

**WSR 24-11-021**  
**EXPEDITED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed May 7, 2024, 9:15 a.m.]

Title of Rule and Other Identifying Information: Paid sick leave; amending WAC 296-128-600, 296-128-765, and 296-128-99140.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to amend rules for accordance with recently passed legislation, ESSB 5793 and SB 5979. The proposed rules implement ESSB 5793 and SB 5979 without material change. SB 5979 changes which workers in the construction industry must receive paid sick leave pay outs following separation. ESSB 5793 allows workers to use paid sick leave when their child's school or place of care is closed after the declaration of an emergency by a local or state government or agency or by the federal government and expands the definition of family member.

Reasons Supporting Proposal: The changes in this expedited rule making will align with the current statutory requirements under RCW 49.46.210 and statutory requirements effective January 1, 2025, from ESSB 5793.

Statutory Authority for Adoption: Chapter 49.46.210 RCW.

Statute Being Implemented: RCW 49.46.210.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Bridget Osborne, Tumwater, Washington, 360-902-5552; Implementation and Enforcement: Bryan Templeton, Tumwater, Washington, 360-902-6639.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

This notice meets the following criteria to use the expedited adoption process for these rules:

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: Expedited rule making is necessary to align rule sections in accordance with recent changes to Washington state statutes, effective March 13, 2024, and January 1, 2025, without changing its effect.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EX-

PRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Bridget Osborne, Department of Labor and Industries, Fraud Prevention and Labor Standards, Employment Standards, P.O. Box 44510, Olympia, WA 98504-4510, phone 360-902-5552, fax 360-902-5350, email ESRules@Lni.wa.gov, AND RECEIVED BY July 22, 2024, by 5:00 p.m.

May 7, 2024  
Joel Sacks  
Director

## OTS-5389.1

AMENDATORY SECTION (Amending WSR 23-24-044, filed 11/30/23, effective 1/1/24)

**WAC 296-128-600 Definitions.** (1) "Absences exceeding three days" means absences exceeding three consecutive days an employee is required to work. For example, assume an employee is required to work on Mondays, Wednesdays, and Fridays, and then the employee uses paid sick leave for any portion of those three work days in a row. If the employee uses paid sick leave again on the following Monday, the employee would have absences exceeding three days.

(2) "Commencement of his or her employment" as provided in RCW 49.46.210 (1)(d), means no later than the beginning of the first day on which the employee is authorized or required by the employer to be on duty on the employer's premises or at a prescribed workplace. "Commencement of their employment" has the same meaning.

(3) "Construction industry employer" means an employer in the industry described in North American industry classification system industry code 23, except for residential building construction code 2361.

~~(4) "Construction worker" ((is any nonexempt employee covered under the 2022 North American Industry Classification System (NAICS) industry code 23, except for those employees who perform only work described in NAICS 2361, residential building construction. This includes employees who work for an employer who performs construction-related work as described in NAICS 23, but are not directly engaged in the construction work itself, such as nonexempt administrative staff))~~ means a worker who performed service, maintenance, or construction work on a job site, in the field or in a fabrication shop using the tools of the worker's trade or craft.

~~((4))~~ (5) "Construction worker covered by a collective bargaining agreement" as provided in RCW 49.46.180, means a ((nonexempt employee)) worker who performed service, maintenance, or construction work on a job site, in the field or in a fabrication shop using the tools of the worker's trade or craft who is covered by a collective bargaining agreement ((, provided that)). To meet this definition, the union signatory to the collective bargaining agreement ((is)) must be an approved referral union program authorized under RCW 50.20.010 and in compliance with WAC 192-210-110, the collective bargaining agreement ((establishes)) must establish equivalent sick leave provisions, as provided in RCW 49.46.180(2), and the ((requirements of RCW 49.46.200 through 49.46.830 are)) collective bargaining agreement or

CBA addendum must expressly (~~waived in the collective bargaining agreement~~) waive the requirements of RCW 49.46.200 through 49.46.830 in clear and unambiguous terms or in an agreed addendum to an existing agreement (~~including an agreement that is open for negotiation provided the sick leave portions were~~) previously ratified (~~by the membership. This does not include employees who are not directly engaged in construction work itself, such as nonexempt administrative staff~~).

~~((5))~~ (6) "Department" means the department of labor and industries.

~~((6))~~ (7) "Director" means the director of the department of labor and industries, or the director's authorized representative.

~~((7))~~ (8) "Employee" has the same meaning as RCW 49.46.010(3). An employee includes a construction worker or construction worker covered by a collective bargaining agreement unless a more specific provision applies.

~~((8))~~ (9) "Employer" has the same meaning as RCW 49.46.010(4).

~~((9))~~ (10) "Frontloading" means providing an employee with paid sick leave before it has accrued at the rate required by RCW 49.46.210 (1) (a).

~~((10))~~ (11) "Health-related reason," as provided in RCW 49.46.210 (1) (b) (iii), means a serious public health concern that could result in bodily injury or exposure to an infectious agent, biological toxin, or hazardous material. Health-related reason does not include closures for inclement weather.

~~((11))~~ (12) "Hours worked" shall be interpreted in the same manner as WAC 296-126-002(8).

~~((12))~~ (13) "Normal hourly compensation" means the hourly rate that an employee would have earned for the time during which the employee used paid sick leave. For employees who use paid sick leave for hours that would have been overtime hours if worked, employers are not required to apply overtime standards to an employee's normal hourly compensation. Normal hourly compensation does not include tips, gratuities, service charges, holiday pay, or other premium rates, unless the employer or a collective bargaining agreement allow for such considerations. However, where an employee's normal hourly compensation is a differential rate, meaning a different rate paid for the same work performed under differing conditions (e.g., a night shift), the differential rate is not a premium rate.

~~((13))~~ (14) "Regular and normal wage" has the same meaning as normal hourly compensation.

~~((14))~~ (15) "Separation" and "separates from employment" mean the end of the last day an employee is authorized or required by the employer to be on duty on the employer's premises or at a prescribed workplace.

~~((15))~~ (16) "Verification" means evidence that establishes or confirms that an employee's use of paid sick leave is for an authorized purpose under RCW 49.46.210 (1) (b) and (c).

~~((16))~~ (17) "Workweek" means a fixed and regularly recurring period of 168 hours, or seven consecutive 24 hour periods. It may begin on any day of the week and any hour of the day, and need not coincide with a calendar week.

AMENDATORY SECTION (Amending WSR 23-24-044, filed 11/30/23, effective 1/1/24)

**WAC 296-128-765 Construction workers under RCW 49.46.210 (1) (1) (effective January 1, 2024).** (1) Following separation, construction industry employers must pay the balance of accrued and unused paid sick leave to construction workers classified under NAICS code 23 who have not reached the 90th calendar day of employment, except for construction workers who perform work limited to work only under NAICS code 236100.

(2) When a construction worker is rehired within 12 months of separation, whether at the same or a different business location of the employer, any sick leave previously paid out following separation does not need to be reinstated.

(3) When a construction worker is rehired within 12 months of separation, whether at the same or a different business location of the construction industry employer, the previous period of employment must be counted for purposes of determining the date upon which the ((employee)) construction worker is entitled to use paid sick leave.

AMENDATORY SECTION (Amending WSR 22-24-034, filed 11/30/22, effective 1/1/23)

**WAC 296-128-99140 Paid sick time usage.** (1) A driver is entitled to use earned paid sick time for the following purposes authorized in RCW 49.46.210(5):

(a) An absence resulting from the driver's mental or physical illness, injury, or health condition; to accommodate the driver's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or a driver's need for preventive medical care;

(b) To allow the driver to provide care for an authorized family member under RCW 49.46.210 with a mental or physical illness, injury, or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care for a family member who needs preventive medical care;

(c) When the driver's child's school or place of care has been closed by order of a public official for any health-related reason or, beginning January 1, 2025, after the declaration of an emergency by a local or state government or agency, or by the federal government;

(d) For absences for which an employee would be entitled to leave under RCW 49.76.030;

(e) During an account deactivation or other status that prevents the driver from performing network services on the transportation network company's platform, unless the deactivation or status is due to a verified allegation of sexual assault or physical assault perpetrated by the driver; and

(f) A transportation company may provide more generous paid sick time policies or permit use of paid sick time for additional purposes or family members.

(2) After three consecutive days of account deactivation, a driver may request paid sick time for any portion of the deactivation period, unless the deactivation or status is due to a verified allegation of sexual assault or physical assault perpetrated by the driver.

(3) A driver is entitled to use accrued earned paid sick time upon recording 90 hours of passenger platform time on the transportation network company's driver platform. Transportation network companies may allow drivers to use accrued, unused paid sick time prior to recording 90 hours of passenger platform time.

(4) Upon recording 90 hours of passenger platform time on the transportation network company's driver platform, a transportation network company must make earned accrued paid sick time available for use to the driver.

(5) A driver is entitled to use earned paid sick time if the driver has recorded passenger platform time as a driver within 90 calendar days preceding the driver's request to use earned paid sick time.

(6) Earned paid sick time must be made available for use within a communication system for drivers.

(7) A transportation network company must allow drivers to use paid sick time in four-hour increments, not to exceed eight hours within one day. A transportation network company may allow paid sick time usage in shorter increments.

(8) A transportation network company must allow drivers to claim earned paid sick time through a communication system within a time frame during which a driver was eligible to use their earned paid sick time and projected absences, so long as the absence is for an authorized purpose under RCW 49.46.210.

(9) A driver may choose to use earned paid sick time simultaneously for multiple transportation network companies during the same time period for a purpose authorized under RCW 49.46.210.

**WSR 24-11-037**  
**EXPEDITED RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

[Filed May 8, 2024, 12:02 p.m.]

Title of Rule and Other Identifying Information: Title 314 WAC; the liquor and cannabis board (LCB) is proposing to amend multiple sections in Title 314 WAC to change the name "Liquor Control Board" to "Liquor and Cannabis Board," and to change occurrences of the acronym used for the liquor and cannabis board from "WSLCB" to the acronym "LCB."

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to make a uniform housekeeping change throughout Title 314 WAC for the use of the acronym "LCB" to designate the liquor and cannabis board, and to update outdated occurrences of the name "Liquor Control Board" remaining in rules. This rule making will bring the name of LCB current with the replacement of "Liquor Control Board."

Reasons Supporting Proposal: This proposed rule change will fully implement the change of the agency name as required by 2SSB 5052 (chapter 70, Laws of 2015), and will improve rule language consistency without affecting rule meaning. Updating the acronym used for the Washington state liquor and cannabis board from "WSLCB" to the acronym "LCB" will also improve rule consistency without affecting rule meaning.

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: RCW 66.08.012; 2SSB 5052 (chapter 70, Laws of 2015).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: LCB, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Jeff Kildahl, P.O. Box 43080, Olympia, WA 98504, 360-480-7960; Enforcement: Chandra Wax, P.O. Box 43080, Olympia, WA 98504, 360-664-9878.

This notice meets the following criteria to use the expedited adoption process for these rules:

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Corrects typographical errors, makes address or name changes, or clarifies language of a rule without changing its effect.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: This proposed rule change will update the agency name as required by Washington state statute and update an acronym for rule language consistency without changing the effect of any rule section.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Jeff Kildahl, Regulatory Analyst, LCB, P.O. Box 43080, Olympia, WA 98504, phone 360-480-7960, fax 360-704-5027, email rules@lcb.wa.gov, lcb.wa.gov, AND RECEIVED BY July 22, 2024.

May 8, 2024  
David Postman  
Chair

### OTS-5318.1

AMENDATORY SECTION (Amending WSR 17-12-030, filed 5/31/17, effective 7/1/17)

**WAC 314-07-010 Definitions.** Following are definitions for the purpose of this title. Other definitions are in WAC 314-01-005 and RCW 66.08.010.

(1) "Applicant" or "liquor license applicant" means any person or business entity who is considered by the board as a true party of interest in a liquor license or permit application, as outlined in WAC 314-07-035.

(2) "Building" means a stationary structure with floor to ceiling solid walls and a roof. A food truck is not a "building."

(3) "Business name" or "trade name" means the name of a licensed business as used by the licensee on signs, advertising, etc.

(4) "Financier" means any person or entity who has made or will make an investment in the licensed business of more than (~~ten thousand dollars~~) \$10,000. A "financier" can be someone who provides money as a gift, someone who loans money to the business and expects to be paid back the amount of the loan without interest, or someone who invests money into the business expecting a percentage of the profits, but accepts the risk that there may not be a full return on the investment. These persons or entities shall submit appropriate investigation level "financier" financial documents.

(5) "Licensee" or "liquor licensee" means any person or entity that holds a liquor license or permit, or any person or entity who is a true party of interest in a liquor license or permit, as outlined in WAC 314-07-035.

(6) "Public institution" means a public college or university. (See WAC 314-07-020 regarding the liquor (~~control~~) and cannabis board notifying public institutions of liquor license applications.)

AMENDATORY SECTION (Amending WSR 17-12-030, filed 5/31/17, effective 7/1/17)

**WAC 314-07-035 What persons or entities have to qualify for a liquor license?** Per RCW 66.24.010(1), a liquor license must be issued in the name(s) of the true party(ies) of interest.

(1) **True parties of interest** - For purposes of this title, "true party of interest" means:

<b>True party of interest</b>	<b>Persons to be qualified</b>
Sole proprietorship	Sole proprietor and spouse.
General partnership	All partners and spouses.
Limited partnership, limited liability partnership, or limited liability limited partnership	<ul style="list-style-type: none"> <li>• All general partners and spouses;</li> <li>• All limited partners that have more than 10((<del>%</del>)) <u>percent</u> interest in the partnership and their spouses.</li> </ul>
Limited liability company	<ul style="list-style-type: none"> <li>• All members (or persons with equivalent title) with more than 10((<del>%</del>)) <u>percent</u> interest in the LLC and spouses. (Note: In order for the liquor ((<del>control</del>)) and <u>cannabis</u> board to identify the persons to be qualified, we will need to know all parties that have an interest in the limited liability company or have a pending interest.)</li> <li>• All managers (or persons with equivalent title) and their spouses.</li> </ul>
Privately held corporation	<ul style="list-style-type: none"> <li>• All corporate officers (or persons with equivalent title) and their spouses.</li> <li>• All stockholders (or persons with equivalent title) and their spouses who hold more than 10((<del>%</del>)) <u>percent</u> of the issued or outstanding stock. (Note: In order for the liquor ((<del>control</del>)) and <u>cannabis</u> board to identify the persons to be qualified, we will need to know all parties who have been issued or will be issued corporate stock.)</li> </ul>
Publicly held corporation	All corporate officers (or persons with equivalent title).
Multi-level ownership structures	The liquor (( <del>control</del> )) and <u>cannabis</u> board will review each entity to determine which individuals are to qualify according to the guidelines in this rule.

True party of interest	Persons to be qualified
Any entity	Any person who is in receipt of, or has the right to receive, more than <del>((ten))</del> 10 percent of the gross or net sales from the licensed business during any full or partial calendar or fiscal year. For the purposes of this chapter: <ul style="list-style-type: none"> <li>• "Gross sales" includes the entire gross receipts from all sales and services made in, upon, or from the licensed business.</li> <li>• "Net sales" means gross sales minus cost of goods sold.</li> </ul>

(2) For purposes of this section, "true party of interest" does not mean:

(a) A person or entity receiving reasonable payment for rent (as determined by the board) on a fixed or percentage basis under a bona fide lease or rental obligation, unless the lessor or property manager exercises control over or participates in the management of the business.

(b) A person who receives a bonus as an employee, if: The employee is on a fixed wage or salary and the bonus is not more than ~~((twenty-five))~~ 25 percent of the employee's prebonus annual compensation; or the bonus is based on a written incentive/bonus program that is not out of the ordinary for the services rendered.

(c) A person or entity contracting with the applicant(s) to sell the property, unless the contract holder exercises control over or participates in the management of the licensed business.

(d) A person or entity receiving payment of franchise fees on a fixed or percentage basis under a bona fide franchise agreement, unless the person or entity receiving payment of franchise fees exercises control over or participates in the management of the licensed business.

(e) A 401K, IRA, or nonfamilial trust.

(3) **Financiers** - The board may conduct a financial investigation of financiers.

(4) **Persons who exercise control of business** - The board may conduct an investigation of any person or entity who exercises any control over the applicant's business operations.

In cases where there is an entity who is in control of the day-to-day business operation (other than the owner) because of an agreement between the owner and the operator, the operating party becomes a true party of interest. The operator must meet all the qualifications of any other true party of interest and if approved, must be the licensee. The owner may be required to be named on the license as a party of interest based on the terms of the agreement, but will not normally be required to meet all the qualifications of a true party of interest.

(5) The board reserves the right to investigate any person or entity in a liquor license application or current liquor license where hidden ownership or misrepresentation of fact is suspected.

(6) For purposes of this section, a person or entity who takes more than ~~((ten))~~ 10 percent of the profits and/or exercises control over the licensed business in a given agreement may be named on the

license as a party of interest per this rule. Examples of this are lease, operating plan, concession or management agreement.

#### OTS-5319.1

AMENDATORY SECTION (Amending WSR 93-23-016, filed 11/5/93, effective 12/6/93)

**WAC 314-10-010 General—Liquor (~~(control)~~) and cannabis board responsibilities.** (1) The liquor (~~(control)~~) and cannabis board shall regulate all sales and distribution of tobacco products pursuant to chapter 507, Laws of 1993. The liquor (~~(control)~~) and cannabis board shall report all tobacco enforcement activity in a manner agreed by the department of health and the liquor (~~(control)~~) and cannabis board on a quarterly basis or as set forth in the interagency agreement.

AMENDATORY SECTION (Amending WSR 93-23-016, filed 11/5/93, effective 12/6/93)

**WAC 314-10-060 Persons under 18 years old attempting to purchase/obtaining tobacco products.** (1) Any person whom a peace officer or enforcement officer has reasonable grounds to believe is under 18 years of age who purchases or attempts to purchase, or attempts to obtain or obtains tobacco products may be detained for a reasonable period of time and in such a reasonable manner as is necessary to determine the person's true identity and date of birth. A person under 18 years of age who is cited for attempting to purchase or purchasing tobacco products is subject to a fine as set by chapter 7.80 RCW or participation in a smoking cessation program or both.

(~~(a)~~) This provision does not apply to a person under the age of 18 who, with parental authorization, is participating in a controlled purchase as a part of a liquor (~~(control)~~) and cannabis board, law enforcement, or local health department activity.

(2) Tobacco products possessed by persons under the age of (~~(eighteen)~~) 18 years are considered contraband and may be seized by an enforcement officer as defined in RCW 7.80.040.

AMENDATORY SECTION (Amending WSR 08-20-109, filed 9/30/08, effective 10/31/08)

**WAC 314-10-100 How may cigarette sampling activity be conducted?** (1) The cigarette sampler's license entitles the licensee, and employees or agents of the licensee, to distribute samples at any lawful location in the state during the term of the license. The person engaged in sampling shall carry the Class T1 or T2 license or a copy of the license at all times and produce same at the request of an enforcement officer as defined in RCW 7.80.040.

(2) No person may distribute or offer to distribute samples in a public place. This prohibition does not apply to:

(a) An area to which persons under 18 years of age are denied admission,

(b) A store or concession to which a cigarette retailers license has been issued, or

(c) At or adjacent to a production, repair or outdoor construction site or facility.

(3) Notwithstanding subsection (2) of this section, no person may distribute or offer to distribute samples within or on a public street, sidewalk, or park that is within 500 feet of a playground, school, or other facility where that facility is being used primarily by persons under 18 years of age for recreational, educational or other purposes.

(4) Class T1 and T2 licensees shall provide the board, (~~forty-five~~) 45 days prior to a sampling event, the locations, dates and times sampling activities will take place.

(5) All T1 and T2 licensees must provide to the liquor (~~con-~~~~trol~~) and cannabis board, in a format prescribed by the board, a listing of the location, date, hours and quantities of cigarettes distributed in the state for the previous six months.

(a) A report for the period covering January 1st through June 30th of each year is due by no later than July 31st of each year.

(b) A report for the period covering July 1st through December 31st is due by no later than January 30th of the immediately following year.

(c) The board may take administrative action against any cigarette sampler who fails to submit the required reports.

AMENDATORY SECTION (Amending WSR 93-23-016, filed 11/5/93, effective 12/6/93)

**WAC 314-10-110 Penalties, suspension notices, posting or advertising of—Other closing notices prohibited.** (1) The liquor (~~con-~~~~trol~~) and cannabis board may suspend or revoke a retailer's or sampler's license for violation of the board's administrative rules governing tobacco. Further, the board may impose a monetary penalty in lieu of license suspension for violation of said rules not covered by statute.

(2) Licensees are required to maintain compliance with all tobacco laws and regulations during any period of suspension. Whenever the board shall suspend the license of any licensee, the board shall on the date the suspension becomes effective cause to be posted in a conspicuous place on or about the licensed premises a notice in a form to be prescribed by the board, stating that the license or licenses have been suspended by order of board because of violation of the Washington state laws or the regulations.

(3) During the period of suspension:

(a) No person shall remove, alter, cover, or in any way disturb the posted notice(s) of suspension;

(b) No person shall place, permit or allow to be placed in, at, or upon the licensed premises, any notice or statement of reasons or purpose indicating that the premises have been closed or that sale of tobacco products has been discontinued for any reason other than as

stated in the notice of suspension; Provided Further, That the prohibition of this subsection shall apply to any nearby or adjacent property, such as a parking lot area that is owned by or under the control of the licensee.

(c) Neither the licensee nor his/her or its employees shall advertise, either by newspaper, radio, television, handbill, brochure, flyer or by any means whatever, that the licensed premises are closed or discontinuing the sale of tobacco products for any reason(s) other than those stated in the board's suspension notices.

(4) A tobacco licensee may operate the business during the period of suspension provided there is no sale or distribution of tobacco products.

### OTS-5320.1

AMENDATORY SECTION (Amending WSR 22-19-035, filed 9/14/22, effective 10/15/22)

#### **WAC 314-11-065 Types of liquor allowed on a licensed premises.**

(1) Licensees may only possess and allow persons to consume or possess the type of liquor permitted by the type of liquor license held on the premises; except:

(a) Under authority of a banquet permit (see chapter 314-18 WAC);

(b) Restaurant licensees may allow patrons to bring wine into the premises for consumption with a meal;

(c) Beer and/or wine restaurant or tavern licensees may keep spirituous liquor on the premises for use in the manufacture of food products, provided that:

(i) All food products manufactured contain one percent or less of alcohol by weight (per RCW 66.12.160);

(ii) Customers are made aware that the food products contain liquor; and

(iii) The beer and/or wine restaurant or tavern licensee notifies the local liquor (~~control~~) and cannabis board enforcement office in writing before they bring spirituous liquor on the premises;

(d) Under the authority of a special occasion license; and

(e) Licensees with an endorsement under WAC 314-20-350, 314-24-350, or 314-28-350 may keep other types of liquor on the premises to provide contract packaging services consistent with RCW 66.24.248.

(2) For on-premises liquor licenses, the licensee or employees may not permit the removal of liquor in an open container from the licensed premises, except:

(a) Liquor brought on a licensed premises under authority of a banquet permit may be resealed in its original container and removed at the end of the banquet permit function;

(b) Per RCW 66.24.320 and 66.24.400, wine that is sold with a meal may be recorked or resealed and removed from the premises;

(c) Liquor purchased by registered guests for consumption inside a hotel or motel room may be resealed in its original container and removed from the hotel or motel premises by the guest; and

(d) Liquor removed from a licensed premises that holds a caterer's endorsement, for the purpose of catering an approved event.

AMENDATORY SECTION (Amending WSR 10-01-090, filed 12/16/09, effective 1/16/10)

**WAC 314-11-095 What records am I required to keep regarding my licensed premises?** Licensees are responsible to keep records that clearly reflect all financial transactions and the financial condition of the business.

(1) All industry members and retailers shall keep and maintain the following records on their premises for a three-year period and the records must be made available for inspection if requested by an employee of the liquor (~~control~~) and cannabis board, or by a person appointed in writing by the board for the purposes of administering or enforcing any provisions of Title 66 RCW or Title 314 WAC:

(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 in the liquor license;

(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) Records of all items, services, and moneys' worth furnished to and received by a retailer and of all items, services, and moneys' worth provided to a retailer and purchased by a retailer at fair market value;

(f) Records of all industry member financial ownership or interests in a retailer and of all retailer financial ownership interests in an industry member; and

(g) Business entertainment records of industry members or their employees who provide either food, beverages, transportation, tickets or admission fees for or at athletic events or for other forms of entertainment to retail licensees and/or their employees.

(2) See additional rules for recordkeeping requirements specific to breweries and wineries: WAC 314-20-015(2), 314-20-050, 314-24-100, and 314-24-150 (as now or hereafter amended).

#### OTS-5321.1

AMENDATORY SECTION (Amending WSR 16-23-122, filed 11/21/16, effective 12/22/16)

**WAC 314-12-215 Alcohol impact areas—Definition—Guidelines.** (1) **What is an alcohol impact area?**

(a) An alcohol impact area is a geographic area located within a city, town or county, and that is adversely affected by chronic public inebriation or illegal activity associated with liquor sales or consumption.

(b) The board may place special conditions or restrictions upon off-premises sales privileges, liquor products, applicants, license

assumptions or licensees that sell liquor for off-premises consumption (see subsection (3) of this section).

(c) The board applies a unique investigative and review process when evaluating liquor license applications, license assumptions or renewals for businesses located in an alcohol impact area.

(2) **How is an alcohol impact area formed?** A local authority (that is, a city, town or county) must first designate an alcohol impact area by ordinance and make good faith efforts for at least six months to mitigate the effects of chronic public inebriation with such ordinance before petitioning the board to recognize an alcohol impact area. The board must recognize an alcohol impact area before any unique review process, condition or restriction described in this rule may be applied. A local authority must meet certain conditions to achieve board recognition of an alcohol impact area.

(a) The geographic area of an alcohol impact area must not include the entire geographic area under the jurisdiction of a local authority. However, when a local authority designates a street as a boundary, the board encourages that the local authority include both sides of the street for greater effectiveness.

(b) The local authority ordinance must explain the rationale of the proposed boundaries, and describe the boundaries in such a way that:

(i) The board can determine which liquor licensees are in the proposed alcohol impact area; and

(ii) The boundaries are understandable to the public at large.

(c) A local authority must:

(i) Submit findings of fact that demonstrate a need for an alcohol impact area and how chronic public inebriation or illegal activity associated with liquor sales or consumption within a proposed alcohol impact area:

(A) Contributes to the deterioration of the general quality of life within an alcohol impact area; or

(B) Threatens the welfare, health, peace or safety of an alcohol impact area's visitors or occupants;

(ii) Submit findings of fact that demonstrate a pervasive pattern of public intoxication or public consumption of liquor as documented in: Crime statistics, police reports, emergency medical response data, detoxification reports, sanitation reports, public health records, community group petitions, public testimony or testimony by current or former chronic public inebriates.

(d) **Minimum requirements for an alcohol impact area petition packet:**

(i) Litter/trash survey and documented results. A litter/trash survey must be conducted within the proposed alcohol impact area boundaries for at least a four week period. Litter/trash surveys must be completed a minimum of twice a week. Use a GIS data map, or similar tool, to point out the "hot spots" of heavy alcohol consumption based on the litter/trash survey. Provide a list of alcohol products found in the litter/trash survey.

(ii) Photographic evidence of litter and drinking in public.

(iii) Law enforcement testimonial(s). Law enforcement testimonial must be from at least one law enforcement officer who frequently works within the proposed alcohol impact area boundaries. A testimonial must discuss the impact of high alcohol content or volume products within the proposed alcohol impact area boundaries and how implementation of an alcohol impact area would benefit the community.

(iv) Letters of support submitted by neighborhood councils, local agencies, schools or universities, business associations, fire departments, local businesses, or private citizens in the community.

(v) Crime statistics and police reports. Crime statistics and police reports must show the statistics for alcohol-related criminal activity within the proposed alcohol impact area boundaries, and must show evidence linking specific products with chronic public inebriation activity.

(e) After reviewing the alcohol impact area petition packet, the board may request supplemental materials to prove the necessity of an alcohol impact area. The supplemental materials may include:

(i) Additional testimonials submitted by citizens who would be directly affected by the proposed alcohol impact area.

(ii) Emergency medical response data. This information must provide evidence that chronic inebriation within the proposed alcohol impact area requires an abnormally high amount of medical emergency care.

(iii) Sanitation reports. This information must provide evidence that chronic inebriation within the proposed alcohol impact area boundaries creates an abnormally high amount of sanitation problems.

(iv) Detoxification reports. This information must provide evidence that chronic inebriation within the proposed alcohol impact area requires an abnormally high amount of detoxification services.

(f) Submit documentation that demonstrates a local authority's past good faith efforts to control the problem through voluntary measures (see subsection (4) of this section). The voluntary compliance report must:

(i) Provide an executive summary of the results of the voluntary compliance period;

(ii) Provide evidence of the local authorities' efforts to control the problem through voluntary measures; and

(iii) Explain why the voluntary measures were not effective and how mandatory restrictions will help address the problem.

(g) Request additional conditions or restrictions and explain how the conditions or restrictions will reduce chronic public inebriation or illegal activity associated with off-premises sales or liquor consumption (see subsection (3) of this section).

**(3) What conditions or restrictions may the board recognize for an alcohol impact area?**

(a) Restrictions may include, but are not limited to:

(i) Limitations on business hours of operation for off-premises liquor sales;

(ii) Restrictions on off-premises sale of certain liquor products within an alcohol impact area; and

(iii) Restrictions on container sizes available for off-premises sale.

(b) The board has adopted a standardized list of products that will be banned in alcohol impact areas. The list can be found on the ((~~WSLCB~~)) LCB website. The list contains products that are banned in the majority of current alcohol impact areas. Requests for additional product restrictions (for example, prohibition of sale of certain liquor products or container sizes) must originate from a local authority's law enforcement agency or public health authority, whereas restrictions affecting business operations (for example, hours of operation) may originate from a local authority's law enforcement agency, public authority or governing body. Product restrictions must be reasonably linked to problems associated with chronic public inebriation

or illegal activity. Reasonable links include, but are not limited to: Police, fire or emergency medical response statistics; photographic evidence; law enforcement, citizen or medical-provider testimonial; testimony by current or former chronic public inebriates; litter pick-up; or other statistically documented evidence.

(c) After the board has recognized an alcohol impact area the local authority may request the board approve additional products to their banned products list provided that the products are reasonably linked to the problems associated with chronic public inebriation or illegal activity. Reasonable links include, but are not limited to: Police, fire or emergency medical response statistics; photographic evidence; law enforcement, citizen or medical-provider testimonial; testimony by current or former chronic public inebriates; litter pick-up; or other statistically documented evidence.

(d) A local authority may propose the removal of a condition, restriction or product from its alcohol impact area's restricted product list provided that a local authority demonstrates its reason (such as, a product is no longer produced or bottled) to the board in writing.

**(4) What types of voluntary efforts must a local authority attempt before the board will recognize an alcohol impact area?**

(a) A local authority must notify all off-premises sales licensees in a proposed alcohol impact area that:

(i) Behavior associated with liquor sales and associated illegal activity is impacting chronic public inebriation; and

(ii) Existing voluntary options are available to them to remedy the problem.

(b) A local authority's efforts must include additional voluntary actions. Examples include, but are not limited to:

(i) Collaborative actions with neighborhood citizens, community groups or business organizations to promote business practices that reduce chronic public inebriation;

(ii) Attempts to achieve voluntary agreements with off-premises sales licensees to promote public welfare, health, peace or safety;

(iii) Requesting licensees to voluntarily discontinue selling products that are considered contributing to the problem;

(iv) Distribution of educational materials to chronic public ~~((inebriants [inebriates]))~~ inebriates or licensees;

(v) Detoxification services;

(vi) Business incentives to discourage the sale of problem products; or

(vii) Change in land use ordinances.

(c) A local authority must implement these voluntary agreements for at least six months before a local authority may present documentation to the board that voluntary efforts failed to adequately mitigate the effects of chronic public inebriation and need augmentation.

**(5) What will the board do once it recognizes an alcohol impact area?**

(a) The board will notify, in a timely manner, the appropriate liquor distributors of the product restrictions.

(b) The board will notify, in a timely manner, all off-premises sales licensees in a proposed or existing alcohol impact area whenever the board recognizes, or recognizes changes to, an alcohol impact area (see subsection (7) of this section).

**(6) What is the review process for liquor license applications, license assumptions, and renewals inside an alcohol impact area?**

(a) When the board receives an application for a new liquor license or a license assumption that includes an off-premises sales

privilege, the board will establish an extended time period of (~~sixty~~) 60 calendar days for a local authority to comment upon the application.

(i) A local authority may, and is encouraged to, submit comment before the end of a comment period. A local authority may request an extension of a comment period when unusual circumstances, which must be explained in the request, require additional time for comment.

(ii) A local authority will notify a licensee or applicant when a local authority requests the board to extend a (~~sixty~~) 60-day comment period.

(b) For renewals, the board will notify a local authority at least (~~ninety~~) 90 calendar days before a current license expires. The same requirements in (a) (i) and (ii) of this subsection apply to the (~~ninety~~) 90-day comment period for problem renewals. For the purposes of this section, a problem renewal means a licensee, a licensed business or a licensed location with a documented history of noncompliance or illegal activity.

**(7) When and for how long will an alcohol impact area be in effect, and may an alcohol impact area be changed?**

(a) An alcohol impact area takes effect on the day that the board passes a resolution to recognize an alcohol impact area. However, product prohibitions take effect no less than (~~thirty~~) 30 calendar days after the board passes such resolution in order to give retailers and distributors sufficient time to remove products from their inventories.

(b) An alcohol impact area remains in effect until:

(i) A local authority repeals the enabling ordinance that defines an alcohol impact area;

(ii) A local authority requests that the board revoke its recognition of an alcohol impact area;

(iii) The board repeals its recognition of an alcohol impact area of its own initiative and following a public hearing; or

(iv) A local authority fails to comply with subsection (8) of this section.

(c) A local authority may petition the board to modify an alcohol impact area's geographic boundaries, repeal or modify an existing condition or restriction, or create a new condition or restriction. The board may agree to do so provided that a local authority shows good cause and submits supporting documentation as contained in subsections (2) and (3) of this section.

(d) Prohibition of a new product added to an existing prohibited products list takes effect no sooner than (~~thirty~~) 30 calendar days following the board's recognition of a modified prohibited products list.

**(8) Reporting requirements and five-year assessments.**

(a) A year after the implementation of the alcohol impact area a local authority shall submit a report to the board that clearly demonstrates the intended effectiveness of an alcohol impact area's conditions or restrictions. The report is due no later than (~~sixty~~) 60 calendar days following the first anniversary of the implementation of the alcohol impact area. The report must include the same categories of information and statistics that were originally used to request the alcohol impact area.

(b) The board will conduct an assessment of an alcohol impact area once every five years following the fifth, (~~tenth, fifteenth~~) 10th, 15th, et cetera, anniversary of the board's recognition of the alcohol impact area. The five-year assessment process is as follows:

(i) Within (~~twenty~~) 20 calendar days of receiving a local authority's fifth, (~~tenth, fifteenth~~) 10th, 15th, et cetera, report, the board shall notify affected parties of the upcoming assessment, whereupon an affected party has (~~twenty~~) 20 calendar days to comment upon, or petition the board to discontinue its recognition of, an alcohol impact area (see (d) of this subsection). Affected parties may include, but are not limited to: Liquor licensees, citizens or neighboring local authorities.

(ii) An affected party may submit a written request for one (~~twenty~~) 20 calendar-day extension of the comment/petition period, which the board may grant provided that an affected party provides sufficient reason why he or she is unable to meet the initial (~~twenty~~) 20-day deadline.

(iii) The board will complete an assessment within (~~sixty~~) 60 calendar days following the close of the final comment/petition period.

(c) An assessment shall include an analysis of:

(i) The same categories of information and statistics that were originally used to request the alcohol impact area; and

(ii) Comments or petitions submitted by affected parties.

An assessment may also include modifications that a local authority must make to an alcohol impact area as required by the board, or the board's reasons for revoking recognition of an alcohol impact area.

(d) To successfully petition the board to discontinue its recognition of an alcohol impact area, an affected party must:

(i) Submit findings of fact that demonstrate how chronic public inebriation or illegal activity associated with liquor sales or consumption within a proposed alcohol impact area does not or no longer:

(A) Contributes to the deterioration of the general quality of life within an alcohol impact area; or

(B) Threatens the welfare, health, peace or safety of an alcohol impact area's visitors or occupants;

(ii) Submit findings of fact that demonstrate the absence of a pervasive pattern of public intoxication or public consumption of liquor as documented in crime statistics, police reports, emergency medical response data, detoxification reports, sanitation reports, public health records or similar records; and

(iii) Demonstrate how the absence of conditions or restrictions will affect chronic public inebriation or illegal activity associated with off-premises sales or liquor consumption (see subsection (3) of this section).

(e) An affected party may submit a written request for one (~~twenty~~) 20-day extension of the comment period, which the board may grant provided that an affected party provides sufficient reason why he or she is unable to meet the (~~twenty~~) 20-day deadline.

**OTS-5322.1**

AMENDATORY SECTION (Amending WSR 10-12-124, filed 6/2/10, effective 7/3/10)

**WAC 314-17-060 What are the course standards, course content, and other requirements for class 12 or 13 training programs?** Class 12 and 13 training courses shall have the standards and requirements as stipulated in RCW 66.20.320 and in this section.

(1) **Subjects.** Each class 12 or 13 training course and accompanying workbook shall include:

- (a) Those subjects listed in RCW 66.20.320;
- (b) Washington state liquor laws and regulations;
- (c) Employment of persons under (~~twenty-one~~) 21 years of age;
- (d) Legal hours of liquor sale and service;
- (e) Prohibited conduct by patrons and employees;
- (f) Required signs at retail licensed premises;
- (g) Minimum lighting requirements; and
- (h) Administrative and criminal sanctions against liquor licensees and permit holders, including permit suspension for delinquent child support payment.

(2) **Administrative materials.** Before beginning a class 12 or 13 training course, each student shall receive:

- (a) An enrollment agreement that clearly states the obligations of a trainer and a student, refund policies, and procedures to terminate enrollment;
- (b) A statement that says, "If you have questions, comments or complaints about the program, please contact the Liquor (~~Control~~) and Cannabis Board," and includes the appropriate board contact information; and
- (c) A notice that students must complete the entire training course before taking the standardized exam.

(3) A provider or trainer is prohibited from stating or implying that the state of Washington, the board or any other state agency endorses or recommends one provider's program over another's program.

(4) **Student evaluation of training course.** A student evaluation for each in-person or online training course is required. A trainer shall provide a separate course evaluation form to each student enrolled in an in-person training course, and a form shall include the board's contact information.

(5) **Exams.** Exams shall be administered following each class 12 or 13 training course.

(a) An exam must demonstrate a student's familiarity with all of the subjects listed in subsection (1) of this section.

(b) A student may not refer to any written, video or online material, or have an in-person or online discussion with another person, during an exam. However, a trainer may allow a student to use an interpreter.

(c) The standardized exam shall have a minimum passing grade of (~~eighty~~) 80 percent unless otherwise stipulated from the board.

(6) **Online training courses.** Effective December 1, 2010, the board allows class 12 and 13 online training courses subject to additional requirements.

(a) A provider must take extra measures to ensure the identity of each student. Extra measures include obtaining the log-in and log-off times (see WAC 314-17-085). Other ways to prevent fraudulent test taking may include, but are not limited to:

(i) Allowing a student to access an examination only once per training course;

- (ii) Discontinuing an examination if it stays idle for ~~((thirty))~~ 30 minutes or more or if another program is accessed; or
- (iii) Asking each student personal identifying questions.
- (b) A trainer shall be available to answer questions during standard business hours via the internet, telephone or some other method.
- (7) **Length of class.** Excluding exam time, a class 12 training course shall be at least three hours in length, and a class 13 training course shall be at least one hour in length.
- (8) **Presentation method.** A presentation method may be in-class or online.
- (9) **Student workbook.**
  - (a) A student workbook must contain accurate, current, and complete information.
  - (b) A provider must update student workbooks and other training course material within ~~((thirty))~~ 30 calendar days following:
    - (i) The effective date of a new applicable state law or regulation; or
    - (ii) Receipt of new or updated information from the board.
  - (c) The board may establish additional workbook standards or requirements as the board deems necessary.

**OTS-5323.1**

AMENDATORY SECTION (Amending WSR 12-24-091, filed 12/5/12, effective 1/5/13)

**WAC 314-19-015 What are the reporting and tax payment requirements?** (1) The required beer and/or wine tax reports must be:

- (a) On a form furnished by the board or in a format approved by the board;
  - (b) Filed every month, including months with no activity or taxes due. A winery or wine certificate of approval holder with total taxable sales of wine in Washington state of ~~((six-thousand))~~ 6,000 gallons or less during the calendar year may elect to file annually;
  - (c) Submitted, with the tax due, to the board on or before the ~~((twentieth))~~ 20th day of the month following the end of the reporting period, for the previous reporting period (for example, a monthly report listing transactions for the month of January is due by February 20; an annual report listing transactions for 2012 is due by January 20, 2013). When the twentieth 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; and
  - (d) Filed separately for each type of liquor license or permit held.
- (2) Wineries, wine certificate of approval holders and wine shippers who elect to file annually:
- (a) Must have taxable sales of wine in Washington state of ~~((six thousand))~~ 6,000 gallons or less during the calendar year;
  - (b) New licensees who anticipate taxable sales of wine in Washington state of less than ~~((six-thousand))~~ 6,000 gallons must request by notifying the liquor ~~((control))~~ and cannabis board within ~~((thir-~~

- ~~ty~~) 30 days of license issuance that they would like to file annually;
- (c) May only change reporting frequency (to annual filing or off annual filing) at the beginning of a calendar year, effective month must be January;
- (d) Are required to file multiple reports in the event of a mid-year tax rate change (for example, the tax rate changes June 1st; annual filer will submit two reports. One for January 1st through May 31st and one for June 1st through December 31st. Both are due January 20th following the end of the reporting period);
- (e) Must submit a report the month following the month the license has been discontinued or business closed (for example, annual filer closes business/discontinued license May 25th, report is due June 20th).

Type of Licensee	Tax Payment Requirements
(3) Washington beer and/or wine distributor	<p>(a) Distributors must pay taxes on all beer and/or wine received during the preceding calendar month, including samples received at no charge (see WAC 314-64-080 and 314-64-090 for more information). The total tax due (per barrel for beer and per liter for wine) is to be paid by the first distributor to receive the product and must be included with the monthly report.</p> <p>(b) Distributors do not pay taxes on beer and/or wine received from another in-state licensed distributor who has already paid the Washington state tax on the product.</p> <p>(c) Distributors may claim a tax refund or credit, provided that they have paid the taxes prior to claiming the credit, for the following (see WAC 314-19-030 for information on claiming a tax refund or credit):</p> <p>(i) Shipments exported directly to a point outside the state of Washington, including sales to interstate common carriers;</p> <p>(ii) Sales to any military reservation in Washington state;</p> <p>(iii) Product that is deemed unsalable due to freight damage, product quality, or other causes that occurred prior to receipt by the distributor, subject to the following conditions:</p> <p>(A) The unsalable product must be destroyed within the state of Washington (per RCW 66.24.305);</p> <p>(B) The licensee must notify their local liquor enforcement officer in advance for destruction of more than <del>(fifty)</del> <u>50</u> cases of wine or <del>(two hundred)</del> <u>200</u> cases of beer;</p> <p>(C) The licensee must report the destroyed product on the next required monthly report;</p> <p>(D) The licensee must keep records showing the reason for the destruction and an inventory of products destroyed. These records must be kept on the licensed premises and available for inspection by board employees for a period of two years; and</p> <p>(E) The licensee must provide documentation from the freight company with the report if they are claiming a credit due to freight damage.</p>

Type of Licensee	Tax Payment Requirements
(4) Washington beer and/or wine importers	<p>Importers must pay taxes on samples received during the preceding calendar month, as follows:</p> <p>(a) If the samples are used by the importer within the state of Washington, the importer must pay the tax.</p> <p>(b) If samples are provided to a distributor, the distributor must pay the tax.</p>
(5) Domestic breweries, microbreweries, and domestic wineries	<p>(a) Domestic breweries, microbreweries, and domestic wineries must list production for the current reporting period only. The brewery that the domestic brewery/brand owner contracts with is required to include any products they produce for the brand owner in their production count.</p> <p>(b) Domestic breweries, microbreweries, and domestic wineries must pay taxes on beer and/or wine that is:</p> <p>(i) Sold at retail on the licensed premises (or shipped to additional winery locations as authorized by RCW 66.24.170(4)), including retail sales to out-of-state residents;</p> <p>(ii) Sold to retail licensees;</p> <p>(iii) Furnished as samples to retail licensees as authorized by RCW 66.28.040, WAC 314-64-080, and 314-64-090 (does not include samples provided to distributors);</p> <p>(iv) Provided as donations to qualifying 501 (c)(3) or (6) nonprofit organizations per RCW 66.28.040 or to the Washington wine commission per RCW 66.12.180 and 66.24.210;</p> <p>(v) Received via an interplant transfer if used as outlined in above subsections (i), (ii), (iii), or (iv);</p> <p>(vi) Sold at farmers markets as authorized by RCW 66.24.170(5), 66.24.240(4) and/or 66.24.244(5); or</p> <p>(vii) Wine that has been shipped out-of-state as nontax paid export and returned to Washington state if used as outlined in (b)(i), (ii), (iii), (iv), or (vi) of this subsection.</p> <p>(c) Domestic breweries, microbreweries, and domestic wineries do not pay tax on beer and/or wine that is:</p> <p>(i) Sold to or furnished as samples to distributors;</p> <p>(ii) Shipped out of a particular location for an interplant transfer;</p> <p>(iii) Exported directly to a point outside the state of Washington, including sales to interstate common carriers;</p> <p>(iv) Sold to any military reservation in Washington state; or</p> <p>(v) Provided as a tasting on the brewery or winery premises or at additional winery locations at no charge, as authorized by RCW 66.24.170(4). See WAC 314-19-010(3) for the definition of "tastings."</p>
(6) Domestic brewery —Brand owners	<p>(a) Domestic brewery-brand owners must file a report showing the quantity of all beer sold or delivered to each licensed beer distributor, or beer exported directly to a point outside the state of Washington, during the preceding reporting period.</p> <p>(b) Domestic brewery-brand owners are not responsible for the tax on beer that is contract produced.</p>

Type of Licensee	Tax Payment Requirements
(7) Out-of-state beer and/or wine certificate of approval holders	<p>(a) Certificate of approval holders must file a report showing the quantity of all beer and/or wine sold or delivered to each licensed beer or wine distributor or importer, including samples, during the preceding reporting period.</p> <p>(b) Tax is due from the certificate of approval holder:</p> <p>(i) On samples shipped to licensed agents, and</p> <p>(ii) On donations to the Washington wine commission per RCW 66.12.180 and 66.24.210 or to 501 (c)(3) nonprofit charitable associations within Washington state per RCW 66.28.040.</p>
(8) Out-of-state United States beer and/or wine certificate of approval holders with a direct shipping to Washington retailer endorsement	<p>(a) Certificate of approval holders with this endorsement must file an addendum report showing the quantity of beer and/or wine sold or delivered to each licensed retailer, including samples, during the preceding reporting period.</p> <p>(b) Tax is due from the certificate of approval holder on beer and/or wine sold or delivered to retail licensees and on sales to nonprofit charitable associations.</p>
(9) Out-of-state United States wine certificate of approval holders with a direct shipping to consumers endorsement	<p>(a) A certificate of approval holder with this endorsement must report the total quantity of wine sold to consumers in Washington state during the preceding reporting period.</p> <p>(b) Tax is due from the certificate of approval holder on wine sold or delivered to Washington state residents.</p>
(10) Authorized representative certificate of approval holders--((U.S.)) United States and/or foreign produced beer or wine	<p>(a) Authorized representative certificate of approval holders must file a report showing the quantity of all beer and/or wine sold or delivered to each licensed beer or wine distributor or importer, including samples. They must list the brewery and/or winery that they represent and that had shipments into Washington state during the preceding month.</p> <p>(b) Tax is due from the authorized representative beer and/or wine certificate of approval holders only on samples shipped to licensed agents, directly to retailers per WAC 314-64-080 and 314-64-090, donations to the Washington wine commission per RCW 66.12.180 and 66.24.210, or to 501 (c)(3) nonprofit charitable associations within Washington state per RCW 66.28.040.</p>
(11) Public house licensees	<p>Public house licensees must pay taxes on all sales of their own product during the preceding calendar month.</p>
(12) Retailer with an endorsement allowing receipt of direct shipment of beer or wine from a United States brewery, microbrewery, or winery	<p>A Washington retailer who receives shipments directly from a United States brewery, microbrewery, or winery, outside Washington, must file a report showing the quantity of beer and wine received by direct shipment from each licensed beer or wine producer, including samples, during the preceding month.</p>
(13) Wine shipper permit holder	<p>(a) An out-of-state winery must file a report showing the total quantity of wine sold or delivered to consumers during the preceding reporting period.</p> <p>(b) Pay the tax due for sales of wine to Washington state residents.</p>

AMENDATORY SECTION (Amending WSR 14-12-101, filed 6/4/14, effective 7/5/14)

**WAC 314-19-020 What if a licensee doesn't report or pay the taxes due, or reports or pays late?** The board may take the following actions against a licensee or permit holder in order to collect any of the reports or taxes due that are outlined in this title.

