and the product type and the total weight of the end product produced, such as hash oil, shatter, tincture, infused dairy butter, etc.;

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

(k) Inventory records;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Submitted, with payment due, to the ((WSLCB)) LCB on or before the 20th day of each month, for the previous month. (For example, a report ((listing)) summarizing transactions for the month of January is due by February 20th.) When the 20th day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day;

(d) Filed separately for each cannabis license held; and

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

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

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

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

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

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

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

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

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

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

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

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

(c) By paying using a money transmitter licensed pursuant to chapter 19.230 RCW. If a licensee uses a money transmitter service, the licensee must remit payments in U.S. dollars.

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

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

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

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

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

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

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

NEW SECTION

WAC 314-55-090 Medical cannabis patient excise tax exemption.

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

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

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

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

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

(a) Date of sale;

(b) From the recognition card:

(i) The unique patient identifier; and

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

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

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

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

(4) Definitions.

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

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

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

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

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

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

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

(5) 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).