<p><b>(1) Suspension or revocation of license</b></p>	<p>(a) Failure to make a report and/or pay the taxes in the manner and dates outlined in this chapter will be sufficient ground for the board to suspend or revoke a liquor license, wine shipper permit, or certificate of approval (per RCW 66.08.150, 66.24.010, 66.24.120, 66.24.206, 66.20.370, 66.20.380, and 66.24.270).</p> <p>(b) The suspension will remain in effect until all missing reports and/or taxes have been filed with the board (see WAC 314-19-010(1) for the definition of "missing").</p>
<p><b>(2) Penalties</b></p>	<p>A penalty of two percent per month will be assessed on any tax payments postmarked after the <del>((twentieth))</del> <u>20th</u> day of the month following the reporting period of the transactions (per the reporting requirements outlined in WAC 314-19-015, RCW 66.24.290, and 66.24.210). When the <del>((twentieth))</del> <u>20th</u> 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.</p> <p>Absent a postmark, the date received at the Washington state liquor <del>((control))</del> <u>and cannabis</u> board, or designee, will be used to determine if penalties are to be assessed.</p>
<p><b>(3) Surety bond requirements</b></p>	<p>(a) <b>What is a surety bond?</b> A "surety bond" is a type of insurance policy that guarantees beer and/or wine tax payment to the state. The surety bond must be:</p> <ul style="list-style-type: none"> <li>(i) Executed by a surety company authorized to do business in the state of Washington;</li> <li>(ii) On a form and in an amount acceptable to the board;</li> <li>(iii) Payable to the Washington state liquor <del>((control))</del> <u>and cannabis</u> board; and</li> <li>(iv) Conditioned that the licensee will pay the taxes and penalties levied by RCW 66.24.210 and/or 66.24.290.</li> </ul> <p>(v) As an option to obtaining a surety bond, a licensee may create an assignment of savings account for the board in the same amount as required for a surety bond. Requests for this option must be submitted in writing to the board's financial division.</p> <p>(b) <b>When will the board require a surety bond?</b> The board may require a surety bond from a Washington beer and/or wine distributor, domestic microbrewery, domestic brewery, public house, domestic winery, wine shipper, or a beer or wine certificate of approval holder that has a direct shipment privilege. If any of the following occur, the board may require the licensee or permit holder to obtain a surety bond or assignment of savings account, within <del>((twenty-one))</del> <u>21</u> days after an administrative violation notice is issued:</p> <ul style="list-style-type: none"> <li>(i) A report or tax payment is missing, as defined in WAC 314-19-010, for two or more consecutive months; or</li> <li>(ii) A report or tax payment is missing, as defined in WAC 314-19-010, two or more times within a two year period.</li> </ul>

(c) **What will happen if the licensee does not acquire the surety bond or savings account?** Failure to meet the bonding or savings account requirements outlined in subsections (a) and (b) of this rule may result in immediate suspension of license privileges until all missing reports are filed and late taxes have been paid and the surety bond is acquired or the savings account is established.

(d) **In what amount and for how long will the board require a surety bond?** The amount of a surety bond or savings account required by this chapter must be either \$3,000, or the total of the highest four months' worth of tax liability for the previous ~~((twelve))~~ 12 month period, whichever is greater.

(i) The licensee or permit holder must maintain the bond for at least two years. After the two year period the licensee or permit holder may request an exemption as outlined in subsection (f) of this rule.

(ii) Surety bond and savings account amounts may be reviewed annually and compared to the last ~~((twelve))~~ 12 months' tax liability of the licensee. If the current bond or savings account amount does not meet the requirements outlined in this section, the licensee or permit holder will be required to increase the bond amount or amount on deposit within ~~((twenty-one))~~ 21 days.

(e) **What action will the board take when a licensee or permit holder holds a surety bond and does not pay taxes due or pays late?** If a licensee or permit holder holds a surety bond or savings account, the board will immediately start the process to collect overdue taxes from the surety company or assigned account. If the exact amount of taxes due is not known due to missing reports, the board will estimate the taxes due based on previous production, receipts, and/or sales.

(f) **Can a licensee or permit holder request an exemption to the surety bond or savings account requirement?** A licensee or permit holder may make a written request to the board's financial division for an exemption from the surety bond or assignment of savings account requirements. The board will grant an exemption once the following criteria are met:

(i) The licensee or permit holder has filed reports and paid applicable taxes to the board for at least two years immediately prior to the exemption request; and

(ii) There have been no late or missing reports or tax payments during the previous two years.

(iii) In order to remain exempt from the surety bond or assignment of savings account requirements, the licensee must continue to meet the tax reporting and payment requirements outlined in this title (outlined in WAC 314-19-015, RCW 66.24.206, 66.24.210, 66.24.270, 66.24.290, and 66.24.580).

OTS-5324.1

AMENDATORY SECTION (Amending WSR 22-23-054, filed 11/9/22, effective 12/10/22)

**WAC 314-20-018 Farmer's market beer and wine sampling.** (1) To conduct beer and wine tasting at a farmer's market, the following criteria must be met:

(a) The farmer's market must be authorized to allow breweries, microbreweries, and wineries to sell sealed bottled wine and/or beer at retail.

(b) The farmer's market must hold an endorsement to allow sampling of beer and wine or both.

(c) A brewery, microbrewery, or winery offering samples at a farmer's market must have an endorsement from the board to sell beer or wine of its own production at a farmer's market (see RCW 66.24.170, 66.24.240, and 66.24.244).

(d) No more than three breweries, microbreweries, or wineries combined may offer samples at a qualifying farmer's market per day.

(e) A brewery, microbrewery, or winery may advertise that it offers samples only at its designated booth, stall, or anywhere within the farmer's market.

(2) Samples of beer or wine may be offered only under the following conditions:

(a) Each sample must be two ounces or less, up to a total of two ounces per customer per day.

(b) Beer and wine samples are to be conducted at the booth or stall of the brewery, microbrewery, or winery with a barrier at least 42 inches in height, where licensees are able to observe and control customers participating in the samples. The barriers may be moveable (an example would be ropes and stanchions).

(c) A brewery, microbrewery, or winery must have food available for customers to consume while sampling beer or wine, or must be adjacent to a vendor offering prepared food.

(d) Customers must remain in the designated sampling area while sampling beer or wine.

(e) Brewery, microbrewery, or winery employees serving beer or wine during sampling events must hold a valid MAST permit.

(f) The brewery, microbrewery, or winery is required to send a list of scheduled beer and wine samplings to the liquor (~~control~~) and cannabis board at MIWenforce@lcb.wa.gov at the beginning of each month. The date for each beer and wine sampling must be included.

(g) The farmer's market is also required to send a list of scheduled beer and wine samplings to the liquor (~~control~~) and cannabis board at MIWenforce@lcb.wa.gov at the beginning of each month. The date for each beer and wine sampling, and the names of the brewery, microbrewery, and winery providing the samples must be included.

(h) The farmer's market is required to provide a sketch to the licensing division of the area where beer and wine samples will be conducted and to any adjacent food booths.

AMENDATORY SECTION (Amending WSR 10-01-090, filed 12/16/09, effective 1/16/10)

**WAC 314-20-050 Beer distributors—Importers—Brewers—Records—Preservation.** (1) Breweries, microbreweries, beer certificate of ap-

proval holders, and beer distributors must keep beer accounts separate and independent from other accounts and maintain proper records in a form approved by the board, showing all transactions in beer.

(2) Breweries, microbreweries, beer distributors, and beer importers must in case of beer exported or beer sold, transferred or shipped to another distributor, preserve all bills of lading or other evidence of shipment for a period of three years after such exportation, and must in the case of sales to retailers preserve all sales slips and keep the same on file in the office of the wholesaler for at least three years after each sale.

(3) Each brewery, beer distributor, and beer importer may maintain microfilm records containing reproductions (including microfiche) of any record, document, or report if first approved by the board. Request for approval shall be directed to the financial division of the Washington state liquor (~~control~~) and cannabis board and must include the following information:

- (a) Records proposed to be reproduced.
- (b) Reproduction process.
- (c) Manner of preserving the reproduction.
- (d) Facilities provided for examining or viewing such reproduction.

If the request is approved, the licensee shall provide for the examining, viewing, and reproduction of such records the same as if they were the original records.

(4) If the brewery, beer distributor, or beer importer keeps records within an automated data processing (ADP) 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 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 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.

(5) The provisions contained in subsections (3) and (4) 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 04-24-097, filed 12/1/04, effective 1/1/05)

**WAC 314-20-140 Beer importers—Certain duties.** No beer importer shall import or transport or cause to be transported into the state of Washington any brand of beer manufactured within or outside of the United States but outside the state of Washington, unless such importer shall have first filed with the board a notice of his intention so

to do, and shall have ascertained from the board that the brewer manufacturing such beer or United States foreign importer of such beer, has obtained from the Washington state liquor (~~(control)~~) and cannabis board a certificate of approval as provided in section 23-F of the Washington State Liquor Act (RCW 66.24.270).

### OTS-5326.1

AMENDATORY SECTION (Amending WSR 02-11-030, filed 5/7/02, effective 6/7/02)

#### **WAC 314-21-005 What is an in-house controlled purchase program?**

(1) Per RCW 66.44.290, an in-house controlled purchase program is a program that allows retail liquor licensees to use (~~(eighteen, nineteen, or twenty)~~) 18, 19, or 20 year old persons to attempt to purchase alcohol for the purpose of evaluating the licensee's training program regarding the sale of liquor to persons under (~~(twenty-one)~~) 21 years of age.

(2) The licensee's controlled purchase program must meet the requirements of RCW 66.44.290, WAC 314-21-015, and 314-21-025.

(3) Per RCW 66.44.290, violations occurring under an in-house controlled purchase program may not be used for criminal prosecution or administrative action by the liquor (~~(control)~~) and cannabis board.

AMENDATORY SECTION (Amending WSR 02-11-030, filed 5/7/02, effective 6/7/02)

**WAC 314-21-015 How can liquor licensees receive approval to conduct an in-house controlled purchase program?** A retail liquor licensee must receive prior written approval from the liquor (~~(control)~~) and cannabis board's enforcement and education division before conducting an in-house controlled purchase program.

(1) The board's approval will be based on the licensee submitting a written plan that meets the requirements outlined in RCW 66.44.290 and chapter 314-21 WAC.

(2) It will take up to (~~(twenty)~~) 20 days for the licensee to receive written approval from the liquor (~~(control)~~) and cannabis board's enforcement and education division once the licensee submits a properly completed written request, therefore the licensee must submit his/her request in writing to the board's enforcement and education division at least (~~(twenty)~~) 20 working days prior to the first controlled purchase program.

(3) The written request must contain:

(a) The location(s) at which the licensee would like to conduct controlled purchase programs.

(b) The name and contact telephone number(s) of the person who will be on the premises supervising the control purchased program, who must be at least (~~(twenty-one)~~) 21 years of age.

(c) The licensee's written procedures for their in-house controlled purchase program, which must address all of the guidelines in WAC 314-21-025.

AMENDATORY SECTION (Amending WSR 02-11-030, filed 5/7/02, effective 6/7/02)

**WAC 314-21-025 What are the guidelines for controlled purchase programs?** A retail liquor licensee may conduct an in-house controlled purchase program under the following conditions:

(1) The licensee must keep a statement on file signed by the licensee and each employee indicating that the employee has received training regarding the sale of liquor to persons under ~~((twenty-one))~~ 21 years of age. Restaurant, tavern, or sports/entertainment facility licensees must keep on file either such a statement for each employee or a copy of the employee's mandatory alcohol server training permit. These records must be maintained on the licensed premises, available for inspection by the board, unless otherwise approved in writing by the liquor ~~((control))~~ and cannabis board's enforcement and education division.

(2) During an in-house controlled purchase program, the person supervising the program must possess:

(a) The licensee's controlled purchase program procedures,

(b) The board's written approval of the in-house controlled purchase program, and

(c) Valid identification (see WAC 314-11-025 for a list of acceptable identification).

(3) The persons participating in the in-house controlled purchase program must be at least ~~((eighteen))~~ 18 years of age.

(4) The persons participating in the in-house controlled purchase program may not use fraudulent identification and should not be deceptively mature in appearance.

(5) The licensee must ensure that two photos are taken of the persons participating in the in-house controlled purchase program on the day of the program. One photo must be full face and one photo must show the employee from head to toe. These photos must be maintained on the licensed premises, available for inspection by the board.

(6) If persons participating in the in-house controlled purchase program are paid for their time, the compensation of such persons may not be based on the number of successful purchases made during the course of the in-house controlled purchase program.

(7) The licensee must have written procedures that ensure any liquor purchased by an ~~((eighteen, nineteen, or twenty))~~ 18, 19, or 20 year old person during an in-house controlled purchase program is adequately secured by the licensee or an employee who is at least ~~((twenty-one))~~ 21 years of age immediately following an occurrence of any purchase.

(8) Per RCW 66.44.290, the licensee must provide his/her employees a written description of the employer's in-house controlled purchase program, which must include a notice of action an employer may take as a consequence of an employee's failure to comply with the employer's policies regarding the sale of alcohol during an in-house controlled purchase program.

(9) Per RCW 66.44.290, a licensee may not terminate an employee solely for a first-time failure to comply with the licensee's policies regarding the sale of alcohol during an in-house controlled purchase program.

(10) If a licensee's controlled purchase program fails to meet any of the requirements of RCW 66.44.290, WAC 314-21-015, or 314-21-025, the board may revoke its approval to conduct in-house controlled purchase programs. The licensee may reapply for approval to

conduct in-house controlled purchase programs not less than one year following the board's revocation of approval.

### OTS-5325.1

AMENDATORY SECTION (Amending WSR 19-21-002, filed 10/2/19, effective 1/1/20)

**WAC 314-23-021 What are the monthly reporting and payment requirements for a spirits distributor license?** (1) A spirits distributor must submit monthly sales reports and payments to the board.

(2) The required monthly sales reports must be:

- (a) Filed electronically or on a form furnished by the board;
- (b) Filed every month, including months with no activity or payment due;
- (c) Submitted, with any payment due to the board on or before the (~~twentieth~~) 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). When the (~~twentieth~~) 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; and

(d) Filed separately for each liquor license held.

(3) Electronic payments will be considered received on the date they post in the ((~~WSLCB~~)) LCB receiving account.

AMENDATORY SECTION (Amending WSR 19-21-002, filed 10/2/19, effective 1/1/20)

**WAC 314-23-022 What if a distributor licensee fails to report or pay, or reports or pays late?** (1) Failure of a spirits distributor licensee to submit monthly reports and payment to the board as required in WAC 314-23-021(1) will be sufficient grounds for the board to suspend or revoke the liquor license.

(2) A penalty of two percent per month will be assessed on any payments postmarked or posted in the ((~~WSLCB~~)) LCB receiving account if paying electronically after the (~~twentieth~~) 20th day of the month following the month of sale. When the (~~twentieth~~) 20th day of the month falls on a Saturday, Sunday, or a legal holiday, the report and payment must be postmarked or posted in the ((~~WSLCB~~)) LCB receiving account if paying electronically no later than the next postal business day.

Absent a postmark, and if not paying electronically, the date received at the ((~~WSLCB~~)) LCB will be used to determine if penalties are to be assessed.

(3) Electronic payments will be considered received on the date they post in the ((~~WSLCB~~)) LCB receiving account.

AMENDATORY SECTION (Amending WSR 19-21-002, filed 10/2/19, effective 1/1/20)

**WAC 314-23-041 What are the monthly reporting requirements for a spirits certificate of approval licensee?** (1) A spirits certificate of approval licensee must submit monthly reports to the board.

(2) The required monthly reports must be:

(a) Filed electronically or on a form furnished by the board;

(b) Filed every month, including months with no activity;

(c) Submitted on or before the (~~twentieth~~) 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). When the (~~twentieth~~) 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; and

(d) Filed separately for each liquor license held.

(3) Absent a postmark, the date received at the ((WSLCB)) LCB will be used to determine timeliness.

#### OTS-5327.1

AMENDATORY SECTION (Amending WSR 18-02-006, filed 12/20/17, effective 1/20/18)

**WAC 314-24-070 Domestic wineries—Purchase and use of bulk wines, brandy or wine spirits—Import permit required—Records—Wine returned to Washington.** (1) Domestic wineries may purchase and/or receive under federal bond from any holder of a domestic winery license, holder of the fruit and/or wine distillery license provided in RCW 66.24.140, or out-of-state holder of a federal winery or fruit distillery basic permit, bulk wine, brandy or bulk wine spirits manufactured or produced by such holder, and use the same in the manufacture or production of wines: Provided, That every domestic winery which imports wine, brandy or wine spirits manufactured outside the state of Washington for use as authorized in this section must first be in possession of a permit issued by the board, in accordance with RCW 66.20.010(5) of the Washington State Liquor Act. Applications for such permits must be submitted to the board in writing. Such permits expire at the end of the board's fiscal year, and are subject to renewal at that time upon written request and remittance of said annual fee. Wine manufactured or produced from one kind of fruit or berry may not receive wine, brandy or wine spirits manufactured or produced from another kind of fruit or berry. Such brandy or wine spirits so purchased shall be used exclusively and only for the purpose of adding wine spirits to wines. In those cases where the holder of a domestic winery license shall also hold such fruit and/or wine distillery license, then, and in such cases, such domestic winery may use brandy or wine spirits manufactured or produced under such distillery license as a wine spirits addition in the manufacture or production of wine by such holder of the domestic winery license.

(2) Any domestic winery using wine, brandy or wine spirits as provided in subsection (1) of this section, shall make and file with

the board, not later than the (~~tenth~~) 10th day of each month upon forms prescribed and furnished by the board, a report showing all transactions of such domestic winery in the purchase and/or use of wine, brandy or wine spirits as provided in said subsection (1) of this section, and shall retain one copy of such report in its own files, and shall keep and preserve for a period of not less than two years any bills of lading or other documents supporting such report. One copy of the bill of lading covering such sale and shipment to a domestic winery is to be forwarded to the board by the shipping winery or fruit distillery, at the time of such shipment.

(3) A domestic winery may ship Washington wine out of and may return such wine to Washington state for ultimate sale. The following conditions apply:

(a) The wine is produced and bottled in Washington by a licensed winery.

(b) The export shall be from the licensed winery and returned to the same entity, a licensed wine distributor or bonded wine warehouse.

(c) The returned wine must not have been altered in any way, with the exception of sparkling wine.

(d) A domestic winery, a licensed wine distributor, or bonded wine warehouse directly receiving previously exported Washington wine must comply with tax collection and tracking requirements initiated by the liquor (~~control~~) and cannabis board.

(e) A domestic winery, a licensed wine distributor, or bonded wine warehouse directly receiving previously exported Washington wine must keep on file for audit purposes clear source records (shipping documents, etc.) with reporting documents. Records need to indicate what wine was returned to the state that was previously reported as an export (including number of cases and gallons).

AMENDATORY SECTION (Amending WSR 18-02-006, filed 12/20/17, effective 1/20/18)

**WAC 314-24-115 Wine importers—Requirements.** (1) Principal office: Each wine importer shall keep the board informed at all times of the location of the principal office required by the Washington State Liquor Act and shall, not less than (~~thirty~~) 30 days prior thereto notify the board in writing of any change in the location of such office.

(2) Warehouses: Wine importers maintaining warehouses at which wine imported by such importer is stored shall have the location approved by the board.

(3) Certain duties: No wine importer shall import or transport or cause to be transported into the state of Washington any brand of wine manufactured within the United States but outside the state of Washington, unless such importer shall have first filed with the board a notice of his intention so to do, and shall have ascertained from the board that the winery manufacturing such wine has obtained from the Washington state liquor (~~control~~) and cannabis board a certificate of approval as provided in the Washington State Liquor Act (section 10, chapter 21, Laws of 1969 ex. sess.).

AMENDATORY SECTION (Amending WSR 10-01-090, filed 12/16/09, effective 1/16/10)

**WAC 314-24-150 Wine records—Preservation.** (1) Every domestic winery, wine distributor, wine certificate of approval holder, wine shipper permit holder, and wine importer shall keep wine accounts separate from other accounts, and maintain proper records in a form approved by the board showing all transactions in wine.

(2) Every domestic winery, wine distributor, and wine importer, shall, in the case of sales of wine within the state, keep and preserve all invoices, bills of lading, sales slips, and other evidence of sale, in the office of the domestic winery, wine distributor or wine importer for at least three years after each sale.

(3) Every domestic winery, wine distributor, and wine importer, shall, in the case of wine exported from the state, keep and preserve all bills of lading and other evidence of shipment in the office of the domestic winery, wine distributor, or wine importer for at least three years after each shipment.

(4) Both the shipping and receiving licensees and permittees, as the case may be, shall keep and preserve all invoices, bills of lading, sales slips, and other evidence of sale, transfer or shipment in their respective offices for at least three years after each sale, transfer or shipment.

(5) Licensees and permittees may maintain microfilm records containing reproductions (including microfiche) of any record, document, or report if first approved by the board. Request for approval shall be directed to the financial division of the Washington state liquor (~~control~~) and cannabis board and must include the following information:

- (a) Records proposed to be reproduced.
- (b) Reproduction process.
- (c) Manner of preserving the reproduction.
- (d) Facilities provided for examining or viewing such reproduction.

If the request is approved, the licensee or permittee shall provide for the examining, viewing, and reproduction of such records the same as if they were the original records.

(6) If the licensee or permittee keeps records within an automated data processing (ADP) 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 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 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.

(7) The provisions contained in subsections (5) and (6) 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 22-23-054, filed 11/9/22, effective 12/10/22)

**WAC 314-24-175 Farmer's market beer and wine sampling.** (1) To conduct beer and wine tasting at a farmer's market, the following criteria must be met:

(a) The farmer's market must be authorized to allow breweries, microbreweries, and wineries to sell bottled wine and/or beer at retail.

(b) The farmer's market must hold an endorsement to allow sampling of beer and wine or both.

(c) A brewery, microbrewery, or winery offering samples at a farmer's market must have an endorsement from the board to sell beer or wine of its own production at a farmer's market (see RCW 66.24.170, 66.24.240, and 66.24.244).

(d) No more than three breweries, microbreweries, or wineries combined may offer samples at a qualifying farmer's market per day.

(e) A brewery, microbrewery, or winery may advertise that it offers samples only at its designated booth, stall, or anywhere within the farmer's market.

(2) Samples of beer or wine may be offered only under the following conditions:

(a) Each sample must be two ounces or less, up to a total of two ounces per customer per day.

(b) Beer and wine samples are to be conducted at the booth or stall of the brewery, microbrewery, or winery with a barrier at least 42 inches in height, where licensees are able to observe and control customers participating in the samples. The barriers may be moveable (an example would be ropes and stanchions).

(c) A brewery, microbrewery, or winery must have food available for customers to consume while sampling beer or wine, or must be adjacent to a vendor offering prepared food.

(d) Customers must remain in the designated sampling area while sampling beer or wine.

(e) Brewery, microbrewery, or winery employees serving beer or wine during sampling events must hold a valid MAST permit.

(f) The brewery, microbrewery, or winery is required to send a list of scheduled beer and wine samplings to the liquor (~~control~~) and cannabis board at MIWenforce@lcb.wa.gov at the beginning of each month. The date for each beer and wine sampling must be included.

(g) The farmer's market is also required to send a list of scheduled beer and wine samplings to the liquor (~~control~~) and cannabis board at MIWenforce@lcb.wa.gov at the beginning of each month. The date for each beer and wine sampling, and the names of the brewery, microbrewery, and winery providing the samples must be included.

(h) The farmer's market is required to provide a sketch to the licensing division of the area where beer and wine samples will be conducted and to any adjacent food booths.

AMENDATORY SECTION (Amending WSR 18-02-006, filed 12/20/17, effective 1/20/18)

**WAC 314-24-265 Defining wine of a winery's own production.** A domestic winery holding a valid license in both Washington and Oregon may market and distribute wine produced in Oregon utilizing their Washington winery license as the premises for transactions if the following conditions are met:

(1) The licensee must request approval from the ((WSLCB)) LCB to market and retail their Oregon wine at their Washington winery premises. Approval will be granted based on the documentation that demonstrates compliance with this regulation.

(2) The licensee must demonstrate a valid Oregon winery license and that the underlying ownership of the Oregon winery license is identical to the Washington winery license.

(3) Both the Washington and Oregon wineries must manufacture wine within the same TTB authorized appellation. Only wine from cross border appellations will be approved.

(4) Oregon wine to be marketed and/or sold in Washington must have the appropriate taxes paid (RCW 66.24.210).

#### OTS-5328.1

AMENDATORY SECTION (Amending WSR 18-21-115, filed 10/17/18, effective 11/17/18)

**WAC 314-29-010 What options does a licensee or permit holder have once he/she receives a notice of an administrative violation?**

(1) A licensee or a mandatory alcohol server training permit holder has ((~~twenty~~)) 20 days from receipt of the notice to:

- (a) Accept the recommended penalty; or
- (b) Request a settlement conference in writing; or
- (c) Request an administrative hearing in writing.

A response must be submitted on a form provided by the agency.

**(2) What happens if a licensee or mandatory alcohol server training permit holder does not respond to the administrative violation notice within ((~~twenty~~)) 20 days?**

(a) If a licensee or permit holder does not respond to the administrative violation notice within ((~~twenty~~)) 20 days, the recommended suspension penalty will go into effect. After ((~~twenty~~)) 20 days and up to ((~~thirty~~)) 30 days from the date of the administrative violation notice, and if the violation includes a monetary penalty, the licensee may pay a ((~~twenty-five~~)) 25 percent fee in addition to the recommended penalty in lieu of suspension.

(b) If the penalty does not include a suspension, the licensee must pay a ((~~twenty-five~~)) 25 percent late fee in addition to the recommended penalty. The recommended penalty plus the late fee must be received within ((~~thirty~~)) 30 days of the violation notice issue date.

(c) When a licensee fails to submit payment of monetary fine proceedings, provisions to collect shall take effect immediately or other actions such as revocation, will be instituted as deemed appropriate by the ((WSLCB)) LCB.

(d) An attempt to advise the debtor of the existence of the debt, and (~~(twenty-five)~~) 25 percent late fee per (b) of this subsection, will be made notifying that the debt may be assigned to a collection agency for collection if the debt is not paid, and at least (~~(thirty)~~) 30 days have elapsed from the time notice was attempted.

(e) Licensees failing to respond to an administrative violation notice or having outstanding fines shall not be eligible to renew their liquor license.

(f) Failure to address monetary penalties for two or more administrative violations notices in a two-year period will result in license cancellation.

**(3) What are the procedures when a licensee or mandatory alcohol server training permit holder requests a settlement conference?**

(a) If the licensee or permit holder requests a settlement conference, the hearing examiner or captain will contact the licensee or permit holder to discuss the violation.

(b) Both the licensee or permit holder and the hearing examiner or captain will discuss the circumstances surrounding the charge, the recommended penalty, and any aggravating or mitigating factors.

(c) If a compromise is reached, the hearing examiner or captain will prepare a compromise settlement agreement. The hearing examiner or captain will forward the compromise settlement agreement, authorized by both parties, to the board for approval.

(i) If the board approves the compromise, a copy of the signed settlement agreement will be sent to the licensee or permit holder, and will become part of the licensing history.

(ii) If the board does not approve the compromise, the licensee or permit holder will be notified of the decision. The licensee or permit holder will be given the option to renegotiate with the hearing examiner or captain, of accepting the originally recommended penalty, or of requesting an administrative hearing on the charges.

(d) If the licensee or permit holder and the hearing examiner or captain cannot reach agreement on a settlement proposal, the licensee may accept the originally recommended penalty, or the hearing examiner or captain will forward a request for an administrative hearing to the board's hearings coordinator.

AMENDATORY SECTION (Amending WSR 16-19-106, filed 9/21/16, effective 10/22/16)

**WAC 314-29-038 Group 5 public safety violations for sports entertainment facility licenses.** Sports entertainment facility licenses are unique and different from other on-premises licenses since they are not open on a daily basis, but rather for specific events. Public safety violations are considered the most serious because they present a direct threat to public safety. All other violations and penalties are the same for sports entertainment facility licensees as other liquor licenses.

(1) General public safety violation penalties.

Violation Type	1st Violation	2nd Violation in a two-year window	3rd Violation in a two-year window	4th and Subsequent violation in a two-year window
<p><b>Violations involving minors: Sale or service to minors outside of WAC 314-29-038(e):</b> Sale or service of alcohol to a person under 21 years of age. <b>Minor frequenting</b> a restricted area. RCW 66.44.270 RCW 66.44.310 WAC 314-11-020 WAC 314-16-150</p>	<p>Monetary penalty will be based on ticket sales to the event, and calculated at \$0.10 per ticket sold, with a mandatory minimum of \$2,500 fine</p>	<p>Monetary penalty will be based on ticket sales to the event, and calculated at \$0.50 per ticket sold, with a mandatory minimum of \$7,000 fine</p>	<p>Monetary penalty will be based on ticket sales to the event, and calculated at \$1.25 per ticket sold, with a mandatory minimum of \$45,000 fine</p>	<p>Penalty to be determined by the board, including possible cancellation of license</p>
<p><b>Sale or service to an apparently intoxicated person:</b> Sale or service of alcohol to, or permitting consumption or possession by, an apparently intoxicated person. RCW 66.44.200 WAC 314-16-150</p>	<p>Monetary penalty will be based on ticket sales to the event, and calculated at \$0.10 per ticket sold, with a mandatory minimum of \$2,500 fine</p>	<p>Monetary penalty will be based on ticket sales to the event, and calculated at \$0.50 per ticket sold, with a mandatory minimum of \$7,000 fine</p>	<p>Monetary penalty will be based on ticket sales to the event, and calculated at \$1.25 per ticket sold, with a mandatory minimum of \$45,000 fine</p>	<p>Penalty to be determined by the board, including possible cancellation of license</p>
<p><b>Conduct violations: Disorderly conduct</b> by licensee or employee, or permitting on premises. <b>Licensee and/or employee intoxicated</b> on the licensed premises and/or drinking on duty. <b>Criminal conduct:</b> Permitting or engaging in criminal conduct. WAC 314-11-015</p>	<p>Monetary penalty will be based on ticket sales to the event, and calculated at \$0.10 per ticket sold, with a mandatory minimum of \$2,500 fine</p>	<p>Monetary penalty will be based on ticket sales to the event, and calculated at \$0.50 per ticket sold, with a mandatory minimum of \$7,000 fine</p>	<p>Monetary penalty will be based on ticket sales to the event, and calculated at \$1.25 per ticket sold, with a mandatory minimum of \$45,000 fine</p>	<p>Penalty to be determined by the board, including possible cancellation of license</p>
<p><b>Lewd conduct:</b> Engaging in or permitting conduct in violation of WAC 314-11-050.</p>	<p>Monetary penalty will be based on ticket sales to the event, and calculated at \$0.10 per ticket sold, with a mandatory minimum of \$2,500 fine</p>	<p>Monetary penalty will be based on ticket sales to the event, and calculated at \$0.50 per ticket sold, with a mandatory minimum of \$7,000 fine</p>	<p>Monetary penalty will be based on ticket sales to the event, and calculated at \$1.25 per ticket sold, with a mandatory minimum of \$45,000 fine</p>	<p>Penalty to be determined by the board, including possible cancellation of license</p>
<p><b>Refusal</b> to allow an inspection and/or obstructing a law enforcement officer from performing their official duties. RCW 66.28.090 RCW 66.44.370 WAC 314-11-090</p>	<p>Monetary penalty will be based on ticket sales to the event, and calculated at \$0.10 per ticket sold, with a mandatory minimum of \$2,500 fine</p>	<p>Monetary penalty will be based on ticket sales to the event, and calculated at \$0.50 per ticket sold, with a mandatory minimum of \$7,000 fine</p>	<p>Monetary penalty will be based on ticket sales to the event, and calculated at \$1.25 per ticket sold, with a mandatory minimum of \$45,000 fine</p>	<p>Penalty to be determined by the board, including possible cancellation of license</p>

(2) If documented ticket sales for an event are unavailable, in order to assess penalties set forth in this section, the facility maximum occupancy will be used for the penalty assessment.

(3) ((WSL~~CB~~)) LCB youth access compliance checks, in accordance with chapter 314-31 WAC.

License Class	Compliance Threshold	1st Violation	2nd Violation	3rd Violation	4th Violation
Sports and entertainment facility	Events: 1 to 20 points of sale (1st incident/sale to minor to be a violation/compliance failure)	\$1000 x I*	\$10,000 x I*	\$25,000 x I*	Penalty to be determined by the board, including possible cancellation of license
Sports and entertainment facility	Events: 21 to 45 points of sale (2nd incident/sale to minor to be a violation/compliance failure)	\$1000 x I*	\$10,000 x I*	\$25,000 x I*	Penalty to be determined by the board, including possible cancellation of license
Sports and entertainment facility	Events: 45 or more points of sale (3rd incident/sale to minor to be a violation/compliance failure)	\$1000 x I*	\$10,000 x I*	\$25,000 x I*	Penalty to be determined by the board, including possible cancellation of license

\* "I" signifies the total cumulative incidents of sales to underage person during an alcohol compliance check.

A point of sale is defined as each different concession stand, or service area (such as a lounge), not each individual cash register.

**OTS-5329.1**

AMENDATORY SECTION (Amending WSR 12-18-002, filed 8/23/12, effective 9/23/12)

**WAC 314-31-005 Liquor compliance checks.** (1) The Washington state liquor (~~control~~) and cannabis board authorizes enforcement officers and investigative aides working with enforcement officers to conduct liquor compliance checks at any location where alcohol is sold, served or provided.

(2) Investigative aides working at the direction of enforcement officers during a liquor compliance check are considered agents of the Washington state liquor (~~control~~) and cannabis board.

(3) Violations involving a licensee, its employee, or a member of the public that result from a liquor compliance check are subject to criminal arrest and/or administrative action by the liquor (~~control~~) and cannabis board.

**OTS-5330.1**

AMENDATORY SECTION (Amending WSR 10-01-089, filed 12/16/09, effective 1/16/10)

**WAC 314-34-020 Information about cigarette and/or tobacco products license suspensions.** (1) On the date a cigarette and/or tobacco products license suspension goes into effect, a liquor enforcement officer will post a suspension notice in a conspicuous place on or about the licensed premises. This notice will state that the license has

been suspended by order of the liquor (~~control~~) and cannabis board due to a violation of a cigarette or tobacco products law or rule.

(2) During the period of cigarette and/or tobacco products license suspension, the licensee and employees:

(a) Are required to maintain compliance with all applicable cigarette and tobacco products laws and rules;

(b) May not remove, alter, or cover the posted suspension notice, and may not permit another person to do so;

(c) May not place or permit the placement of any statement on the licensed premises indicating that the premises have been closed for any reason other than as stated in the suspension notice;

(d) May not advertise by any means that the licensed premises is closed for any reason other than as stated in the liquor (~~control~~) and cannabis board's suspension notice.

(3) During the period of cigarette and tobacco products license suspension:

(a) A retail cigarette and/or tobacco products licensee may operate his/her business provided there is no sale, delivery, removal, or receipt of cigarette and tobacco products.

(b) A cigarette wholesaler and tobacco products distributor licensee may operate his/her business provided there is no sale, delivery, removal, or receipt of cigarette and tobacco products.

#### OTS-5331.1

AMENDATORY SECTION (Amending WSR 12-17-006, filed 8/1/12, effective 9/1/12)

**WAC 314-36-060 Public storage warehouses.** (1) No public storage warehouse shall accept, receive, or store or otherwise handle any spirits, beer, or wine, without first obtaining from the Washington state liquor (~~control~~) and cannabis board a letter of authorization.

(2) No consumption of spirits, beer, or wine, is allowed at public storage warehouses.

#### OTS-5332.1

AMENDATORY SECTION (Amending WSR 22-23-054, filed 11/9/22, effective 12/10/22)

**WAC 314-42-001 Board operations and procedure.** This section details the general course and method by which the operations of the board are channeled and determined in addition to the other functions and procedures of the board as provided in Title 314 WAC.

(1) The "Washington state liquor and cannabis board" or "board" pursuant to RCW 66.08.012 and 66.08.014, consists of three members appointed by the governor, with the consent of the senate, for staggered terms of six years. Where appropriate, the term "board" also refers to

the staff and employees of the Washington state liquor and cannabis board.

(2) The board delegates certain administrative functions to an administrative director appointed by the board as provided in WAC 314-42-010.

(3) Pursuant to the requirements of the Open Public Meetings Act, chapter 42.30 RCW all determinations and business of the board will be made and conducted in meetings open to the public, except matters exempt from the act under RCW 42.30.140 or properly conducted in executive session pursuant to RCW 42.30.110.

(a) The board holds regular meetings as published with the office of the code reviser in the *Washington State Register* per RCW 42.30.075 and as published on the board's website at [lcb.wa.gov](http://lcb.wa.gov). For scheduling purposes, it is the board's intent to schedule petitions, take public testimony, conduct rule making activities, and adopt resolutions at its regular board meetings as published in the *Washington State Register* and posted on the (~~WSLCB~~) LCB website.

(b) Occasionally the board may deem it necessary to cancel meetings or conduct business at times other than as published in the *Washington State Register*. For these occasions, stakeholder notification will occur as provided in the Open Public Meetings Act, chapter 42.30 RCW.

AMENDATORY SECTION (Amending WSR 12-17-006, filed 8/1/12, effective 9/1/12)

**WAC 314-42-010 Liquor (~~control~~) and cannabis board administrative director.** (1) The purpose of this rule is to ensure efficient and consistent administration of the liquor (~~control~~) and cannabis board through the delegation of certain administrative functions to an administrative director. The delegation of administrative functions by the board, as provided for in this section, does not alter the board's statutory responsibility to administer Title 66 RCW.

(2) The administrative director will be appointed by, and serve at the pleasure of, the board, and will perform his/her duties under the general control, management, and supervision of the board.

(3) The following duties are delegated by the board to the administrative director:

(a) Appointing authority as defined by WAC 356-05-040, 356-30-007, and 356-34-011 for all liquor (~~control~~) and cannabis board employees, with the exception of the director and staff of the policy, legislative, and media relations division as described in subsection (4) (e) and staff that report directly to the board members;

(b) Authorize expenditures of funds from the board approved internal budget;

(c) Purchase, lease, contract, or otherwise acquire any goods, services, and products within the board approved internal budget;

(d) Approve uncontested licenses and permits (this authority may be further delegated);

(e) Assign duties, coordinate agency operations, and establish performance standards and timelines;

(f) Approve disbursements of excess funds from the liquor revolving fund; and

(g) Perform other duties of a routine administrative nature identified by the board.

(4) The following duties will not be delegated and will remain functions of the board:

- (a) Final approval of agency-wide and division budgets as prepared by the administrative director;
- (b) Revocation or suspension of a license or permit;
- (c) Appeals of administrative actions taken against liquor and tobacco licensees;
- (d) Approval of contested liquor license and permit applications; and
- (e) Direct oversight of the policy, legislative, and media relations division and staff that report directly to the board members, including:
  - (i) Rule making actions,
  - (ii) Approval of agency-request legislative proposals, and
  - (iii) The employment, termination, and discipline of the director and staff of the policy, legislative, and media relations division and staff that report directly to the board members.

AMENDATORY SECTION (Amending WSR 01-11-058, filed 5/11/01, effective 6/11/01)

**WAC 314-42-020 Appearance and practice before the board—Who may appear.** During an adjudicative proceeding, no person may appear in a representative capacity before the Washington state liquor (~~control~~) and cannabis board or its designated hearing officer other than the following:

- (1) Attorneys at law duly qualified and entitled to practice before the supreme court of the state of Washington;
- (2) Attorneys at law duly qualified and entitled to practice before the highest court of record of any other state, if the attorneys at law of the state of Washington are permitted to appear in a representative capacity before administrative agencies of such other state, and if not otherwise prohibited by our state law; and/or
- (3) A bona fide officer, authorized manager, partner, or full time employee of an individual firm, association, partnership, or corporation who appears for such individual firm, association, partnership, or corporation.

AMENDATORY SECTION (Amending WSR 08-17-056, filed 8/15/08, effective 9/15/08)

**WAC 314-42-095 What happens after an administrative hearing?**

(1) Following an administrative hearing, the administrative law judge will prepare an initial order and send it to the licensee or permit holder, the assistant attorney general, the board's offices, and any other party to the administrative hearing.

(2)(a) Either the licensee, permit holder, or the assistant attorney general may file a petition for review of the initial order with the liquor (~~control~~) and cannabis board within (~~twenty~~) 20 days of the date of service of the initial order. With notice to all parties the board may change the time for filing a petition for review of the initial order. The board may extend or shorten the filing time

based on a voluntary stipulation of the parties or upon motion of a party that demonstrates a clear and convincing showing of exigent circumstances. The petition for review must:

- (i) Specify the portions of the initial order to which exception is taken; and
  - (ii) Refer to the evidence of record which is relied upon to support the petition.
- (b) Within (~~ten~~) 10 days after service of the petition for review, any party may file a reply with the liquor (~~control~~) and cannabis board and copies of the reply must be mailed to all other parties or their representatives at the time the reply is filed.
- (3) The administrative record, the initial order, and any petitions for review and replies filed by the parties will be circulated to the board members for review.
- (4) Following this review, the board will enter a final order which is appealable under the provisions of RCW 34.05.510 through 34.05.598 (Washington Administrative Procedure Act). The board may issue a final order that differs from the initial order even though no party has filed a petition for review or reply.

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

- WAC 314-42-115 Preliminary record in brief adjudicative proceedings.** (1) The preliminary record with respect to a liquor license suspension due to nonpayment of spirits taxes in RCW 66.24.010 shall consist of:
- (a) All correspondence from department of revenue requesting missing taxes or reports; and
  - (b) Request from department of revenue to the liquor (~~control~~) and cannabis board requesting suspension of the liquor license.
- (2) The preliminary record with respect to a liquor license intent to deny under WAC 314-07-065(2) where the applicant has failed to submit information or documentation shall consist of:
- (a) All correspondence between the applicant and the board pertaining to requests for information or documentation; and
  - (b) A copy of the application report prepared by licensing division staff.
- (3) The preliminary record with respect to a liquor license application intent to deny where the applicant failed to meet the criminal history standards outlined in WAC 314-07-040 shall consist of:
- (a) A copy of the application report prepared by licensing division staff;
  - (b) The personal/criminal history statement(s) submitted by the applicant;
  - (c) Any interoffice correspondence reporting criminal history of applicant(s); and
  - (d) Copies of any correspondence submitted by the applicant explaining or rebutting the criminal history findings.
- (4) The preliminary record with respect to a special occasion liquor license application (chapter 314-05 WAC) intent to deny where the applicant failed to meet the criminal history standards outlined in WAC 314-07-040 shall consist of:
- (a) A copy of the application report prepared by licensing division staff;

(b) The personal/criminal history statement(s) submitted by the applicant(s);

(c) Any interoffice correspondence reporting criminal history of applicant(s); and

(d) Copies of any correspondence submitted by the applicant explaining or rebutting the criminal history findings.

(5) The preliminary record with respect to a special occasion liquor license application (chapter 314-05 WAC) intent to deny where the application was objected to by the local authority wherein the event is scheduled (WAC 314-07-065(7)) shall consist of:

(a) A copy of the special occasion license application and supporting materials;

(b) A copy of the notice sent to the local authority by licensing division staff;

(c) A copy of the objection received from the local authority; and

(d) A copy of any correspondence from the applicant rebutting the objection from the local authority.

(6) The preliminary record with respect to suspension of mandatory alcohol server, provider or trainer, for noncompliance with a support order in accordance with RCW 66.20.085 shall consist of:

(a) A copy of the license suspension certification from the department of social and health services; and

(b) A copy of all documents received from or on behalf of the permit holder rebutting the identification of the server, provider, or trainer.

(7) The preliminary record with respect to suspension of mandatory alcohol server, provider or trainer, for failing to meet the criminal history standards outlined in WAC 314-07-070(1) shall consist of:

(a) A copy of the personal/criminal history statement submitted by the applicant;

(b) Any interoffice correspondence reporting criminal history of applicant; and

(c) Copies of any correspondence submitted by the applicant, permit holder, provider or trainer explaining or rebutting the criminal history findings.

(8) The preliminary record with respect to liquor license suspensions due to nonpayment of beer or wine taxes per WAC 314-19-015 shall consist of:

(a) Copies of any correspondence requesting missing taxes, fees, or penalties when identified after processing reporting form monthly; and

(b) Copies of backup documentation including envelopes showing late filing, corrections on reporting form, and audit findings.

(9) The preliminary record with respect to one-time event denials for private clubs in WAC 314-40-080 shall consist of:

(a) A copy of the written request for a one-time event;

(b) A copy of the written denial including the reason(s) for the denial; and

(c) Copies of all correspondence.

(10) The preliminary record with respect to banquet permit denials in WAC 314-18-030 shall consist of:

(a) The application for a banquet permit;

(b) A copy of the written denial including the reason(s) for denial; and

(c) All correspondence.

(11) The preliminary record with respect to denial of restrictions requested on a nightclub license by a local authority under the provisions in WAC 314-02-039 shall consist of:

(a) A copy of the application report prepared by licensing division staff and the threshold decision by the licensing director or his/her designee;

(b) A copy of all correspondence from the local authority requesting restrictions on the nightclub premises; and

(c) Copies of any correspondence submitted by the nightclub applicant or license holder rebutting the request for restrictions.

(12) The preliminary record with respect to licensing's approval of a request for restrictions on a nightclub license under the provisions of WAC 314-02-039 shall consist of:

(a) A copy of the application report prepared by licensing division staff and the threshold decision by the licensing director or his/her designee;

(b) A copy of all correspondence from the local authority requesting restrictions on the nightclub premises; and

(c) Copies of any correspondence submitted by the nightclub applicant or license holder rebutting the request for restrictions.

(13) The preliminary record with respect to a liquor license suspension due to noncompliance with a support order from the department of social and health services under RCW 66.24.010 shall consist of:

(a) The written request from department of social and health services to suspend the liquor license;

(b) A copy of the written liquor (~~control~~) and cannabis board suspension order; and

(c) Copies of all correspondence.

(14) The preliminary record with respect to a liquor license suspension due to noncompliance with RCW 74.08.580, electronic benefits cards, per RCW 66.24.013 shall consist of:

(a) The written request from department of social and health services to suspend the liquor license;

(b) The complete investigation from department of social and health services to support the suspension;

(c) A copy of the written liquor (~~control~~) and cannabis board suspension order; and

(d) Copies of all correspondence.

(15) The preliminary records with respect to liquor license suspension due to nonpayment of spirits liquor license fees per RCW 66.24.630 shall consist of:

(a) All correspondence relating to discrepancies in fees and/or penalties when identified after processing reporting forms; and

(b) All backup documentation including envelopes showing late filing, corrections on reporting forms, and audit findings.

(16) The preliminary records with respect to liquor license suspensions due to nonpayment of spirits distributor license fees per RCW 66.24.055 shall consist of:

(a) All correspondence requesting missing fees and/or penalties when identified after processing reporting forms; and

(b) All backup documentation including envelopes showing late filing, corrections on reporting forms, and audit findings.

(17) The preliminary record with respect to tobacco license denials shall consist of:

(a) The license application from business license services;

(b) The personal/criminal history statement submitted by the applicant;

(c) The judicial information system criminal history and division recommendation;

(d) The letter of denial from the liquor (~~control~~) and cannabis board;

(e) The notice of intent to deny statement to the applicant; and

(f) All correspondence.

(18) The preliminary record with respect to a cannabis license intent to deny due to failure or refusal to submit information per WAC 314-55-050(2) shall consist of:

(a) All correspondence between the applicant and the board pertaining to requests for information or documentation; and

(b) A copy of the application report prepared by licensing division staff.

(19) The preliminary record with respect to a cannabis license application intent to deny where the applicant failed to meet the criminal history standards outlined in WAC 314-55-050(4) shall consist of:

(a) A copy of the application report prepared by licensing division staff;

(b) The personal/criminal history statement(s) submitted by the applicant;

(c) Any communication from the Washington state patrol or Federal Bureau of Investigation pertaining to the criminal history of the applicant;

(d) Any interoffice correspondence reporting criminal history of applicant(s); and

(e) Copies of any correspondence submitted by the applicant explaining or rebutting the criminal history findings.

(20) The preliminary record with respect to a cannabis license intent to deny due to denial, suspension, or cancellation of a cannabis license in another jurisdiction per WAC 314-55-050(8) shall consist of:

(a) A copy of the application report prepared by licensing division staff; and

(b) Documentation from any other state or jurisdiction demonstrating the action taken against the applicant.

(21) The preliminary record with respect to a cannabis license intent to deny due to proximity to the perimeter of entities listed in WAC 314-55-050(10) shall consist of:

(a) A copy of the application report prepared by licensing division staff;

(b) Any interoffice correspondence reporting the measurement from the proposed business location to the facility within 1,000 feet;

(c) Documentation of measurement data including Geographic Positioning System (GPS) and related calculations; and

(d) Correspondence from the applicant illustrating alternative measurement data and/or rebuttal of the LCB's measurement data.

(22) The preliminary record with respect to a cannabis license intent to suspension due to nonpayment of cannabis excise taxes per WAC 314-55-050(11) shall consist of:

(a) All correspondence relating to discrepancies in fees and/or penalties when identified after processing reporting forms; and

(b) All backup documentation including envelopes showing late filing, corrections on reporting forms, and audit findings.

(23) The preliminary record with respect to a cannabis license intent to deny due to failure to submit an attestation concerning current tax obligations per WAC 314-55-050(12) shall consist of:

(a) A copy of the application report prepared by licensing division staff; and

(b) All correspondence with the applicant related to the request for this information.

(24) The preliminary record with respect to a cannabis license intent to deny due to denial, suspension, or revocation of a liquor license per WAC 314-55-050(13) shall consist of:

(a) A copy of the application report prepared by licensing division staff; and

(b) Documentation from liquor (~~(control)~~) and cannabis board records or any other state demonstrating the action taken against the applicant.

### OTS-5333.1

AMENDATORY SECTION (Amending WSR 10-06-122, filed 3/3/10, effective 4/3/10)

**WAC 314-52-005 Purpose and application of rules.** (1) The liquor (~~(control)~~) and cannabis board regulates alcohol advertising to promote public safety, prevent the misuse of alcohol and reduce youth exposure to alcohol advertising and marketing. These rules provide reasonable regulations as to the kind, character, size, and location of advertising of liquor, as authorized by RCW 66.08.060.

(2) No person engaged in business as a manufacturer, importer, distributor, or retailer of liquor shall publish or disseminate in any media any advertisement of liquor, unless such advertisement is in conformance with these rules.

(3) The board holds each manufacturer, importer, distributor, or retailer of liquor responsible for complying with the advertising rules of the Washington state liquor (~~(control)~~) and cannabis board in any advertising material placed by them or on their behalf by their agents. If desired, advertising may be submitted prior to publication for an advisory opinion by the Washington state liquor (~~(control)~~) and cannabis board, but advisory opinions will be restricted to advertising material submitted by manufacturers, importers, distributors, or retailers of liquor, or their agents.

(4) Liquor advertising materials, defined as institutional or educational advertising in WAC 314-52-015, intended for placement in retail outlets of the Washington state liquor (~~(control)~~) and cannabis board shall be presented to the Washington state liquor (~~(control)~~) and cannabis board for prior approval before placement. All other forms of advertising approved and accepted by the board shall not be prohibited under this rule.

AMENDATORY SECTION (Amending WSR 10-06-122, filed 3/3/10, effective 4/3/10)

**WAC 314-52-015 General.** (1) Institutional advertising shall mean advertising which promotes company or brand name identification, but does not directly solicit purchase or consumption of liquor. Edu-

cational advertising shall mean factual information on liquor, its manufacture, history, consumption and methods of ascertaining the quality of various types of liquors. All liquor advertising on products sold in the state of Washington may not contain any statement, picture, or illustration that:

- (a) Is false or misleading;
  - (b) Promotes over consumption;
  - (c) Uses the Washington state liquor (~~(control)~~) and cannabis board's seal or refers to Washington state liquor (~~(control)~~) and cannabis board, except where required by law;
  - (d) Represents the use of liquor has curative or therapeutic effects, if such statement is untrue or tends to create a misleading impression;
  - (e) Implies the consumption of liquor enhances athletic prowess, or any statement, picture, or illustration that refers to any known athlete, if such statement, picture, or illustration implies, or if the reader may reasonably infer, that the use of liquor contributed to any known athlete's athletic achievements;
  - (f) Depicts a child or other person under legal age to consume liquor, or includes:
    - (i) Objects, such as toys or characters, suggesting the presence of a child, or any other depiction designed in any manner to be especially appealing to children or other persons under legal age to consume liquor; or
    - (ii) Is designed in any manner that would be especially appealing to children or other persons under (~~(twenty-one)~~) 21 years of age.
  - (g) Is targeted principally to minors by implying that the consumption of alcoholic beverages is fashionable or the accepted course of behavior for persons under (~~(twenty-one)~~) 21 years of age; or
  - (h) Uses subliminal or similar techniques. "Subliminal or similar techniques" as used in this section, refers to any device or technique that is used to convey, or attempts to convey, a message to a person by means of images or sounds of a very brief nature that cannot be perceived at a normal level of awareness.
- (2) If advertising claims the alcohol product has a curative or therapeutic effect or enhances health or performance, the licensee must:
- (a) Cite the name of the author and date of the research or study supporting the claim; and
  - (b) Provide a copy of this research or study to the board.

## OTS-5362.2

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

**WAC 314-55-010 Definitions.** The following definitions apply for the purpose of this chapter in addition to the definitions provided in RCW 69.50.101.

- (1) "Applicant" or "cannabis license applicant" means any person or business entity who is considered by the (~~(WSLCB)~~) LCB as a true party of interest in a cannabis license, as outlined in WAC 314-55-035. However, for purposes of determining an application's pri-

ority under RCW 69.50.331 (1)(a), only the person or business entity that is applying for the license will be considered the applicant.

(2) "Batch" means a quantity of cannabis-infused product containing material from one or more lots of cannabis.

(3) "Business name" or "trade name" means the name of a licensed business as used by the licensee on signs and advertising.

(4) "Characterizing flavor" means a noticeable taste, other than one of cannabis, resulting from an additive or combination of additives including, but not limited to, fruit, spice, herbs, alcohol, candy, or menthol, or that is noticeable before or during consumption of the cannabis product.

(5) "Child care center" means an entity that regularly provides child day care and early learning services for a group of children for periods of less than 24 hours licensed by the Washington state department of early learning under chapter 170-295 WAC.

(6) "Consultant" means an expert who provides advice or services in a particular field, whether a fee is charged or not. A consultant who is in receipt of, or has the right to receive, a percentage of the gross or net profit from the licensed business during any full or partial calendar or fiscal year is a true party of interest and subject to the requirements of WAC 314-55-035. A consultant who exercises any control over an applicant's or licensee's business operations is also subject to the requirements of WAC 314-55-035(4).

(7) "Cooperative" means a group of more than one, but no more than four qualified medical cannabis patients and/or designated providers who share responsibility for growing and processing cannabis only for the medical use of the members of the cooperative.

(8) "Domicile" means a person's true, fixed, primary permanent home and place of habitation and the tax parcel on which it is located. It is the place where the person intends to remain and to which the person expects to return when the person leaves without intending to establish a new domicile elsewhere.

(9) "Elementary school" means a school with a physical location for early education that provides the first four to eight years of basic education and recognized by the Washington state superintendent of public instruction.

(10) "Employee" means any person performing services on a licensed premises for the benefit of the licensee whether or not such person is compensated by the licensee.

(11) "End product" means a cannabis product that requires no further processing prior to retail sale.

(12) "Financier" means any person or entity, other than a banking institution, that provides money as a gift or loans money to the applicant/business and expects to be paid back the amount of the loan with or without reasonable interest.

(13) "Game arcade" means an entertainment venue featuring primarily video games, simulators, and/or other amusement devices where persons under (~~twenty-one~~) 21 years of age are not restricted.

(14) "Harvest" means the cannabis plant material derived from plants of the same strain that were cultivated at the same licensed location and gathered at the same time.

(15) "Immature plant or clone" means a cannabis plant or clone that has no flowers, is less than 12 inches in height, and is less than 12 inches in diameter.

(16) "Intermediate product" means cannabis flower lots or other material lots that have been converted by a cannabis processor to a cannabis mix lot, cannabis concentrate or cannabis-infused product

that must be or are intended to be converted further to an end product.

(17) "LCB" means the Washington state liquor and cannabis board.

(18) "Library" means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.

~~((18))~~ (19) "Licensed premises" means all areas of a premises where the licensee has leasehold rights as listed in the property lease submitted to the board. Any vehicle assigned for the purposes of transporting cannabis, useable cannabis, cannabis concentrates, or cannabis-infused products shall be considered an extension of the licensed premises.

~~((19))~~ (20) "Licensee" or "cannabis licensee" means any person or entity that holds a cannabis license, or any person or entity who is a true party of interest in a cannabis license, as outlined in WAC 314-55-035.

~~((20))~~ (21) "Lot" means either of the following:

(a) The flowers from one or more cannabis plants of the same strain. A single lot of flowers cannot weigh more than five pounds; or

(b) The trim, leaves, or other plant matter from one or more cannabis plants. A single lot of trim, leaves, or other plant matter cannot weigh more than 15 pounds.

~~((21))~~ (22) "Lozenge" means a cannabis-infused product such as a hard candy, mint, pastille, tablet, or similar type of edible product that is generally swallowed whole, chewed and swallowed, or dissolved in the mouth.

~~((22))~~ (23) "Cannabis strain" means a pure breed or hybrid variety of Cannabis reflecting similar or identical combinations of properties such as appearance, taste, color, smell, cannabinoid profile, and potency.

~~((23))~~ (24) "Cannabis mix" means an intermediate lot that contains multiple strains of useable cannabis and is chopped or ground so no particles are greater than 3 mm.

~~((24))~~ (25) "Cannabis mix infused" or "mix infused" means an end product that contains cannabis mix and may contain other intermediate products or useable cannabis.

~~((25))~~ (26) "Cannabis mix packaged" or "mix packaged" means an end product containing only cannabis mix and no other product types.

~~((26))~~ (27) "Member," except as that term is used in relation to registered cooperatives, means a principal or governing person of a given entity including, but not limited to: LLC member/manager, president, vice president, secretary, treasurer, CEO, director, stockholder, partner, general partner, limited partner. This includes all spouses of all principals or governing persons named in this definition and referenced in WAC 314-55-035.

~~((27))~~ (28) "Paraphernalia" means items used for the storage or use of useable cannabis, cannabis concentrates, or cannabis-infused products, such as, but not limited to, lighters, roach clips, pipes, rolling papers, bong, and storage containers. Items for growing, cultivating, and processing cannabis, such as, but not limited to, butane, lights, and chemicals are not considered "paraphernalia."

~~((28))~~ (29) "Pesticide" means, but is not limited to: (a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest; (b) any substance or mixture of substances intended

to be used as a plant regulator, defoliant, or desiccant; and (c) any spray adjuvant. Pesticides include substances commonly referred to as herbicides, fungicides, insecticides, and cloning agents.

~~((29))~~ (30) "Perimeter" means a property line that encloses an area.

~~((30))~~ (31) "Plant" means a cannabis plant.

~~((31))~~ (32) "Plant canopy" means the square footage dedicated to live plant production, such as maintaining mother plants, propagating plants from seed to plant tissue, clones, vegetative or flowering area. Plant canopy does not include areas such as space used for the storage of fertilizers, pesticides, or other products, quarantine, office space, etc.

~~((32))~~ (33) "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment, owned and/or managed by a city, county, state, federal government, or metropolitan park district.

~~((33))~~ (34) "Product(s) otherwise taken into the body" means a cannabis-infused product for human consumption or ingestion intended for uses other than inhalation, oral ingestion, or external application to the skin.

~~((34))~~ (35) "Public park" means an area of land for the enjoyment of the public, having facilities for rest and/or recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, federal government, or metropolitan park district. Public park does not include trails.

~~((35))~~ (36) "Public transit center" means a facility located outside of the public right of way that is owned and managed by a transit agency or city, county, state, or federal government for the express purpose of staging people and vehicles where several bus or other transit routes converge. They serve as efficient hubs to allow bus riders from various locations to assemble at a central point to take advantage of express trips or other route to route transfers.

~~((36))~~ (37) "Recreation center or facility" means a supervised center that provides a broad range of activities and events intended primarily for use by persons under 21 years of age, owned and/or managed by a charitable nonprofit organization, city, county, state, federal government, or metropolitan park district.

~~((37))~~ (38) "Residence" means a person's address where he or she physically resides and maintains his or her abode.

~~((38))~~ (39) "Secondary school" means a high and/or middle school with a physical location: A school for students who have completed their primary education, usually attended by children in grades seven to 12 and recognized by the Washington state superintendent of public instruction.

~~((39))~~ (40) "Selling price" means the same meaning as in RCW 82.08.010, except that when the product is sold under circumstances where the total amount of consideration paid for the product is not indicative of its true value. Selling price means the true value of the product sold as determined or agreed to by the ~~((WSLCB))~~ LCB. For purposes of this subsection:

(a) "Product" means cannabis, cannabis concentrates, useable cannabis, or cannabis-infused products; and

(b) "True value" means market value based on sales at comparable locations in the state of the same or similar product of like quality and character sold under comparable conditions of sale to comparable purchasers. In the absence of such sales of the same or similar product, true value means the value of the product sold as determined by

all of the seller's direct and indirect costs attributed to the product.

~~((40))~~ (41) "Terpenes" means a class of compounds that impart smell, taste, or both occurring in the cannabis plant which consist of a carbon skeleton derived from isoprene units. The word "terpene" may include, but is not limited to, the following:

(a) "Botanical terpenes" means constituents derived from a spice, fruit, vegetable or vegetable juice, edible yeast, herb, bark, bud, root, or leaf or similar plant material. Their significant function in cannabis products is flavoring. This includes:

(i) Essential oil, which is natural oil typically obtained by distillation and possessing the characteristic fragrance of the plant or other source from which it is extracted;

(ii) Oleoresin, which is a natural or artificial mixture of essential oils and a resin;

(iii) Distillate; or

(iv) Any product of roasting, heating, or enzymolysis which contains terpenes.

(b) "Synthetic terpenes" means any terpene that does not occur in the cannabis plant, or in other botanical sources, and is produced through chemical manipulation in a laboratory or similar facility.

(c) "Terpenoids" means the natural products and related compounds formally derived from isoprene units, or "isoprenoids," that have the same meaning as that found in the current version of the International Union of Pure and Applied Chemistry (IUPAC) and as hereafter amended.

~~((41))~~ (42) "Unit" means an individually packaged cannabis-infused solid or liquid product meant to be eaten or swallowed, not to exceed 10 servings or 100 milligrams of active tetrahydrocannabinol (THC), or Delta 9.

~~((42) "WSLCB" means the Washington state liquor and cannabis board.)~~

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

**WAC 314-55-018 Prohibited practices—Money advances—Contracts—Gifts—Rebates, discounts, and exceptions, etc.** (1) No industry member or licensee shall enter into any agreement which causes undue influence over another licensee or industry member. This rule shall not be construed as prohibiting the placing and accepting of orders for the purchase and delivery of cannabis that are made in accordance with usual and common business practice and that are otherwise in compliance with chapter 69.50 RCW and this chapter.

(2) No cannabis producer or processor shall advance and no cannabis licensee shall receive money or moneys' worth under an agreement written or unwritten or by means of any other business practice or arrangement such as:

(a) Gifts;

(b) Discounts;

(c) Loans of money;

(d) Premiums;

(e) Rebates;

(f) Free product of any kind except as allowed by WAC 314-55-096 and RCW 69.50.585; or

(g) Treats or services of any nature whatsoever except such services as are authorized in this section and under RCW 69.50.585.

(3) "Industry member" means a licensed cannabis producer, cannabis processor, cannabis retailer, cannabis transportation licensee, cannabis research licensee, their authorized representatives, and including, but not limited to, any affiliates, subsidiaries, officers, partners, financiers, agents, employees, and representatives of any licensee.

(4) Consistent with WAC 314-55-017, no industry member or employee thereof shall sell to any cannabis licensee or solicit from any such licensee any order for any cannabis tied in with, or contingent upon, the licensee's purchase of some other cannabis, or any other merchandise, paraphernalia, property, or service.

(5) If the ((~~WSLCB~~)) LCB finds in any instance that any licensee has violated this section, then all licensees involved in the violation shall be held equally responsible.

AMENDATORY SECTION (Amending WSR 22-21-058, filed 10/12/22, effective 11/12/22)

**WAC 314-55-050 Withdrawal, denial, suspension, or cancellation of a cannabis license application or license.** (1) The board has the discretion to withdraw, deny, suspend, or cancel a cannabis license application or license consistent with RCW 69.50.331, for reasons including, but not limited to, the following:

(a) Not meeting the initial or ongoing qualifications, requirements, or both for a specific cannabis license, as outlined in this chapter and chapter 69.50 RCW;

(b) Not submitting information or documentation requested by the board during the application evaluation process;

(c) Misrepresenting fact, or not disclosing a material fact to the board during the application process or any review or follow-up review that may occur after a license has been issued;

(d) Not meeting the background check standards outlined in WAC 314-55-040;

(e) Not meeting the cannabis law or rule violation history standards outlined in WAC 314-55-045;

(f) Using funds that cannot be verified for the acquisition, startup and operation of the business, or obtained in a way that violates the law;

(g) Not allowing the board or its authorized representative access to any place where a licensed activity takes place;

(h) Not producing any book, record or document required by law or board rule;

(i) The applicant or licensee has had a cannabis license or medical cannabis license denied, suspended, or canceled in another state or local jurisdiction;

(j) The city, county, tribal government, or port authority has submitted a substantiated objection to the application or against the premises for which the new or renewed license is requested, as described in RCW 69.50.331 (7) and (10).

(k) The applicant or licensee has not paid taxes or fees required under chapter 69.50 RCW or did not provide production, processing, inventory, sales and transportation reports or documentation required under this chapter.

(l) The applicant or licensee did not submit an attestation that they are current in any tax obligations to the Washington state department of revenue.

(m) The applicant or licensee has been denied a liquor or cannabis license or had a liquor license or cannabis license suspended or revoked in this or any other state.

(n) The operating plan submitted with the application does not demonstrate that the applicant meets the criteria for licensure.

(o) The applicant or licensee does not operate their business consistent with the operating plan approved by the board.

(p) The board determines the issuance of the license will not be in the best interest of the welfare, health, or safety of the people of the state.

(2) Except as provided in subsection (3) of this section, the board will not issue a new cannabis license if the proposed licensed business is within 1,000 feet of the perimeter of the grounds of any of the facilities listed in (a) through (h) of this subsection. The distance will be measured as the shortest straight line distance from the property line of the proposed building or business location to the property line of the entities listed below:

(a) Elementary or secondary school;

(b) Playground;

(c) Recreation center or facility;

(d) Child care center;

(e) Public park;

(f) Public transit center;

(g) Library; or

(h) Any game arcade (where admission is not restricted to persons age 21 or older).

(3) (a) A city or county may, by local ordinance, permit cannabis businesses licensing within 1,000 feet but not less than 100 feet of the facilities listed in subsection (2) of this section except elementary and secondary schools, and playgrounds.

(b) If an applicant applies for a cannabis license at a location less than 1,000 feet of a recreation center or facility, child care center, public park, public transit center, library, or game arcade, the applicant must provide the ((~~WSLCB~~)) LCB with a copy of the local ordinance that describes the distance required by the city or county where the facility will be located.

AMENDATORY SECTION (Amending WSR 22-21-058, filed 10/12/22, effective 11/12/22)

**WAC 314-55-055 Cannabis retailer license forfeiture.** (1) (a) A cannabis retailer's license is subject to forfeiture if the retailer is not fully operational and open to the public after 12 months of issuance of the license. No cannabis retailer's license is subject to forfeiture within the first nine months of issuance.

(b) Fully operational means the business meets the following criteria for at least 12 consecutive weeks within a 12-month period after issuance of the license:

(i) The business is open to the public for a minimum of five hours a day between the hours of 8:00 a.m. and 12:00 midnight, three days a week;

(ii) The business posts hours of operation outside of the premise in the public view; and

(iii) The business reports monthly sales from the sale of cannabis products and pays applicable taxes.

(2) A cannabis retailer's license will not be subject to forfeiture if the licensee is not able to open a fully operational retail cannabis business based on actions by the city, town, or county with jurisdiction over the licensed business including:

(a) The adoption of a ban or moratorium that prohibits the retail cannabis business from opening; or

(b) The adoption of an ordinance or regulation related to zoning, business licensing, land use, or other regulatory measure that has the effect of preventing a licensee from receiving an occupancy permit from the jurisdiction or which otherwise prevents a licensed cannabis retailer from becoming operational.

(3) Exceptions to license forfeiture.

(a) The board has the sole discretion to grant exceptions to the license forfeiture process if a cannabis retailer licensee experiences circumstances that are out of their control such as a natural disaster.

(b) Sufficient documentation is required to verify any of the exceptions to license forfeiture in this section. Licensees must inform the board if conditions change, such as an adjustment to zoning requirements, changes to a ban or moratorium, or other circumstances that would allow the licensee to operate.

(c) If the underlying condition exempting a cannabis retail license from forfeiture under subsection (2) of this section or (a) of this subsection is removed, then the 12-month time frame to become fully operational and open to the public requirement under subsection (1) of this section will begin from the time the condition exempting the retail license from forfeiture is removed.

(4) A cannabis retail licensee who receives a notice of license forfeiture under this section from the ((WSLCB)) LCB may request an administrative hearing under chapter 34.05 RCW. A request for a hearing must be made in writing and received by the ((WSLCB)) LCB no later than 20 days after service of the notice. Requests submitted in paper form may be delivered to the ((WSLCB)) LCB in person during normal business hours at 1025 Union Avenue S.E., Olympia, WA 98504, or mailed to the ((WSLCB)) LCB. Mailed appeal requests must be addressed to: ((WSLCB)) LCB, ATTN: Adjudicative Proceedings Coordinator, P.O. Box 43076, Olympia, WA 98504-3076 or, for certified mail, ((WSLCB)) LCB, ATTN: Adjudicative Proceedings Coordinator, 1025 Union Avenue S.E., Olympia, WA 98504.

AMENDATORY SECTION (Amending WSR 22-23-054, filed 11/9/22, effective 12/10/22)

**WAC 314-55-073 Cannabis research license.** A cannabis research license allows a holder of the license to produce, process, and possess cannabis for the limited research purposes provided in RCW 69.50.372. The ((WSLCB)) LCB designates a scientific reviewer (reviewer) to review research applications and make recommendations for the approval or denial of research projects and to assess licensed research activities. The following provisions are in addition to the

requirements for cannabis research licensees provided in RCW 69.50.372.

**(1) Eligibility and continuing requirements for research license applications, prohibitions and restrictions.**

(a) Other than the restrictions listed in this subsection, any person, organization, agency, or business entity may apply for a cannabis research license.

(b) Other cannabis licensees may apply for a research license. Facilities at which the research is conducted must be wholly separate and distinct from the cannabis business, except:

(i) Licensed producers with a research license and approved research project may grow cannabis plants or possess cannabis for research purposes at the producer's licensed premises. However, all cannabis grown or possessed for research purposes or purposes other than those related to the research project must be kept wholly separated and distinct from commercial operations and must not be comingled with or diverted to cannabis grown for commercial purposes or purposes other than those related to the research project; and

(ii) Licensed processors with a research license and approved research project may possess cannabis for research purposes at the processors licensed premises. However, all cannabis possessed for research purposes must be kept wholly separated and distinct from all cannabis possessed for commercial purposes or purposes other than those related to the research project and must not be comingled with or diverted to cannabis possessed for commercial purposes or purposes other than those related to the research project. Licensed processors who do not also hold a producer license may not grow cannabis plants for the purposes of research under a research license at the processor's licensed location.

(c) Labs certified to perform quality assurance testing on cannabis and cannabis products by the ((WSLCB)) LCB may apply for a research license. Certified labs with a research license and approved research project must ensure that all cannabis possessed for research purposes is wholly separated from and is not comingled with cannabis possessed for state required testing purposes for licensed producers or processors or cannabis possessed for any reason other than research purposes.

(d) All research license applicants and persons conducting research under the research license must be 21 years of age or older.

(e) All research license applicants and those persons that have managing control over an organization, agency, or business entity must pass a criminal background check and financial investigation prior to being eligible to receive a research license.

(f) Except as otherwise provided by chapter 69.50 RCW and agency rule, no applicant for a research license may possess any cannabis plants or cannabis for research purposes unless and until the research project is approved and the applicant is notified that the research license is approved in writing by the ((WSLCB)) LCB.

(g) No research licensee may conduct research unless and until the research project is approved by the reviewer and the ((WSLCB)) LCB in writing.

**(2) Initial applications.**

**(a) Application made with business licensing services (BLS).**

(i) Applicants for a research license must apply through BLS to begin the application process for a research license.

(ii) Upon submitting an application for a research license through BLS, the applicant will receive an application letter from the

((WSLCB)) LCB directing the applicant to submit the additional application materials directly to the ((WSLCB's)) LCB's designated scientific reviewer (reviewer).

(A) The applicant must submit complete and accurate additional application materials directly to the reviewer within 30 days of the date of the application letter from the ((WSLCB)) LCB or by the date indicated on the application letter. It is the responsibility of the research license applicant to comply with the application requirements in this section and ensure the application is complete, accurate, and successfully submitted to the reviewer.

(B) Incomplete or incorrect additional application materials, materials that do not adhere to the content requirements in this section, or materials not received by the reviewer by 5:00 p.m. on the 30th day or the application date as indicated on the letter from the ((WSLCB)) LCB will not be considered by the reviewer and the ((WSLCB)) LCB will withdraw the application after receiving notice in writing from the reviewer.

(b) **Additional application materials requirements.**

(i) Application materials that do not adhere to the content requirements in this section or incomplete or incorrect applications will be withdrawn.

(ii) The applicant is responsible for ensuring that no information is included in the research plan that may compromise the applicant's ability to secure patent, trade secret, or other intellectual property protection. All application documents must be submitted by a person who has the legal authority to represent the entity if the applicant is an entity other than an individual person.

(iii) All documents must be submitted to the reviewer in a legible PDF format.

(iv) All of the following information and documents are required for each initial application:

(A) A completed cover page form, cannabis research license application form, and signature page form created by the ((WSLCB)) LCB and available at the ((WSLCB's)) LCB's website at [lcb.wa.gov](http://lcb.wa.gov).

(B) A research plan limited to eight pages, not including references or citations, that includes the following information:

(I) Purpose and goal(s) of the proposed research project(s);

(II) Key milestones and timelines for the research project(s);

(III) Background and preliminary studies;

(IV) Amount of cannabis to be grown, if applicable, including the justification with respect to milestone tasks;

(V) Anticipated cost of the proposed research project(s) and funding available for the work. The scientific reviewer may request additional information or ask clarifying questions about the cost of the proposal to determine whether the budget meets the scope and design of the proposed project;

(VI) Key personnel and organizations, including names and roles;

(VII) Facilities, equipment, and other resources required and available for conducting the proposed research project(s).

(C) A biosketch for each individual involved in executing the proposed research project limited to two pages per individual performing technical and administrative functions essential to performing the proposed research, including proof that the individual is 21 years of age or older. Biosketches must be prepared using the National Institutes of Health (NIH) biographical sketch format, available at <http://grants.nih.gov/grants/forms/new-renewal-revisions.htm>.

(D) Letters of support limited to two pages per letter confirming the commitment of time and resources from external personnel or organizations if external personnel or organizations will participate in research activities under an approved research project. Letters of support are required to confirm the commitment of time and resources from personnel involved in the proposed research project(s) who are not employed at the applicant organization. Letters of support must include specific details regarding the type(s) and magnitude of the time and resources being committed to the proposed research project(s) and must be signed by individuals having the authority to make such commitments.

(E) For all project(s) involving human or animal subjects, documentation of all required institutional review board (IRB) or institutional animal care and use committee (IACUC) approvals. Documents must be provided on IRB or IACUC letterhead and be signed by authorized officials of those regulatory bodies.

(v) Documents that do not conform to the requirements in subsection (b) of this section may be withdrawn. All nonform documents must conform to the following requirements:

(A) Eight and one-half by 11-inch portrait-oriented page dimensions;

(B) Single-spaced with all margins measuring at least one inch; and

(C) At least 12-point font in Times New Roman or Arial, not proportionately reduced.

(c) **Review by the ((WSLCB's)) LCB's designated scientific reviewer.**

(i) If the applicant submits application materials to the reviewer by the required deadline specified by the ((WSLCB's)) LCB's application letter and the reviewer determines the additional application materials are complete and meet the document requirements specified in this section, the reviewer will proceed with reviewing the research project to evaluate whether the project complies with the provisions of RCW 69.50.372 (1) and (2). The scientific reviewer may require the applicant to provide additional information if the scientific reviewer determines that more information is necessary to complete the review.

(ii) When evaluating research projects, the reviewer must:

(A) Ensure confidentiality;

(B) Screen members of the reviewer panel for any conflicts of interest and take appropriate measures if a conflict of interest is identified;

(C) Review all information, including the budget, to evaluate whether the scope and design of the proposed project matches the budget and resources of the applicant; and

(D) The scientific reviewer may require the applicant to submit to a site inspection. The site inspection may occur after the initial review and before the license is issued to evaluate the adequacy of the location, facilities, or equipment to complete the proposed project.

(iii) The reviewer will assess fees for the review of the research project proposal directly to the applicant pursuant to RCW 69.50.372(7). The reviewer will not recommend approval of an application for any research license for which an unpaid balance of fees to the reviewer is due regardless of the recommendation of the reviewer regarding the sufficiency of the research project.

(iv) If at any time during the process of review the reviewer finds that the additional application materials are not complete, the

reviewer will notify the ((WSLCB)) LCB in writing and the ((WSLCB)) LCB will withdraw the application.

(v) The reviewer will supply a written evaluation to the ((WSLCB)) LCB in writing after completing review of the research project. Evaluations will provide the approval recommendation status; determination(s) of the applicable research category or categories; and, as applicable, the reasons for a "Not Approved" recommendation. The ((WSLCB)) LCB will provide written evaluations to applicants following completion of the review process by the reviewer along with the ((WSLCB's)) LCB's approval or denial of the research license.

(d) **((WSLCB)) LCB requirements and licensing process.** If the reviewer indicates the application for a research license should be approved, the following requirements must be met prior to final approval of the license by the ((WSLCB)) LCB.

(i) The ((WSLCB)) LCB will request criminal background and financial information from the research license applicant and evaluate the applicant(s) pursuant to the standards and requirements established in WAC 314-55-020 except that research license applicants are not subject to prioritization under subsection (3) of that section;

(ii) Funding of the proposed research must be disclosed by the applicant(s) in amount, timing and source(s). Funding sources may include organizational resources and individuals and organizations that are not part of the person, organization, agency, or business entity applying for the research license. Out-of-state resources may be included, but must be identified;

(iii) The applicant(s) must adhere to the notice posting requirements under WAC 314-55-020;

(iv) The applicant must demonstrate access to and proficiency with the traceability system; and

(v) The applicant must meet facility security requirements as provided in WAC 314-55-083 prior to being granted a license.

**(3) Research license withdrawal and denials.**

(a) The ((WSLCB)) LCB will withdraw an application if:

(i) The application or additional application materials are determined incomplete or incorrect by the ((WSLCB)) LCB or its designated reviewer;

(ii) The additional application materials are not timely received by the reviewer as provided in this section; or

(iii) The applicant(s) request withdrawal of a research license application at any time in the application process. The applicant must request the withdrawal in writing and is responsible for any review costs due to the reviewer. The voluntary withdrawal of a research license application does not result in a hearing right.

(b) The ((WSLCB)) LCB will deny a research license if:

(i) The scientific reviewer does not recommend approval of the license after reviewing the research proposal for compliance with this section or RCW 69.50.372;

(ii) The applicant does not meet the requirements for a license under this section or RCW 69.50.372; or

(iii) The applicant provides false or misleading information in any of the materials it submits to the ((WSLCB)) LCB or the reviewer.

(c) If the ((WSLCB)) LCB denies a research application for the reasons provided in (b) (iii) of this subsection or for failing to meet criminal history or administrative violations requirements under this section, the applicant(s) is prohibited from reapplying for a research license for one calendar year from the date of the ((WSLCB's)) LCB's denial of the license.

(d) A person or entity that has outstanding unpaid review fees owing to the scientific reviewer is prohibited from reapplying for a research license until all review fees are paid to the scientific reviewer.

**(4) Reporting required.**

(a) The ((WSLCB)) LCB or the ((WSLCB's)) LCB's designated reviewer may require reporting by or auditing of research licensees as necessary.

(b) The ((WSLCB's)) LCB's designated reviewer must submit an annual status report of all completed and ongoing research projects for the previous year to the ((WSLCB)) LCB by December 31st of each calendar year.

(c) The licensee must adhere to the reporting requirements in the traceability system under WAC 314-55-083.

(d) The reviewer must immediately notify the ((WSLCB)) LCB if it receives information indicating that a research licensee is operating outside the scope of the projects approved under a research license.

**(5) Adding an additional research project or changing existing approved research project process (after licensure).**

(a) A research licensee is restricted to only those research activities under a research project that has been reviewed and approved by reviewer.

(b) Applications to add a new project or change an existing approved project is the same as what is required for initial application except that a new license application through BLS is not required. To apply to add a new research project or change an existing approved project, a research licensee must submit all materials to the reviewer as required under subsection (2)(b) of this section. Incomplete project applications will not be considered.

(c) The reviewer will review the application for a new research project or change to an existing approved research project pursuant to subsection (2)(c) of this section. The reviewer will supply a written evaluation to the ((WSLCB)) LCB and the licensee in writing after completing review of the application for a new research project or a change to an existing approved research project. Evaluations will provide the approval recommendation status; determination(s) of the applicable research category or categories; and, as applicable, the reasons for a "Not Approved" recommendation.

**(6) Research license renewals.**

(a) Research license renewals operate on an annual basis, based on the license issuance date. A licensee must have an ongoing approved research project or an application for a new research project to be eligible for license renewal. The ((WSLCB)) LCB will notify the licensee and reviewer 90 days prior to the license renewal date. The licensee must provide a status report to the reviewer or an application for a new research project if the licensee's ongoing approved research project will end within 30 days prior to or after the renewal date. The status report or application must be received by the reviewer within 30 days of the 90-day renewal notice from the ((WSLCB)) LCB or the license will not be renewed.

(b) The reviewer will notify the ((WSLCB)) LCB in writing if the licensee meets the requirements for renewal not later than 15 days prior to the licensee's renewal date.

(c) If the reviewer determines that the research project does not meet requirements for renewal due to lack of an ongoing project or for failure to meet the requirements of RCW 69.50.372 or this section for

a proposed new project, the reviewer will recommend the ((WSLCB)) LCB not renew the license.

(d) The ((WSLCB)) LCB will review the licensee's violation history and criminal background check prior to renewal. If the violation history or criminal records disqualifies the licensee from eligibility for a research license under WAC 314-55-050, the ((WSLCB)) LCB will not renew the license.

(7) **License revocation.**

(a) The ((WSLCB)) LCB may revoke an application for the following reasons:

(i) The ((WSLCB)) LCB has reason to believe that cannabis is being diverted from the research licensee;

(ii) The research licensee operates outside the scope of the research project(s) approved under the license issued to the licensee;

(iii) The applicant makes a misrepresentation of fact, or fails to disclose a material fact to the ((WSLCB)) LCB during the application process or any subsequent investigation after a license has been issued;

(iv) The ((WSLCB)) LCB finds that the licensee possesses cannabis plants, cannabis, or cannabis products that are not accounted for in the traceability system;

(v) The research licensee makes changes to their operating plan, entity structure, or location without prior approval from the ((WSLCB)) LCB;

(vi) The research licensee fails to maintain security requirements for the licensed research facility; or

(vii) The licensee violates any provision of chapter 69.50 RCW or this chapter.

(b) A licensee may request voluntary cancellation of a license at any time. The licensee must request cancellation of a research license to the ((WSLCB)) LCB in writing. The voluntary cancellation of a research license does not result in a hearing right.

(8) **Cannabis disposal requirements.**

(a) Licensees must dispose of cannabis as provided in WAC 314-55-097.

(b) Licensees must dispose of cannabis if the research license is discontinued for any reason. A licensee may transfer plants to another cannabis research licensee. A licensee may work with the ((WSLCB)) LCB to dispose of cannabis or cannabis plants.

(9) An applicant or licensee may request an administrative hearing to contest the withdrawal, denial, nonrenewal, or revocation of a research license pursuant to chapter 34.05 RCW. A request for a hearing must be made in writing and received by the ((WSLCB)) LCB no later than 20 days after the date the notification of withdrawal, denial, nonrenewal, or revocation was mailed to the applicant or licensee. Appeal requests submitted in paper form may be delivered to the ((WSLCB)) LCB in person during normal business hours at 1025 Union Avenue S.E., Olympia, WA 98501, or mailed to the ((WSLCB)) LCB. Mailed appeal requests must be addressed to: ((WSLCB)) LCB, ATTN: Adjudicative Proceedings Coordinator, P.O. Box 43076, Olympia, WA 98504-3076 or, for certified mail, ((WSLCB)) LCB, ATTN: Adjudicative Proceedings Coordinator, 1025 Union Avenue S.E., Olympia, WA 98501.

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

**WAC 314-55-075 Cannabis producer license—Privileges, requirements, and fees.** (1) (a) A cannabis producer license allows the licensee to produce, harvest, trim, dry, cure, and package cannabis into lots for sale at wholesale to cannabis processor licensees and to other cannabis producer licensees. A cannabis producer may also produce and sell:

(i) Cannabis plants, seed, and plant tissue culture to other cannabis producer licensees;

(ii) Immature cannabis plants or clones and cannabis seeds to members of a registered cooperative, qualifying patients, or designated providers under the conditions provided in this chapter; and

(iii) Immature cannabis plants or clones and cannabis seeds to a licensed cannabis researcher under the conditions provided in this chapter.

(b) Cannabis production must take place within a fully enclosed secure indoor facility or greenhouse with rigid walls, a roof, and doors. Outdoor production may take place in nonrigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight obscure wall or fence at least eight feet high. Outdoor producers must meet security requirements described in WAC 314-55-083. An outdoor grow must be physically separated at least 20 feet from another licensed outdoor grow. In addition, outdoor grows cannot share common walls or fences.

(2) The application fee for a cannabis producer license is \$250. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(3) The annual fee for issuance and renewal of a cannabis producer license is \$1,000. The annual fee for issuance and renewal of a cannabis producer license is \$1,381. The ((~~WSLCB~~)) LCB will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee is responsible for all fees required for criminal history checks.

(4) The application window for cannabis producer licenses is closed. The ((~~WSLCB~~)) LCB may reopen the cannabis producer application window at subsequent times when the ((~~WSLCB~~)) LCB deems necessary.

(5) Any entity and/or principals within any entity are limited to an interest, as defined in WAC 314-55-035, in no more than three cannabis producer licenses.

(6) The maximum amount of space for cannabis production cannot exceed the amount licensed. Applicants must designate on their operating plan the size category of the production premises and the amount of actual square footage in their premises that will be designated as plant canopy. There are three categories as follows:

(a) Tier 1 - Less than 4,000 square feet;

(b) Tier 2 - Four thousand square feet up to 10,000 square feet; and

(c) Tier 3 - Ten thousand square feet up to 30,000 square feet.

(7) The ((~~WSLCB~~)) LCB may reduce a licensee's or applicant's square footage designated to plant canopy for the following reasons:

- (a) If the amount of square feet of production of all licensees exceeds the maximum square feet the ((WSLCB)) LCB will reduce the allowed square footage by the same percentage.
- (b) If 50 percent production space used for plant canopy in the licensee's operating plan is not met by the end of the first year of operation the ((WSLCB)) LCB may reduce the tier of licensure.
- (8) If the total amount of square feet of cannabis production exceeds the maximum square feet, the ((WSLCB)) LCB reserves the right to reduce all licensee's production by the same percentage or reduce licensee production by one or more tiers by the same percentage.
- (9) The maximum allowed amount of cannabis on a producer's premises at any time is as follows:
- (a) Outdoor or greenhouse grows - One and one-quarter of a year's harvest; or
- (b) Indoor grows - Six months of their annual harvest.
- (10) A producer may not treat or otherwise adulterate useable cannabis with any organic or nonorganic chemical or other compound whatsoever to alter the color, appearance, weight, or smell of the useable cannabis.
- (11) A cannabis producer must make quality assurance test results available to any processor purchasing product. A cannabis producer must label each lot of cannabis with the following information:
- (a) Lot number;
- (b) UBI number of the producer; and
- (c) Weight of the product.

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

- WAC 314-55-077 Cannabis processor license—Privileges, requirements, and fees.** (1) A cannabis processor license allows the licensee to process, dry, cure, package, and label useable cannabis, cannabis concentrates, and cannabis-infused products for sale at wholesale to cannabis processors and cannabis retailers.
- (2) **Application and license fees.**
- (a) The application fee for a cannabis processor license is \$250. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.
- (b) The annual fee for issuance and renewal of a cannabis processor license is \$1,381. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee is responsible for all fees required for the criminal history checks.
- (c) The application window for cannabis processor licenses is closed. The board may reopen the cannabis processor application window at subsequent times when the board deems necessary.
- (3) Any entity and/or principals within any entity are limited to no more than three cannabis processor licenses.
- (4) (a) A cannabis processor that makes cannabis-infused solid or liquid product meant to be ingested orally (cannabis edibles) must obtain a cannabis-infused edible endorsement from the department of agriculture as required under chapter 15.125 RCW and rules adopted by the department to implement that chapter (chapter 16-131 WAC). A li-

censee must allow the board or their designee to conduct physical visits and inspect the processing facility, recipes, and records required under WAC 314-55-087 during normal business hours or at any time of apparent operation without advance notice.

(b) A cannabis processor licensed by the board must ensure cannabis-infused edible processing facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapter 15.125 RCW and rules promulgated to implement chapters 16-131, 16-165 and 16-167 WAC.

(5) (a) A cannabis processor may blend tested useable cannabis from multiple lots into a single package for sale to a cannabis retail licensee so long as the label requirements for each lot used in the blend are met and the percentage by weight of each lot is also included on the label.

(b) A processor may not treat or otherwise adulterate useable cannabis with any organic or nonorganic chemical or other compound whatsoever to alter the color, appearance, weight, or smell of the useable cannabis.

**(6) Recipes, product, packaging, and labeling approval.**

(a) A cannabis processor licensee must obtain label and packaging approval from the board for all cannabis-infused products meant for oral ingestion prior to offering these items for sale to a cannabis retailer. The cannabis processor licensee must submit a picture of the product, labeling, and packaging to the board for approval. More information on the product, packaging, and label review process is available on the board's website.

(b) All recipes for cannabis-infused products meant for oral ingestion (cannabis edible products) must be approved by the department of agriculture under chapter 16-131 WAC. Licensees must obtain recipe approval from the department of agriculture prior to submitting any cannabis edible products, packages, and labels for review and approval by the board. The recipe for any cannabis-infused solid or liquid products meant to be ingested orally must be kept on file at the cannabis processor's licensed premises and made available for inspection by the board or its designee.

(c) If the board denies a cannabis-infused product for sale in cannabis retail outlets, the cannabis processor licensee may request an administrative hearing under chapter 34.05 RCW, Administrative Procedure Act.

(7) With the exception of the cannabis, all ingredients used in making cannabis-infused products for oral ingestion must be a commercially manufactured food as defined in WAC 246-215-01115.

(8) Cannabis-infused edible products in solid or liquid form must be homogenized to ensure uniform disbursement of cannabinoids.

(9) A cannabis processor may infuse food or drinks with cannabis, provided that:

(a) The product or products do not require cooking or baking by the consumer;

(b) Coatings applied to the product or products are compliant with the requirements of this chapter;

(c) The product and package design is not similar to commercially available products marketed for consumption by persons under 21 years of age, as defined by WAC 314.55.105 (1) (c).

(10) To reduce the risk to public health, potentially hazardous foods as defined in WAC 246-215-01115 may not be infused with cannabis. Potentially hazardous foods require time-temperature control to

keep them safe for human consumption and prevent the growth of pathogenic microorganisms or the production of toxins. Any food that requires refrigeration, freezing, or a hot holding unit to keep it safe for human consumption may not be infused with cannabis.

(11) Other food items that may not be infused with cannabis to be sold in a retail store include:

- (a) Any food that has to be acidified to make it shelf stable;
- (b) Food items made shelf stable by canning or retorting;
- (c) Fruit or vegetable juices (this does not include shelf stable concentrates);
- (d) Fruit or vegetable butters;
- (e) Pumpkin pies, custard pies, or any pies that contain egg;
- (f) Dairy products of any kind such as butter, cheese, ice cream, or milk; and
- (g) Dried or cured meats.

(h) Vinegars and oils derived from natural sources may be infused with dried cannabis if all plant material is subsequently removed from the final product. Vinegars and oils may not be infused with any other substance, including herbs and garlic.

(i) Cannabis-infused jams and jellies made from scratch must utilize a standardized recipe in accordance with 21 C.F.R. Part 150, revised as of April 1, 2013.

(12) Consistent with WAC 314-55-104, a cannabis processor may infuse dairy butter or fats derived from natural sources, and use that extraction to prepare allowable cannabis-infused solid or liquid products meant to be ingested orally, but the dairy butter or fats derived from natural sources may not be sold as stand-alone products.

The board may designate other food items that may not be infused with cannabis.

(13) Cannabis processor licensees are allowed to have a maximum of six months of their average useable cannabis and six months average of their total production on their licensed premises at any time.

(14) **Processing service arrangements.** A processing service arrangement is when one processor (processor B) processes useable cannabis or an altered form of useable cannabis (cannabis product) for another licensed processor (processor A) for a fee.

(a) Processor A is the product owner. However, processor B may handle the product under its license as provided in chapter 69.50 RCW and this chapter. Processor B is not allowed to transfer the product to a retailer and may only possess cannabis or cannabis products received from processor A for the limited purposes of processing it for ultimate transfer back to processor A.

(b) Processing service arrangements must be made on a cash basis only as provided in WAC 314-55-115 and payment for the service and return of the processed product must be made within 30 calendar days of delivery to processor B. Failure to do so as provided by the preceding sentence is a violation of this section and any cannabis or cannabis product involved in the transaction will be subject to seizure and destruction. Payment with any cannabis products, barter, trade, or compensation in any form other than cash for processing service arrangements is prohibited under processing service arrangements.

(c) Each processor that enters into a processing service arrangement must include records for each service arrangement in recordkeeping documents which must be maintained consistent with this chapter.

(15) Cannabis may not be returned by any retail licensee to any processor except as provided in this section.

(a) Every processor must maintain on the licensed premises for a period of five years complete records of all refunds and exchanges made under this section including an inventory of cannabis and cannabis products returned to the processor by any retail licensee.

(b) Cannabis may be returned by a retail licensee in the event a retailer goes out of the business of selling cannabis at retail and a cash refund, as defined by WAC 314-55-115, may be made upon the return of the cannabis or cannabis products, so long as ((~~WSLCB~~)) LCB approval is acquired prior to returns and refunds under this subsection.

(c) Cannabis products different from that ordered by a retailer and delivered to the retailer may be returned to a processor and either replaced with cannabis products which were ordered or a cash refund, as defined by WAC 314-55-115, may be made. These incorrect orders must be discovered and corrected within eight days of the date the delivery was made to be eligible for returns and refunds under this subsection.

(d) A cannabis processor may accept returns of products and sample jars from cannabis retailers for destruction, but is not required to provide refunds to the retailer. It is the responsibility of the retailer to ensure the product or sample jar is returned to the processor.

(16) The board may take disciplinary action against any cannabis processor that fails to comply with the provisions of WAC 246-80-021.

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

**WAC 314-55-085 What are the transportation requirements for a cannabis licensee?** (1) **Notification of shipment.** Upon transporting any cannabis or cannabis product, a producer, processor, retailer, or certified third-party testing lab shall notify the ((~~WSLCB~~)) LCB of the type and amount and/or weight of cannabis and/or cannabis products being transported, the name of transporter, information about the transporting vehicle, times of departure and expected delivery. This information must be reported in the traceability system described in WAC 314-55-083(4).

(2) **Receipt of shipment.** Upon receiving the shipment, the licensee or certified third-party lab receiving the product shall report the amount and/or weight of cannabis and/or cannabis products received in the traceability system.

(3) **Transportation manifest.** A complete printed transport manifest on a form provided by the ((~~WSLCB~~)) LCB containing all information required by the ((~~WSLCB~~)) LCB must be kept with the product at all times.

(4) **Records of transportation.** Records of all transportation must be kept for a minimum of three years at the licensee's location and are subject to inspection.

(5) **Transportation of product.** Cannabis or cannabis products that are being transported must meet the following requirements:

(a) Only the cannabis licensee, an employee of the licensee, a transportation licensee, or a certified testing lab may transport product and/or occupy a transporting vehicle;

(b) Drivers and/or occupants of a transporting vehicle must be 21 years of age or older;

(c) Cannabis or cannabis products must be in a sealed package or container approved by the ((WSLCB)) LCB pursuant to WAC 314-55-105;

(d) Sealed packages or containers cannot be opened during transport;

(e) Cannabis or cannabis products must be in a locked, safe and secure storage compartment that is secured to the inside body/compartment of the vehicle transporting the cannabis or cannabis products;

(f) Any vehicle transporting cannabis or cannabis products must travel directly from the shipping licensee to the receiving licensee and must not make any unnecessary stops in between except to other facilities receiving product;

(g) Live plants may be transported in a fully enclosed, windowless locked trailer, or in a secured area within the inside body/compartment of a van or box truck. A secured area is defined as an area where solid or locking metal partitions, cages, or high strength shatterproof acrylic can be used to create a secure compartment in the fully enclosed van or box truck. The secure compartment in the fully enclosed van or box truck must be free of windows. Live plants may not be transported in the bed of a pickup truck, a sports utility vehicle, or passenger car.

(6) For purposes of this chapter, any vehicle assigned for the purposes of transporting cannabis, usable cannabis, cannabis concentrates, or cannabis-infused products shall be considered an extension of the licensed premises. Transport vehicles are subject to inspection by enforcement officers of the ((WSLCB)) LCB. Vehicles assigned for transportation may be stopped and inspected by a ((WSLCB)) LCB enforcement officer at any licensed location, or while en route during transportation.

(7) All cannabis plants, clones, seeds, lots, batches, intermediate products, end products, vendor samples, and sample jars must remain physically tagged during transport.

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

**WAC 314-55-092 Failure to pay excise taxes and late payment of excise taxes.** (1) If a cannabis licensee does not submit its payment(s) to the ((WSLCB)) LCB as required in WAC 314-55-089: The licensee is subject to penalties.

**Penalties:** A penalty of two percent per month will be assessed on the outstanding balance for any payments postmarked after the 20th day of the month following the month of sale. 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. Absent a postmark, the date received at the ((WSLCB)) LCB or authorized designee, will be used to assess the penalty of two percent per month on the outstanding balance after the 20th day of the month following the month of sale.

(2) Failure to make a report and/or pay the license taxes and/or penalties in the manner and dates outlined in WAC 314-55-089 will be sufficient grounds for the ((WSLCB)) LCB to suspend or revoke a cannabis license.

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

**WAC 314-55-097 Cannabis waste disposal—Liquids and solids.** (1)

Solid and liquid wastes generated during cannabis production and processing must be stored, managed, and disposed of in accordance with applicable state and local laws and regulations.

(2) Wastewater generated during cannabis production and processing must be disposed of in compliance with applicable state and local laws and regulations.

(3) Wastes from the production and processing of cannabis plants must be evaluated against the state's dangerous waste regulations (chapter 173-303 WAC) to determine if those wastes designate as dangerous waste. It is the responsibility of each waste generator to properly evaluate their waste to determine if it is designated as a dangerous waste. If a generator's waste does designate as a dangerous waste, then that waste(s) is subject to the applicable management standards found in chapter 173-303 WAC.

(a) Wastes that must be evaluated against the dangerous waste regulations include, but are not limited to, the following:

(i) Waste from cannabis flowers, trim and solid plant material used to create an extract (per WAC 314-55-104).

(ii) Waste solvents used in the cannabis process (per WAC 314-55-104).

(iii) Discarded plant waste, spent solvents and laboratory wastes from any cannabis processing or quality assurance testing.

(iv) Cannabis extract that fails to meet quality testing.

(b) Cannabis wastes that do not designate as dangerous shall be managed in accordance with subsection (4) of this section.

(c) A cannabis plant, useable cannabis, trim and other plant material in itself is not considered dangerous waste as defined under chapter 173-303 WAC unless it has been treated or contaminated with a solvent.

(4) Cannabis waste that does not designate as dangerous waste (per subsection (3) of this section) must be rendered unuseable following the methods in subsection (5) of this section prior to leaving a licensed producer, processor, or laboratory. Disposal of the cannabis waste rendered unuseable must follow the methods under subsection (6) of this section.

Wastes that must be rendered unuseable prior to disposal include, but are not limited to, the following:

(a) Waste evaluated per subsection (3) of this section and determined to not designate as "Dangerous Waste."

(b) Cannabis plant waste, including roots, stalks, leaves, and stems that have not been processed with solvent.

(c) Solid cannabis sample plant waste possessed by third-party laboratories accredited by the ((~~WSL~~LCB)) LCB to test for quality assurance that must be disposed of.

(d) Other wastes as determined by the ((~~WSL~~LCB)) LCB.

(5) The allowable method to render cannabis plant waste unuseable is by grinding and incorporating the cannabis plant waste with other ground materials so the resulting mixture is at least 50 percent non-cannabis waste by volume. Other methods to render cannabis waste unuseable must be approved by the ((~~WSL~~LCB)) LCB before implementation.

Material used to grind with the cannabis falls into two categories: Compostable waste and noncompostable waste.

(a) Compostable mixed waste: Cannabis waste to be disposed as compost feedstock or in another organic waste method (for example, anaerobic digester) may be mixed with the following types of waste materials:

- (i) Food waste;
- (ii) Yard waste;
- (iii) Vegetable based grease or oils; or
- (iv) Other wastes as approved by the ((~~WSLCB~~)) LCB.

(b) Noncompostable mixed waste: Cannabis waste to be disposed in a landfill or another disposal method (for example, incinerator) may be mixed with the following types of waste materials:

- (i) Paper waste;
- (ii) Cardboard waste;
- (iii) Plastic waste;
- (iv) Soil; or
- (v) Other wastes as approved by the ((~~WSLCB~~)) LCB.

(6) Cannabis wastes rendered unuseable following the method described in subsection (4) of this section can be disposed.

(a) Disposal of the cannabis waste rendered unuseable may be delivered to a permitted solid waste facility for final disposition. Examples of acceptable permitted solid waste facilities include:

- (i) Compostable mixed waste: Compost, anaerobic digester, or other facility with approval of the jurisdictional health department.
- (ii) Noncompostable mixed waste: Landfill, incinerator, or other facility with approval of the jurisdictional health department.

(b) Disposal of the cannabis waste rendered unuseable may be managed on-site by the generator in accordance with the standards of chapter 173-350 WAC.

(c) A record of the final destination of cannabis waste rendered unuseable.

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

**WAC 314-55-0995 Laboratory certification and accreditation requirements.** The following requirements apply to third-party labs seeking certification by the ((~~WSLCB~~)) LCB or its designee to do quality assurance testing on cannabis and cannabis products in Washington state, and for certified third-party laboratories (certified labs) to remain certified by the ((~~WSLCB~~)) LCB. The requirements provided in this section are continuing requirements, and must be adhered to and maintained for a third-party lab to remain certified. The ((~~WSLCB~~)) LCB may summarily suspend a lab's certification if a certified lab is found out of compliance with the requirements of this chapter.

(1) A third-party laboratory must be certified by the ((~~WSLCB~~)) LCB or their vendor as meeting the ((~~WSLCB's~~)) LCB's accreditation and other requirements prior to conducting quality assurance tests required under this chapter. Certified labs must conspicuously display the certification letter received by the ((~~WSLCB~~)) LCB upon certification at the lab's premises in a conspicuous location where a customer may observe it unobstructed in plain sight.

(2) A person with financial interest in a certified lab may not have direct or indirect financial interest in a licensed cannabis producer or processor for whom they are conducting required quality assurance tests. A person with direct or indirect financial interest in

a certified lab must disclose to the ((WSLCB)) LCB by affidavit any direct or indirect financial interest in a licensed cannabis producer or processor.

(3) The following provisions are conditions of certification for third-party testing labs. Failure to adhere to the below requirements may result in the suspension or revocation of certification.

(a) Each lab must employ a scientific director responsible to ensure the achievement and maintenance of quality standards of practice. The scientific director must possess the following minimum qualifications:

(i) A doctorate in the chemical or microbiological sciences from a college or university accredited by a national or regional certifying authority with a minimum of two years' post-degree laboratory experience;

(ii) A master's degree in the chemical or microbiological sciences from a college or university accredited by a national or regional certifying authority with a minimum of four years' of post-degree laboratory experience; or

(iii) A bachelor's degree in the chemical or microbiological sciences from a college or university accredited by a national or regional certifying authority with a minimum of six years of post-education laboratory experience.

(b) Certified labs must follow the analytical requirements most current version of the *Cannabis Inflorescence and Leaf Monograph* published by the *American Herbal Pharmacopoeia* or notify the ((WSLCB)) LCB or its designee what alternative scientifically valid testing methodology the lab is following for each quality assurance test. Third-party validation by the ((WSLCB)) LCB or its designee is required for any monograph or analytical method followed by a certified lab to ensure the methodology produces scientifically accurate results prior to use of alternative testing methods to conduct required quality assurance tests.

(c) The ((WSLCB)) LCB may require third-party validation and ongoing monitoring of a certified lab's basic proficiency to correctly execute the analytical methodologies employed by the certified lab. The ((WSLCB)) LCB may contract with a vendor to conduct the validation and ongoing monitoring described in this subsection. The certified lab must pay all vendor fees for validation and ongoing monitoring directly to the ((WSLCB's)) LCB's vendor.

(4) Certified labs must allow the ((WSLCB)) LCB or the ((WSLCB's)) LCB's vendor to conduct physical visits and inspect related laboratory equipment, testing and other related records during normal business hours without advance notice.

(5) As a condition of certification, labs must adopt and follow minimum good lab practices (GLPs) as provided in WAC 314-55-103, and maintain internal standard operating procedures (SOPs), and a quality control/quality assurance (QC/QA) program as specified by the ((WSLCB)) LCB. The ((WSLCB)) LCB or authorized third-party organization ((WSLCB's)) LCB's designee) may conduct audits of a lab's GLPs, SOPs, QC/QA, and inspect all other related records.

(6) The ((WSLCB)) LCB or its designee will take immediate disciplinary action against any certified lab that fails to comply with the provisions of this chapter or falsifies records related to this section including, without limitation, revoking the certification of the certified lab.

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

**WAC 314-55-103 Good laboratory practice checklist.** A third-party testing lab must be certified by the ((WSLCB)) LCB or its vendor as meeting the ((WSLCB's)) LCB's accreditation and other requirements prior to conducting required quality assurance tests. The following checklist will be used by the ((WSLCB)) LCB or its vendor to certify third-party testing labs:

<b>ORGANIZATION</b> Completed by: Reviewed by:	<b>Document Reference</b>	<b>Y</b>	<b>N</b>	<b>NA</b>	<b>Comments</b>
1. The laboratory or the organization of which it is a part of shall be an entity that can be held legally responsible.	-	-	-	-	-
2. The laboratory conducting third-party testing shall have no financial interest in a licensed producer or processor for which testing is being conducted.	-	-	-	-	-
If the laboratory is part of an organization performing activities other than testing, the responsibilities of key personnel in the organization that have an involvement or influence on the testing activities of the laboratory shall be defined in order to identify potential conflicts of interest.	-	-	-	-	-
3. The laboratory shall have policies and procedures to ensure the protection of its client's confidential information and proprietary rights, including procedures for protecting the electronic storage and transmission of results.	-	-	-	-	-
4. In every instance where the lab references certification status they shall clearly indicate which tests they are currently certified for.	-	-	-	-	-
5. The laboratory is responsible for all costs of initial certification and ongoing site assessments.	-	-	-	-	-
6. The laboratory must agree to site assessments every year for the first three years to maintain certification. Beginning year four of certification, on-site assessments will occur every two years to maintain certification.	-	-	-	-	-
7. The laboratory must allow ((WSLCB)) <u>LCB</u> staff or their representative to conduct physical visits and check I-502 related laboratory activities at any time.	-	-	-	-	-
8. The laboratory must report all test results directly into ((WSLCB's)) <u>LCB's</u> traceability system within (( <del>twenty-four</del> )) 24 hours of completion. Labs must also record in the traceability system an acknowledgment of the receipt of samples from producers or processors and verify if any unused portion of the sample was destroyed or returned to the customer.	-	-	-	-	-

<b>HUMAN RESOURCES</b> Completed by: Reviewed by:	<b>Document Reference</b>	<b>Y</b>	<b>N</b>	<b>NA</b>	<b>Comments</b>
9a. Job descriptions for owners and all employees. A written and documented system detailing the qualifications of each member of the staff including any specific training requirements applicable to analytical methods.	-	-	-	-	-
b. Specialized training such as by vendors, classes granting CEUs, etc., shall be documented in each training file.	-	-	-	-	-
10. Qualifications of owners and staff: CVs for staff on file.	-	-	-	-	-
a. Have technical management which has overall responsibility for the technical operations and the provision of the resources needed to ensure the required quality of laboratory operations.	-	-	-	-	-

<b>HUMAN RESOURCES</b> Completed by: Reviewed by:	<b>Document Reference</b>	<b>Y</b>	<b>N</b>	<b>NA</b>	<b>Comments</b>
b. Documentation that the scientific director meets the requirements of ((WSLCB)) LCB rules.	-	-	-	-	-
c. Chain of command, personnel organization/flow chart, dated and signed by the laboratory director.	-	-	-	-	-
d. Written documentation of delegation of responsibilities in the absence of the scientific director and management staff (assigned under chapter 314-55 WAC as related to quality assurance testing).	-	-	-	-	-
e. Documentation of employee competency (DOC): Prior to independently analyzing samples, and on an annual, ongoing basis, testing personnel must demonstrate acceptable performance on precision, accuracy, specificity, reportable ranges, blanks, and unknown challenge samples (proficiency samples or internally generated quality controls). Dated and signed by the laboratory director.	-	-	-	-	-
f. The laboratory management shall ensure the competence of all who operate specific equipment, perform tests and/or calibrations, evaluate results, and sign test reports and calibration certificates.	-	-	-	-	-
g. When using staff who are undergoing training, appropriate supervision shall be provided.	-	-	-	-	-
h. Personnel performing specific tasks shall be qualified on the basis of appropriate education, training, experience and/or demonstrated skills, as necessary.	-	-	-	-	-
i. The management shall authorize specific personnel to perform particular types of sampling, test and/or calibration, to issue test reports and calibration certificates, to give opinions and interpretations and to operate particular types of equipment.	-	-	-	-	-
j. The laboratory shall maintain records of the relevant authorization(s), competence, educational and professional qualifications, training, skills and experience of all technical personnel, including contracted personnel.	-	-	-	-	-
k. Successful training (in-house courses are acceptable) in specific methodologies used in the laboratory shall be documented.	-	-	-	-	-
l. Designate a quality manager (however named) who, irrespective of other duties and responsibilities, shall have defined responsibility and authority for ensuring that the quality system is implemented and followed; the quality manager shall have direct access to the highest level of management at which decisions are made on laboratory policy or resources.	-	-	-	-	-
m. The laboratory shall delegate responsibilities for key managerial personnel to be acted upon in cases of absence or unavailability.	-	-	-	-	-
n. The laboratory shall provide adequate supervision of testing staff, including trainees, by persons familiar with methods and procedures, purpose of each test and/or calibration, and with the assessment of the test or calibration results.	-	-	-	-	-
11. Standard operating procedure for the following:	-	-	-	-	-
a. Instructions on regulatory inspection and preparedness.	-	-	-	-	-
b. Instruction on law enforcement interactions.	-	-	-	-	-
c. Information on U.S. federal laws, regulations, and policies relating to individuals employed in these operations, and the implications of these for such employees.	-	-	-	-	-

HUMAN RESOURCES Completed by: Reviewed by:		Document Reference	Y	N	NA	Comments
d.	Written and documented system of employee training on hazards (physical and health) of chemicals in the workplace, including prominent location of MSDS or SDS sheets and the use of appropriate PPE.	-	-	-	-	-
e.	Written and documented system on the competency of personnel on how to handle chemical spills and appropriate action; spill kit on-site and well-labeled, all personnel know the location and procedure.	-	-	-	-	-
f.	Information on how employees can access medical attention for chemical or other exposures, including follow-up examinations without cost or loss of pay.	-	-	-	-	-
g.	Biosafety at a minimum covering sterilization and disinfection procedures and sterile technique training.	-	-	-	-	-
STANDARD OPERATING PROCEDURES		Document Reference	Y	N	NA	Comments
12.	As appropriate, laboratory operations covered by procedures shall include, but not be limited to, the following:	-	-	-	-	-
a.	Environmental, safety and health activities;	-	-	-	-	-
b.	Sample shipping and receipt;	-	-	-	-	-
c.	Laboratory sample chain of custody and material control;	-	-	-	-	-
d.	Notebooks/logbooks;	-	-	-	-	-
e.	Sample storage;	-	-	-	-	-
f.	Sample preparation;	-	-	-	-	-
g.	Sample analysis;	-	-	-	-	-
h.	Standard preparation and handling;	-	-	-	-	-
i.	Postanalysis sample handling;	-	-	-	-	-
j.	Control of standards, reagents and water quality;	-	-	-	-	-
k.	Cleaning of glassware;	-	-	-	-	-
l.	Waste minimization and disposition.	-	-	-	-	-
13.	The following information is required for procedures as appropriate to the scope and complexity of the procedures or work requested:	-	-	-	-	-
a.	Scope (e.g., parameters measured, range, matrix, expected precision, and accuracy);	-	-	-	-	-
b.	Unique terminology used;	-	-	-	-	-
c.	Summary of method;	-	-	-	-	-
d.	Interferences/limitations;	-	-	-	-	-
e.	Approaches to address background corrections;	-	-	-	-	-
f.	Apparatus and instrumentation;	-	-	-	-	-
g.	Reagents and materials;	-	-	-	-	-
h.	Hazards and precautions;	-	-	-	-	-
i.	Sample preparation;	-	-	-	-	-
j.	Apparatus and instrumentation setup;	-	-	-	-	-
k.	Data acquisition system operation;	-	-	-	-	-
l.	Calibration and standardization;	-	-	-	-	-
m.	Procedural steps;	-	-	-	-	-
n.	QC parameters and criteria;	-	-	-	-	-
o.	Statistical methods used;	-	-	-	-	-

STANDARD OPERATING PROCEDURES		Document Reference	Y	N	NA	Comments
p.	Calculations;	-	-	-	-	-
q.	Assignment of uncertainty;	-	-	-	-	-
r.	Forms used in the context of the procedure.	-	-	-	-	-
s.	Document control with master list identifying the current revision status of documents.	-	-	-	-	-
FACILITIES AND EQUIPMENT		Document Reference	Y	N	NA	Comments
14.	Allocation of space: Adequate for number of personnel and appropriate separation of work areas.	-	-	-	-	-
15.	Arrangement of space.	-	-	-	-	-
a.	Allows for appropriate work flow, sampling, lab space separate from office and break areas.	-	-	-	-	-
b.	Employee bathroom is separate from any laboratory area.	-	-	-	-	-
16.	Adequate eyewash/safety showers/sink.	-	-	-	-	-
17.	Procurement controls.	-	-	-	-	-
a.	The laboratory shall have procedure(s) for the selection and purchasing of services and supplies it uses that affect the quality of the tests and/or calibrations. Procedures covering reagents and laboratory consumables shall exist for the purchase, receipt, storage, and disposition of expired materials.	-	-	-	-	-
b.	The laboratory shall ensure that purchased supplies and reagents and consumable materials that affect the quality of tests and/or calibrations are inspected or otherwise verified as complying with standard specifications or requirements defined in the methods for the tests and/or calibrations concerned.	-	-	-	-	-
i.	Reagents and standards shall be inspected, dated and initialed upon receipt, and upon opening.	-	-	-	-	-
ii.	Calibration standards and analytical reagents shall have an expiration or reevaluation date assigned.	-	-	-	-	-
iii.	Solutions shall be adequately identified to trace back to preparation documentation.	-	-	-	-	-
c.	Prospective suppliers shall be evaluated and selected on the basis of specified criteria.	-	-	-	-	-
d.	Processes to ensure that approved suppliers continue to provide acceptable items and services shall be established and implemented.	-	-	-	-	-
18.	Subcontracting.	-	-	-	-	-
a.	The laboratory shall advise the customer of the subcontract arrangement in writing, including the subcontractors' accreditation credentials under chapters 69.50 RCW and 314-55 WAC.	-	-	-	-	-
b.	The laboratory shall maintain a register of all subcontractors that it uses for tests and/or calibrations and a record of the evidence of compliance with chapter 314-55 WAC for the work in question.	-	-	-	-	-
c.	When there are indications that subcontractors knowingly supplied items or services of substandard quality, this information shall be forwarded to appropriate management for action.	-	-	-	-	-
19.	Utilities (items verified upon on-site inspection).	-	-	-	-	-
a.	Electrical:	-	-	-	-	-

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
i. Outlets: Adequate, unobstructed, single-use, multiplug adaptors with surge control;	-	-	-	-	-
ii. Single-use extension cords;	-	-	-	-	-
iii. Ground fault circuit interrupters near wet areas.	-	-	-	-	-
b. Plumbing:	-	-	-	-	-
i. Appropriateness of sink usage: Separate sinks for work/personal use;	-	-	-	-	-
ii. Adequate drainage from sinks or floor drains;	-	-	-	-	-
iii. Hot and cold running water.	-	-	-	-	-
c. Ventilation:	-	-	-	-	-
i. Areas around solvent use or storage of solvents or waste solvents;	-	-	-	-	-
ii. Vented hood for any microbiological analysis - Class II Type A biosafety cabinet as applicable.	-	-	-	-	-
iii. Fume hood with appropriate ventilation.	-	-	-	-	-
d. Vacuum: Appropriate utilities/traps for prevention of contamination (as applicable).	-	-	-	-	-
e. Shut-off controls: Located outside of the laboratory.	-	-	-	-	-
20. Waste disposal: Appropriate for the type of waste and compliant with WAC 314-55-097 Cannabis waste disposal—Liquids and solids.	-	-	-	-	-
21. Equipment. Equipment and/or systems requiring periodic maintenance shall be identified and records of major equipment shall include:	-	-	-	-	-
a. Name;	-	-	-	-	-
b. Serial number or unique identification from name plate;	-	-	-	-	-
c. Date received and placed in service;	-	-	-	-	-
d. Current location;	-	-	-	-	-
e. Condition at receipt;	-	-	-	-	-
f. Manufacturer's instructions;	-	-	-	-	-
g. Date of calibration or date of next calibration;	-	-	-	-	-
h. Maintenance;	-	-	-	-	-
i. History of malfunction.	-	-	-	-	-
22. Maintenance.	-	-	-	-	-
a. Documented evidence of routine preventive maintenance and calibration of equipment including, but not limited to: Thermometer, pipette, analytical balances, and additional analytical equipment.	-	-	-	-	-
i. Calibration programs shall be established for key quantities or values of the instruments where these properties have a significant effect on the results.	-	-	-	-	-
ii. Before being placed into service, equipment, including equipment used for sampling, shall be calibrated or checked to establish that it meets the laboratory's specification requirements and complies with the relevant standard specifications.	-	-	-	-	-

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
iii. Equipment that has been subjected to overloading or mishandling, gives suspect results, or has been shown to be defective or outside of specified limits, shall be taken out of service. Such equipment shall be isolated to prevent its use or clearly labeled or marked as being out-of-service until it has been repaired and shown by calibration or test to perform correctly.	-	-	-	-	-
b. Documentation of a maintenance schedule and reviewed by the laboratory director.	-	-	-	-	-
i. Calibration procedures shall specify frequency of calibration checks.	-	-	-	-	-
ii. Instruments that are routinely calibrated shall be verified daily or prior to analyzing samples (as applicable).	-	-	-	-	-
iii. Acceptance criteria shall be determined, documented and used.	-	-	-	-	-
iv. When possible, any external calibration service (metrological laboratory) used shall be a calibration laboratory accredited to ISO/IEC 17025:2005 by a recognized accreditation body.	-	-	-	-	-
v. Laboratories shall demonstrate, when possible, that calibrations of critical equipment and hence the measurement results generated by that equipment, relevant to their scope of accreditation, are traceable to the SI through an unbroken chain of calibrations.	-	-	-	-	-
vi. External calibration services shall, wherever possible, be obtained from providers accredited to one of the following: ISO/IEC 17025, ISO Guide 34, an ILAC recognized signatory, a CIPM recognized National Metrology Institute (NMI), or a state weights and measures facility that is part of the NIST laboratory metrology program. Calibration certificates shall be endorsed by a recognized accreditation body symbol or otherwise make reference to accredited status by a specific, recognized accreditation body, or contain endorsement by the NMI. Certificates shall indicate traceability to the SI or reference standard and include the measurement result with the associated uncertainty of measurement.	-	-	-	-	-
vii. Where traceability to the SI is not technically possible or reasonable, the laboratory shall use certified reference materials provided by a competent supplier.	-	-	-	-	-
viii. Calibrations performed in-house shall be documented in a manner that demonstrates traceability via an unbroken chain of calibrations regarding the reference standard/material used, allowing for an overall uncertainty to be estimated for the in-house calibration.	-	-	-	-	-
ix. Calibrations shall be repeated at appropriate intervals, the length of which can be dependent on the uncertainty required, the frequency of use and verification, the manner of use, stability of the equipment, and risk of failure considerations.	-	-	-	-	-
x. Periodic verifications shall be performed to demonstrate the continued validity of the calibration at specified intervals between calibrations. The frequency of verifications can be dependent on the uncertainty required, the frequency of use, the manner of use, stability of the equipment, and risk of failure considerations.	-	-	-	-	-
c. Documentation of curative maintenance in logbook, signed and dated by laboratory director.	-	-	-	-	-
d. Evidence of temperature monitoring for equipment requiring specific temperature ranges.	-	-	-	-	-

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
e. Test and calibration equipment, including both hardware and software, shall be safeguarded from adjustments which would invalidate the test and/or calibration results.	-	-	-	-	-
f. Decontamination and cleaning procedures for:	-	-	-	-	-
i. Instruments;	-	-	-	-	-
ii. Bench space; and	-	-	-	-	-
iii. Ventilation hood/microbial hood.	-	-	-	-	-
g. Documentation of adequacy of training of personnel and responsibility for each maintenance task.	-	-	-	-	-
h. The organization shall describe or reference how periodic preventive and corrective maintenance of measurement or test equipment shall be performed to ensure availability and satisfactory performance of the systems.	-	-	-	-	-
23. Computer systems (items verified upon on-site inspection).	-	-	-	-	-
a. Adequate for sample tracking.	-	-	-	-	-
b. Adequate for analytical equipment software.	-	-	-	-	-
c. Software control requirements applicable to both commercial and laboratory developed software shall be developed, documented, and implemented.	-	-	-	-	-
d. In addition, procedures for software control shall address the security systems for the protection of applicable software.	-	-	-	-	-
e. For laboratory-developed software, a copy of the original program code shall be:	-	-	-	-	-
i. Maintained;	-	-	-	-	-
ii. All changes shall include a description of the change, authorization for the change;	-	-	-	-	-
iii. Test data that validates the change.	-	-	-	-	-
f. Software shall be acceptance tested when installed, after changes, and periodically during use, as appropriate.	-	-	-	-	-
g. Software testing shall include performing manual calculations or checking against another software product that has been previously tested, or by analysis of standards.	-	-	-	-	-
h. The version and manufacturer of the software shall be documented.	-	-	-	-	-
i. Commercially available software may be accepted as supplied by the vendor. For vendor supplied instrument control/data analysis software, acceptance testing may be performed by the laboratory.	-	-	-	-	-
24. Security.	-	-	-	-	-
a. Written facility security procedures during operating and nonworking hours.	-	-	-	-	-
b. Roles of personnel in security.	-	-	-	-	-
c. SOP for controlled access areas and personnel who can access.	-	-	-	-	-
25. Control of records.	-	-	-	-	-
a. The laboratory shall establish and maintain procedures for identification, collection, indexing, access, filing, storage, maintenance and disposal of quality and technical records.	-	-	-	-	-
b. All records shall be legible and shall be stored and retained in such a way that they are readily retrievable in facilities that provide a suitable environment to prevent damage or deterioration and to prevent loss.	-	-	-	-	-
c. Records must be retained for a period of three years.	-	-	-	-	-

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
d. All records shall be held secure and in confidence.	-	-	-	-	-
e. The laboratory shall have procedures to protect and back-up records stored electronically and to prevent unauthorized access to or amendment of these records.	-	-	-	-	-
f. The laboratory shall retain records of original observations, derived data and sufficient information to establish an audit trail, calibration records, staff records and a copy of each test report or calibration certificate issued, for a defined period.	-	-	-	-	-
g. The records for each test or calibration shall contain sufficient information to facilitate, if possible, identification of factors affecting the uncertainty and to enable the test or calibration to be repeated under conditions as close as possible to the original.	-	-	-	-	-
h. The records shall include the identity of personnel responsible for the sampling, performance of each test and/or calibration and checking of results.	-	-	-	-	-
i. Observations, data and calculations shall be recorded at the time they are made and shall be identifiable to the specific task.	-	-	-	-	-
j. When mistakes occur in records, each mistake shall be lined out, not erased or made illegible or deleted, and the correct value entered alongside.	-	-	-	-	-
k. All such alterations or corrections to records shall be signed or initialed and dated by the person making the correction.	-	-	-	-	-
l. In the case of records stored electronically, equivalent measures shall be taken to avoid loss or change of original data.	-	-	-	-	-
m. All entries to hard copy laboratory records shall be made using indelible ink. No correction fluid may be used on original laboratory data records.	-	-	-	-	-
n. Laboratories shall establish and maintain a data review process beginning at sample receipt and extending through the report process. The data review process shall be an independent review, conducted by a qualified individual other than the analyst.	-	-	-	-	-
o. The review process shall be documented before data are reported.	-	-	-	-	-
26. Storage.	-	-	-	-	-
a. Appropriate and adequate for sample storage over time. The laboratory shall monitor, control and record environmental conditions as required by the relevant specifications, methods and procedures or where they influence the quality of the results. Due attention shall be paid, for example, to biological sterility, dust, electromagnetic disturbances, humidity, electrical supply, temperature, and sound and vibration levels, as appropriate to the technical activities concerned.	-	-	-	-	-
b. Adequate storage of chemical reference standards.	-	-	-	-	-
c. Appropriate storage of any reagents: Fireproof cabinet, separate cabinet for storage of any acids.	-	-	-	-	-
d. Appropriate safe and secure storage of documents etc., archiving, retrieval of, maintenance of and security of data for a period of three years.	-	-	-	-	-

QA PROGRAM AND TESTING		Document Reference	Y	N	NA	Comments
27.	Sampling/sample protocols must be consistent with chapter 314-55 WAC, written and approved by the laboratory director, and must include documented training.	-	-	-	-	-
a.	Demonstrate adequacy of the chain-of-custody, including: Tracking upon receipt of sample including all personnel handling the sample and documenting condition of the sample through a macroscopic and foreign matter inspection.	-	-	-	-	-
b.	Macroscopic and foreign matter inspection - Fit for purpose test. Scientifically valid testing methodology: Either AHP monograph compliant or other third-party validation.	-	-	-	-	-
c.	Failed inspection of product: Tracking and reporting.	-	-	-	-	-
d.	Return of failed product documentation and tracking.	-	-	-	-	-
e.	Disposal of used/unused samples documentation.	-	-	-	-	-
f.	Sample preparation, extraction and dilution SOP.	-	-	-	-	-
g.	Demonstration of recovery for samples in various matrices (SOPs):	-	-	-	-	-
i.	Plant material - Flower;	-	-	-	-	-
ii.	Edibles (solid and liquid meant to be consumed orally);	-	-	-	-	-
iii.	Topical;	-	-	-	-	-
iv.	Concentrates.	-	-	-	-	-
28.	Data protocols.	-	-	-	-	-
a.	Calculations for quantification of cannabinoid content in various matrices - SOPs.	-	-	-	-	-
b.	Determination of the range for reporting the quantity (LOD/LOQ) data review or generation.	-	-	-	-	-
c.	Reporting of data: Certificates of analysis (CA) - Clear and standardized format for consumer reporting.	-	-	-	-	-
d.	Each test report shall include at least the following information, unless the laboratory has valid reasons for not doing so:	-	-	-	-	-
i.	A title (e.g., "Test Report" or "Certificate of Analysis");	-	-	-	-	-
ii.	The name and address of the laboratory, and the location where the tests were carried out, if different from the address of the laboratory;	-	-	-	-	-
iii.	Unique identification of the test report certificate (such as the serial number), and on each page an identification in order to ensure that the page is recognized as a part of the test report or calibration certificate, and a clear identification of the end of the test report or calibration certificate;	-	-	-	-	-
iv.	The name and address of the customer;	-	-	-	-	-
v.	Identification of the method used;	-	-	-	-	-
vi.	A description of, the condition of, and unambiguous identification of the item(s) tested;	-	-	-	-	-
vii.	The date of receipt of the test item(s) where this is critical to the validity and application of the results, and the date(s) of performance of the test or calibration;	-	-	-	-	-
viii.	Reference to the sampling plan and procedures used by the laboratory or other bodies where these are relevant to the validity or application of the results;	-	-	-	-	-
ix.	The test results with, where appropriate, the units of measurement;	-	-	-	-	-

QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
x. The name(s), function(s) and signature(s) or equivalent identification of person(s) authorizing the test report or certificate; and	-	-	-	-	-
xi. Where relevant, a statement to the effect that the results relate only to the items tested or calibrated.	-	-	-	-	-
e. Material amendments to a test report or calibration certificate after issue shall be made only in the form of a further document, or data transfer, which includes the statement: "Supplement to Test Report (or Calibration Certificate), serial number... (or as otherwise identified)," or an equivalent form of wording.	-	-	-	-	-
f. When it is necessary to issue a complete new test report or calibration certificate, this shall be uniquely identified and shall contain a reference to the original that it replaces.	-	-	-	-	-
g. If the laboratory chooses to include a reference to their I-502 certification on their test report, any test results not covered under I-502 certification shall be clearly identified on the report.	-	-	-	-	-
h. Documentation that the value reported in the CA is within the range and limitations of the analytical method.	-	-	-	-	-
i. Documentation that qualitative results (those below the LOQ but above the LOD) are reported as "trace," or with a nonspecific (numerical) designation.	-	-	-	-	-
j. Documentation that the methodology has the specificity for the degree of quantitation reported. Final reports are not quantitative to any tenths or hundredths of a percent.	-	-	-	-	-
k. Use of appropriate "controls": Documentation of daily use of positive and negative controls that challenge the linearity of the curve; and/or an appropriate "matrix blank" and control with documentation of the performance for each calibration run.	-	-	-	-	-
29. Chemical assay procedure/methodology.	-	-	-	-	-
30. Quality Control (QC):	-	-	-	-	-
a. Documentation of use of an appropriate internal standard for any quantitative measurements as applicable to the method.	-	-	-	-	-
b. Appropriate reference standards for quantification of analytes, performing and documenting a calibration curve with each analysis.	-	-	-	-	-
i. Reference materials shall, where possible, be traceable to SI units of measurement, or to certified reference materials. Internal reference materials shall be checked for accuracy as far as is technically and economically practicable.	-	-	-	-	-
ii. The laboratory shall create and follow procedures for safe handling, transport, storage and use of reference standards and reference materials in order to prevent contamination or deterioration and in order to protect their integrity.	-	-	-	-	-
iii. Reference materials shall have a certificate of analysis that documents traceability to a primary standard or certified reference material and associated uncertainty, when possible. When applicable, the certificate must document the specific NIST SRM® or NMI certified reference material used for traceability.	-	-	-	-	-
c. Demonstration of calibration curve $r^2$ value of no less than 0.995 with a minimum of four points which bracket the expected sample concentration range.	-	-	-	-	-

QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
i. The calibration curve shall be verified by preparing an independently prepared calibration standard (from neat materials) or with a standard from an independent source. Acceptance criteria for the standard calibration curve and the independent calibration verification standard shall be documented.	-	-	-	-	-
ii. Instrument calibration/standardization shall be verified each 24-hour period of use, or at each instrument start-up if the instrument is restarted during the 24-hour period, by analysis of a continuing calibration verification standard. Acceptance criteria shall be documented.	-	-	-	-	-
iii. Calibration or working quantification ranges shall encompass the concentrations reported by the laboratory. Continuing calibration verification standards and continuing calibration blanks shall be analyzed in accordance with the specified test methods. Acceptance criteria shall be documented.	-	-	-	-	-
d. Assuring the quality of test results.	-	-	-	-	-
i. The laboratory shall have quality control procedures for monitoring the validity of tests and calibrations undertaken.	-	-	-	-	-
ii. The resulting data shall be recorded in such a way that trends are detectable and, where practicable, statistical techniques shall be applied to the reviewing of the results.	-	-	-	-	-
iii. This monitoring shall be planned and reviewed and may include, but not be limited to, the following:	-	-	-	-	-
A. Regular use of certified reference materials and/or internal quality control using secondary reference materials;	-	-	-	-	-
B. Participation in interlaboratory comparison or proficiency-testing programs;	-	-	-	-	-
C. Replicate tests or calibrations using the same or different methods;	-	-	-	-	-
D. Retesting or recalibration of retained items;	-	-	-	-	-
E. Correlation of results for different characteristics of an item.	-	-	-	-	-
iv. Quality control data shall be analyzed and, where they are found to be outside predefined criteria, planned actions shall be taken to correct the problem and to prevent incorrect results from occurring.	-	-	-	-	-
v. The laboratory shall determine, where feasible, the accuracy and precision of all analyses performed.	-	-	-	-	-
vi. Acceptance limits for each method shall be established based on statistical evaluation of the data generated by the analysis of quality control check samples, unless specific acceptance limits are established by the method.	-	-	-	-	-
vii. Control charts or quality control databases shall be used to record quality control data and compare them with acceptance limits.	-	-	-	-	-
viii. Procedures shall be used to monitor trends and the validity of test results.	-	-	-	-	-
31. Proficiency.	-	-	-	-	-
a. Participation in approved PT programs for each field of testing.	-	-	-	-	-
b. Passing PT results for two consecutive PTs.	-	-	-	-	-
c. Documentation of investigation for all failed PTs.	-	-	-	-	-

QA PROGRAM AND TESTING		Document Reference	Y	N	NA	Comments
32.	Method validation: Scientifically valid testing methodology: AHP monograph compliant, other third-party validation or the current version of a standard method. The following requirements are applied to other third-party validation:	-	-	-	-	-
a.	The laboratory shall validate nonstandard methods, laboratory-designed/developed methods, standard methods used outside their intended scope, and amplifications and modifications of standard methods to confirm that the methods are fit for the intended use.	-	-	-	-	-
b.	The validation shall be as extensive as is necessary to meet the needs of a given application or field of application.	-	-	-	-	-
c.	The laboratory shall record the results obtained, the procedure used for the validation, and a statement as to whether the method is fit for the intended use.	-	-	-	-	-
d.	The customer shall be informed as to the method chosen.	-	-	-	-	-
e.	The laboratory shall confirm that it can properly operate standard methods before introducing the tests or calibrations. If the standard method changes, the confirmation shall be repeated.	-	-	-	-	-
f.	Deviation from test and calibration methods shall occur only if the deviation has been documented, technically justified, authorized, and accepted by the customer.	-	-	-	-	-
g.	Validation shall be documented and include the following elements as applicable:	-	-	-	-	-
i.	Minimum acceptance criteria;	-	-	-	-	-
ii.	Analyte specificity;	-	-	-	-	-
iii.	Linearity;	-	-	-	-	-
iv.	Range;	-	-	-	-	-
v.	Accuracy;	-	-	-	-	-
vi.	Precision;	-	-	-	-	-
vii.	Detection limit;	-	-	-	-	-
viii.	Quantification limit;	-	-	-	-	-
ix.	Stability of samples and reagents interlaboratory precision;	-	-	-	-	-
x.	Analysis robustness;	-	-	-	-	-
xi.	Presence of QC samples;	-	-	-	-	-
xii.	Use of appropriate internal reference standard;	-	-	-	-	-
xiii.	Daily monitoring of the response of the instrument;	-	-	-	-	-
h.	Validation shall be performed for matrix extensions for each type of product tested, including data review of recovery for:	-	-	-	-	-
i.	Solvent-based extract;	-	-	-	-	-
ii.	CO <sub>2</sub> extraction or other "hash oil";	-	-	-	-	-
iii.	Extract made with food grade ethanol;	-	-	-	-	-
iv.	Extract made with food grade glycerin or propylene glycol;	-	-	-	-	-
v.	Infused liquids;	-	-	-	-	-
vi.	Infused solids;	-	-	-	-	-
vii.	Infused topical preparations;	-	-	-	-	-
viii.	Other oils, butter or fats.	-	-	-	-	-
33.	Estimation of uncertainty of measurement.	-	-	-	-	-

QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
a. Testing laboratories shall have and shall apply procedures for estimating uncertainty of measurement. The laboratory shall at least attempt to identify all the components of uncertainty and make a reasonable estimation, and shall ensure that the form of reporting of the result does not give a wrong impression of the uncertainty. Reasonable estimation shall be based on knowledge of the performance of the method and on the measurement scope and shall make use of, for example, previous experience and validation data.	-	-	-	-	-
b. In those cases where a well-recognized test method specifies limits to the values of the major sources of uncertainty of measurement and specifies the form of presentation of calculated results, the laboratory is considered to have satisfied this clause by following the test method and reporting instructions.	-	-	-	-	-
c. When estimating the uncertainty of measurement, all uncertainty components which are of importance in the given situation shall be taken into account using appropriate methods of analysis.	-	-	-	-	-
d. Sources contributing to the uncertainty include, but are not necessarily limited to, the reference standards and reference materials used, methods and equipment used, environmental conditions, properties and condition of the item being tested or calibrated, and the operator.	-	-	-	-	-
e. Test methods are classified as either qualitative or quantitative. Qualitative tests are defined as having nonnumerical results. Although estimation of measurement uncertainty is not needed for these tests, laboratories are expected to have an understanding of the contributors to variability of the results. For quantitative tests, laboratories shall determine measurement uncertainty using appropriate statistical techniques.	-	-	-	-	-
f. Laboratories shall make independent estimations of uncertainty for tests performed on samples with significantly different matrices.	-	-	-	-	-
g. Laboratories are required to re-estimate measurement uncertainty when changes to their operations are made that may affect sources of uncertainty.	-	-	-	-	-
h. When reporting measurement uncertainty, the test report shall include the coverage factor and confidence level used in the estimations (typically k = approximately 2 at the 95% confidence level).	-	-	-	-	-
34. Other methods.	-	-	-	-	-
a. Validated microbiological methods fit for purpose.	-	-	-	-	-
b. Microbial contaminants within limits as directed by ((WSLCB)) LCB.	-	-	-	-	-
c. Moisture content testing fit for purpose. Scientifically valid testing methodology: AHP monograph compliant, or other third-party validation.	-	-	-	-	-
d. Solvent residuals testing fit for purpose; solvent extracted products made with class 3 or other solvents used are not to exceed 500 parts per million (PPM) per one gram of solvent based product and are to be tested.	-	-	-	-	-
e. Any other QA/QC methods is proven to be fit for purpose.	-	-	-	-	-
35. Laboratory records.	-	-	-	-	-
a. Legible and in ink (or computerized system).	-	-	-	-	-
b. Signed and dated.	-	-	-	-	-

QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
c. Changes initialed and dated.	-	-	-	-	-
d. Evidence of periodic review and signed by a management representative.	-	-	-	-	-
36. Preventive/corrective action.	-	-	-	-	-
The laboratory shall establish a policy and procedure and shall designate appropriate authorities for implementing corrective action when nonconforming work or departures from the policies and procedures in the management system or technical operations are identified.	-	-	-	-	-
a. The procedure for corrective action shall start with an investigation to determine the root cause(s) of the problem.	-	-	-	-	-
b. Where corrective action is needed, the laboratory shall identify potential corrective actions. It shall select and implement the action(s) most likely to eliminate the problem and to prevent recurrence.	-	-	-	-	-
c. The laboratory shall document and implement any required changes resulting from corrective action investigations.	-	-	-	-	-
d. Any PT round that leads to the nonproficient status of a laboratory shall be addressed by the corrective action process.	-	-	-	-	-
e. The laboratory shall monitor the results to ensure that the corrective actions taken have been effective.	-	-	-	-	-
f. When improvement opportunities are identified or if preventive action is required, action plans shall be developed, implemented and monitored to reduce the likelihood of the occurrence of such nonconformities and to take advantage of the opportunities for improvement.	-	-	-	-	-
37. Complaints.	-	-	-	-	-
a. The laboratory shall have a policy and procedure for the resolution of complaints received from customers or other parties.	-	-	-	-	-
b. Records shall be maintained of all complaints and of the investigations and corrective actions taken by the laboratory.	-	-	-	-	-
c. Test reports.	-	-	-	-	-
d. Each test report or calibration certificate shall include at least the following information, unless otherwise justified:	-	-	-	-	-
i. A title (e.g., "Test Report" or "Calibration Certificate");	-	-	-	-	-
ii. The name and address of the laboratory, and the location where the tests and/or calibrations were carried out, if different from the address of the laboratory;	-	-	-	-	-
iii. Unique identification of the test report or calibration certificate (such as the serial number), and on each page an identification in order to ensure that the page is recognized as a part of the test report or calibration certificate, and a clear identification of the end of the test report or calibration certificate;	-	-	-	-	-
iv. The name and address of the customer;	-	-	-	-	-
v. Identification of the method used;	-	-	-	-	-
vi. A description of, the condition of, and unambiguous identification of the item(s) tested or calibrated;	-	-	-	-	-
vii. The date of receipt of the test or calibration item(s) where this is critical to the validity and application of the results, and the date(s) of performance of the test or calibration;	-	-	-	-	-

QA PROGRAM AND TESTING		Document Reference	Y	N	NA	Comments
viii.	Reference to the sampling plan and procedures used by the laboratory or other bodies where these are relevant to the validity or application of the results;	-	-	-	-	-
ix.	The test or calibration results with, where appropriate, the units of measurement;	-	-	-	-	-
x.	The name(s), function(s) and signature(s) or equivalent identification of person(s) authorizing the test report or calibration certificate; and	-	-	-	-	-
xi.	Where relevant, a statement to the effect that the results relate only to the items tested or calibrated.	-	-	-	-	-
38.	Periodic management review and internal audit.	-	-	-	-	-
a.	Laboratory management shall annually review its quality system and associated procedures to evaluate continued adequacy. This review shall be documented.	-	-	-	-	-
b.	Periodically and in accordance with a predetermined schedule perform an internal audit of laboratory operations to verify compliance to the GLP checklist.	-	-	-	-	-

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

**WAC 314-55-1035 Laboratory certification—Suspension and revocation.** (1) The board may summarily suspend or revoke the certification of any lab certified under WAC 314-55-0995 for any of the following reasons:

(a) The laboratory owner or science director violates any of the requirements of chapter 314-55 WAC relating to the operations of the laboratory.

(b) The laboratory owner or science director aids, abets, or permits the violation of any provision of chapters 314-55 WAC, 69.50 RCW, 69.51A RCW, or Title 9 or 9A RCW related to the operations of the laboratory, or the laboratory owner or science director permits laboratory staff to do so.

(c) Evidence the certificate holder or owner made false statements in any material regard:

(i) On the application for certification;

(ii) In submissions to the board relating to receiving or maintaining certification; or

(iii) Regarding any testing performed or results provided to ((WSLCB)) LCB or the cannabis licensee by the certificate holder or owner pursuant to WAC 314-55-102.

(d) The laboratory owner or science director is convicted of any crime substantially related to the qualifications or duties of that owner and related to the functions of the laboratory, including a conviction for falsifying any report of or that relates to a laboratory analysis. For purposes of this subsection, a "conviction" means a plea or finding of guilt regardless of whether the imposition of sentence is deferred or the penalty is suspended.

(e) The laboratory submits proficiency test sample results generated by another laboratory as its own.

(f) The laboratory staff denies entry to any employee of the ((WSLCB)) LCB or ((WSLCB's)) LCB's vendor during normal business hours

for an on-site assessment or inspection, as required by WAC 314-55-0995, 314-55-102, 314-55-1025, or 314-55-103.

(2) (a) The following violations are subject to the penalties as provided in (b) of this subsection:

(i) The laboratory fails to submit an acceptable corrective action report in response to a deficiency report, and failure to implement corrective action related to any deficiencies found during a laboratory assessment.

(ii) The laboratory fails to report proficiency testing results pursuant to WAC 314-55-1025.

(iii) The laboratory fails to remit certification fees within the time limit established by a certifying authority.

(iv) The laboratory fails to meet recordkeeping requirements as required by chapter 314-55 WAC unless the failure to maintain records is substantial enough to warrant a suspension or revocation under subsection (1) of this section.

(b) The penalties for the violations in (a) of this subsection are as follows:

(i) First violation: Ten-day suspension of the lab's certification or until the lab corrects the violation leading to the suspension, whichever is longer.

(ii) Second violation within a three-year period: Thirty-day suspension of laboratory certification or until the laboratory corrects the violation leading to the suspension, whichever is longer.

(iii) Third violation within a three-year period: Revocation of the lab's certification.

(3) A certified lab may also be subject to a suspension of certification related to proficiency testing requirements under WAC 314-55-1025.

(4) A laboratory that has its certification suspended or revoked under this section may request an administrative hearing to contest the suspension or revocation as provided in chapter 34.05 RCW.

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

**WAC 314-55-104 Cannabis processor license extraction require-**

**ments.** (1) Processors are limited to the methods, equipment, solvents, gases, and mediums detailed in this section when creating cannabis extracts.

(2) Processors may use the hydrocarbons N-butane, isobutane, propane, or heptane. These solvents must be of at least 99 percent purity and a processor must use them in a professional grade closed loop extraction system designed to recover the solvents, work in an environment with proper ventilation, controlling all sources of ignition where a flammable atmosphere is or may be present.

(3) Processors may use a professional grade closed loop CO<sub>2</sub> gas extraction system where every vessel is rated to a minimum of 600 pounds per square inch. The CO<sub>2</sub> must be of at least 99 percent purity.

(4) Closed loop systems for hydrocarbon or CO<sub>2</sub> extraction systems must be commercially manufactured and bear a permanently affixed and visible serial number.

(5) Certification from a licensed engineer must be provided to the ((WSLCB)) LCB for professional grade closed loop systems used by

processors to certify that the system was commercially manufactured, safe for its intended use, and built to codes of recognized and generally accepted good engineering practices, such as:

- (a) The American Society of Mechanical Engineers (ASME);
- (b) American National Standards Institute (ANSI);
- (c) Underwriters Laboratories (UL); or
- (d) The American Society for Testing and Materials (ASTM).

(6) The certification document must contain the signature and stamp of a professional engineer and the serial number of the extraction unit being certified.

(7) Professional grade closed loop systems, and other equipment used must be approved for specific use or the technical report must be approved by the state building code officials prior to use per WAC 51-54A-3800.

(8) Professional closed loop systems, other equipment used, the extraction operation, and facilities must be approved for their use by the local fire code official and meet any required fire, safety, and building code requirements specified in:

- (a) Title 296 WAC;
- (b) Chapters 51-51 and 51-54A WAC;
- (c) National Fire Protection Association (NFPA) standards;
- (d) International Building Code (IBC);
- (e) International Fire Code (IFC); and
- (f) Other applicable standards including following all applicable fire, safety, and building codes in processing and the handling and storage of the solvent or gas.

(9) Processors may use heat, screens, presses, steam distillation, ice water, and other methods without employing solvents or gases to create kief, hashish, bubble hash, or infused dairy butter, or oils or fats derived from natural sources, and other extracts.

(10) Under WAC 314-55-077, infused dairy butter and oils or fats derived from natural sources may be used to prepare infused edible products, but they may not be prepared as stand-alone edible products for sale.

(11) Processors may use food grade glycerin, ethanol, and propylene glycol solvents to create extracts. All ethanol must be removed from the extract in a manner to recapture the solvent and ensure that it is not vented into the atmosphere.

(12) Processors creating cannabis extracts must develop standard operating procedures, good manufacturing practices, and a training plan prior to producing extracts for the marketplace. Any person using solvents or gases in a closed looped system to create cannabis extracts must be fully trained on how to use the system, have direct access to applicable material safety data sheets and handle and store the solvents and gases safely.

(13) Parts per million for one gram of finished extract cannot exceed residual solvent or gas levels provided in WAC 314-55-102.

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

**WAC 314-55-106 Cannabis warning symbol requirement.** The following requirements are in addition to the packaging and labeling requirements provided in WAC 314-55-105.

(1) Cannabis-infused products for oral ingestion sold at retail must be labeled on the principal display panel or front of the product package with the "not for kids" warning symbol ("warning symbol") created and made available in digital form to licensees without cost by the Washington poison center (WPC). The warning symbol may be found on the WPC's website.

(a) The warning symbol must be of a size so as to be legible, readily visible by the consumer, and effective to alert consumers and children that the product is not for kids, but must not be smaller than three-quarters of an inch in height by one-half of an inch in width; and

(b) The warning symbol must not be altered or cropped in any way other than to adjust the sizing for placement on the principal display panel or front of the product package, except that a licensee must use a black border around the edges of the white background of the warning symbol image when the label or packaging is also white to ensure visibility of the warning symbol.

(c) Licensees may download the digital warning symbol from the WPC and print stickers, or purchase and use a sticker made available by the WPC, in lieu of incorporating the warning symbol on the label or packaging as required under subsection (1) of this section. If a licensee elects to use a warning symbol sticker, the sticker:

(i) Must meet all requirements of (a) and (b) of this subsection; and

(ii) Must not cover or obscure in any way labeling or information required on cannabis products by WAC 314-55-105.

(2) All cannabis products sold at retail must be labeled on the principal display panel or front of the product package with the cannabis universal symbol ("universal symbol") created and made available in digital form to licensees without cost by the ((~~WSLCB~~)) LCB. The digital file for the universal symbol is available on the ((~~WSLCB's~~)) LCB's website.

(a) The universal symbol must be of a size so as to be legible, readily visible by the consumer, and effective to alert consumers that the product is or contains cannabis, but must not be smaller than three-quarters of an inch in height by three-quarters of an inch in width;

(b) The universal symbol must not be altered or cropped in any way other than to adjust the sizing for placement on the principal display panel or front of the product package; and

(c) Licensees may download the digital universal symbol from the ((~~WSLCB's~~)) LCB's website and print stickers in lieu of incorporating the universal symbol on the label or packaging as required under (a) and (b) of this subsection. If a licensee elects to use a universal symbol sticker, the sticker:

(i) Must meet all requirements of this section; and

(ii) Must not cover or obscure in any way labeling or information required on cannabis products by WAC 314-55-105.

(3) For the purposes of this section, "principal display panel" means the portion(s) of the surface of the immediate container, or of any outer container or wrapping, which bear(s) the labeling designed to be most prominently displayed, shown, presented, or examined under conditions of retail sale. "Immediate container" means the external container holding the cannabis product.

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

**WAC 314-55-107 Cannabis product compliance.** A cannabis compliant product must meet all requirements in the department of health rules found in chapter 246-70 WAC in addition to all ((WSLCB)) LCB requirements found in chapter 314-55 WAC.

AMENDATORY SECTION (Amending WSR 22-13-051, filed 6/8/22, effective 7/9/22)

**WAC 314-55-108 Pesticide action levels.** (1) Only pesticides allowed under WAC 314-55-084 may be used in the production of cannabis, and they must be registered by the Washington state department of agriculture (WSDA) under chapter 15.58 RCW.

(2) Pursuant to WAC 314-55-102, if the ((WSLCB)) LCB, WSDA, other designee of the ((WSLCB)) LCB, or certified lab identifies a pesticide that is not allowed under subsection (1) of this section and is above the action levels provided in subsection (3) of this section, that lot or batch from which the sample was deducted has failed quality control testing and may be subject to a recall as provided in WAC 314-55-225.

(3) The action levels for pesticides are provided in the table below. The action level for all other pesticides that are not listed in the table below or not allowed under subsection (1) of this section is 0.1 ppm.

Analyte	µg/g (ppm)	CAS#
Abamectin (Sum of Isomers)	0.50	71751-41-2
• Avermectin B1a		65195-55-3
• Avermectin B1b		65195-56-4
Acephate	0.40	30560-19-1
Acequinocyl	2.0	57960-19-7
Acetamiprid	0.20	135410-20-7
Aldicarb	0.40	116-06-3
Azoxystrobin	0.20	131860-33-8
Bifenazate	0.20	149877-41-8
Bifenthrin	0.20	82657-04-3
Boscalid	0.40	188425-85-6
Carbaryl	0.20	63-25-2
Carbofuran	0.20	1563-66-2
Chlorantraniliprole	0.20	500008-45-7
Chlorfenapyr	1.0	122453-73-0
Chlorpyrifos	0.20	2921-88-2
Clofentezine	0.20	74115-24-5
Cyfluthrin	1.0	68359-37-5
Cypermethrin	1.0	52315-07-8
Daminozide	1.0	1596-84-5
DDVP (Dichlorvos)	0.10	62-73-7
Diazinon	0.20	333-41-5

Analyte	µg/g (ppm)	CAS#
Dimethoate	0.20	60-51-5
Ethoprophos	0.20	13194-48-4
Etofenprox	0.40	80844-07-1
Etiozazole	0.20	153233-91-1
Fenoxycarb	0.20	72490-01-8
Fenpyroximate	0.40	134098-61-6
Fipronil	0.40	120068-37-3
Flonicamid	1.0	158062-67-0
Fludioxonil	0.40	131341-86-1
Hexythiazox	1.0	78587-05-0
Imazalil	0.20	35554-44-0
Imidacloprid	0.40	138261-41-3
Kresoxim-methyl	0.40	143390-89-0
Malathion	0.20	121-75-5
Metalaxyl	0.20	57837-19-1
Methiocarb	0.20	2032-65-7
Methomyl	0.40	16752-77-5
Methyl parathion	0.20	298-00-0
MGK-264	0.20	113-48-4
Myclobutanil	0.20	88671-89-0
Naled	0.50	300-76-5
Oxamyl	1.0	23135-22-0
Paclobutrazol	0.40	76738-62-0
Permethrins (Sum of Isomers)	0.20	52645-53-1
• cis-Permethrin		54774-45-7
• trans-Permethrin		51877-74-8
Phosmet	0.20	732-11-6
Piperonyl butoxide	2.0	51-03-6
Prallethrin	0.20	23031-36-9
Propiconazole	0.40	60207-90-1
Propoxur	0.20	114-26-1
Pyrethrins (Sum of Isomers)	1.0	8003-34-7
• Pyrethrin I		121-21-1
• Pyrethrin II		121-29-9
Pyridaben	0.20	96489-71-3
Spinosad (Sum of Isomers)	0.20	168316-95-8
• Spinosyn A		131929-60-7
• Spinosyn D		131929-63-0
Spiromesifen	0.20	283594-90-1
Spirotetramat	0.20	203313-25-1
Spiroxamine	0.40	118134-30-8
Tebuconazole	0.40	80443-41-0
Thiacloprid	0.20	111988-49-9

Analyte	µg/g (ppm)	CAS#
Thiamethoxam	0.20	153719-23-4
Trifloxystrobin	0.20	141517-21-7

(4) For the purposes of this section, limits have been written to the number of significant digits that laboratories are expected to use when reporting to the board and on associated certificates of analysis.

(5) Except as otherwise provided in this section, licensed cannabis producer or processor that provided a sample that fails quality control testing must dispose of the entire lot or batch from which the sample was taken as provided by cannabis waste disposal requirements in WAC 314-55-097 and document the disposal of the sample pursuant to traceability requirements in WAC 314-55-083(4) and recordkeeping requirements in WAC 314-55-087. A licensee's sample that does not test above the pesticide action levels under this section where test results show the presence of a pesticide that is not allowed under subsection (1) of this section may still be subject to an administrative violation if the disallowed pesticide was applied.

(6) Pursuant to WAC 314-55-102, at the request of the producer or processor, the ((WSLCB)) LCB may authorize a retest to validate a failed test result on a case-by-case basis. All costs of the retest will be borne by the producer or the processor requesting the retest.

(7) Pursuant to WAC 314-55-102, upon request a cannabis licensee must disclose and make available all quality control tests and retest results for the lot or batch of usable cannabis, cannabis concentrates, or cannabis-infused products to the cannabis licensee or retail customer who is considering purchasing the usable cannabis, cannabis concentrates, or cannabis-infused products.

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

**WAC 314-55-109 Cannabinoid additives—Requirements, restrictions, and quality assurance testing.** (1) As provided in RCW 69.50.326 Licensed cannabis producers and licensed cannabis processors may use a cannabidiol (CBD) product obtained from a source not licensed under this chapter, provided the CBD product:

(a) Has a THC level of 0.3 percent or less; and  
 (b) Has been tested for contaminants and toxins by a testing laboratory accredited under this chapter and in accordance with testing standards established in this section.

(2) Licensed cannabis producers and licensed cannabis processors may use a CBD product obtained from a source not licensed under this chapter and chapter 69.50 RCW as an additive for the purpose of enhancing the CBD concentration of any product authorized for production, processing, and sale under this chapter. However, useable cannabis, except cannabis that is an intermediate product that will be converted into a cannabis-infused product or a cannabis concentrate, may not be treated or otherwise adulterated in any way including the addition of a CBD product consistent with the rules of this chapter. Except as allowed under this section, CBD product additives must be lawfully produced by, or purchased from, a producer or processor licensed under this chapter. The testing requirements for CBD products derived

from cannabis produced by cannabis licensees are provided in WAC 314-55-102. The testing requirements in this section are required in addition to quality assurance testing otherwise required under this chapter for cannabis products.

(3) **Traceability requirements.** A licensee must enter CBD products obtained from a source not licensed under this chapter into the state traceability system and keep the information in the traceability system completely up to date, consistent with cannabis and cannabis product recordkeeping and traceability requirements in WAC 314-55-083. A licensee must keep CBD products obtained from a source not licensed under this chapter labeled and quarantined in an area separate from cannabis and cannabis products under video surveillance consistent with the requirements for controlled areas in WAC 314-55-083(3) until the CBD products successfully pass quality assurance testing or are destroyed due to failure of tests as provided in this section. At no time during the quarantine period can the product be handled or moved under any circumstances, except for purposes of deducting samples as required under this section, and is subject to auditing by the ((WSLCB)) LCB or its designee(s). CBD products obtained from a source not licensed under this chapter that fail quality assurance testing as provided in this section must not be added to any cannabis product and must be disposed of consistent with WAC 314-55-097 and the disposal logged into the traceability system consistent with WAC 314-55-083.

(4) **Testing requirements.** The following sample deduction and testing requirements apply to CBD products obtained from a source not licensed under this chapter. Such products must successfully pass quality assurance testing prior to being added to any cannabis product. Samples that fail quality assurance testing and the corresponding products that the samples were deducted from must be disposed of consistent with WAC 314-55-097.

(a) **Sample size and deduction requirements.** Licensed producers, licensed processors, certified labs, and their employees must adhere to the minimum sampling protocols as provided in this section. Samples must be deducted in a way that is most representative of the product the sample is deducted from. The minimum sample size for the testing requirements under this section for CBD products is one percent of the product as packaged by the manufacturer of the CBD product but in no case shall the sample be less than two grams. Licensees, certified labs, and their employees may not adulterate or change in any way the representative sample before the sample is tested.

(i) All samples must be collected/deducted in a sanitary environment using sanitary practices and ensure facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapters 16-165 and 16-167 WAC.

(ii) Persons collecting samples must wash their hands prior to collecting a sample, wear appropriate gloves, and must use sanitary utensils and storage devices when collecting samples.

(iii) Samples must be placed in a sanitary plastic or glass container and stored in a location that prevents the propagation of pathogens and other contaminants, such as a secure, low-light, cool and dry location.

(iv) The licensee must maintain the CBD products from which the sample was deducted in a secure, low-light, cool, and dry location to prevent the products from becoming contaminated or degraded prior to the CBD products being added or incorporated into cannabis products after successful passage of testing requirements.

(v) Each quality assurance sample must be clearly marked "quality assurance sample" and be labeled with the following information:

- (A) The unique identifier for the product generated by the state traceability system;
- (B) The name of the certified lab receiving the sample;
- (C) The license number and business or trade name of the licensee sending the sample;
- (D) The date the sample was collected; and
- (E) The weight of the sample.

(vi) Certified labs may retrieve samples from a cannabis licensee's licensed premises and transport the sample(s) directly to the lab. Certified labs may also return any unused portion of the sample(s).

(b) **Required fields of testing.**

(i) **Potency testing.** Potency testing is required to confirm the product is less than 0.3 percent THC, contains detectable levels of CBD, and to determine the levels of THC, THC-A, CBD, and CBD-A in the product. Synthetic cannabinoids as defined in RCW 69.50.204 are prohibited under RCW 69.50.401 and any test result that suggests the presence of a synthetic cannabinoid must be immediately reported to the ((WSLCB)) LCB.

(A) Certified labs must test and report the following cannabinoids to the ((WSLCB)) LCB in the state traceability system when testing for potency:

- (I) THCA;
- (II) THC;
- (III) Total THC;
- (IV) CBDA;
- (V) CBD; and
- (VI) Total CBD.

(B) Calculating total THC and total CBD.

(I) Total THC must be calculated as follows, where M is the mass or mass fraction of delta-9 THC or delta-9 THCA:  $M \text{ total delta-9 THC} = M \text{ delta-9 THC} + (0.877 \times M \text{ delta-9 THCA})$ .

(II) Total CBD must be calculated as follows, where M is the mass or mass fraction of CBD and CBDA:  $M \text{ total CBD} = M \text{ CBD} + (0.877 \times M \text{ CBDA})$ .

(C) Regardless of analytical equipment or methodology used for testing, certified labs must accurately measure and report the acidic (THCA and CBDA) and neutral (THC and CBD) forms of the cannabinoids.

(D) The following potency results fail quality assurance testing for the purposes of this section and the sample and corresponding product from which the sample was deducted must be disposed of consistent with this section and WAC 314-55-097:

- (I) The CBD product tests above 0.3 percent THC;
- (II) The CBD product does not contain any detectable amounts of CBD or CBD-A; and
- (III) The sample test results indicate that a substance is present that is not THC, CBD, or inert substance which the THC or CBD is dissolved into.

(ii) **Pesticide screening.**

(A) Certified third-party labs must screen for any pesticides that are not allowed and are designated as having the potential for misuse on a list created, maintained, and periodically updated by the department of health in consultation with the Washington state department of agriculture and the ((WSLCB)) LCB.

(B) If the ((WSLCB)) LCB, WSDA, other designee of the ((WSLCB)) LCB, or certified lab identifies a pesticide that is not allowed for use or application on cannabis under this chapter and is above the action levels provided in WAC 314-55-108, that sample and corresponding product from which the sample was deducted has failed quality assurance testing. A sample that tests at or above the action levels for pesticides consistent with WAC 314-55-108 fails pesticide testing requirements for the purposes of this section. A sample and corresponding product from which the sample was deducted that fails quality assurance testing under this section must be destroyed consistent with WAC 314-55-097.

(C) Certified third-party labs must also screen for pyrethrins and piperonyl butoxide (PBO) in samples of CBD products obtained from a source not licensed under this chapter. Certified third-party labs may also screen for additional pesticides not specifically required under this section and per the DOH list, however, any sample that tests at or above the action level for any pesticide(s) as established in WAC 314-55-108 fails the testing requirements under this section and must be disposed of consistent with WAC 314-55-097.

(iii) **Heavy metal screening.** For the purposes of heavy metal screening, a sample fails quality assurance testing and must be disposed of consistent with WAC 314-55-097 if it meets or exceeds the following limits:

Metal	Limit, µg/daily dose (5 grams)
Inorganic arsenic .....	10.0
Cadmium .....	4.1
Lead .....	6.0
Mercury .....	2.0

(iv) **Residual solvents screening.** Certified labs must test for the solvents listed in the table below at a minimum. Except as otherwise provided in this subsection, a sample and corresponding product from which the sample was deducted fail quality assurance testing for residual solvents and must be disposed of consistent with WAC 314-55-097 if the results meet or exceed the limits provided in the table below. Residual solvent results of more than 5,000 ppm for class three solvents, 50 ppm for class two solvents, and 2 ppm for class one solvents as defined in *United States Pharmacopoeia, USP 30 Chemical Tests / <467> - Residual Solvents (USP <467>)* not listed in the table below fail quality assurance testing.

Solvent	ppm
Acetone	5,000
Benzene	2
Butanes	5,000
Cyclohexane	3,880
Chloroform	2
Dichloromethane	600
Ethyl acetate	5,000
Heptanes	5,000
Hexanes	290

Solvent	ppm
Isopropanol (2-propanol)	5,000
Methanol	3,000
Pentanes	5,000
Propane	5,000
Toluene	890
Xylene*	2,170

\* Usually 60% *m*-xylene, 14% *p*-xylene, 9% *o*-xylene with 17% ethyl benzene.

(v) **Microbiological screening.** The sample and corresponding product from which the sample was deducted fail quality assurance testing for microbiological screening and must be disposed of consistent with WAC 314-55-097 if the results exceed the following limits:

	Enterobacteria (bile-tolerant gram-negative bacteria)	<i>E. coli</i> (pathogenic strains) and <i>Salmonella spp.</i>
Unprocessed Plant Material	10 <sup>4</sup>	Not detected in 1g
Extracted or Processed Botanical Product	10 <sup>3</sup>	Not detected in 1g

(vi) **Mycotoxin screening.** The sample and corresponding product from which the sample was deducted fail quality assurance testing for mycotoxin screening and must be disposed of consistent with WAC 314-55-097 if the results exceed the following limits:

- (A) Total of Aflatoxin B1, B2, G1, G2: 20 µg/kg of substance; and
- (B) Ochratoxin A: 20 µg/kg of substance.

(5) **Test results reporting requirements.** Certified labs must report all test results as required by this section into the state traceability system within 24 hours of completion of the tests.

(6) **Retesting.** At the request of the producer or processor, the ((WSLCB)) LCB may authorize a retest to validate a failed test result on a case-by-case basis. All costs of the retest will be borne by the producer or the processor requesting the retest. Potency retesting will generally not be authorized.

(7) **Remediation.** Producers and processors may remediate failed products so long as the remediation method does not impart any toxic or deleterious substance to the CBD products obtained from a source outside the regulated system. Remediation solvents or methods used on the product must be disclosed to a licensed processor the producer or producer/processor transfers the products to; a licensed retailer carrying cannabis products derived from the remediated product; or consumer upon request. The product(s) the failed sample(s) were deducted from must be remediated using the same remediation technique. No remediated CBD products obtained from a source outside the regulated system may be sold, transported, or used in the processing of cannabis products until the completion and successful passage of quality assurance testing as required in this section.

(8) A licensee or certified lab that violates any of the provisions of this section is subject to disciplinary action, including

possible summary suspension or revocation of the producer license, processor license, producer/processor license, or lab certification.

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

**WAC 314-55-135 Discontinue cannabis sales.** (1) **Notification:** A licensee must notify the ((WSLCB's)) LCB's enforcement and education division in writing if the licensee plans to stop doing business for more than 30 days, or if the licensee plans to permanently discontinue cannabis sales.

(2) **Discontinued business: Sale of cannabis inventory and stock after discontinuance of business.** Notwithstanding any other provision of Title 69 RCW or 314 WAC, a producer, processor or retail licensee who permanently discontinues business for any reason shall dispose of the salable inventory and remaining stock to a ((WSLCB)) LCB approved licensed business at fair market value. Sales below cost are prohibited. The ((WSLCB)) LCB shall require tax expressed as a percent of the total price of the gross sales as reported on the profit and loss statement in the last published monthly report of the ((WSLCB)) LCB. In the event of remaining inventory after sale, the licensee shall notify the enforcement and education division of the ((WSLCB)) LCB. The enforcement division will establish conditions for destruction or arrange for the removal of product.

(3) **Assumptions: Assumption of license and purchases by licensee of certain cannabis inventory and stock.** In the case of a sale of business with a license, after obtaining the approval of the ((WSLCB)) LCB and under the supervision of a representative of the ((WSLCB)) LCB, the licensee may sell the entire inventory at a negotiated fair market price. Sales below cost are prohibited.

(4) **Evictions.** A licensee must notify the ((WSLCB's)) LCB's enforcement and education division immediately in writing upon notice of eviction from a licensed premises. Conditions to temporarily relocate and secure inventory will be established by the ((WSLCB)) LCB.

(5) **Abandoned cannabis inventory or product.** In the event a licensee abandons any cannabis on the premises, the property owner or their designated representative should notify the enforcement and education division of the ((WSLCB)) LCB. The enforcement division will work with the property owner to arrange for the removal and/or destruction of product. Any sales or distribution of cannabis by an unlicensed person is subject to the criminal provisions of Title 69 RCW.

(6) **Maintaining a licensed location.** Cannabis licenses are associated with a physical location. Persons operating without a ((WSLCB)) LCB approved licensed location to produce, process, or sell cannabis will be discontinued.

AMENDATORY SECTION (Amending WSR 22-21-058, filed 10/12/22, effective 11/12/22)

**WAC 314-55-137 Receiverships.** (1) **Service and notice.**

(a) Any person who files any receivership or trustee action involving any cannabis licensee must serve the board with original notice of the action. Service is accomplished by delivery of the origi-

nal notice of action to the board through one of the following methods:

- (i) Delivery to the board at 1025 Union Avenue S.E., Olympia, WA 98504; or
- (ii) Mailed to the board. Mailed notice must be addressed to: ((WSLCB)) LCB, ATTN: Licensing - Receiverships, P.O. Box 43076, Olympia, WA 98504-3076 or, for certified mail, ((WSLCB)) LCB, ATTN: Licensing - Receiverships, 1025 Union Avenue S.E., Olympia, WA 98504; or
- (iii) Electronic delivery to the board at [licensingappeals@lcb.wa.gov](mailto:licensingappeals@lcb.wa.gov).

(b) The board will find a licensee compliant with this section only if it receives original notice of the action and the receiver is selected consistent with board requirements.

(2) **The role of a receiver when a licensee is placed in receivership.** If a cannabis licensee is placed under receivership, the receiver:

(a) Upon compliance with the requirements listed in this section, the receiver may operate the licensee's business during the receivership period;

(b) The receiver assumes all licensee reporting responsibilities under this chapter including, but not limited to, full responsibility for maintaining records and entries into the traceability system maintained by the board; and

(c) The receiver is required to comply with all applicable laws under chapter 69.50 RCW and rules in this chapter including, but not limited to, the responsibilities of cannabis licensees set forth in WAC 314-55-110.

(d) Failure to abide by the requirements set forth in chapter 69.50 RCW and this chapter as specified in this subsection may result in enforcement action against the license under chapter 69.50 RCW and rules under this chapter and may result in the receiver being disqualified to act as a receiver by the board.

(3) **Who may serve as a receiver.** Any person who meets the requirements of chapter 7.60 RCW and the following additional requirements may serve as a receiver for a cannabis business:

(a) Is currently in good standing on the preapproved receiver list maintained by the board; or

(b) Is approved by the board under the requirements in subsection (5) of this section to serve as a receiver of a cannabis licensee.

(4) **Qualifying for the board's preapproved receiver list.**

(a) The following requirements must be met to qualify for the board's preapproved receiver list:

(i) Submit a complete receiver application with the board;

(ii) Be a Washington state resident for at least six months prior to the application for preapproval as a receiver and maintain residency throughout the term of the receivership;

(iii) Submit to and pass a criminal background check;

(iv) Provide any financial disclosures requested by the board;

and

(v) Disclose any interests the person has in any cannabis licensee(s).

(b) Review and qualification requirements in this subsection only apply to persons or entities actively participating in the management of the receivership and do not apply to spouses of those persons or persons involved in a business entity or fellow members of a business entity that are not actively involved in the management of the receivership.

(c) A receiver placed on the preapproved receiver list maintained by the board must annually update all information and disclosures required under this subsection to remain eligible to act as a receiver and be on the preapproved receiver list. Annual updates must be made one calendar year after the date the receiver is approved.

**(5) Appointing a receiver who is not preapproved by the ((WSLCB)) LCB.**

(a) Within two days of filing of any action to appoint a receiver, a proposed receiver must:

(i) Submit a complete application with the board to serve as receiver for the licensee;

(ii) Be a Washington resident for six months prior to appointment as a receiver and maintain residency throughout the term of the receivership;

(iii) Submit to and pass a criminal background check;

(iv) Provide any financial disclosures requested by the ((WSLCB)) LCB; and

(v) Disclose any interest the proposed receiver has in any cannabis licensee(s).

(b) Review and qualification requirements in this subsection only apply to persons or entities actively participating in the management of the receivership and do not apply to spouses of those persons or persons involved in a business entity or fellow members of a business entity that are not actively involved in the management of the receivership.

(c) If the proposed receiver is denied approval by the board at any time, a substitute receiver may be proposed for board approval. The substitute receiver must provide all information required by this subsection.

(d) If the proposed receiver is not approved by the board at the time the receiver is appointed by the court, the receiver will not be considered compliant with this section, and may be subject to penalty under chapter 69.50 RCW, or as provided in this chapter and may result in the receiver being disqualified to act as a receiver by the board.

**(6) Limitations on a person's ability to serve as a receiver.**

(a) As operators and controllers of licensed cannabis establishments, receivers are subject to the same limits as licensees or any other person. Those limits include, but are not limited to:

(i) No person serving as a receiver of a licensed cannabis producer or licensed cannabis processor shall have a financial interest in, or simultaneously serve as a receiver for, a licensed cannabis retailer; and

(ii) No person shall serve as a receiver for, or be a true party of interest in, more than five cannabis retail licensees or more than three cannabis producer, processor, or producer/processor licensees at the same time.

(b) If the board determines that a receiver is violating or has violated the restrictions in this subsection, the receiver may be disqualified to act as a receiver by the board.

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

**WAC 314-55-140 Death or incapacity of a cannabis licensee.** (1)  
The appointed guardian, executor, administrator, trustee, or assignee

must notify the ((~~WSLCB's~~)) LCB's licensing and regulation division in the event of the death, incapacity, bankruptcy, or assignment for benefit of creditors of any licensee.

(2) The ((~~WSLCB~~)) LCB may give the appointed guardian, executor, administrator, trustee, or assignee written approval to continue cannabis sales on the licensed business premises for the duration of the existing license and to renew the license when it expires.

(a) The person must be a resident of the state of Washington.

(b) A criminal background check may be required.

(3) When the matter is resolved by the court, the true party(ies) of interest must apply for a cannabis license for the business.

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

**WAC 314-55-155 Advertising requirements and promotional items—Coupons, giveaways, etc.** The following provisions apply in addition to the requirements and restrictions in RCW 69.50.369.

(1) **Advertising generally.** The following requirements apply to all advertising by cannabis licensees in Washington state.

(a) All cannabis advertising and labels of useable cannabis, cannabis concentrates, and cannabis-infused products sold in the state of Washington must not contain any statement, or illustration that:

(i) Is false or misleading;

(ii) Promotes over consumption;

(iii) Represents the use of cannabis has curative or therapeutic effects;

(iv) Depicts a child or other person under legal age to consume cannabis, or includes:

(A) The use of objects, such as toys, inflatables, movie characters, cartoon characters suggesting the presence of a child, or any other depiction or image designed in any manner to be likely to be appealing to youth or especially appealing to children or other persons under legal age to consume cannabis; or

(B) Is designed in any manner that would be especially appealing to children or other persons under 21 years of age.

(b) No cannabis licensee shall place or maintain, or cause to be placed or maintained, an advertisement of a cannabis business or cannabis product, including cannabis concentrates, useable cannabis, or cannabis-infused product:

(i) In any form or through any medium whatsoever within 1,000 feet of the perimeter of a school grounds, playground, recreation center or facility, child care center, public park, library, or a game arcade admission to which it is not restricted to persons aged 21 years or older unless the 1,000 minimum distance requirement has been reduced by ordinance in the local jurisdiction where the licensed retailer is located and the licensed retailer is located within 1,000 feet of a restricted location listed in this paragraph;

(ii) On or in a private vehicle, public transit vehicle, public transit shelter, bus stop, taxi stand, transportation waiting area, train station, airport, or any similar transit-related location;

(c) All advertising for cannabis businesses or cannabis products, regardless of what medium is used, must contain text stating that cannabis products may be purchased or possessed only by persons 21 years

of age or older. Examples of language that conforms to this requirement include, but are not limited to: "21+," "for use by persons 21 and over only," etc.

(d) A cannabis licensee may not engage in advertising or marketing that specifically targets persons residing out of the state of Washington.

(2) **Outdoor advertising.** In addition to the requirements for advertising in subsection (1) of this section, the following restrictions and requirements apply to outdoor advertising by cannabis licensees:

(a) Except for the use of billboards as authorized under RCW 69.50.369 and as provided in this section, licensed cannabis retailers may not display any outdoor signage other than two separate signs identifying the retail outlet by the licensee's business name or trade name, stating the location of the business, and identifying the nature of the business. Both signs must be affixed to a building or permanent structure and each sign is limited to 1,600 square inches.

(i) All text on outdoor signs, including billboards, is limited to text that identifies the retail outlet by the licensee's business or trade name, states the location of the business, and identifies the type or nature of the business.

(ii) No outdoor advertising signs, including billboards, may contain depictions of cannabis plants or cannabis products. Logos or artwork that do not contain depictions of cannabis plants or cannabis products as defined in this section are permissible.

(A) A depiction of a cannabis plant means an image or visual representation of a cannabis leaf, plant, or the likeness thereof that explicitly suggests or represents a cannabis leaf or plant.

(B) A depiction of a cannabis product means an image or visual representation of useable cannabis, cannabis-infused products, or cannabis concentrates, or an image that indicates the presence of a product, such as smoke, etc.

(iii) Stating the location of the business may include information such as the physical address or location, directional information, website address, email address, or phone number of the licensed business.

(iv) Identifying the nature of the business may include information related to the operation of the business, what the business is engaged in, or the goods the business offers for sale.

(v) Double-sided signs or signs with text visible on opposite sides are permissible and count as a single sign so long as the sign is contained in or affixed to a single structure.

(b) No cannabis licensee may use or employ a commercial mascot outside of, and in proximity to, a licensed cannabis business.

(c) Outdoor advertising is prohibited on signs and placards in arenas, stadiums, shopping malls, fairs that receive state allocations, farmers markets, and video game arcades, whether any of the foregoing are open air or enclosed, but not including any such sign or placard located at an adult only facility.

(d) The restrictions in this section and RCW 69.50.369 do not apply to outdoor advertisements at the site of an event to be held at an adult only facility that is placed at such site during the period the facility or enclosed area constitutes an adult only facility, but must not be placed there more than 14 days before the event, and that does not advertise any cannabis product other than by using a brand name, such as the business or trade name or the product brand, to identify

the event. Advertising at adult only facilities must not be visible from outside the adult only facility.

(e) A sign affixed to the licensed premises or in the window of a licensed premises indicating the location is open for business, closed for business, the hours of operation, that the licensed location has an ATM inside, or other similar informational signs not related to the products or services of the cannabis business are not considered advertising for the purposes of this section.

(f) "Adopt-a-Highway" signs erected by the Washington state department of transportation under a current valid sponsorship with the department of transportation are not considered advertising for the purposes of this section.

(3) Advertising placed on windows within the premises of a licensed cannabis retail store facing outward must meet the requirements for outdoor advertising as provided in RCW 69.50.369 and this section.

(4) Promotional items such as giveaways, coupons, and distribution of branded or unbranded merchandise are banned. For the purposes of this section, a "giveaway" does not include representative samples of products (edible products and topicals only) carried by a licensed retailer that are not infused with cannabis and are offered to customers on licensed cannabis retail premises for sampling purposes only.

(5) Cannabis retail licensees holding a medical cannabis endorsement may donate product to qualifying patients or designated providers who hold a valid recognition card. Retail licensees may not advertise "free" or "donated" product.

(6) Except for outdoor advertising under subsection (2) of this section, all advertising must contain the following warnings that must be in type size at least 10 percent of the largest type used in the advertisement:

(a) "This product has intoxicating effects and may be habit forming.";

(b) "Cannabis can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug.";

(c) "There may be health risks associated with consumption of this product."; and

(d) "For use only by adults 21 and older. Keep out of the reach of children."

(7) For the purposes of this section, the following definitions apply:

(a) "Adult only facility" means:

(i) A location restricted to persons age 21 and older by the ((~~WSLCB~~)) LCB or classified by the ((~~WSLCB~~)) LCB as off limits to persons under 21 years of age; or

(ii) A venue restricted to persons age 21 and older and where persons under 21 years of age are prohibited from entering or remaining, including employees and volunteers.

(b) "Billboard" means a permanent off-premises sign in a fixed location used, in whole or in part, for the display of off-site commercial messages with a minimum size of five feet in height by 11 feet in width.

(c) "Off-premises sign" means a sign relating, through its message and content, to a business activity, product, or service not available on the premises upon which the sign is erected.

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

**WAC 314-55-160 Objections to cannabis license applications.** (1) **How can persons, cities, counties, tribal governments, or port authorities object to the issuance of a cannabis license?** Per RCW 69.50.331, the ((WSLCB)) LCB will notify cities, counties, tribal governments, and port authorities of the following types of cannabis applications. In addition to these entities, any person or group may comment in writing to the ((WSLCB)) LCB regarding an application.

Type of application	Entities the ((WSLCB)) <u>LCB</u> will/may notify
<ul style="list-style-type: none"> <li>Applications for an annual cannabis license at a new location.</li> </ul>	<ul style="list-style-type: none"> <li>Cities and counties in which the premises is located will be notified.</li> <li>Tribal governments and port authorities in which the premises is located may be notified.</li> </ul>
<ul style="list-style-type: none"> <li>Applications to change the class of an existing annual cannabis license.</li> </ul>	
<ul style="list-style-type: none"> <li>Changes of ownership at existing licensed premises.</li> </ul>	<ul style="list-style-type: none"> <li>Cities and counties in which the premises is located will be notified.</li> <li>Tribal governments and port authorities in which the premises is located may be notified.</li> </ul>

(2) **What will happen if a person or entity objects to a cannabis license application?** When deciding whether to issue or deny a cannabis license application, the ((WSLCB)) LCB will give substantial weight to input from governmental jurisdictions in which the premises is located based upon chronic illegal activity associated with the applicant's operations of the premises proposed to be licensed or the applicant's operation of any other licensed premises; and other persons or groups. Note: Per RCW 69.50.331, the ((WSLCB)) LCB shall not issue a new cannabis license if any of the following are within 1,000 feet of the premises to be licensed: Any elementary or secondary schools, playgrounds, recreation centers or facilities, child care centers, public parks, public transit centers, libraries, game arcade where admission is not restricted to persons 21 years of age or older.

(a) If the ((WSLCB)) LCB contemplates issuing a license over the objection of a governmental jurisdiction in which the premises is located, the government subdivision may request an adjudicative hearing under the provisions of the Administrative Procedure Act, chapter 34.05 RCW. If the ((WSLCB)) LCB, in its discretion, grants the governmental jurisdiction(s) an adjudicative hearing, the applicant will be notified and given the opportunity to present evidence at the hearing.

(b) If the ((WSLCB)) LCB denies a cannabis license application based on the objection from a governmental jurisdiction, the applicant(s) may either:

(i) Reapply for the license no sooner than one year from the date on the final order of denial; or

(ii) Submit a written request on a form provided by the ((WSLCB)) LCB for an adjudicative hearing under the provisions of the Administrative Procedure Act, chapter 34.05 RCW. The request must be received within 20 days of the date the intent to deny notification was mailed.

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

**WAC 314-55-165 Objections to cannabis license renewals. (1) How can local cities, counties, tribal governments, or port authorities object to the renewal of a cannabis license?**

(a) The ((WSLCB)) LCB will give governmental jurisdictions approximately 90 days written notice of premises that hold annual cannabis licenses in that jurisdiction that are up for renewal.

(b) Per RCW 69.50.331, if a county, city, tribal government, or port authority wants to object to the renewal of a cannabis license in its jurisdiction, it must submit a letter to the ((WSLCB)) LCB detailing the reason(s) for the objection and a statement of all facts on which the objections are based.

(c) The county, city, tribal government, or port authority may submit a written request to the ((WSLCB)) LCB for an extension for good cause shown.

(d) This letter must be received by the ((WSLCB)) LCB at least 30 days before the cannabis license expires. The objection must state specific reasons and facts that show issuance of the cannabis license at the proposed location or to the applicant business how it will detrimentally impact the safety, health, or welfare of the community.

(e) If the objection is received within 30 days of the expiration date or the licensee has already renewed the license, the objection will be considered as a complaint and possible license revocation may be pursued by the enforcement division.

(f) Objections from the public will be referred to the appropriate city, county, tribal government, or port authority for action under subsection (2) of this section. Upon receipt of the objection, the ((WSLCB's)) LCB's licensing and regulation division will acknowledge receipt of the objection(s) and forward to the appropriate city, county, tribal government, or port authority. Such jurisdiction may or may not, based on the public objection, request nonrenewal.

**(2) What will happen if a city, county, tribal government, or port authority objects to the renewal of a cannabis license?** The ((WSLCB)) LCB will give substantial weight to a city, county, tribal government, or port authority objection to a cannabis license renewal of a premises in its jurisdiction based upon chronic illegal activity associated with the licensee's operation of the premises. Based on the jurisdiction's input and any information in the licensing file, the ((WSLCB)) LCB will decide to either renew the cannabis license, or to pursue nonrenewal.

<p><b>(a) ((WSLCB)) LCB decides to renew the cannabis license:</b></p>	<p><b>(b) ((WSLCB)) LCB decides to pursue nonrenewal of the cannabis license:</b></p>
<p>(i) The ((WSLCB)) LCB will notify the jurisdiction(s) in writing of its intent to renew the license, stating the reason for this decision.</p> <p>(ii) The jurisdiction(s) may contest the renewal and request an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW) by submitting a written request on a form provided by the ((WSLCB)) LCB. The request must be received within ((twenty)) <u>20</u> days of the date the intent to renew notification was mailed. If the ((WSLCB)) LCB, in its discretion, grants the governmental jurisdiction(s) an adjudicative hearing, the applicant will be notified and given the opportunity to present evidence at the hearing.</p>	<p>(i) The ((WSLCB)) LCB will notify the licensee in writing of its intent to not renew the license, stating the reason for this decision.</p> <p>(ii) The licensee may contest the nonrenewal action and request an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW) by submitting a written request on a form provided by the ((WSLCB)) LCB. The request must be received within ((twenty)) <u>20</u> days of the date the intent to deny notification was mailed.</p> <p>(iii) If the licensee requests a hearing, the governmental jurisdiction will be notified.</p> <p>(iv) During the hearing and any subsequent appeal process, the licensee is issued a temporary operating permit for the cannabis license until a final decision is made.</p>

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

**WAC 314-55-185 ((WSLCB)) LCB right to inspect premises or vehicles associated with a license to produce, process, sell, research, or transport cannabis.** (1) The following must be available for inspection at all times by an enforcement officer of the ((WSLCB)) LCB:

(a) All licensed premises used in the production, processing, storage, transportation, research, or sale of cannabis, useable cannabis, cannabis concentrates, cannabis-infused products, or any premises or parts of premises used or in any way connected, physically or otherwise, with the licensed business;

(b) Any vehicle assigned for the purpose of transporting cannabis, useable cannabis, cannabis concentrates, or cannabis-infused products at any licensed location, or while en route during transportation;

(c) Records as outlined in this chapter; and

(d) Cannabis, useable cannabis, cannabis concentrates, or cannabis-infused products on the licensed premises for the purpose of analyzing samples (the licensee will be given a receipt for any product removed from the premises for this purpose).

(2) Every person being on a licensed premises or within a transporting vehicle, or having charge thereof, must admit an enforcement officer of the ((WSLCB)) LCB demanding to enter therein in pursuance of this section in the execution of his/her duty, and must not obstruct or attempt to obstruct the entry of such officer, or refuse to allow an officer to examine the premises, vehicles, records, and products subject to this section of the licensee.

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

**WAC 314-55-200 How will the ((WSLCB)) LCB identify cannabis, useable cannabis, cannabis concentrates, and cannabis-infused products during checks of licensed businesses?** Officers shall identify cannabis, useable cannabis, cannabis concentrates, and cannabis-infused products during on-site inspections of licensed producers, processors, and retailers of cannabis by means of product in the traceability system, and/or by observation based on training and experience. Products that are undetermined to be cannabis, useable cannabis, and cannabis-infused products will be verified by the following:

- (1) Officers may take a sample large enough for testing purposes;
- (2) Field test kits may be used if available and appropriate for the type of product being verified; and
- (3) Those samples not able to be tested with a field test kit may be tested through the Washington state toxicology or crime lab.

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

**WAC 314-55-210 Will the ((WSLCB)) LCB seize or confiscate cannabis, cannabis concentrates, useable cannabis, and cannabis-infused products?** The ((WSLCB)) LCB may seize, destroy, confiscate, or place an administrative hold on cannabis, useable cannabis, cannabis concentrates, and cannabis-infused products under the following circumstances:

- (1) During an unannounced or announced administrative search or inspection of licensed locations, areas of unlicensed locations used for business or commercial purposes, or vehicles involved in the transportation of cannabis products, where any product was found to be in excess of product limitations set forth in WAC 314-55-075, 314-55-077, and 314-55-079.
- (2) Any product not properly logged in inventory records or untraceable product required to be in the traceability system.
- (3) Cannabis, cannabis concentrates, useable cannabis, and cannabis-infused product that are altered or not properly packaged and labeled in accordance with WAC 314-55-105.
- (4) During a criminal investigation, officers shall follow seizure laws detailed in RCW 69.50.505 and any other applicable criminal codes.
- (5) The ((WSLCB)) LCB may destroy any cannabis, cannabis concentrate, useable cannabis, and/or cannabis-infused products in its possession that is not identifiable through the Washington cannabis traceability system or otherwise in a form that is not compliant with

Washington's cannabis statutes or rules, chapters 69.50 RCW and 314-55 WAC.

(6) ((WSLCB)) LCB officers may order an administrative hold of cannabis, useable cannabis, cannabis concentrates, and cannabis-infused products to prevent destruction of evidence, diversion or other threats to public safety, while permitting a licensee to retain its inventory pending further investigation, pursuant to the following procedure:

(a) If during an investigation or inspection of a licensee, a ((WSLCB)) LCB officer develops reasonable grounds to believe certain cannabis, useable cannabis, cannabis concentrates, and cannabis-infused products constitute evidence of acts in violation of the state laws or rules, or otherwise constitute a threat to public safety, the ((WSLCB)) LCB officer may issue a notice of administrative hold of any such cannabis, useable cannabis, cannabis concentrate, or cannabis-infused products. The notice of administrative hold shall provide a documented description of the cannabis, useable cannabis, cannabis concentrate, or cannabis-infused products to be subject to the administrative hold.

(b) The licensee shall completely and physically segregate the cannabis, useable cannabis, cannabis concentrate, and cannabis-infused products subject to the administrative hold in a limited access area of the licensed premises under investigation, where it shall be safeguarded by the licensee. Pending the outcome of the investigation and any related disciplinary proceeding, the licensee is prohibited from selling, giving away, transferring, transporting, or destroying the cannabis, useable cannabis, cannabis concentrate, and cannabis-infused products subject to the administrative hold.

(c) Nothing herein shall prevent a licensee from the continued cultivation or harvesting of the cannabis subject to the administrative hold. All cannabis, useable cannabis, cannabis concentrate, and cannabis-infused products subject to the administrative hold must be put into separate harvest batches from product not subject to the administrative hold.

(d) Following an investigation, the ((WSLCB)) LCB may lift the administrative hold, order the continuation of the administrative hold, or seek a final agency order for the destruction of the cannabis, useable cannabis, cannabis concentrate, and cannabis-infused products.

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

**WAC 314-55-220 What is the process once the ((WSLCB)) LCB summarily orders cannabis, useable cannabis, cannabis concentrates, or cannabis-infused products of a cannabis licensee to be destroyed?** (1)

The ((WSLCB)) LCB may issue an order to summarily destroy cannabis, useable cannabis, cannabis concentrates, or cannabis-infused products after the ((WSLCB's)) LCB's enforcement division has completed a preliminary staff investigation of the violation and upon a determination that immediate destruction of cannabis, useable cannabis, cannabis concentrates, or cannabis-infused products is necessary for the protection or preservation of the public health, safety, or welfare.

(2) Destruction of any cannabis, useable cannabis, cannabis concentrates, or cannabis-infused products under this provision shall

take effect immediately upon personal service on the licensee or employee thereof of the summary destruction order unless otherwise provided in the order.

(3) When a license has been issued a summary destruction order by the ((~~WSLCB~~)) LCB, an adjudicative proceeding for the associated violation or other action must be promptly instituted before an administrative law judge assigned by the office of administrative hearings. If a request for an administrative hearing is timely filed by the licensee, then a hearing shall be held within 90 days of the effective date of the summary destruction ordered by the ((~~WSLCB~~)) LCB.

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

**WAC 314-55-225 Cannabis recalls.** (1) **Definitions.** For the purposes of this section, the following definitions apply:

(a) "Affected product" means cannabis, useable cannabis, cannabis concentrates, or cannabis-infused products subject to a recall.

(b) "Affected licensee" means a licensee whose cannabis, useable cannabis, cannabis concentrates, or cannabis-infused products are subject to a recall. More than one licensee may be an affected licensee in a recall.

(2) **Exempt market withdrawals.**

(a) A licensee may withdraw from the market cannabis, useable cannabis, cannabis concentrates, or cannabis-infused products by its own determination for reasons that do not pose a risk to consumers such as for aesthetic reasons or other similar deficiencies in product or packaging.

(b) If a licensee initiates a market withdrawal for a reason that does not pose a risk to consumers, the licensee must notify the ((~~WSLCB~~)) LCB by contacting the local ((~~WSLCB~~)) LCB enforcement officer assigned to the local area within 48 hours of beginning the market withdrawal. Licensees withdrawing cannabis, useable cannabis, cannabis concentrates, or cannabis-infused products under this subsection (2), for reasons other than risk to consumers, are exempt from the remaining requirements of this section.

(3) (a) **When a recall is required.** A recall is required when circumstances exist that pose a risk to consumers. Factors that contribute to a determination of a recall situation include, but are not limited to, the following:

(i) Evidence that pesticides not approved by the board are present on or in cannabis, useable cannabis, cannabis concentrates, or cannabis-infused products above the action levels prescribed by board rule;

(ii) Evidence that residual solvents are present on or in cannabis, useable cannabis, cannabis concentrates, or cannabis-infused products at levels above the action levels prescribed by board rule; or

(iii) Evidence of another condition that poses a risk to consumers including, but not limited to, ingredients in cannabis-infused products that are unfit for human consumption.

(b) **Licensee-initiated recalls.**

(i) If a licensee initiates a recall due to a condition that poses a risk to consumers and would make a recall appropriate under this subsection (3), the licensee must:

(A) Immediately notify the local ((WSLCB)) LCB enforcement officer; and

(B) Secure, isolate, and prevent the distribution of all cannabis, useable cannabis, cannabis concentrates, or cannabis-infused products that may have been exposed to the condition warranting the recall. The licensee is prohibited from destroying any affected product prior to notifying the ((WSLCB)) LCB and coordinating with the local ((WSLCB)) LCB officer on destruction activities.

(ii) If the ((WSLCB)) LCB determines the licensee fails to engage in recall efforts that meet the urgency of the risk to consumers, the ((WSLCB)) LCB may seek a board-directed recall as provided in this section depending on the circumstances.

(c) **((WSLCB)) LCB investigation-initiated recalls.**

(i) If the ((WSLCB)) LCB determines that a recall is not appropriate after an investigation, the ((WSLCB)) LCB enforcement division may release administrative holds placed on cannabis, useable cannabis, cannabis concentrates, or cannabis-infused products as part of the investigation as appropriate, unless an administrative hold is necessary under a continuing investigation.

(ii) If the ((WSLCB)) LCB determines that a recall is appropriate after an investigation, the ((WSLCB)) LCB notifies the board and requests the board issue a recall. If the board issues a recall, the ((WSLCB)) LCB notifies the affected licensee that is the source of the issue giving rise to a recall.

(d) **Recall plans.** All licensees must develop a recall plan within 60 days of the effective date of this section that sets the procedures the licensee will follow in the event of a recall of the licensee's product or products under the licensee's control. If a licensee becomes an affected licensee as part of a recall and the affected licensee distributed affected product to consumers or to retailers, the affected licensee must immediately notify all licensees that received affected product, and issue a press release and other appropriate public notification to inform consumers of the recall and identifying information about the affected product recalled.

(i) A recall plan must include, at a minimum, the following:

(A) Designation of a member of the licensee's staff who serves as the licensee's recall coordinator;

(B) Procedures for identifying and isolating product to prevent or minimize its distribution to consumers;

(C) Procedures to retrieve and destroy product; and

(D) A communications plan to notify those affected by the recall, including:

(I) How the affected licensee will notify other licensees in possession of product subject to the recall; and

(II) The use of press releases and other appropriate notifications to ensure consumers are notified of the recall and affected product information if the affected product was distributed to consumers.

(ii) A recall must follow the procedures outlined in the recall plan unless otherwise agreed by the ((WSLCB)) LCB and the licensee. The affected licensee must ensure recall procedures are conducted to maximize recall of affected product and minimize risks to consumers.

(e) **Destruction of affected product.** An affected licensee must coordinate destruction of affected product with the local ((WSLCB)) LCB enforcement officer and allow ((WSLCB)) LCB enforcement to oversee the destruction of affected product recalled to ensure the destruction of affected product that poses risks to consumers.

(f) **Recall reports and audit.** The affected licensee must track the total amount of affected product and the amount of affected product returned to the affected licensee as part of the recall effort. The affected licensee must report to the ((WSLCB)) LCB periodically on the progress of the recall efforts. The periodic reports must occur at a minimum of once a week or as otherwise specified and agreed to by the ((WSLCB)) LCB and the affected licensee in the recall plan.

(g) **Recall closure.** If the ((WSLCB)) LCB determines that the recall efforts are successful and risks to public health and safety are no longer present, the ((WSLCB)) LCB may recommend closure of the recall to the board.

(4) **Board-directed recall.**

(a) Upon the recommendation by the ((WSLCB)) LCB enforcement division, the board may issue a directed recall if:

(i) The affected licensee does not comply with a recall under subsection (3) of this section;

(ii) The affected licensee does not comply with the recall plan or recall reporting requirements under subsection (3) of this section; or

(iii) The ((WSLCB)) LCB enforcement division determines that affected product may be diverted or is being diverted from the licensed business, or another circumstance that makes the affected licensee's destruction of the product inadvisable or a risk to consumers.

(b) If the board issues a directed recall, the ((WSLCB)) LCB will notify consumers of the recall and all licensees that may possess product affected by the recall if notice has not yet occurred.

(c) Under a directed recall, the ((WSLCB)) LCB enforcement division may seek an order for destruction of the affected product from the board.

(i) If the board issues an order for destruction, the ((WSLCB)) LCB enforcement division may seize and conduct the destruction of affected product.

(ii) An order for destruction will include notice to the licensee and opportunity for hearing before destruction, unless there is evidence of an immediate danger to public health, safety, or welfare to justify an immediate order for destruction, with an opportunity for an expedited hearing after the destruction.

(d) If a destruction order is issued and the ((WSLCB)) LCB seizes product affected by the recall and conducts the destruction of the product, the affected licensee may be responsible for reimbursing the ((WSLCB)) LCB for costs associated with product destruction.

(e) If the board finds that an immediate danger to the public health, safety, or welfare requires immediate ((WSLCB)) LCB action, a licensee may also be subject to summary suspension under RCW 66.08.150(4).

(5) The ((WSLCB)) LCB will maintain a recall web page on its website of all current and closed recalls of record.

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

**WAC 314-55-230 What are the procedures the ((WSLCB)) LCB will use to destroy or donate cannabis, useable cannabis, cannabis concentrates, and cannabis-infused products to law enforcement?** (1) The ((WSLCB)) LCB may require a cannabis licensee to destroy cannabis,

useable cannabis, cannabis concentrates, and cannabis-infused products found in a licensed establishment to be in excess of product limits set forth in WAC 314-55-075, 314-55-077, and 314-55-079.

(2) Destruction of seized cannabis, useable cannabis, cannabis concentrates, cannabis-infused products, or confiscated cannabis after case adjudication, will conform with the ((~~WSLCB~~)) LCB evidence policies, to include the option of donating cannabis, useable cannabis, cannabis concentrates, and cannabis-infused products, set for destruction, to local and state law enforcement agencies for training purposes only.

(3) Cannabis, useable cannabis, cannabis concentrates, and cannabis-infused products set for destruction shall not reenter the traceability system or market place.

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

**WAC 314-55-310 Transportation license.** (1) A transportation license allows the licensee to physically transport or deliver cannabis, cannabis concentrates, and cannabis-infused products between licensed cannabis businesses within Washington state. The application fee for the transportation license is \$250 and the annual fee is \$1,300.

(2) Applicants for the transportation license must submit the following information:

(a) Personal/criminal history forms for all true parties of interest (see WAC 314-55-035);

The criminal history background check will consist of completion of a personal/criminal history form provided by the ((~~WSLCB~~)) LCB and submission of fingerprints to a vendor approved by the ((~~WSLCB~~)) LCB. The applicant will be responsible for paying all fees required by the vendor for fingerprinting. These fingerprints will be submitted to the Washington state patrol and the Federal Bureau of Investigation for comparison to their criminal records. The applicant will be responsible for paying all fees required by the Washington state patrol and the Federal Bureau of Investigation.

(b) Documents showing the right to the physical location to be licensed (purchase and sale agreement or lease in the name of the applicant);

(c) Copies of the current UTC common carrier permits. All vehicles and trailers must also be permitted by UTC as common carriers;

(d) Corporate information form or limited liability information form as applicable;

(e) Proof of insurance.

(i) Licensees shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the consumer should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the licensees. Licensees shall furnish evidence in the form of a certificate of insurance satisfactory to the ((~~WSLCB~~)) LCB that insurance, in the following kinds and minimum amounts, has been secured. Failure to provide proof of insurance, as required, may result in license cancellation.

(ii) Commercial general liability insurance: The licensee shall at all times carry and maintain commercial general liability insurance and if necessary, commercial umbrella insurance for bodily injury and

property damage arising out of licensed activities. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the licensee or its officers, agents, representatives, assigns, or servants. The insurance shall also cover bodily injury, including disease, illness and death, and property damage arising out of the licensee's premises/operations, products, and personal injury. The limits of liability insurance shall not be less than \$1,000,000.

(iii) Insurance carrier rating: The insurance required in (e) (i) of this subsection shall be issued by an insurance company authorized to do business within the state of Washington. Insurance must be placed with a carrier that has a rating of A - Class VII or better in the most recently published edition of *Best's Reports*. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with chapters 48.15 RCW and 284-15 WAC.

(iv) Additional insured. The state and its employees, agents, and volunteers shall be named as an additional insured on all general liability, umbrella, and excess insurance policies. All policies shall be primary over any other valid and collectable insurance.

(3) **Transport manifest.** A complete printed transport manifest on a form provided by the ((WSLCB)) LCB containing all information required by the ((WSLCB)) LCB must be kept with the product at all times.

(4) **Records of transportation.** Records of all transportation must be kept for a minimum of three years at the licensee's location and are subject to inspection if requested by an employee of the ((WSLCB)) LCB or local law enforcement:

(a) Copies of transportation manifests for all deliveries;

(b) A transportation log documenting the chain of custody for each delivery to include driver(s) and vehicle(s) associated with each delivery;

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

(d) Accounting and tax records related to the licensed business;

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

(f) All employee records, to include training.

(5) **Transportation of product.** Cannabis or cannabis products that are being transported must meet the following requirements:

(a) Only the transportation licensee or an employee of the transportation licensee who is at least 21 years of age may transport product. All drivers must carry a valid Washington driver's license with the proper endorsements when operating a vehicle in the transportation of product. All passengers in the vehicle transporting cannabis or cannabis products must be employees of the transportation licensee who are at least 21 years of age;

(b) Cannabis or cannabis products must be in a sealed package or container approved by the ((WSLCB)) LCB pursuant to WAC 314-55-105;

(c) Sealed packages or containers cannot be opened during transport;

(d) Cannabis or cannabis products must be in a locked, safe and secure storage compartment that is secured to the inside body/compartment of the vehicle transporting the cannabis or cannabis products;

(e) Any vehicle transporting cannabis or cannabis products must be delivered or returned to the shipper within 48 hours from the time of pickup;

(f) Live plants may be transported in a fully enclosed, windowless locked trailer, or in a secured area within the inside body/compartment of a van or box truck. A secured area is defined as an area where solid or locking metal partitions, cages, or high strength shatterproof acrylic can be used to create a secure compartment in the fully enclosed van or box truck. The secure compartment in the fully enclosed van or box truck must be free of windows. Live plants may not be transported in the bed of a pickup truck, a sports utility vehicle, or passenger car.

(6) For purposes of this chapter, any vehicle assigned for the purposes of transporting cannabis, useable cannabis, cannabis concentrates, or cannabis-infused products shall be considered an extension of the licensed premises and subject to inspection by enforcement officers of the ((WSLCB)) LCB. Vehicles assigned for transportation may be stopped and inspected by a ((WSLCB)) LCB enforcement officer at any licensed location, or while en route during transportation.

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

**WAC 314-55-410 Cooperatives.** (1) A cooperative may be formed by qualifying patients and/or designated providers to share responsibility for growing and processing cannabis only for the medical use of the members of the cooperative. A cooperative must meet the following criteria:

(a) All cooperative members must be at least 21 years of age. The designated provider of a qualifying patient under 21 years of age may be a member of a cooperative on the qualifying patient's behalf;

(b) All cooperative members must hold valid recognition cards as defined by RCW 69.51A.010;

(c) No more than four qualifying patients or designated providers may become members of a cooperative;

(d) Qualifying patients or designated providers may only participate in one cooperative;

(e) A cooperative member may only grow plants in the cooperative and may not grow plants elsewhere;

(f) Cooperative members must participate in growing plants. Cooperative members must provide nonmonetary resources and assistance in order to participate. A monetary contribution or donation is not considered assistance;

(g) Cooperative members may grow up to the total amount of plants for which each cooperative member is authorized on his or her recognition card. At the location, the qualifying patients or designated providers may possess the amount of useable cannabis that can be produced with the number of plants permitted, but no more than 72 ounces;

(h) Cooperative members may not sell, donate, or otherwise provide cannabis, cannabis concentrates, useable cannabis, or other cannabis-infused products to a person who is not a member of the cooperative;

(i) A cooperative may not be located within a one mile radius of a cannabis retailer;

(j) A cooperative must be located at the domicile of one of the cooperative members. Only one cooperative may be located per property tax parcel; and

(k) To obscure public view of the premises, outdoor cannabis production must be enclosed by a sight obscure wall or fence at least eight feet high.

(2) People who wish to form a cooperative must register the location with the ((WSLCB)) LCB. The location registered is the only location where cooperative members may grow or process cannabis. The following is required to register a cooperative:

(a) Submit a completed Cannabis Cooperative Registration Form;

(b) Submit copies of each person's recognition card who is seeking to be part of the registered cooperative;

(c) Submit a deed, lease, rental agreement, or other document establishing ownership or control to the property where the cooperative is to be located. If the property is leased or rented, a sworn statement from the property owner granting permission to engage in a cooperative must also be submitted that includes a telephone number and address where the owner can be contacted for verification;

(d) Submit a sketch outlining the location where the cannabis is planned to be grown.

(3) ((WSLCB)) LCB will contact the primary contact listed for each registered cooperative on an annual basis to ensure validity of recognition cards and to confirm the status, whether active or inactive, of the cooperative. If the ((WSLCB)) LCB finds that the cooperative no longer meets the criteria required under this section, the ((WSLCB)) LCB may not renew the cooperative registration.

(4) ((WSLCB)) LCB may inspect a cooperative between the hours of 8:00 a.m. and 8:00 p.m. unless otherwise agreed upon by cooperative members and ((WSLCB)) LCB staff.

(5) If a person or persons seeking to register the cooperative fails to meet the requirements of a registered cooperative as provided in this section, the ((WSLCB)) LCB will deny the cooperative registration.

(6) If the ((WSLCB)) LCB finds a registered cooperative violated the requirements of this section, the ((WSLCB)) LCB will revoke the cooperative's registration.

(7) A person may request an administrative hearing to contest a denial of registration, nonrenewal, or a revocation of a cooperative's registration under this section as provided in chapter 34.05 RCW.

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

**WAC 314-55-415 What are the recordkeeping and reporting requirements for cooperatives?** (1) Cannabis cooperatives must keep records that clearly reflect all activity, inventory, and conditions of the cooperative. The following records must be kept in a format prescribed by the ((WSLCB)) LCB. All records must be maintained on the cooperative premises for a three-year period and must be made available for inspection if requested by an employee of the ((WSLCB)) LCB, the department of health, the department of revenue, or local law enforcement.

(a) Cooperatives must maintain a plant log to track each cannabis plant from the time it enters the cooperative. At minimum, tracking must include:

(i) Unique plant identification numbers for each plant at the cooperative;

- (ii) The date the plant was brought into the cooperative; and
- (iii) The date the plant leaves the cooperative, including the reason, (e.g., harvested, destroyed, or member left the cooperative).
- (b) Cooperatives must maintain a log to track all harvested plant material from time of harvest until all harvested material has been dispersed. At minimum, tracking must include:
  - (i) A unique identification number for each harvest;
  - (ii) The total dry weight of harvested material;
  - (iii) The date quantities are removed from the harvested material;
  - (iv) The amount removed from the harvested material;
  - (v) The reason quantities are removed from the harvested material (e.g., taken for use by qualifying patient, used for extraction, etc.); and
  - (vi) The current weight of the harvested material.
- (c) Cooperatives must maintain a log to track all extracts produced from the time they are produced until all extracted material has been dispersed. At minimum, tracking must include:
  - (i) A unique identification for the extract batch;
  - (ii) The date the extract batch was created;
  - (iii) The total initial weight of the extract batch;
  - (iv) ID number of the harvest the material used to make the extract came from;
  - (v) The weight of cannabis plant material used to create the batch;
  - (vi) The date quantities are removed from the extract batch;
  - (vii) The quantity removed from the extract batch and reason; and
  - (viii) The current weight of the extract batch.
- (2) Cooperatives must submit monthly activity report(s) to the ((~~WSLCB~~)) LCB. The required monthly reports must be:
  - (a) On an electronic system designated by the ((~~WSLCB~~)) LCB;
  - (b) Filed every month, including months with no activity;
  - (c) Submitted to the ((~~WSLCB~~)) LCB on or before the 20th day of each month, for the previous month. (For example, a report listing activity for the month of January is due by February 20th.);
  - (d) Filed separately for each cooperative; and
  - (e) All records must be maintained and available for review for a three-year period on licensed premises.

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

**WAC 314-55-417 Sales of immature plants or clones and seeds from licensed producers to members of cooperatives, qualifying patients, and designated providers.** This section details the requirements for sales of immature plants or clones and seeds by licensed producers to members of a registered cooperative, qualifying patients, and designated providers.

(1) Medical cannabis patients who enter into the medical cannabis authorization database established and maintained by the department of health, receive a recognition card, and are members of a cooperative that has been granted a registration by the Washington state liquor and cannabis board ((~~WSLCB~~)) LCB may purchase immature plants or clones and seeds to be grown in the cooperative from a licensed cannabis producer.

(2) Qualifying patients and designated providers who hold a valid unexpired recognition card and have been entered into the medical cannabis authorization database established and maintained by the department of health, may purchase immature plants or clones and seeds from a licensed cannabis producer.

(3) Members of a registered cooperative, qualifying patients, and designated providers who wish to purchase immature plants or clones and seeds from a licensed producer must:

(a) Personally go to the licensed producer to complete the purchase and transfer of any cannabis plants purchased; and

(b) Provide the following information to a licensed producer:

(i) Proof of identification in the form of a state-issued identification card or other valid government-issued identification;

(ii) A valid recognition card; and

(iii) If the person purchasing immature plants or clones or seeds is a member of a registered cooperative, a copy of the letter from the ((WSLCB)) LCB confirming the person is a member of a registered cooperative.

(4) The physical transfer of cannabis plants between licensed producers and members of a cooperative, qualifying patients, or designated providers must take place on the premises of the licensed producer. Deliveries of cannabis plants by a licensed producer to members of a cooperative, qualifying patients, or designated providers are prohibited.

(5) Members of registered cooperatives, qualifying patients, and designated providers are limited to purchasing no more than the maximum amount that the medical cannabis patient's authorization form allows of any combination of immature plants or clones and seeds in a single sale or cumulative sales within a calendar month from a licensed producer. It is the responsibility of the member of the registered cooperative, qualifying patient, or designated provider to ensure that they possess no more than the maximum number of plants allowed under their authorization forms and as provided in chapter 69.51A RCW.

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-508 Review of orders on stay.** (1) The licensee, or agency, may petition the ((WSLCB)) LCB for review of an initial order on stay. Any petition for review must be in writing and received by the ((WSLCB)) LCB within ((ten)) 10 days of service of the initial order. If neither party has requested review within ((ten)) 10 days of service, the initial order shall be deemed the final order of the ((WSLCB)) LCB for purposes of RCW 34.05.467.

(2) If the ((WSLCB)) LCB receives a timely petition for review, the ((WSLCB)) LCB shall consider the petition within ((fifteen)) 15 days of service of the petition for review. Consideration on review shall be limited to the record of the hearing on stay.

(3) The order of the ((WSLCB)) LCB on the petition for review shall be effective upon personal service unless another date is specified in the order and is final pursuant to RCW 34.05.467. Final disposition of the petition for stay shall not affect subsequent administrative proceedings for suspension or revocation of a license.

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

**WAC 314-55-523 Category IV.** Violations that are significant regulatory violations.

**Category IV  
Significant Regulatory Violations**

<b>Violation Type</b>	<b>1st Violation</b>	<b>2nd Violation in a Two-year Window</b>	<b>3rd Violation in a Two-year Window</b>	<b>4th Violation in a Two-year Window</b>
<b>Noncompliance with record keeping requirements.</b> WAC 314-55-087	\$500 monetary fine	5-day suspension or \$1,250 monetary fine	10-day suspension or \$2,500 monetary option	30-day suspension or \$7,500 monetary option
<b>Cannabis illegally given away, including being sold below the cost of acquisition, true value, or both.</b> WAC 314-55-017(3) WAC 314-55-018 (2)(f) WAC 314-55-018(5) WAC 314-55-077 (11)(b)	\$500 monetary fine	5-day suspension or \$2,500 monetary option	10-day suspension or \$7,500 monetary option	30-day suspension or \$15,000 monetary option
<b>Retail sales: Use of an unauthorized money transmitter.</b> WAC 314-55-115(5)	\$500 monetary fine	5-day suspension or \$1,250 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension or \$7,500 monetary option
<b>Misuse or unauthorized use of cannabis license (operating outside of license class).</b> RCW 69.50.325	5-day suspension or \$2,500 monetary option	10-day suspension or \$5,000 monetary option	30-day suspension or \$10,000 monetary option	60-day suspension or \$20,000 monetary option
<b>Selling or purchasing cannabis on credit.</b> WAC 314-55-018 WAC 314-55-115	5-day suspension or \$2,500 monetary option	10-day suspension or \$5,000 monetary option	30-day suspension or \$10,000 monetary option	60-day suspension or \$20,000 monetary option
<b>Engaging in nonretail conditional sales, prohibited practices, or both.</b> WAC 314-55-017(1) WAC 314-55-018	\$1,250 monetary fine	5-day suspension or \$2,500 monetary option	10-day suspension or \$7,500 monetary option	30-day suspension or \$15,000 monetary option
<b>Operating/floor plan:</b> Violations of a ((WSLCB)) LCB approved operating plan. WAC 314-55-020 (11)(a)	\$500 monetary fine	5-day suspension or \$1,250 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension or \$7,500 monetary option
<b>Failure to maintain required insurance.</b> WAC 314-55-082 WAC 314-55-310	\$1,250 monetary fine	5-day suspension or \$2,500 monetary option	10-day suspension or \$7,500 monetary option	30-day suspension or \$15,000 monetary option
<b>Unauthorized sale to a retail licensee (processor).</b> RCW 69.50.360 RCW 69.50.363 WAC 314-55-077 WAC 314-55-083(4)	\$1,250 monetary fine	Tier 1: \$2,500 Tier 2: \$5,000 Tier 3: \$10,000 monetary fine	Tier 1: \$7,500 Tier 2: \$15,000 Tier 3: \$30,000 monetary fine	Tier 1: \$15,000 Tier 2: \$30,000 Tier 3: \$60,000 monetary fine

Violation Type	1st Violation	2nd Violation in a Two-year Window	3rd Violation in a Two-year Window	4th Violation in a Two-year Window
<b>Packaging and labeling.</b> WAC 314-55-105	\$500 monetary fine	5-day suspension or \$1,250 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension or \$7,500 monetary option
<b>Unauthorized or unapproved product storage or delivery (processor/producer).</b> WAC 314-55-085(5)	\$1,250 monetary fine	Tier 1: \$2,500 Tier 2: \$5,000 Tier 3: \$7,500 monetary fine	Tier 1: \$5,000 Tier 2: \$10,000 Tier 3: \$15,000 monetary fine	Tier 1: \$10,000 Tier 2: \$20,000 Tier 3: \$30,000 monetary fine
<b>Unauthorized or unapproved product storage or delivery (transporter).</b> WAC 314-55-310 (5)(d)	\$1,250 monetary fine	\$2,500 monetary fine	\$5,000 monetary fine	\$10,000 monetary fine
<b>Failure to meet cannabis waste disposal requirements.</b> WAC 314-55-097	\$1,250 monetary fine	Tier 1: \$2,500 Tier 2: \$5,000 Tier 3: \$7,500 monetary fine	Tier 1: \$5,000 Tier 2: \$10,000 Tier 3: \$15,000 monetary fine	Tier 1: \$10,000 Tier 2: \$20,000 Tier 3: \$30,000 monetary fine
<b>Sampling violations (processors/producers: Vendor, educational, and internal quality control samples).</b> WAC 314-55-096	\$1,250 monetary fine	Tier 1: \$2,500 Tier 2: \$5,000 Tier 3: \$7,500 monetary fine	Tier 1: \$5,000 Tier 2: \$10,000 Tier 3: \$15,000 monetary fine	Tier 1: \$10,000 Tier 2: \$20,000 Tier 3: \$30,000 monetary fine
<b>Sampling violations (retail).</b> WAC 314-55-096(5) WAC 314-55-096(6)	\$1,250 monetary fine	Tier 1: \$2,500 Tier 2: \$5,000 Tier 3: \$7,500 monetary fine	Tier 1: \$5,000 Tier 2: \$10,000 Tier 3: \$15,000 monetary fine	Tier 1: \$10,000 Tier 2: \$20,000 Tier 3: \$30,000 monetary fine
<b>Failure to maintain required security alarm.</b> WAC 314-55-083(2)	\$1,250 monetary fine	\$2,500 monetary fine	\$5,000 monetary fine	\$10,000 monetary fine

**OTS-5406.1**

AMENDATORY SECTION (Amending WSR 18-05-006, filed 2/7/18, effective 3/10/18)

**WAC 314-60-010 Purpose.** The purposes of this chapter are to:

- (1) Describe the organization of the Washington state liquor and cannabis board (~~((WSLCB))~~) (LCB);
- (2) Detail how the (~~(WSLCB))~~ LCB complies with laws governing the disclosure (release) of public records; and
- (3) Explain how an individual or organization may obtain public records.

AMENDATORY SECTION (Amending WSR 22-23-054, filed 11/9/22, effective 12/10/22)

**WAC 314-60-015 Agency description—Contact information.** (1) (a) The Washington state liquor and cannabis board (~~((WSLCB))~~) (LCB) is an agency created to exercise the police power of the state in adminis-

tering and enforcing laws and regulations relating to alcoholic beverage control (Title 66 RCW), cannabis (chapter 69.50 RCW), tobacco (chapter 70.155 RCW), and vapor products (chapter 70.345 RCW).

(b) The board issues licenses relating to liquor, cannabis, tobacco, and vapor products; and collects taxes imposed on liquor and cannabis.

(c) The ((WSLCB)) LCB is responsible for enforcing laws preventing access to tobacco products by persons under the age of 18 years (chapter 70.155 RCW). The board enforces the tobacco tax laws and the department of revenue administers tobacco tax laws (chapters 82.24 and 82.26 RCW).

(2) The Washington state liquor and cannabis board is organized into seven divisions:

- (a) Board administration;
- (b) Director's office;
- (c) Licensing and regulation;
- (d) Enforcement and education;
- (e) Finance;
- (f) Information technology; and
- (g) Human resources.

(3) (a) The administrative offices of the Washington state liquor and cannabis board are located at 1025 Union Avenue S.E., Olympia, WA 98501.

(b) ((WSLCB)) LCB staff is also located at enforcement offices maintained in major cities throughout the state.

Enforcement offices addresses and contact numbers are located on the ((WSLCB's)) LCB's website at [lcb.wa.gov](http://lcb.wa.gov).

(4) An organizational chart is available from the board's public records office which illustrates the general structure of the ((WSLCB's)) LCB's operations. More information on the construct of the ((WSLCB)) LCB is also available on the ((WSLCB's)) LCB's website at [lcb.wa.gov](http://lcb.wa.gov).

AMENDATORY SECTION (Amending WSR 22-23-054, filed 11/9/22, effective 12/10/22)

**WAC 314-60-025 Public records officer.** (1) The ((WSLCB)) LCB public records officer:

(a) Receives all public records requests made to the ((WSLCB)) LCB;

(b) Provides "fullest assistance" to persons seeking ((WSLCB)) LCB public records;

(c) Oversees the ((WSLCB's)) LCB's compliance with the Public Records Act, including locating, processing, and releasing records responsive to public records requests;

(d) Creates and maintains an index of certain ((WSLCB)) LCB public records, to the extent required by RCW 42.56.070; and

(e) Prevents the fulfillment of public records requests from causing excessive interference with essential functions of the department.

(2) Any person wishing to access ((WSLCB)) LCB public records should contact the ((WSLCB's)) LCB's public records officer or designee at:

Mailing Address:

Public Records Officer  
Liquor and Cannabis Board  
P.O. Box 43090  
Olympia, WA 98504

Building Address:

1025 Union Avenue S.E.  
Olympia, WA 98501  
Phone: 360-664-1693  
Email: publicrecords@lcb.wa.gov

Current contact information is also available on the ((WSLCB)) LCB's website at lcb.wa.gov.

(3) The public records officer may designate one or more ((WSLCB)) LCB staff to carry out the responsibilities set forth in subsection (1) of this section; and other staff may process public records requests. Therefore, use of the term public records officer in this chapter may include the public records officer's designee(s) or any other staff assisting in processing public records requests, where indicated by context.

AMENDATORY SECTION (Amending WSR 22-23-054, filed 11/9/22, effective 12/10/22)

**WAC 314-60-070 Availability of public records.** (1) Many records are available on the ((WSLCB's)) LCB's website at lcb.wa.gov. Requestors are encouraged to search for and view records on the ((WSLCB's)) LCB's website in lieu of or prior to making a public records request. An index of public records is available as provided in subsection (3) of this section.

(2) Requestors are encouraged to contact the public records officer to determine the location and availability of records prior to or at the time of making a public records request.

(3) **Hours for inspection of records.**

(a) Public records are available for inspection and copying at the main office of the board during normal business hours of the ((WSLCB)) LCB, Monday through Friday, from 9:00 a.m. to noon and from 1:00 p.m. to 4:30 p.m., excluding state legal holidays.

(b) Records must be inspected at the offices of the ((WSLCB)) LCB and may not be removed from ((WSLCB)) LCB offices. The majority of public records are located at the ((WSLCB's)) LCB's central office, although some may be located in other locations, including the regional offices.

(4) **Records index.** The ((WSLCB)) LCB maintains an index as required under RCW 42.56.070 and updates the index on a biennial basis at minimum. The index of public records is available on the ((WSLCB's)) LCB's website at lcb.wa.gov, including:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute and the constitution which have been adopted by the agency; and

(c) Declaratory orders issued pursuant to RCW 34.05.240 containing an analysis or decision of substantial importance to the agency in carrying out its duties.

(5) **Organization of records.** The ((WSLCB)) LCB will maintain its records in a reasonably organized manner. The ((WSLCB)) LCB will take reasonable actions to protect records from damage and disorganization.

AMENDATORY SECTION (Amending WSR 22-23-054, filed 11/9/22, effective 12/10/22)

**WAC 314-60-080 Requests for public records.** An individual may request a public record orally or in writing. The ((WSLCB)) LCB encourages all public records requests be submitted in writing. Public records requests may be sent to the ((WSLCB)) LCB via email at publicrecords@lcb.wa.gov.

(1) A form for public records requests prescribed by the ((WSLCB)) LCB is available at its main office and on its website at lcb.wa.gov. A written request or public records request form must be submitted or presented to the public records officer or designee and may be sent to the ((WSLCB)) LCB via email at publicrecords@lcb.wa.gov. The request should include the following information:

- (a) The name, organization, mailing address, telephone number, and email address of the requestor;
  - (b) The date and time of day of the request;
  - (c) Identification of the public records sought, in a form or description adequate for the public records officer to identify and locate the records;
  - (d) If the matter requested is referenced within the current index maintained by the board, a reference to the requested record as described; and
  - (e) The address where copies of the record are to be mailed or emailed, or notification that the requestor wants to examine the record at the ((WSLCB)) LCB.
- (2) If the public records officer or designee accepts a request other than in writing, he or she will confirm receipt of the information and the substance of the request in writing.

AMENDATORY SECTION (Amending WSR 18-05-006, filed 2/7/18, effective 3/10/18)

**WAC 314-60-085 Processing public records requests.** (1) **Order of processing public records requests.** The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(2) **Acknowledging receipt of request.** Within five business days after receipt of the request, the public records officer or designee will do one or more of the following:

- (a) Provide the records or make the records available for inspection and copying depending on the nature of the request;
- (b) If copies are requested and payment of a deposit for copies, if any, is made or terms of payment agreed upon, send the copies to the requestor;
- (c) Provide a reasonable estimate of when records will be available; or

(d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer or designee may revise the estimate of when records will be available; or

(e) Deny the request.

(3) **If no response is received.** If the public records officer does not respond in writing within five business days after the day of receipt of the request for disclosure, the requestor should consider contacting the public records officer to ensure that the ((WSLCB)) LCB received the request.

(4) **Protecting the rights of others.** If the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer or designee may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(5) **Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part, under chapter 42.56 RCW or as otherwise provided by law. If the ((WSLCB)) LCB believes that a record is exempt from disclosure and should be withheld, the public records officer or designee will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer or designee will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(6) **Inspection of records.**

(a) Consistent with other demands, the ((WSLCB)) LCB shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. If, after inspecting a record or records, the requestor wishes to receive a copy of a particular record or records, he or she should so indicate to the public records officer or designee. Copies will be provided pursuant to subsection (7) of this section.

(b) The requestor must review the assembled records within ((thirty)) 30 days of the ((WSLCB's)) LCB's notification to him or her that the records are available for inspection. The agency will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the agency to make arrangements to review the records. If the requestor or a representative of the requestor fails to review the records within the ((thirty)) 30-day period or make other arrangements, the ((WSLCB)) LCB may close the request. If the requestor subsequently files the same or a substantially similar request, that subsequent request will be considered a new request and will be processed in the order allowing the greatest number of requests to be processed in the most efficient manner.

(7) **Providing copies of records.**

(a) Upon request, the public records officer or designee will provide copies of requested records. Copies may be provided in either hard copy or electronic format, as requested. The cost for copies is set forth in WAC 314-60-090 and costs for copies of records must be paid to the ((WSLCB)) LCB prior to delivery of copies of records.

(b) Copies may be mailed or emailed to the requestor, or made available for pickup at the ((WSLCB's)) LCB's offices, depending on the format of the records and the request of the requestor. If the copies are available for pickup at the ((WSLCB's)) LCB's offices, the requestor must pay for and pick up the copies within ((~~thirty~~)) 30 days of the ((WSLCB's)) LCB's notification to him or her that the copies are available for pickup. The ((WSLCB)) LCB will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the ((WSLCB)) LCB to make arrangements to pay for and pick up the copies. If the requestor fails to pay for or pick up the copies within the ((~~thirty~~)) 30-day period, or fails to make other arrangements, the ((WSLCB)) LCB may close the request. If the requestor subsequently files the same or a substantially similar request, that subsequent request will be considered a new request and will be processed in the order allowing the greatest number of requests to be processed in the most efficient manner.

(8) **Electronic records.** The process for requesting electronic public records is the same as for requesting paper public records. When a person requests records in an electronic format, the public records officer will provide the nonexempt records, or portions of such records that are reasonably locatable, in an electronic format that is used by the ((WSLCB)) LCB and is generally commercially available, or in a format that is reasonably translatable from the format in which the ((WSLCB)) LCB keeps the record.

(9) **Providing records in installments.** When the request is for a large number of records, the public records officer or designee will provide access for inspection or copies of records in installments, if he or she reasonably determines that it would be practical to provide the records in that way. Costs for each installment of copies of records must be paid to the ((WSLCB)) LCB prior to delivery of the installment. If, within ((~~thirty~~)) 30 days, the requestor fails to pay for one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(10) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the ((WSLCB)) LCB has completed the records request and made any located nonexempt records available for inspection.

(11) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer or designee will close the request and indicate the closure to the requestor.

(12) **Later discovered documents.** If, after the ((WSLCB)) LCB has informed the requestor that it has provided all available records and closed a request, the ((WSLCB)) LCB becomes aware of additional responsive records existing at the time of the request, it will promptly inform the requestor of the additional records and provide them on an expedited basis.

AMENDATORY SECTION (Amending WSR 18-05-006, filed 2/7/18, effective 3/10/18)

**WAC 314-60-090 Costs of providing copies of public records. (1)**

No fee is charged for the inspection of public records.

(2) The ((WSLCB)) LCB does not charge any fee for access to or downloading records posted on its internet website prior to a request, unless the requestor specifically requests that posted records be provided by other means, such as a printed copy or electronic copies provided by the ((WSLCB)) LCB.

(3) (a) The board finds it would be unduly burdensome to calculate the actual costs of providing public records to requestors as the type of request and staff time to copy and provide records vary widely. The board does not have the resources to conduct a study of these costs, and conducting a study would interfere with other essential agency functions. Additionally, through the 2017 legislative process, the public and requestors commented on and were informed of authorized fees and costs, including costs for electronic records, provided in RCW 42.56.120 (2) (b) and (c), (3) and (4).

(b) The following fee schedule adapted from RCW 42.56.120 applies to physical and electronic copies of public records provided by the ((WSLCB)) LCB. Copy charges may be combined to the extent more than one type of charge applies to copies responsive to a particular request.

<b>Public Records Fee Schedule</b>	
<b>Charge:</b>	<b>Record Type:</b>
15 cents/page	Photocopies, printed copies of electronic records when requested by the requestor, or for the use of agency equipment to make photocopies.
10 cents/page	Scanned records, or use of agency equipment for scanning.
5 cents for each 4 electronic files or attachment	Files and attachments loaded and delivered on a digital storage media (CD, DVD, or thumb drive).
10 cents per gigabyte	Records transmitted in electronic format or for use of agency equipment to send records electronically.
Actual cost	Digital storage media or devices.
Actual cost	Any container or envelope used to mail copies.
Actual cost	Postage or delivery charges.

<b>Public Records Fee Schedule</b>	
Actual cost	Customized service charge (in addition to fees for copies - See copying fees above), if the board estimates that the request would require use of information technology expertise to prepare data compilations, or provide customized electronic access when such compilations and customized access services are not used by the agency for other agency purposes. The board will notify such requestor of the customized service charge to be applied, why the charge applies, and an estimate of the cost of the charge, and will allow the requestor to amend the request in order to avoid or reduce the cost of the customized service charge.
<b>Option for Copies:</b>	
Up to \$2 flat fee	As an alternative to the copy charges above, the board may charge a flat fee of up to \$2 for any request when the agency reasonably estimates and documents that the costs are equal to or more than \$2. If applied to the initial installment, additional flat fees will not be charged for subsequent installments.

(4) If the requestor asks the ((WSLCB)) LCB to provide a summary of the applicable charges before any copies are made, the ((WSLCB)) LCB will provide an estimate and will allow the requestor to revise the request to reduce the number of copies to be made to reduce the charges. The ((WSLCB)) LCB may require a deposit of up to ((ten)) 10 percent of the cost of providing copies for a request, including a customized service charge.

AMENDATORY SECTION (Amending WSR 18-05-006, filed 2/7/18, effective 3/10/18)

**WAC 314-60-100 Exemptions.** (1) The Public Records Act (chapter 42.56 RCW) exempts a number of types of records from public inspection, production, and copying that the board may assert when responding to a request for public records. In addition, records are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by ((WSLCB)) LCB for inspection and copying:

(a) **Autopsy, post mortem or medical examiner reports.** Requests for these records should be referred to the agency which originated the record(s): Coroner's office, medical examiner's office, etc. (RCW 68.50.105)

(b) **Claim file information.** On any industrial insurance claim. (RCW 51.28.070)

(c) **Criminal history reports.** Certain criminal history information concerning nonconviction data is prohibited from disclosure under chapter 10.97 RCW. Law enforcement agency reports should be referred to the agency that originated the report. (RCW 10.97.080)

(d) **Crime victims.** Files and information. (RCW 7.68.140)

(e) **Attorney client privileged communications, mediation communications.** Communications protected by RCW 5.60.060(2), 42.56.290 and 7.07.030 exempt from disclosure.

(f) **Medical records and data.** Medical records, drug records, accident victims and other persons to which ((WSLCB)) LCB has access. (RCW 42.56.360(2) and chapter 70.02 RCW)

(g) **Social Security numbers.** (RCW 42.56.250(3) and 42 U.S.C. Section 405 (c) (2) (C) (vii) (1))

(h) **Trade secrets.** As defined in RCW 19.108.010, including blueprints, diagrams, drawings, formulas, photos, etc., requested to be held confidential by the affected person. Should be labeled "RESTRICTED TRADE INFORMATION." (RCW 39.10.470(2) and 49.17.200)

(2) The ((WSLCB)) LCB is prohibited by statute from disclosing lists of individuals for commercial purposes under RCW 42.56.070.

AMENDATORY SECTION (Amending WSR 18-05-006, filed 2/7/18, effective 3/10/18)

**WAC 314-60-110 Review of denials of public records requests.**

(1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by submitting a written request for review. The written request must specifically refer to the written statement by the public records officer or designee which constituted or accompanied the denial. A written petition for review may be sent to:

Public Records Officer  
P.O. Box 43080  
Olympia, Washington 98504-3080  
360-664-1693  
publicrecords@lcb.wa.gov

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer shall refer it to the administrative director. The administrative director shall immediately consider the matter and either affirm or reverse such denial. The request shall be returned with a final decision, within two business days following the ((WSLCB's)) LCB's receipt of the request for review of the original denial, or within such other time as the ((WSLCB)) LCB and the requestor mutually agree to.

(3) If the ((WSLCB)) LCB denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter as provided in WAC 44-06-160.

(4) **Judicial review.** Any person may obtain court review of denials of public records request.

## OTS-5334.1

AMENDATORY SECTION (Amending WSR 99-10-066, filed 5/4/99, effective 6/4/99)

**WAC 314-68-040 What are the procedures for a private individual to bring alcoholic beverages into the state from outside the United States for personal or household use?** Fill out a board declaration form, which is available from the United States Custom Service.

(1) Compute the state taxes and markup using the chart on the form.

(2) Sign the form.

(3) Keep a copy for your records and give a copy to the United States Customs Service.

(4) Send a copy of the form with payment within (~~ten~~) 10 days to the Washington State Liquor (~~Control~~) and Cannabis Board, Purchasing Division, Olympia, Washington.

(5) The board will mail a receipt to the individual who signed the form, authorizing use of the alcoholic beverages for personal or household use.

AMENDATORY SECTION (Amending WSR 99-10-066, filed 5/4/99, effective 6/4/99)

**WAC 314-68-050 What are the procedures for a private individual to bring alcoholic beverages into the state from another state for personal or household use?** (1) You must obtain prior authorization from the board before bringing alcoholic beverages into the state from another state for personal or household use. Any private individual who fails to obtain prior authorization will be subject to the provisions of RCW 66.44.160, "Illegal possession, transportation of alcoholic beverages."

(2) To obtain approval if you know the quantity of alcoholic beverages you will bring into the state:

(a) Mail a list of the items to be brought into the state to the Washington State Liquor (~~Control~~) and Cannabis Board, Purchasing Division, Olympia, Washington.

(b) The liquor purchasing agent will compute the tax and markup.

(c) The board will mail an authorization once the payment of the applicable equivalent markup and tax is paid.

(3) To obtain approval if you do not know the quantity of alcoholic beverages you will bring into the state:

(a) Mail a certification that markup and tax will be paid to the Washington State Liquor (~~Control~~) and Cannabis Board, Purchasing Division, Olympia, Washington.

(b) The liquor purchasing agent will review the certification to pay equivalent markup and tax and mail an authorization to bring the alcoholic beverages into the state along with a declaration form.

(c) Once you have brought the alcoholic beverages into the state:

(i) Fill out the declaration form.

(ii) Compute the state taxes and markup using the chart on the form.

(iii) Sign the form.

(iv) Keep a copy for your records.

(v) Mail a copy of the form with payment within (~~ten~~) 10 days to the Washington State Liquor (~~Control~~) and Cannabis Board, Purchasing Division, Olympia, Washington.

**OTS-5335.1**

AMENDATORY SECTION (Amending Order 44, filed 5/4/76)

**WAC 314-72-020 Application.** Pursuant to WAC 197-10-800, the liquor (~~control~~) and cannabis board has reviewed its authorized activities and found them to be exempt under the provisions of chapter 197-10 WAC.

**WSR 24-11-042**  
**EXPEDITED RULES**  
**DEPARTMENT OF COMMERCE**  
[Filed May 9, 2024, 9:29 a.m.]

Title of Rule and Other Identifying Information: Updated rules for state agencies in WAC 194-28-070 to maintain consistency with corresponding rules for local governments in WAC 194-29-070 in determining how these entities can achieve the goals set forth in RCW 43.19.648.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 43.19.648 requires that all state agencies and local governments, to the extent practicable as determined by rules adopted pursuant to RCW 43.325.080, satisfy 100 percent of their fuel usage for operating publicly owned vessels, vehicles, and construction equipment from electricity or biofuel. Rules for state agencies were initially adopted in 2013 and are specified in WAC 194-28-070, while the corresponding rules for local governments were initially adopted in 2015 and are written in WAC 194-29-070. In reviewing these rules, the department of commerce (commerce) found an inconsistency in the rule language concerning routine charging in the field for covered vehicles. The purpose of this proposed expedited rule making is to update the rule language in WAC 194-28-070 for state agency vehicles so that it is more consistent with the rules for local governments in WAC 194-29-070. Commerce has developed draft rules to update guidance in WAC 194-28-070 (1)(a)(ii) to match the more recent language in WAC 194-29-070 (1)(a) defining what charging requirements for new electric or hybrid vehicles in state government fleets is considered to be practicable as these entities work to meet the goals in RCW 43.19.648.

Reasons Supporting Proposal: Since 2007, the legislature has recognized and mandated state agency and local government fleet conversion to electric or hybrid electric vehicles as a necessary step in achieving Washington's clean transportation goals. To this end, commerce is charged with writing and maintaining rules to determine what is practicable for these entities as they work to meet the requirements codified in RCW 43.19.648. Commerce completed rules to guide state agencies in 2013, and subsequently produced similar rules for local governments in 2015. Both types of entities are covered in the same mandate and beholden to the same targets identified in statute for practicable fleet conversion. However, the rapidly increasing availability and sophistication of charging infrastructure and electric vehicle technology in the United States means that what was considered practicable in 2015 (the year when the state agency rule became effective) was already outdated by 2018. Because of this, practicable field charging requirements in the 2015 rules for local governments (which became effective in 2018) are more relevant and up-to-date as compared to the corresponding rules for state agencies from 2013. It is important that commerce update rules for state agencies so that they are consistent with the most up-to-date guidance for practicable field charging. Doing so will preserve consistency between local government and state agencies, and will ensure that the most recent guidance is available for use by both types of entities.

Statutory Authority for Adoption: RCW 43.325.080.

Statute Being Implemented: RCW 43.19.648.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington department of commerce, governmental.

Name of Agency Personnel Responsible for Drafting: Seth Kolodziejewski, Olympia, Washington, 360-688-8189; Implementation and Enforcement: Hanna Waterstrat, Olympia, Washington, 360-764-0015.

This notice meets the following criteria to use the expedited adoption process for these rules:

Relates only to internal governmental operations that are not subject to violation by a person.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: Because these rules only affect state agencies' implementation of their statutory responsibilities from RCW 43.19.648, the rules relate only to internal governmental operations and are not subject to violation by an individual. An expedited rule making is appropriate given that the proposed changes only update outdated guidance such that it is identical to updated rules written three years later. Commerce is not adding anything new to the ways in which covered entities can meet the goals in RCW 43.19.648, but is simply ensuring consistency between the rules applying to state agencies and local governments.

#### NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Nick Manning, Washington Department of Commerce, 1011 Plum Street S.E., Olympia, WA 98504, phone 564-200-4324, email nick.manning@commerce.wa.gov, AND RECEIVED BY July 22, 2024.

May 9, 2024  
Amanda Hathaway  
Rules Coordinator

#### OTS-5412.1

AMENDATORY SECTION (Amending WSR 13-10-016, filed 4/22/13, effective 5/23/13)

**WAC 194-28-070 Compliance evaluation.** RCW 43.325.080 requires the department to specify how agency efforts to meet the goals set forth in RCW 43.19.648(1) will be evaluated. In so doing, the department will consider the following criteria in determining whether state agencies have, to the extent practicable, satisfied (~~one hundred~~) 100 percent of fuel usage for operating vessels, vehicles, and construction equipment from electricity or biofuel, effective June 1, 2015:

(1) Vehicle electrification.

(a) It is considered practicable to procure a PHEV and PEV light-duty vehicle, light-duty truck, or medium-duty passenger vehicle when the following criteria are met:

(i) The vehicle is due for replacement ~~((7))~~;

(ii) ~~((The anticipated driving range or use would not require battery charging in the field on a routine basis))~~ Charging requirements can be met during routine use or through fleet management strategies; and

(iii) The lifecycle cost is within five percent of an equivalent HEV based on anticipated length of service.

(b) Agencies are encouraged to pursue electrification in additional vehicle classes as opportunities emerge.

(c) Per RCW 43.19.648(5), agencies are to install EVSE capable of charging PEVs and PHEVs in each of the state's fleet parking and maintenance facilities, to the extent practicable, by December 31, 2015. The department is not charged with monitoring or reporting on compliance with this law, but agencies need to show progress in this area for electricity to be a feasible fuel source at these locations.

(d) Under the federal Energy Independence and Security Act of 2007, the U.S. Department of Energy (USDOE) is responsible for rule-making to determine the extent to which alternative fuel credits recognize electricity used by HEVs and PHEVs in state vehicle fleets subject to the federal Energy Policy Act of 1992. The department will utilize the USDOE rule when crediting compliance for these vehicles.

(2) Biofuels.

(a) Biodiesel: Unless otherwise limited by law, it is considered practicable for agencies to:

(i) Use a minimum of ~~((twenty))~~ 20 percent biodiesel-blend fuel (B20) on an annualized basis when purchasing fuel through the state procurement system.

(ii) Make good faith efforts to identify sources and procure a minimum of B20 when purchasing fuel on a retail basis.

(b) Ethanol: It is considered practicable for agencies with "flex-fuel" vehicles capable of using either high-blend ethanol fuel (E85) or regular gasoline to make good faith efforts to identify sources and procure E85 when purchasing fuel on a retail basis if the price of E85 is at least ~~((twenty))~~ 20 percent less than regular gasoline.

(c) Renewable Natural Gas: It is considered practicable for agencies considering acquisition of natural gas-fueled vehicles to actively assess opportunities to procure renewable natural gas as the primary fuel.

(3) Alternate fuels.

Compressed natural gas, liquefied natural gas, or propane may be substituted for electricity or biofuel if the department determines that electricity and biofuel are not reasonably available. If an agency believes electricity and biofuels are not reasonably available to fuel a specific vehicle, vessel, or construction equipment, the agency must submit a request for such a determination to the department by July 1 of the year prior to the agency's anticipated procurement on a form provided by the department. Such a request may be made as part of the agency's annual reporting under WAC 194-28-080.

## WSR 24-11-069

## EXPEDITED RULES

## DEPARTMENT OF HEALTH

(Board of Osteopathic Medicine and Surgery)

[Filed May 14, 2024, 11:55 a.m.]

Title of Rule and Other Identifying Information: Osteopathic physicians and surgeons five-year rule review. In accordance with RCW 43.70.041, the board of osteopathic medicine and surgery (board) and the department of health (department) have conducted a five-year rule review of chapter 243-853 WAC, Osteopathic medicine and surgery. As a result of this review, the board is proposing amendments to WAC 246-853-045 and 246-853-210 to clarify and update outdated language. In addition, the board is proposing to repeal WAC 243-853-060.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In compliance with RCW 43.70.041, the board conducted a review of sections in chapter 246-853 WAC that have not been reviewed in the last five years and have identified that WAC 246-853-045 and 246-853-210 contain outdated language. The board is proposing to update the term "practitioner" to "osteopathic physician" to be consistent with the entire chapter. The board has also identified that WAC 246-853-060 does not contain any rule language content and is proposing to repeal this section.

Reasons Supporting Proposal: RCW 43.70.041 requires the department to have a formal review process of its existing rules to simplify, improve, and streamline rules pertaining to health professions at least once every five years. As a result of this review, the board is proposing amendments that update rule language to currently accepted language without changing its effect.

Statutory Authority for Adoption: RCW 18.57.005 and 43.70.041.

Statute Being Implemented: RCW 43.70.041.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Board of osteopathic medicine and surgery, governmental.

Name of Agency Personnel Responsible for Drafting: Becky McElhiney, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4766; Implementation and Enforcement: James Chaney, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2831.

This notice meets the following criteria to use the expedited adoption process for these rules:

Corrects typographical errors, makes address or name changes, or clarifies language of a rule without changing its effect.

This notice meets the following criteria to use the expedited repeal process for these rules:

Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The proposed amendments clarify and update language to currently accepted rule language and remove an obsolete rule section that does not contain any rule language content.

## NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU

OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Becky McElhiney, Department of Health, Board of Osteopathic Medicine and Surgery, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4766, fax 360-236-2901, email osteopathic@doh.wa.gov, https://fortress.wa.gov/doh/policyreview, AND RECEIVED BY July 22, 2024.

May 13, 2024  
 U. James Chaney  
 Executive Director  
 Board of Osteopathic Medicine and Surgery

### OTS-5239.1

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

**WAC 246-853-045 Inactive credential.** (~~(A practitioner)~~) An osteopathic physician may obtain an inactive credential. Refer to the requirements of chapter 246-12 WAC(~~(, Part 4)~~).

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

**WAC 246-853-210 Expired license.** (1) If the license has expired for three years or less, the (~~(practitioner)~~) osteopathic physician must meet the requirements of chapter 246-12 WAC(~~(, Part 2)~~).

(2) If the license has expired for over three years, and the (~~(practitioner)~~) osteopathic physician has been in active practice in another United States jurisdiction, the (~~(practitioner)~~) osteopathic physician must:

(a) Submit verification of active practice from any other United States jurisdiction;

(b) Meet the requirements of chapter 246-12 WAC(~~(, Part 2)~~).

(3) If the license has expired for over three years, and the (~~(practitioner)~~) osteopathic physician has not been in active practice in another United States jurisdiction, the (~~(practitioner)~~) osteopathic physician:

(a) May be required to be reexamined as provided in RCW 18.57.080;

(b) Must meet the requirements of chapter 246-12 WAC(~~(, Part 2)~~).

### OTS-5014.1

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-853-060 Continuing professional education required.

## WSR 24-11-124

## EXPEDITED RULES

## FOREST PRACTICES BOARD

[Filed May 21, 2024, 10:27 a.m.]

Title of Rule and Other Identifying Information: Chapter 222-21 WAC, Forestry riparian easement program.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making will amend the forestry riparian easement program rules to implement SSB 5667. Amended WAC includes: WAC 222-21-005, 222-21-010, 222-21-030, 222-21-045, 222-21-050, and 222-21-080.

The purpose is to better serve the small forest landowner community by amending the existing forestry riparian easement rules to: Clarify the definitions of "qualifying timber" and "completion of harvest"; shorten the term of the easement from 50 years to 40 years; change the date used for easement valuation from the date the small forest landowner office receives the forest riparian easement application to the date of the completion of harvest; increase compensation from the current 50-89 percent of the value of the trees left in the buffer to 90 percent of the value; eliminate the high impact regulatory threshold determination; and increase the cap on funding available for landowners with qualifying timber on rule defined unstable slopes located in and adjacent to the forestry riparian area from \$50,000 to \$150,000 per landowner per biennium.

Reasons Supporting Proposal: To change the forest practices rules to implement the legislative changes to the forestry riparian easement program. In March of 2024, the Washington state legislature passed SSB 5667, which amended RCW 76.13.120 and 76.13.140. This bill was signed on March 18th and will become effective on June 6, 2024.

Statutory Authority for Adoption: RCW 76.09.040.

Statute Being Implemented: RCW 76.13.120 and 76.13.140.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Forest practices board, governmental.

Name of Agency Personnel Responsible for Drafting: Maggie Franquemont, 1111 Washington Street S.E., Olympia, 564-233-8359; Implementation: Karen Zirkle, 1111 Washington Street S.E., Olympia, 564-200-4702; and Enforcement: Saboor Jawad, 1111 Washington Street S.E., Olympia, 360-742-7130.

This notice meets the following criteria to use the expedited adoption process for these rules:

Relates only to internal governmental operations that are not subject to violation by a person.

Corrects typographical errors, makes address or name changes, or clarifies language of a rule without changing its effect.

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The rule amendments meet the criteria for expedited rule making by implementing statute that was changed by the 2024 legislature.

## NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU

OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Patricia Anderson, Forest Practices Board, P.O. Box 47012, fax 360-902-1428, email forest.practicesboard@dnr.wa.gov, AND RECEIVED BY July 25, 2023 [2024].

May 20, 2023 [2024]  
Leonard Young  
Chair

### OTS-5438.1

AMENDATORY SECTION (Amending WSR 12-11-106, filed 5/22/12, effective 6/22/12)

**WAC 222-21-005 Policy.** The legislature has found that further reduction in harvestable timber owned by small forest landowners as a result of the rules adopted under RCW 76.09.055 or 76.09.370 will further erode small landowners' economic viability and willingness or ability to keep the lands in forestry use and, therefore, reduce the amount of habitat available for salmon recovery and conservation of other aquatic resources. The legislature addressed these concerns by establishing a forestry riparian easement program to acquire easements from qualifying small forest landowners along riparian and other areas of value to the state for protection of aquatic resources. At least semiannually, the department shall consult with the small forest landowner advisory committee established in RCW 76.13.110(4) to review landowner complaints, administrative processes, rule recommendations, and related issues where the department is actively seeking the small forest landowner advisory committee's advice on potential improved efficiencies and effectiveness.

AMENDATORY SECTION (Amending WSR 12-11-106, filed 5/22/12, effective 6/22/12)

**WAC 222-21-010 Definitions.** The following definitions apply to this chapter:

(1) **"Completion of harvest"** means that the trees (~~within the~~) from an area under an approved forest practices application have been commercially harvested and further entry into that area by any type of logging or slash treating equipment or method is not expected.

(2) **"Easement premises"** means the geographic area designated in a forestry riparian easement including areas in which qualifying timber is located.

(3) **"Forestry riparian easement"** means a conservation easement covering qualifying timber granted voluntarily to the state by a qualifying small forest landowner.

(4) **"Forests and fish rules"** means the rules adopted by the board in accordance with RCW 76.09.055, 76.09.370, and the amendments to those rules.

(5) **"Hazardous substances"** includes, but is not limited to, hazardous substances as defined in RCW (~~(70.102.010 and 70.105D.020)~~) 70A.415.010 and 70A.305.010, and solid waste as defined in RCW (~~(70.95.030)~~) 70A.205.015.

(6) **"Qualifying small forest landowner"** means an owner of forest land with qualifying timber meeting all of the criteria in (a) (i) through (iv) of this subsection as of the date the department receives a forest practices application associated with a proposed forestry riparian easement, and the date the department offers compensation for the easement.

(a) A qualifying small forest landowner:

(i) Is an individual, partnership, corporation, or other nongovernmental for-profit legal entity. If a landowner grants timber rights to another entity for less than five years, the landowner may still be a qualifying small forest landowner under this chapter;

(ii) Has a fee interest in the land and timber or has rights to harvest the timber to be included in the forestry riparian easement that extend at least (~~(fifty)~~) 40 years from the date the completed forestry riparian easement application is submitted to and received by the small forest landowner office;

(iii) Has no outstanding violations of chapters 76.09 or 76.13 RCW or any associated forest practices rules;

(iv) Has harvested or expects to harvest from his or her forest lands in this state as follows:

(A) No more than the average volume that would qualify the landowner as a "small harvester" under RCW 84.33.035 during the three years prior to the year the department receives a complete forest practices application associated with the easement, and certifies that he or she does not expect to exceed that average timber volume during the (~~(ten)~~) 10 years following the date of the offer of compensation for the easement; or

(B) If the landowner can establish to the satisfaction of the small forest landowner office that those harvest limits were or will be exceeded to raise funds to pay estate taxes or other equally compelling and unexpected obligations such as court-ordered judgments or extraordinary expenses, the landowner may still be a qualifying small forest landowner.

(b) To be eligible for a forestry riparian easement, a qualifying small forest landowner must have submitted a forest practices application covering qualifying timber to the appropriate region office, and the department must have approved the application or disapproved it because of forests and fish rule restrictions. See WAC 222-21-032 for more information about easement eligibility.

(7) **"Qualifying timber"** means forest trees on land owned by a qualifying small forestland owner for which the small forestland owner is willing to grant the state a forestry riparian easement and that meet criteria (a) through (c) of this subsection:

(a) Are covered by a forest practices application.

(b) Fit one of the following situations:

(i) The timber is required to be left unharvested because of forests and fish rule restrictions and is within, immediately adjacent to, or physically connected to a commercially reasonable harvest unit under an approved forest practices application; or

(ii) The timber cannot be approved for harvest under a forest practices application because of forests and fish rule restrictions.

(c) Are located within one or more of the following areas:

(i) Riparian or other sensitive aquatic areas;

(ii) Channel migration zones; or

(iii) Areas of potentially unstable slopes or landforms, verified by the department, that have the potential to deliver sediment or debris to a public resource or threaten public safety and are immediately adjacent to or physically connected to other qualifying timber that is located within riparian or other sensitive aquatic areas.

Qualifying timber may also mean forest trees that do not meet criteria (b) or (c) of this subsection if they are uneconomic to harvest as determined under WAC 222-21-032(6).

(8) "**Small forest landowner office**" means an office within the department of natural resources. The office is a resource and focal point for small forest landowner concerns and policies, and has expertise regarding the management of small forest holdings and government programs applicable to such holdings. The office manages the forestry riparian easement program.

AMENDATORY SECTION (Amending WSR 21-06-020, filed 2/22/21, effective 3/25/21)

**WAC 222-21-030 Documentation and standards.** (1) **Forest practices application.** Prior to submitting a forestry riparian easement application, the landowner must have an approved forest practices application or an application that was disapproved because of forests and fish rule restrictions.

(2) **Forestry riparian easement application.** The landowner will provide the following information in a forestry riparian easement application:

(a) County tax parcel numbers of the property in the proposed easement premises;

(b) A list of all forest practices application numbers of approved and/or disapproved forest practices applications;

(c) Date of completed harvest;

(d) The landowner's signature certifying that the landowner meets the criteria of a qualifying small forest landowner and documenting that the landowner is willing to sell or donate such easements to the state; and

~~((d))~~ (e) Documentation that qualifying timber within or immediately adjacent to, or physically connected to a commercially reasonable harvest area, cannot be harvested because of forests and fish rule restrictions, or is uneconomic to harvest because of forests and fish rule restrictions. See WAC 222-21-032 for additional information about these eligibility criteria.

The small forest landowner office may require additional information from the applicant to process the application and evaluate the eligibility of the proposed easement premises and the landowner.

(3) **Baseline documentation.** The small forest landowner office will gather baseline documentation that will describe the features and current uses on the proposed forestry riparian easement premises and the qualifying timber. The documentation will include but not be limited to:

(a) A summary of cruise information consistent with the standards and methods in WAC 222-21-040; and

(b) An assessment to determine site condition and potential liabilities associated with the proposed riparian easement premises.

(4) **Forestry riparian easement contract.** The forestry riparian easement contract will identify the parties, describe the land, locate the easement, state the terms and conditions, and provide a statement of consideration. The contract will include language consistent with RCW 76.13.120(~~((5))~~) (6) concerning the preservation of all lawful uses of the easement premises by the landowner. The easement will be for a term of (~~(fifty)~~) 40 years from the date the completed forestry riparian easement application is submitted to and received by the small forest landowner office.

(5) **Land description standards.**

(a) The forestry riparian easement contract will include a description of the easement premises using a land survey provided by the department unless the cost of securing the survey would be unreasonable in relation to the value of the easement conveyed.

(b) When the small forest landowner office determines a land survey is not required, the department will prepare a written description that suitably and accurately depicts the location of the easement conveyed, or the department may consider other methods, such as producing a map, to accurately describe the easement premises.

AMENDATORY SECTION (Amending WSR 21-06-020, filed 2/22/21, effective 3/25/21)

**WAC 222-21-045 Valuation.** (1) **The small forest landowner office will calculate the compensation amount for** forestry riparian easements by determining a stumpage value for the qualifying timber. The office will use data gathered from (~~(or adjusted to)~~) the date (~~(the office received the complete forestry riparian easement application)~~) of the completed harvest. For applications that are eligible under WAC 222-21-032 without an associated harvest completion date, the office will use the date the completed forest riparian easement application is received. The office will use the stumpage value determination method described in (a) of this subsection (~~(for)~~) to calculate the stumpage value of the qualifying timber (~~(that cannot be harvested because of forests and fish rule restrictions. For qualifying timber approved for harvest, the office will use both the stumpage value determination method and the small harvester tax return method to)~~). The office will also calculate the stumpage value of the qualifying timber as described in (b) of this subsection if the landowner voluntarily provides harvest records. The office will determine the highest compensation amount for the landowner.

(a) **Stumpage value determination method.** The small forest landowner office will create and maintain value tables to determine stumpage value of the qualifying timber. These tables will be created using a method coordinated with the department of revenue. The values will closely approximate the stumpage value for logs on the date (~~(the office received a complete forestry riparian easement application)~~) of the completed harvest. The landowner will provide:

(i) The reference for the stumpage value table and any other needed information for use of the table; and

(ii) Any information the landowner would like the office to consider in its cruise and valuation of the qualifying timber.

(b) **Small harvester tax return method.**

(i) The landowner must provide comprehensive mill or buyer information for each harvest unit associated with the forestry riparian easement including:

- (A) The delivered value by species;
- (B) The total volume by species; and

(C) The actual harvesting and marketing costs as defined in the department of revenue small harvester instructions.

This information must be verifiable as proceeds from the timber harvests from documents such as mill receipts and/or forest excise tax returns. If the small forest landowner office does not receive a comprehensive packet of mill or buyer information or is not satisfied with the source of the documentation, the office will determine the qualifying timber value using the stumpage value determination method.

~~(ii) ((The office will use a time adjustment index to determine the qualifying timber value based on the date the office received the complete forestry riparian easement application. The office will generate a time adjustment index for each harvest associated with the easement based on log price changes.~~

~~(iii))~~ The office will determine the ((adjusted)) stumpage value by subtracting the average logging and hauling cost per thousand board feet (MBF) from the value of the ((time adjusted)) mill or buyer information. The office will then determine the value of the qualifying timber by multiplying the ((time adjusted)) stumpage value of each species in the harvest unit by the net volume for each corresponding species in the inventory of qualifying timber.

~~((iv))~~ (iii) The ((department)) office determines the values of the timber species that exist in the easement premises, not the species in the harvest area. The ((department)) office determines the ((easement)) qualifying timber value by multiplying the determined cruise volume of qualified timber in the easement premises by the appropriate stumpage value of those species shown on the appropriate table used for timber harvest excise tax purposes per RCW 84.33.091 or the appropriate stumpage values of those species calculated by the office using the landowner's comprehensive mill or buyer information.

**(2) Determining the forestry riparian easement compensation.**

~~((The small forest landowner office uses a "high impact regulatory threshold" to calculate the compensation offered for a forestry riparian easement. This threshold is determined by multiplying the value of all timber covered under a forest practices application by 19.1 percent for timber in western Washington and 12.2 percent for timber in eastern Washington.~~

~~(a) When the percentage of the qualifying timber value to the total value of all timber covered under a forest practices application is equal to or less than the applicable high impact regulatory threshold (19.1 percent or 12.2 percent), the compensation offered for an easement will be fifty percent of the qualifying timber value.~~

~~(b) When the percentage of the qualifying timber value to the total value of all timber covered under a forest practices application exceeds the applicable high impact regulatory threshold (19.1 percent or 12.2 percent), the compensation offered for an easement will be more than fifty percent of the qualifying timber value up to the applicable high impact regulatory threshold, plus full compensation (one hundred percent) for the qualifying timber value that exceeds the high impact regulatory threshold. This is mathematically represented as follows:~~

Where:

$V_q$  = the value of qualifying timber;

$V_h$  = the value of harvested timber; and

$t$  = the high impact of regulatory threshold (19.1 percent for western Washington, 12.2 percent for eastern Washington);

The compensation for easement =  $((V_q/(V_q + V_h)) - t) * (V_q + V_h) + (t * (V_q + V_h)/2)$ .

The easement compensation will equal 90 percent of the qualifying timber value determined in subsection (1) (a) or (b) of this section.

AMENDATORY SECTION (Amending WSR 12-11-106, filed 5/22/12, effective 6/22/12)

**WAC 222-21-050 Payment of compensation and reimbursement to the small forest landowner.** (1) All compensation and reimbursement to the small forest landowner is subject to available funding and to the extent reasonable possible the small forest landowner office will process forestry riparian easement applications in the order received.

(2) If funding is not available, the small forest landowner office will maintain a priority list for compensation and reimbursement to the landowner. Priority will be based on the date the small forest landowner office received the complete forestry riparian easement application. In instances where two easement applications are received on the same date, priority will be based on the date the department received a complete forest practices application associated with the easement.

(3) The small forest landowner office will offer compensation for the easement in a purchase and sale agreement. The small forest landowner will accept or reject the conditions of the purchase and sale agreement in writing and submit the written acceptance or rejection to the small forest landowner office.

(4) Compensation for the forestry riparian easement and reimbursement of landowner costs will be paid after:

(a) The department has verified that the landowner has no outstanding violations under chapters 76.09 or 76.13 RCW or any associated forest practices rules;

(b) Any dispute over the amount of compensation or eligibility or other matter involving the easement has been resolved; and

(c) The small forest landowner office has sent a forestry riparian easement contract to the landowner, the landowner has signed the contract, and the landowner has delivered it to the department.

(5) Compensation for any qualifying timber located on potentially unstable slopes or landforms will not exceed a total of (~~fifty thousand dollars~~) \$150,000 during any biennial funding period.

AMENDATORY SECTION (Amending WSR 12-11-106, filed 5/22/12, effective 6/22/12)

**WAC 222-21-080 Eminent domain.** If a forestry riparian easement is taken, in whole or in part, by exercise of the power of eminent domain, or acquired by purchase in lieu of condemnation, the state will

receive compensation for its remaining interest in the easement based upon the following formula:

Where:

C = the compensation to the department for the state's remaining interest in the easement;

O = the original compensation for the easement paid to the small forest landowner by the state;

P = the proportion of the forestry riparian easement extinguished or terminated;

CPI<sub>o</sub> = the Consumer Price Index for all Urban Consumers as published by the Bureau of Labor Statistics for the month in which the original compensation was determined;

CPI<sub>c</sub> = the Consumer Price Index for all Urban Consumers as published by the Bureau of Labor Statistics for the most recent month available at the time the easement is terminated or extinguished;

I = the rate of return on 30 year treasury bonds, as reported by the Federal Reserve Statistical Release H15 less the rate of increase in the Consumer Price Index for all Urban Consumers as published by the U.S. Department of Labor Bureau of Labor Statistics for the previous 12 months;

R = the number of years remaining on the easement at the time of extinguishment or termination;

$C = \underline{O} * P * (CPI_c / CPI_o) * (1 - (1 + I)^R) / (1 - (1 + I)^{50})$ .

**WSR 24-11-143**  
**EXPEDITED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
[Filed May 21, 2024, 4:37 p.m.]

Title of Rule and Other Identifying Information: Wildfire smoke; chapter 296-820 WAC and chapter 296-307 WAC, Part G-1.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of labor and industries (L&I) is conducting expedited rule making to update the air quality index (AQI) values referenced in the wildfire smoke rules to reflect changes the Environmental Protection Agency (EPA) [made] to the AQI that became effective on May 6, 2024. This ensures that the regulated community will be able to comply with the rule requirements when using data sources that do not display the hourly PM<sub>2.5</sub> concentrations.

In 2023, L&I completed rule making on the hazards of wildfire smoke exposure to outdoor workers. The primary pollutant in wildfire smoke is harmful fine particles, referred to as PM<sub>2.5</sub>. The wildfire smoke rules require employers to implement protective measures based on the current concentration of PM<sub>2.5</sub> measured in micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ). The AQI is a unitless index created by the EPA to communicate air quality conditions to the public. While the rules are based on hourly average PM<sub>2.5</sub> concentrations, they reference the corresponding AQI for workers and employers who choose to use the AQI to determine the amount of smoke in the air.

**PROPOSED CHANGES:**

- Update references to the AQI values throughout chapter 296-820 WAC and WAC 296-307-09805 through 296-307-09860 to align with recent EPA updates. This includes adding AQI values to a level previously considered "Beyond the AQI" as the EPA.
- Add language identifying a new PM<sub>2.5</sub> web application developed by L&I as an approved source for identifying current PM<sub>2.5</sub> concentration.
- Makes housekeeping changes and minor updates to the appendices found in both chapters to reflect EPA revisions including updating the equation for calculating the AQI (nonmandatory).

L&I determined that expedited rule making is appropriate because there are no changes to the substantive rule requirements, including the levels of smoke and particulate matter in the air that require action under the rules. The rule making updates the references to the corresponding AQI based on the EPA's recent revisions to the AQI which were published in the Federal Register on March 6, 2024, and went into effect on May 6, 2024, adds an option for checking PM<sub>2.5</sub>, and makes other housekeeping changes to align with the EPA changes.

Reasons Supporting Proposal: During the course of the multi-year rule-making project, L&I became aware that the EPA was working to update the AQI breakpoints, which would change the AQI values referenced in the wildfire smoke rules. Throughout stakeholdering, L&I communicated that if the EPA made updates to the AQI, L&I would update the wildfire smoke rules to ensure the regulated community has accurate information.

This proposed rule making updates L&I's current wildfire smoke rule to correctly reflect the recent revisions to the AQI.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Statute Being Implemented: Chapter 49.17 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Tracy West, Tumwater, Washington, 509-237-2372; Implementation and Enforcement: Craig Blackwood, Tumwater, Washington, 360-902-5828.

This notice meets the following criteria to use the expedited adoption process for these rules:

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopted or incorporating rule.

Corrects typographical errors, makes address or name changes, or clarifies language of a rule without changing its effect.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: This rule making is limited to implementing changes made in federal law.

#### NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Cynthia Ireland, Administrative Regulations Analyst, L&I, Division of Occupational Safety and Health, P.O. Box 44620, Olympia, WA 98504-4620, phone 360-791-5048, fax 360-902-5619, email Cynthia.Ireland@lni.wa.gov, AND RECEIVED BY July 22, 2024, by 5:00 p.m.

May 21, 2024  
Joel Sacks  
Director

OTS-5290.3

### Part G-1 Outdoor Heat Exposure and Wildfire Smoke

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-307-09805 Purpose and scope.** WAC 296-307-09805 through 296-307-09860 applies to all workplaces, including those with agricultural activity according to RCW 49.17.020, with the exception of the following:

(1) Enclosed buildings or structures in which the employer ensures that windows, doors, bays, and other exterior openings are kept closed, except when it is necessary to briefly open doors to enter and exit.

(2) Enclosed vehicles in which the air is filtered by a properly maintained cabin air filter and the employer ensures that windows, doors, and other openings are kept closed except when it is necessary to briefly open doors to enter or exit. Buses, light rail, and other enclosed vehicles used for transit systems where doors are frequently opened to board and deboard passengers are not included under this exemption.

(3) Work within the scope of chapter 296-305 WAC, (~~Safety standards for firefighters~~) Safety standards for firefighters.

(4) Workers performing prescribed burns.

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-307-09810 Definitions.** (1) **Air Quality Index (AQI).** A unitless index used by the U.S. Environmental Protection Agency (EPA) to communicate air quality for several pollutants, including PM<sub>2.5</sub>. References to the AQI used throughout WAC 296-307-09805 through 296-307-09860 means the "NowCast AQI for PM<sub>2.5</sub>."

((Note: The EPA has proposed revisions to the AQI.<sup>1</sup> DOSH will revisit chapter 296-820 WAC, and WAC 296-307-098 Wildfire smoke, if the proposed changes are adopted.))

(2) **Current PM<sub>2.5</sub>.** The concentration of PM<sub>2.5</sub> for the most current hour available, calculated using an hourly average of PM<sub>2.5</sub> data.

Note: The NowCast AQI as provided by the Washington state department of ecology, local clean air agency, or U.S. EPA is also acceptable to approximate current PM<sub>2.5</sub>.

(3) **Emergency response.** Rescue, evacuation, utilities, communications, transportation, and medical operations; when such operations are directly aiding firefighting; protecting public health and safety; or actively protecting, restoring, or maintaining the safe and reliable operation of critical infrastructure at risk.

(4) **High-efficiency particulate air (HEPA) filter.** A filter capable of trapping and retaining at least 99.97 percent of all monodispersed particles of 0.3 micrometers mean aerodynamic diameter or larger.

(5) **NIOSH.** The National Institute for Occupational Safety and Health of the U.S. Centers for Disease Control and Prevention. NIOSH tests and approves respirators for use in the workplace.

(6) **NowCast.** The method used by the EPA and the Washington state department of ecology to approximate the air quality for the most current hour available by using a calculation that involves multiple hours of past data. The NowCast uses longer averages during periods of stable air quality and shorter averages when air quality is changing

rapidly, such as during a wildfire. The NowCast is generally updated every hour.

(7) **PM<sub>2.5</sub>**. Solid particles and liquid droplets suspended in air, known as particulate matter, with an aerodynamic diameter of 2.5 micrometers or smaller. Measured in micrograms per cubic meter (µg/m<sup>3</sup>).

(8) **Wildfire smoke**. PM<sub>2.5</sub> which includes emissions from planned and unplanned fires in wildlands, wildland urban interface, agricultural operations, or adjacent developed areas. Wildfire smoke contains a complex mixture of gases and particulates. Fine particulates such as PM<sub>2.5</sub> are the primary pollutant of public and occupational health concern in wildfire smoke.

(9) **Wildlands**. Sparsely populated geographical areas covered primarily by grass, brush, trees, crops, or combination thereof.

((1 Federal Register Vol. 88, No. 18, Page 5558, January 2023: <https://www.govinfo.gov/content/pkg/FR-2023-01-27/pdf/2023-00269.pdf>))

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-307-09815 Identification of harmful exposures.** The employer must determine the current PM<sub>2.5</sub> for worksites covered by WAC 296-307-09805 through 296-307-09860 periodically as needed. The employer may use any of the following methods to determine employee exposures such that they are able to comply with the requirements in WAC 296-307-09805 through 296-307-09860:

- (1) Check PM<sub>2.5</sub> forecasts and the current PM<sub>2.5</sub> from any of the following:
  - (a) Washington department of ecology website;
  - (b) Air Quality WA mobile app;
  - (c) Washington department of labor and industries PM<sub>2.5</sub> Air Quality Monitoring Map;
  - (d) Washington smoke information website;
  - ((d)) (e) U.S. EPA Fire and Smoke Map;
  - ((e)) (f) U.S. EPA AirNow website;
  - ((f)) (g) U.S. EPA AirNow mobile app;
  - ((g)) (h) U.S. Forest Service AirFire website; or
  - ((h)) (i) Local clean air agency website.

(2) Obtain PM<sub>2.5</sub> forecasts and the current PM<sub>2.5</sub> directly from the Washington state department of ecology, U.S. EPA, U.S. EPA EnviroFlash.info, or local clean air agency by telephone, email, text, or other effective method; or

(3) Measure current PM<sub>2.5</sub> levels at the work location in accordance with WAC 296-307-09845.

The following table indicates the NowCast AQI values that may be used from the Washington state department of ecology, local clean air agency, or EPA to comply with this section:

CURRENT PM <sub>2.5</sub>	NOWCAST AIR QUALITY INDEX FOR PM <sub>2.5</sub> (AQI)
20.5 µg/m <sup>3</sup>	<del>((69))</del> 72
35.5 µg/m <sup>3</sup>	101
250.5 µg/m <sup>3</sup>	<del>((301))</del> 351
500.4 µg/m <sup>3</sup>	<del>((500))</del> 849

CURRENT PM <sub>2.5</sub>	NOWCAST AIR QUALITY INDEX FOR PM <sub>2.5</sub> (AQI)
555 µg/m <sup>3</sup>	<del>((Beyond the AQI))</del> <u>957</u>

- Notes:
- The current PM<sub>2.5</sub> is updated hourly.
  - Employers are not responsible for tracking employee exposures outside of working hours.

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-307-09820 Hazard communication.** For any worksite covered by WAC 296-307-09805 through 296-307-09860, the employer must establish and implement a system for communicating wildfire smoke hazards in a form readily understandable by all affected employees, including provisions designed to encourage employees to inform the employer of wildfire smoke hazards at the worksite without fear of reprisal.

(1) The hazard communication system must include procedures for:

(a) Informing employees when the current PM<sub>2.5</sub> as identified in WAC 296-307-09815, exceeds the following thresholds, and the protective measures available to employees to reduce their wildfire smoke exposures:

(i) When at least two consecutive current PM<sub>2.5</sub> readings are 20.5 µg/m<sup>3</sup> (AQI ~~((69))~~ 72) or more;

(ii) 35.5 µg/m<sup>3</sup> (AQI 101) or more;

(iii) 250.5 µg/m<sup>3</sup> (AQI ~~((301))~~ 351) or more;

(iv) 500.4 µg/m<sup>3</sup> (AQI ~~((500))~~ 849) or more; and

(v) 555 µg/m<sup>3</sup> (~~((beyond the))~~ AQI 957) or more.

(b) Enabling and encouraging employees to inform the employer of:

(i) Worsening air quality;

(ii) Availability issues of appropriate exposure control measures and respiratory protection required by WAC 296-307-09805 through 296-307-09860; and

(iii) Any symptoms that may potentially be related to wildfire smoke exposure including, but not limited to:

(A) Respiratory:

- Cough;
- Difficulty breathing;
- Wheezing;
- Shortness of breath, particularly when accompanied by greater use of accessory muscles;

- Asthma attack;

- Runny nose;

- Sore throat;

- Sinus pain or pressure; or

- Phlegm.

(B) Cardiovascular:

- Chest pain or discomfort;

- Fast or irregular heartbeat;

- Feeling weak, light-headed, faint, or dizzy; or

- Pain or discomfort in the jaw, neck, or back.

(C) Symptoms concerning for a stroke:

- Sudden numbness or weakness in the face, arm, or leg, especially on one side of the body;

- Sudden confusion, trouble speaking, or difficulty understanding speech;
  - Sudden trouble seeing in one or both eyes;
  - Sudden trouble walking, dizziness, loss of balance, or lack of coordination; or
  - Sudden severe headache with no known cause.
- (D) Headache; scratchy or irritated eyes; fatigue or tiredness.
- (2) A wildfire smoke response plan must be included in the written accident prevention program before work that exposes the worker to a current PM<sub>2.5</sub> concentration of 20.5 µg/m<sup>3</sup> (AQI ((~~69~~) 72) or more. The wildfire smoke response plan must be tailored to the workplace and include at least the following elements:
- (a) The health effects and symptoms of wildfire smoke exposure;
  - (b) The importance of informing the employer when the employee is experiencing symptoms of wildfire smoke exposure;
  - (c) The right to obtain medical attention without fear of reprisal;
  - (d) The requirements of WAC 296-307-09805 through 296-307-09860;
  - (e) The employer's methods of determining the current PM<sub>2.5</sub> under WAC 296-307-09815;
  - (f) How employees can obtain the current PM<sub>2.5</sub>, and the employer's methods to communicate the current PM<sub>2.5</sub>;
  - (g) The employer's response plan for wildfire smoke, including methods to protect employees from wildfire smoke, and the exposure symptom response procedures;
  - (h) The importance, benefits, and limitations of using a properly fitted respirator when exposed to wildfire smoke;
  - (i) The risks and limitations of using an unfitted respirator, and the risks of wearing a respirator without a medical evaluation; and
  - (j) How to properly put on, use, and maintain the respirators provided by the employer.

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-307-09825 Information and training.** The employer must provide all workers with information and training regarding wildfire smoke before work that exposes the worker to a current PM<sub>2.5</sub> concentration of 20.5 µg/m<sup>3</sup> (AQI ((~~69~~) 72) or more. Training must be provided at least annually thereafter.

- (1) Information and training must be provided in a manner and language readily understood by the workers.
- (2) At a minimum, the training must include the following information found in WAC 296-307-09850, Appendix A:
  - (a) The health effects and symptoms of wildfire smoke exposure;
  - (b) The importance of informing the employer when the employee is experiencing symptoms of wildfire smoke exposure;
  - (c) The right to obtain medical attention without fear of reprisal;
  - (d) The requirements of WAC 296-307-09805 through 296-307-09860;
  - (e) The employer's methods of determining the current PM<sub>2.5</sub> under WAC 296-307-09815;

(f) How employees can obtain the current PM<sub>2.5</sub>, and the employer's methods to communicate the current PM<sub>2.5</sub>;

(g) The employer's response plan for wildfire smoke, including methods to protect employees from wildfire smoke, and the exposure symptom response procedures;

(h) The importance, benefits, and limitations of using a properly fitted respirator when exposed to wildfire smoke;

(i) The risks and limitations of using an unfitted respirator, and the risks of wearing a respirator without a medical evaluation; and

(j) How to properly put on, use, and maintain the respirators provided by the employer.

(3) Supervisor training. Prior to supervising employees performing work that exposes the worker to current PM<sub>2.5</sub> levels that are 20.5 µg/m<sup>3</sup> (AQI ((69)) 72) or more, supervisors must have training on the information in subsection (2) of this section, and the following topics:

(a) The procedures the supervisor must follow to implement the applicable provisions of WAC 296-307-09805 through 296-307-09860;

(b) The procedures the supervisor must follow if an employee exhibits symptoms of wildfire smoke exposure; and

(c) Procedures for moving or transporting employees to an emergency medical service provider, or other appropriate level of care, if necessary.

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-307-09830 Exposure symptom response.** (1) Employers must allow employees who display any symptoms that may potentially be related to wildfire smoke exposure to seek medical attention or follow medical advice they have been given, and must not retaliate against affected employees for seeking such medical attention, or following medical advice.

(2) Employers must monitor employees displaying symptoms of wildfire smoke exposure to determine whether medical attention is necessary.

(a) Symptoms requiring immediate medical attention include, but are not limited to:

- Wheezing, difficulty breathing, or shortness of breath, particularly when accompanied by greater use of accessory muscles;
- Asthma attacks;
- Chest pain or symptoms concerning for heart attack;
- Nausea or vomiting;
- Sudden numbness or weakness in the face, arm, or leg, especially on one side of the body;
- Sudden confusion, trouble speaking, or difficulty understanding speech;
- Sudden trouble seeing in one or both eyes;
- Sudden trouble walking, dizziness, loss of balance, or lack of coordination; or
- Sudden severe headache with no known cause.

(b) Except as required under subsection (3) of this section, while medical attention is being arranged or where medical attention

is not necessary, employers must take steps to reduce or eliminate continued exposure to wildfire smoke as appropriate to employee symptoms; intensity of exposure; and exposure controls in place, including respiratory protections in place.

(3) Where the current PM<sub>2.5</sub> is 250.5 µg/m<sup>3</sup> (AQI (~~301~~) 351) or more, employers must ensure workers experiencing symptoms requiring immediate medical attention, including those described under subsection (2)(a) of this section, be moved to a location that ensures sufficient clean air such as:

(a) A location where the current PM<sub>2.5</sub> is less than 20.5 µg/m<sup>3</sup>; or

(b) An enclosed building, structure, or vehicle with HEPA filtration sufficient for the volume of the space.

(4) Employers must have effective provisions made in advance for prompt medical attention of employees who display symptoms of wildfire smoke exposure.

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-307-09835 Exposure controls.** (1) Where the current PM<sub>2.5</sub> is 20.5 µg/m<sup>3</sup> (AQI (~~69~~) 72) or more, the employer is encouraged to implement exposure controls.

(2) Where the current PM<sub>2.5</sub> is 35.5 µg/m<sup>3</sup> (AQI 101) or more, the employer must implement effective exposure controls whenever feasible.

(3) Such controls include, but are not limited to:

(a) Providing enclosed buildings, structures, or vehicles where the air is adequately filtered;

(b) Providing portable HEPA filters in enclosed areas;

(c) Relocating work to a location with a lower ambient air concentration of PM<sub>2.5</sub>;

(d) Changing work schedules to a time with a lower ambient air concentration of PM<sub>2.5</sub>;

(e) Avoiding or reducing work that creates additional exposures to dust, fumes, or smoke;

(f) Reducing work intensity; and

(g) Providing additional rest periods.

(4) WAC 296-307-09835 is not required during emergency response.

Note: Exposure controls may be implemented to the extent that the work is no longer covered by the scope of this rule as listed in WAC 296-307-09805 (1) or (2).

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-307-09840 Respiratory protection.** (1) Where the current PM<sub>2.5</sub> is 20.5 µg/m<sup>3</sup> (~~(AQI 69)~~) to 35.4 µg/m<sup>3</sup> (AQI 72 to 100), the employer is encouraged to provide N95 filtering-facepiece respirators at no cost to employees upon request. Employees may provide and wear their own respiratory protection as long as voluntary use of these respirators does not introduce hazards to the work environment.

(2) Where the current PM<sub>2.5</sub> is 35.5 µg/m<sup>3</sup> (~~((AQI 101))~~) to 250.4 µg/m<sup>3</sup> (AQI ~~((300))~~ 101 to 350), the employer must provide N95 filtering-facepiece respirators at no cost to all exposed employees, and must encourage respirator use. Employers must provide respirators by either of the following methods:

(a) Directly distribute to each exposed employee; or

(b) Maintain a sufficient supply for all exposed employees at each work location where exposure occurs. Such respirator supply availability and locations must be made known, and be readily accessible, to all exposed employees in a manner that does not restrict or hinder employee access to obtain and replace respirators when needed.

(3) Where the current PM<sub>2.5</sub> is 250.5 µg/m<sup>3</sup> (~~((AQI 301))~~) to 500.3 µg/m<sup>3</sup> (AQI ~~((499))~~ 351 to 848), the employer must distribute N95 filtering-facepiece respirators directly to each exposed employee, and must encourage respirator use.

(4) Required use of respiratory protection.

(a) Where the current PM<sub>2.5</sub> is 500.4 µg/m<sup>3</sup> (~~((AQI 500))~~) to 554.9 µg/m<sup>3</sup> (~~((beyond the))~~ AQI 849 to 957), employees must be enrolled in a complete respiratory protection program in accordance with WAC 296-307-594 through 296-307-622, *Respirators*, except as provided in (b) of this subsection. The employer must provide and require to be worn one of the following respirators:

(i) N95 filtering-facepiece respirator;

(ii) Half-facepiece air-purifying respirator equipped with P100 filters; or

(iii) Other respirators equipped with P100 filters, with an assigned protection factor of 10 or greater as listed in WAC 296-307-60205 *Select and provide appropriate respirators*.

(b) This subsection does not apply to employees exposed to PM<sub>2.5</sub> for a total of 15 minutes or less during a 24-hour period.

(5) Where the current PM<sub>2.5</sub> is 555 µg/m<sup>3</sup> (~~((beyond the))~~ AQI 957) or more, employees must be enrolled in a complete respiratory protection program in accordance with WAC 296-307-594 through 296-307-622, *Respirators*. The employer must provide and require to be worn one of the following respirators equipped with P100 filters:

(a) Loose-fitting powered air-purifying respirator;

(b) Full-facepiece air-purifying respirator;

(c) Full-facepiece powered air-purifying respirator; or

(d) Other respirators with an assigned protection factor of 25 or more as listed in WAC 296-307-60205 *Select and provide appropriate respirators*, such that the PM<sub>2.5</sub> levels inside the respirator are less than 55.5 µg/m<sup>3</sup> (AQI 151).

(6) Respirators must be NIOSH-approved devices that effectively protect the wearers from inhalation of wildfire smoke.

(7) The employer must use WAC 296-307-09825 in lieu of the advisory information in Table 2 of WAC 296-307-59805 *Make sure voluntary use of respirators is safe*, for training regarding voluntary use of respirators for wildfire smoke.

(8) Respirators must be cleaned, stored, maintained, and replaced so that they are in good working order, and do not present a health hazard to users. Replace or repair any respirator that is not functioning properly, and do not permit their use. Filtering-facepiece respirators must not be cleaned, repaired, or shared. Dispose of and replace any filtering-facepiece respirator that is dirty, damaged, or

difficult to breathe through. Elastomeric respirators must be properly cleaned and disinfected before being worn by another employee.

- Notes:
- Respirator use is not considered voluntary when an employer requires respirators to be used. A complete respiratory protection program in accordance with WAC 296-307-594 through 296-307-622, *Respirators*, is required if the employer chooses to require respirator use.
  - For voluntary use of filtering-facepiece respirators, such as N95 respirators, some of the requirements of WAC 296-307-594 through 296-307-622, *Respirators*, such as fit-testing and medical evaluations, do not apply.
  - Elastomeric respirators equipped with P100 filters may be used in place of N95 filtering-facepiece respirators. If elastomeric respirators are used voluntarily, additional requirements apply from WAC 296-307-594 through 296-307-622, *Respirators*, such as medical evaluations and establishing a respiratory protection program.
  - For voluntary or required use of loose-fitting powered air-purifying respirators, some of the requirements of WAC 296-307-594 through 296-307-622, *Respirators*, do not apply, such as fit-testing and requiring workers to be clean-shaven.
  - During emergency response, required use of respirators must be implemented to the extent feasible.

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-307-09850 Appendix A: Protection from wildfire smoke information and training (mandatory). (1) The health effects and symptoms of wildfire smoke:**

(a) Although there are many hazardous chemicals in wildfire smoke, the main harmful pollutant for people who are not very close to the fire is "particulate matter," the tiny particles suspended in the air.

Particulate matter is a health risk whether you are exposed over a short period of time or a long period of time. The EPA has determined that particulate matter does cause, or likely causes cardiovascular disease, respiratory disease, cancer, and harm to the nervous system. In addition, particulate matter can irritate the eyes and lungs, causing eye irritation, phlegm, and persistent coughing. It can also cause difficulty breathing, reduced lung function, wheezing, bronchitis, worsening of asthma, heart failure, and early death.

(b) Wildfire smoke can harm your health even if you cannot see or smell the smoke or do not feel any symptoms. Even healthy people can be harmed by wildfire smoke. The wildfire smoke rule is designed to limit the harm from wildfire smoke, and it is important to consider taking action to reduce your exposure to smoke whenever the rule's protections are in effect, whether or not you have symptoms. Watch for symptoms as an additional indication to reduce exposure to smoke, and reduce work intensity.

This appendix reviews many wildfire smoke symptoms, but not every possible symptom may be mentioned, and it is a good idea to talk to your doctor or other health care provider before being exposed to wildfire smoke to have a plan for protecting yourself, including what symptoms to watch out for and how to reduce your exposure. This is especially important if you have any medical conditions; are pregnant; or have questions about the health effects or symptoms of wildfire smoke exposure.

(c) The wildfire smoke rule has additional requirements in WAC 296-307-09830 when workers experience symptoms requiring immediate medical attention. When the current PM<sub>2.5</sub> is 250.5 µg/m<sup>3</sup> or more, your employer must ensure workers experiencing such symptoms be moved to a location that ensures sufficient clean air as described in WAC 296-307-09830(3). Symptoms requiring immediate medical attention include, but are not limited to:

- Symptoms concerning for a heart attack, such as:
  - Chest pain or discomfort;

- Feeling weak, light-headed, faint, or dizzy;
- Pain or discomfort in the jaw, neck, or back;
- Pain or discomfort in one or both arms or shoulders;
- Shortness of breath, especially if accompanied by chest discomfort;
- Symptoms concerning for a stroke, such as:
  - Sudden numbness or weakness in the face, arm, or leg, especially on one side of the body;
  - Sudden confusion, trouble speaking, or difficulty understanding speech;
  - Sudden trouble seeing in one or both eyes;
  - Sudden trouble walking, dizziness, loss of balance, or lack of coordination;
  - Sudden severe headache with no known cause;
- Wheezing, difficulty breathing, or shortness of breath, particularly when accompanied by greater use of accessory muscles;
- Asthma attacks; or
- Nausea or vomiting.

(d) In addition to symptoms that under this rule require immediate medical attention, wildfire smoke can also cause other symptoms, many of which are described below. Even if a symptom is not mentioned here, you have the right under the wildfire smoke rule to seek medical attention or follow medical advice if you develop any symptoms you think may potentially be related to wildfire smoke exposure, regardless of their severity.

Regardless of whether a symptom is serious enough to require immediate medical attention, employers covered by the wildfire smoke rule are required by WAC 296-307-09830(4) to have effective provisions made in advance for prompt medical attention of employees displaying symptoms of wildfire smoke exposure.

If you develop a symptom, you should follow the advice of your doctor or health care provider, and seek medical attention if necessary. Your employer must not retaliate against you for seeking medical attention or following medical advice you have been given.

In addition to the symptoms requiring immediate medical attention according to WAC 296-307-09830, all of the following symptoms are also potentially related to wildfire smoke exposure. They may also require medical attention:

- Respiratory:
  - Cough;
  - Runny or irritated nose;
  - Sore throat;
  - Sinus pain or pressure;
  - Phlegm.
- Fast or irregular heartbeat;
- Headache;
- Scratchy or irritated eyes; or
- Fatigue or tiredness.

(e) Developing wildfire smoke symptoms, even mild ones, indicates you are being overexposed to the smoke and should report your symptoms to your employer. In response, according to WAC 296-307-09830 your employer must permit you to follow medical advice you have been given, seek medical attention if necessary, and must take appropriate steps to reduce your exposure. This may include providing you with access to clean air according to WAC 296-307-09830(3) (your employer must ensure access to clean air when the current PM<sub>2.5</sub> is greater than 250.5 µg/

m<sup>3</sup>); helping you use respiratory protection; or taking other steps to control your exposure.

(f) Sensitive groups:

L&I and the Washington state department of health consider all outdoor workers as a sensitive group at higher risk of experiencing adverse health effects from wildfire smoke exposure<sup>(1)</sup>.<sup>1</sup>

Sensitive groups include people who are at higher risk of experiencing adverse health effects as a result of exposure to wildfire smoke, including those with preexisting health conditions; those with increased duration of exposure; and those whose work results in an increased breathing rate, including outdoor workers<sup>(1)</sup>.<sup>1</sup> Although everyone is impacted by wildfire smoke exposure, sensitive groups are among those most likely to experience health problems from exposure to wildfire smoke.

Examples of sensitive groups include:

- Outdoor workers;
- People with lung diseases such as asthma or chronic obstructive pulmonary disease (COPD), including bronchitis and emphysema, and those who smoke;
- People with respiratory infections, such as pneumonia, acute bronchitis, bronchiolitis, colds, or flu; or those with, or recovering from COVID-19;
- People with existing heart or circulatory problems, such as irregular heartbeat, congestive heart failure, coronary artery disease, angina, and those who have had a heart attack or stroke;
- Children under 18 years old, and adults over age 65;
- People who are pregnant;
- People with diabetes;
- People with other medical or health conditions that can be worsened by exposure to wildfire smoke as determined by a physician;
- Tribal and indigenous people;
- People with low income.

<sup>1</sup> Washington Department of Health. April 2022, accessed ((April 2023)) March 14, 2024. Washington Air Quality Guide for Particle Pollution: [https://doh.wa.gov/sites/default/files/legacy/Documents/4300/waqa%20infographic\\_English.pdf?uid=64384c71c8715](https://doh.wa.gov/sites/default/files/legacy/Documents/4300/waqa%20infographic_English.pdf?uid=64384c71c8715)

**(2) The importance of informing the employer when the employee is experiencing symptoms of wildfire smoke exposure:**

Watch for symptoms of wildfire smoke exposure as a sign to reduce exposure. The particulate matter in wildfire smoke can harm your health, even at lower levels of exposure.

It is important to notify your employer when you are experiencing symptoms of wildfire smoke exposure so your employer can respond appropriately.

Your employer will have provisions made in advance for prompt medical attention for employees who are experiencing symptoms of wildfire smoke exposure.

Do not ignore your symptoms. Wildfire smoke can be hazardous even when you cannot see it or smell it. Your employer cannot retaliate against you for reporting symptoms, for seeking medical attention, or for following medical advice you have been given. This is true whenever the wildfire smoke rule's protections are in effect.

Wildfire smoke is a serious work-related hazard for outdoor workers, and you have the right to file a workers' compensation claim to have your symptoms evaluated. You may file a workers' compensation claim whether or not you have personal health insurance. Your employer cannot prevent you from or retaliate against you for filing a workers' compensation claim.

In most cases, L&I will pay for your initial medical evaluation, even if your claim is denied. If your claim is allowed, the workers' compensation system will cover medical bills directly related to your condition and partial wage replacement benefits if you cannot work.

When the current PM<sub>2.5</sub> is 250.5 µg/m<sup>3</sup> or more, your employer must ensure workers experiencing symptoms requiring immediate medical attention be moved to a location that ensures sufficient clean air as described in WAC 296-307-09830(3).

**(3) The right to obtain medical attention without fear of reprisal:**

Employers must allow employees who show signs of injury or illness due to wildfire smoke exposure to seek medical attention or follow medical advice they have been given, and must not retaliate against affected employees for seeking such medical attention or following medical advice.

Employers must also have effective provisions made in advance for prompt medical attention of employees in the event of serious injury or illness caused by wildfire smoke exposure.

Additionally, when the current PM<sub>2.5</sub> is 250.5 µg/m<sup>3</sup> or more, employers must ensure workers experiencing symptoms requiring immediate medical attention be moved to a location that ensures sufficient clean air as described in WAC 296-307-09830(3).

For more information on your workplace safety and health rights, discrimination protections, and filing a discrimination complaint, visit [www.Lni.wa.gov/WorkplaceDiscrimination](http://www.Lni.wa.gov/WorkplaceDiscrimination).

**(4) The requirements of WAC 296-307-09805 through 296-307-09860:**

The following table summarizes the key requirements of the rule. This is not an exhaustive list, and additional details are found in WAC 296-307-09805 through 296-307-09860.

CURRENT PM <sub>2.5</sub>	AQI	REQUIREMENTS AT CURRENT PM <sub>2.5</sub> LEVEL
0.0-20.4 µg/m <sup>3</sup>	<del>((0-68))</del> <u>0-71</u>	<ul style="list-style-type: none"> <li>• Prepare a written wildfire smoke response plan.</li> <li>• Provide wildfire smoke training to employees.</li> <li>• Watch the PM<sub>2.5</sub> conditions and forecasts.</li> <li>• Prepare a two-way communication system.</li> <li>• Make provisions for prompt medical attention, and permit such medical attention without retaliation.</li> </ul>
20.5-35.4 µg/m <sup>3</sup>	<del>((69-100))</del> <u>72-100</u>	<p>All of the above and:</p> <ul style="list-style-type: none"> <li>• Notify employees of PM<sub>2.5</sub> conditions.</li> <li>• Ensure only trained employees work outdoors.</li> <li>• Consider implementing exposure controls.</li> <li>• Consider providing voluntary use respirators.</li> </ul>
35.5-250.4 µg/m <sup>3</sup>	<del>((101-300))</del> <u>101-350</u>	<p>All of the above and:</p> <ul style="list-style-type: none"> <li>• Implement exposure controls.</li> <li>• Make N95 respirators available for voluntary use.</li> </ul>
250.5-500.3 µg/m <sup>3</sup>	<del>((301-499))</del> <u>351-848</u>	<p>All of the above and:</p> <ul style="list-style-type: none"> <li>• Ensure workers experiencing symptoms requiring immediate medical attention be moved to a location that ensures sufficient clean air.</li> <li>• Directly distribute N95 respirators to employees for voluntary use.</li> </ul>
500.4-554.9 µg/m <sup>3</sup>	<del>((500-beyond the AQI))</del> <u>849-956</u>	<p>All of the above and:</p>

- Implement a complete required use respiratory protection program, including fit-testing, medical evaluations, requiring employees to be clean-shaven, and requiring the use of particulate respirators.

555 µg/m<sup>3</sup> or more

~~((Beyond the AQI))~~  
957 or more

All of the above and:

- Require respirators with an assigned protection factor (APF) of 25 or more.

**(5) The employer's methods of determining the current PM<sub>2.5</sub> under WAC 296-307-09815:**

The employer's methods of determining the current PM<sub>2.5</sub>: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**(6) How employees can obtain the current PM<sub>2.5</sub>, and the employer's methods to communicate the current PM<sub>2.5</sub>:**

Various government agencies monitor the air quality at locations throughout Washington and provide information to the public on the current air quality. These monitoring sites measure several harmful pollutants, but the pollutant of particular concern for wildfire smoke is the current PM<sub>2.5</sub> which is reported as the hourly average of PM<sub>2.5</sub> in µg/m<sup>3</sup>. Some of these sites also report the NowCast Air Quality Index (AQI). The NowCast AQI uses the air quality data of all the pollutants from these regulatory monitors and the NowCast averaging time to attempt to provide a general index of the overall air quality.

Although these monitoring stations may measure several pollutants, WAC 296-307-09805 through 296-307-09860 only uses the hourly average of PM<sub>2.5</sub>. The NowCast AQI for PM<sub>2.5</sub> may also be used as an alternative.

One way to find the current and forecasted PM<sub>2.5</sub> is to go to [enviwa.ecology.wa.gov](http://enviwa.ecology.wa.gov) and find the nearest monitor on the map, or [fire.airnow.gov](http://fire.airnow.gov) and enter the zip code of the location where you will be working. The current PM<sub>2.5</sub> is also available from the Air Quality WA mobile app, or the AirNow mobile app.

Employees who do not have access to the internet can contact their employer for the current PM<sub>2.5</sub>. The U.S. EPA website [www.enviroflash.info](http://www.enviroflash.info) can transmit daily and forecasted air quality by email for your city or zip code.

While the requirements in this rule are based on the current PM<sub>2.5</sub>, employers may choose to use the NowCast Air Quality Index (AQI) for PM<sub>2.5</sub> to comply with this rule. Because the current PM<sub>2.5</sub> is based on a one-hour average, and the NowCast AQI averages data over a longer time, it is normal for the two values to differ over short periods of time. Your employer will tell you whether they use the current one-hour average PM<sub>2.5</sub>, or the NowCast AQI for PM<sub>2.5</sub>. The following table indicates the NowCast AQI values that may be used from the Washington state department of ecology, local clean air agency, or EPA to approximate the current PM<sub>2.5</sub>.

CURRENT PM <sub>2.5</sub>	NOWCAST AIR QUALITY INDEX FOR PM <sub>2.5</sub> (AQI)
20.5 µg/m <sup>3</sup>	<del>((69))</del> 72
35.5 µg/m <sup>3</sup>	101

CURRENT PM <sub>2.5</sub>	NOWCAST AIR QUALITY INDEX FOR PM <sub>2.5</sub> (AQI)
250.5 µg/m <sup>3</sup>	<del>((301))</del> <u>351</u>
500.4 µg/m <sup>3</sup>	<del>((500))</del> <u>849</u>
555 µg/m <sup>3</sup>	<del>((Beyond the AQI))</del> <u>957</u>

Your employer will establish a two-way communication system to communicate changing wildfire smoke conditions to you, and allowing you to communicate information to your employer such as: Worsening air quality; availability issues of exposure control measures and respirators; and any symptoms of wildfire smoke exposure. Your employer cannot retaliate or discriminate against you for raising safety concerns, or reporting symptoms.

The employer's communication system is: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**(7) The employer's response plan for wildfire smoke including methods to protect employees from wildfire smoke, and the exposure symptom response procedures:**

Your employer will provide training on the specific methods they will implement to protect you as part of their wildfire smoke response plan, and their procedures to respond when employees experience symptoms of wildfire smoke exposure.

The employer's methods to protect employees are: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

The employer's exposure symptom response procedures are: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**(8) The importance, limitations, and benefits of using a properly fitted respirator when exposed to wildfire smoke:**

Respirators can be an effective way to protect employee health by reducing exposure to wildfire smoke, when they are properly selected and worn. Respirator use can be beneficial even when the current PM<sub>2.5</sub> is less than 35.5 µg/m<sup>3</sup>.

Respirator use is not voluntary, and a complete respiratory protection program in accordance with WAC 296-307-594 through 296-307-622, *Respirators*, is required in any of the following situations:

- The employer chooses to require respirator use;
- A respiratory hazard, such as exposure to a substance over the permissible exposure limit (PEL) or hazardous exposure to an airborne biological hazard, is present.
- Work under the scope of this rule where the current PM<sub>2.5</sub> is 500.4 µg/m<sup>3</sup> (AQI ~~((500))~~ 849) or higher.

If respirator use is required, you will be enrolled in a complete respiratory protection program which includes additional training, fit-testing, and medical evaluations.

To evaluate respiratory hazards in your workplace, see WAC 296-307-624 through 296-307-628, *Respiratory hazards*.

Take the following precautions to ensure the best possible protection when using N95 respirators voluntarily for protection from wildfire smoke:

(a) Employers must select respirators certified for protection against the specific air contaminants at the workplace. For PM<sub>2.5</sub>, a National Institute for Occupational Safety and Health (NIOSH) certified respirator with at least an N95 particulate filter is required. A label or statement of certification should appear on the respirator or respirator packaging.

KN95 masks, surgical masks, or other items worn over the nose and mouth such as scarves, t-shirts, and bandannas will not provide protection against wildfire smoke. A NIOSH-approved N95 filtering-facepiece respirator, shown in the image below, is the minimum level of protection for wildfire smoke.

(b) Read and follow the manufacturer's instructions on the respirator's use, maintenance, cleaning and care, along with any warnings regarding the respirator's limitations.

For the best protection, follow the manufacturer's instructions for medical evaluations, fit-testing, and shaving. Fit-testing is done to ensure that you have the correct size respirator, and that it seals properly. Without fit-testing, wildfire smoke can leak around the seal of the respirator and increase your risk of experiencing adverse health effects. Because of this, you should not rely on voluntary use respirators alone to protect you from wildfire smoke. Take action to reduce your exposure to wildfire smoke in the other ways described in the wildfire smoke rule and in subsection (10) of this appendix, ask your employer to voluntarily arrange for respirator fit-testing, or both.

(c) Tight-fitting respirators such as N95s cannot form a seal over facial hair. Small particles such as those in wildfire smoke will leak around the respirator if you are not clean-shaven. Be sure you are clean-shaven to ensure the respirator can seal to your face.

(d) Do not wear respirators in areas where the air contains contaminants for which the respirator is not designed. A respirator designed to filter particles will not protect you against gases or vapors, and it will not supply oxygen. Some filtering-facepiece respirators are equipped with a sorbent layer for absorbing "nuisance" organic vapors. These can be used for voluntary use, but are not NIOSH certified for protection against hazardous concentrations of organic vapor.

(e) Keep track of your respirator, so you do not mistakenly use someone else's respirator.

(f) If you have questions about whether it is safe for you to wear a respirator, you should talk to your doctor or other medical provider, particularly if you have a heart, lung, or other medical conditions.

**(9) The risks and limitations of using an unfitted respirator, and the risks of wearing a respirator without a medical evaluation:**

Respirators such as N95s must form a tight seal to the face to work properly. This is especially important for people at increased risk for severe disease, as exposure to wildfire smoke can worsen symptoms. A fit-test is conducted to verify that a respirator properly seals to your face so smoke does not leak around the seal.

It also ensures that the respirator be comfortable so you can wear it as long as you need. Your employer is not required to provide a fit-test for voluntary use of N95 respirators for wildfire smoke below a current  $PM_{2.5}$  of  $500.4 \mu\text{g}/\text{m}^3$  (AQI ((500)) 849) unless your employer chooses to require respirator use. Even without a fit-test, you can take steps to improve the respirator seal, and to reduce your exposure to wildfire smoke by following the steps in subsection (10) of this appendix.

While wearing a respirator provides protection from wildfire smoke, it increases breathing resistance, causing you to work harder to breathe. If you have heart or lung problems, talk to your doctor or other medical provider before using a respirator. A medical evaluation is conducted as part of evaluating respirator selection and use to ensure that the wearer is healthy enough to perform work while wearing a respirator. Your employer is not required to provide a medical evaluation for voluntary use of N95 respirators for wildfire smoke below a current  $PM_{2.5}$  of  $500.4 \mu\text{g}/\text{m}^3$  (AQI ((500)) 849) unless your employer chooses to require respirator use. If you have questions about whether it is safe for you to wear a respirator, you should talk to your doctor or other medical provider. This is particularly important if you have a heart or lung condition (including asthma), or if you have other medical conditions of concern. Follow your health care provider's advice if you have medical conditions that can be worsened by wildfire smoke exposure.

If, while wearing a respirator, you experience:

- Any symptoms your doctor, other health care provider, or employer has told you may limit or prevent the effective use of respirators; or
- Any respiratory (lung, breathing), cardiac (heart, circulation), or other symptoms (including, but not limited to, those listed under subsection (1) of this appendix) that may limit or prevent the effective use of respirators;

Then go to an area with clean air as described in WAC 296-307-09830(3), take off the respirator, and get help. You should also do this if you are unsure whether a symptom you are experiencing may limit or prevent the effective use of respirators.

**(10) How to properly put on, use, and maintain the respirators provided by the employer:**

A tight-fitting respirator such as an N95 will not be able to seal to your face if facial hair interferes with the seal. Make sure you are clean-shaven to allow a better seal and more reliable protection. Loose-fitting powered air-purifying respirators do not rely on a tight seal to provide protection, so they may be worn by people with facial hair.

Always inspect your respirator for damage or defects before use, and follow the manufacturer's instructions. Replace respirators that are damaged, dirty, or wet.

The proper way to put on a respirator depends on the type and model of the respirator. For those who use a filtering-facepiece respirator such as an N95 follow these steps to put on the respirator:

- (a) With clean, dry hands, inspect the respirator and straps for any damage or defect.
- (b) Hold the respirator with the straps facing you, and the metal or foam nosebridge facing up.

(c) Place the mask with the top over your nose and the bottom under your chin. Hold the mask in place with one hand.

(d) While holding the mask to your face with one hand, grab the top strap with the other hand.

(e) Pull the top strap over your head and place it so the strap goes above your ears.

(f) While continuing to hold the mask to your face, pull the bottom strap over your head and place it so the strap goes below your ears.

(g) Bend the nosepiece of the respirator over the top of the nose, so it fits securely.

(h) Perform a seal check:

(i) The mask should sit snug on your face, with the top strap above your ears, the bottom strap below.

(ii) Cover the respirator with both hands and exhale. If you feel air leaking where the respirator seals against your face, adjust the respirator and nosepiece and try again. The respirator should bulge from the face and not leak around the seal.

(iii) Next, cover the respirator with both hands and inhale. If you feel air leaking where the respirator seals against the face, adjust the respirator and nosepiece and try again. The respirator should collapse slightly and not leak around the seal.

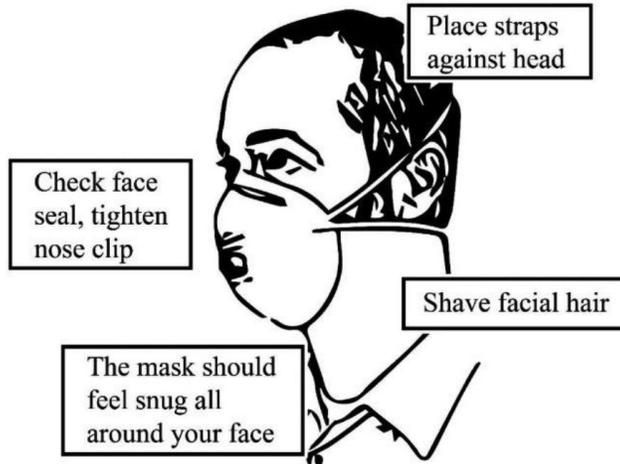
Filtering-facepiece respirators are disposable respirators that cannot be cleaned or disinfected. Best practice is to replace filtering-facepiece respirators at the beginning of each shift.

Respirator filters need to be replaced if they get damaged, deformed, dirty, or difficult to breathe through. If, while wearing a respirator, you experience:

- Any symptoms your doctor, other health care provider, or employer has told you may limit or prevent the effective use of respirators; or

- Any respiratory (lung, breathing), cardiac (heart, circulation), or other symptoms (including, but not limited to, those listed under subsection (1) of this appendix) that may limit or prevent the effective use of respirators;

Then go to an area with clean air as described in WAC 296-307-09830(3), take off the respirator, and get help. You should also do this if you are unsure whether a symptom you are experiencing may limit or prevent the effective use of respirators.



AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-307-09860 Appendix B: Calculating the Air Quality Index for PM<sub>2.5</sub> (nonmandatory)**. The Air Quality Index (AQI) for PM<sub>2.5</sub> is calculated as follows:

$$((I_{PM2.5})) I_p = \frac{I_{Hi} - I_{Lo}}{BP_{Hi} - BP_{Lo}} (C_p - BP_{Lo}) + I_{Lo}$$

Where:

$((I_{PM2.5})) I_p$  is the Air Quality Index value for PM<sub>2.5</sub>

$C_p$  is the concentration of PM<sub>2.5</sub> in µg/m<sup>3</sup> truncated to 1 decimal place

$BP_{Hi}$  is the concentration breakpoint that is greater than or equal to  $C_p$

$BP_{Lo}$  is the concentration breakpoint that is less than or equal to  $C_p$

$I_{Hi}$  is the AQI value corresponding to  $BP_{Hi}$

$I_{Lo}$  is the AQI value corresponding to  $BP_{Lo}$

PM <sub>2.5</sub> ((THRESHOLDS)) BREAKPOINT <sup>1</sup>	AQI <sup>1</sup>	AQI CATEGORY <sup>1</sup>	WA DOH HEALTH MESSAGING <sup>2</sup>
((0.0-12.0)) 0.0-9.0	0-50	Good	It is a great day to be active outside and a good time to make a plan if worse air quality is in the forecast.
((12.1-35.4)) 9.1-35.4	51-100	Moderate	Some people are especially sensitive to lower levels of particle pollution and should reduce exposure. For example, limit time outside and avoid strenuous outdoor activity. All sensitive groups should watch for symptoms.

PM <sub>2.5</sub> ((THRESHOLDS)) BREAKPOINT <sup>1</sup>	AQI <sup>1</sup>	AQI CATEGORY <sup>1</sup>	WA DOH HEALTH MESSAGING <sup>2</sup>
35.5-55.4	101-150	Unhealthy for sensitive groups	Sensitive groups should take steps to reduce exposure. Limit time outside, avoid strenuous outdoor activity, and follow tips for cleaner indoor air. Everyone should watch for symptoms as a sign to reduce exposure.
<del>((55.5-150.4))</del> <u>55.5-125.4</u>	151-200	Unhealthy	Everyone should reduce exposure. Limit time outside, avoid strenuous outdoor activity, and follow tips for cleaner indoor air.
<del>((150.5-250.4))</del> <u>125.5-225.4</u>	201-300	Very unhealthy	Everyone should reduce exposure. Stay inside and filter indoor air to keep it cleaner. Go elsewhere for cleaner air, if needed.
<del>((250.5-350.4))</del> <u>225.5</u> <u>or more</u>	<del>((301-400))</del> <u>301 or more</u>	Hazardous	Everyone should reduce exposure. Stay inside and filter indoor air to keep it cleaner. Go elsewhere for cleaner air, if needed.
<del>((350.5-500.4</del>	401-500	Hazardous	<del>Everyone should reduce exposure. Stay inside and filter indoor air to keep it cleaner. Go elsewhere for cleaner air, if needed.</del>
<del>&gt;500.4</del>	<del>Beyond the AQI</del>	<del>Hazardous (beyond the AQI))</del>	

<sup>1</sup> ((U.S. EPA. September 2018. Technical Assistance Document for the Reporting of Daily Air Quality—The Air Quality Index (AQI). EPA 454/B-18-007. Research Triangle Park, North Carolina.)) Federal Register Vol. 89, No. 45, Page 16405, March 6, 2024: <http://www.govinfo.gov/content/pkg/FR-2024-03-06/pdf/2024-02637.pdf>.

<sup>2</sup> Washington Department of Health. April 2022, accessed ((April 2023)) March 14, 2024. Washington Air Quality Guide for Particle Pollution: <https://doh.wa.gov/sites/default/files/legacy/Documents/4300/waqa%20infographic%5fEnglish.pdf?uid=64384c71c8715>.

### OTS-5289.3

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-820-805 Purpose and scope.** WAC 296-820-805 through 296-820-860 applies to all workplaces, including those with agricultural activity according to RCW 49.17.020, with the exception of the following:

(1) Enclosed buildings or structures in which the employer ensures that windows, doors, bays, and other exterior openings are kept closed, except when it is necessary to briefly open doors to enter and exit.

(2) Enclosed vehicles in which the air is filtered by a properly maintained cabin air filter and the employer ensures that windows, doors, and other openings are kept closed except when it is necessary to briefly open doors to enter or exit. Buses, light rail, and other enclosed vehicles used for transit systems where doors are frequently opened to board and deboard passengers are not included under this exemption.

(3) Work within the scope of chapter 296-305 WAC, (~~Safety standards for firefighters~~) Safety standards for firefighters.

(4) Workers performing prescribed burns.

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-820-810 Definitions.** (1) **Air Quality Index (AQI).** A unitless index used by the U.S. Environmental Protection Agency (EPA) to communicate air quality for several pollutants, including PM<sub>2.5</sub>. References to the AQI used throughout this chapter means the "NowCast AQI for PM<sub>2.5</sub>."

((Note: The EPA has proposed revisions to the AQI.<sup>1</sup> DOSH will revisit chapter 296-820 WAC and WAC 296-307-098 Wildfire smoke, if the proposed changes are adopted.))

(2) **Current PM<sub>2.5</sub>.** The concentration of PM<sub>2.5</sub> for the most current hour available, calculated using an hourly average of PM<sub>2.5</sub> data.

Note: The NowCast AQI as provided by the Washington state department of ecology, local clean air agency, or U.S. EPA is also acceptable to approximate current PM<sub>2.5</sub>.

(3) **Emergency response.** Rescue, evacuation, utilities, communications, transportation, and medical operations; when such operations are directly aiding firefighting; protecting public health and safety; or actively protecting, restoring, or maintaining the safe and reliable operation of critical infrastructure at risk.

(4) **High-efficiency particulate air (HEPA) filter.** A filter capable of trapping and retaining at least 99.97 percent of all monodispersed particles of 0.3 micrometers mean aerodynamic diameter or larger.

(5) **NIOSH.** The National Institute for Occupational Safety and Health of the U.S. Centers for Disease Control and Prevention. NIOSH tests and approves respirators for use in the workplace.

(6) **NowCast.** The method used by the EPA and the Washington state department of ecology to approximate the air quality for the most current hour available by using a calculation that involves multiple hours of past data. The NowCast uses longer averages during periods of stable air quality and shorter averages when air quality is changing rapidly, such as during a wildfire. The NowCast is generally updated every hour.

(7) **PM<sub>2.5</sub>.** Solid particles and liquid droplets suspended in air, known as particulate matter, with an aerodynamic diameter of 2.5 micrometers or smaller. Measured in micrograms per cubic meter (µg/m<sup>3</sup>).

(8) **Wildfire smoke.** PM<sub>2.5</sub> which includes emissions from planned and unplanned fires in wildlands, wildland urban interface, agricultural operations, or adjacent developed areas. Wildfire smoke contains a complex mixture of gases and particulates. Fine particulates such as PM<sub>2.5</sub> are the primary pollutant of public and occupational health concern in wildfire smoke.

(9) **Wildlands.** Sparsely populated geographical areas covered primarily by grass, brush, trees, crops, or combination thereof.

((<sup>1</sup> Federal Register Vol. 88, No. 18, Page 5558, January 2023: <https://www.govinfo.gov/content/pkg/FR-2023-01-27/pdf/2023-00269.pdf>))

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-820-815 Identification of harmful exposures.** The employer must determine the current PM<sub>2.5</sub> for worksites covered by WAC 296-820-805 through 296-820-860 periodically as needed. The employer may use any of the following methods to determine employee exposures

such that they are able to comply with the requirements in WAC 296-820-805 through 296-820-860:

- (1) Check PM<sub>2.5</sub> forecasts and the current PM<sub>2.5</sub> from any of the following:
  - (a) Washington department of ecology website;
  - (b) Air Quality WA mobile app;
  - (c) Washington department of labor and industries PM<sub>2.5</sub> Air Quality Monitoring Map;
  - (d) Washington smoke information website;
  - ~~((d))~~ (e) U.S. EPA Fire and Smoke Map;
  - ~~((e))~~ (f) U.S. EPA AirNow website;
  - ~~((f))~~ (g) U.S. EPA AirNow mobile app;
  - ~~((g))~~ (h) U.S. Forest Service AirFire website; or
  - ~~((h))~~ (i) Local clean air agency website.

(2) Obtain PM<sub>2.5</sub> forecasts and the current PM<sub>2.5</sub> directly from the Washington state department of ecology, U.S. EPA, U.S. EPA EnviroFlash.info, or local clean air agency by telephone, email, text, or other effective method; or

(3) Measure current PM<sub>2.5</sub> levels at the work location in accordance with WAC 296-820-845.

The following table indicates the NowCast AQI values that may be used from the Washington state department of ecology, local clean air agency, or EPA to comply with this section:

CURRENT PM <sub>2.5</sub>	NOWCAST AIR QUALITY INDEX FOR PM <sub>2.5</sub> (AQI)
20.5 µg/m <sup>3</sup>	<del>((69))</del> <u>72</u>
35.5 µg/m <sup>3</sup>	101
250.5 µg/m <sup>3</sup>	<del>((301))</del> <u>351</u>
500.4 µg/m <sup>3</sup>	<del>((500))</del> <u>849</u>
555 µg/m <sup>3</sup>	<del>((Beyond the AQI))</del> <u>957</u>

- Notes:
- The current PM<sub>2.5</sub> is updated hourly.
  - Employers are not responsible for tracking employee exposures outside of working hours.

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-820-820 Hazard communication.** For any worksite covered by WAC 296-820-805 through 296-820-860, the employer must establish and implement a system for communicating wildfire smoke hazards in a form readily understandable by all affected employees, including provisions designed to encourage employees to inform the employer of wildfire smoke hazards at the worksite without fear of reprisal.

- (1) The hazard communication system must include procedures for:
  - (a) Informing employees when the current PM<sub>2.5</sub> as identified in WAC 296-820-815, exceeds the following thresholds, and the protective measures available to employees to reduce their wildfire smoke exposures:
    - (i) When at least two consecutive current PM<sub>2.5</sub> readings are 20.5 µg/m<sup>3</sup> (AQI ~~((69))~~ 72) or more;
    - (ii) 35.5 µg/m<sup>3</sup> (AQI 101) or more;
    - (iii) 250.5 µg/m<sup>3</sup> (AQI ~~((301))~~ 351) or more;

(iv) 500.4  $\mu\text{g}/\text{m}^3$  (AQI (~~500~~) 849) or more; and

(v) 555  $\mu\text{g}/\text{m}^3$  (~~((beyond the))~~ AQI 957) or more.

(b) Enabling and encouraging employees to inform the employer of:

(i) Worsening air quality;

(ii) Availability issues of appropriate exposure control measures and respiratory protection required by WAC 296-820-805 through 296-820-860; and

(iii) Any symptoms that may potentially be related to wildfire smoke exposure including, but not limited to:

(A) Respiratory:

- Cough;
- Difficulty breathing;
- Wheezing;
- Shortness of breath, particularly when accompanied by greater use of accessory muscles;
- Asthma attack;
- Runny nose;
- Sore throat;
- Sinus pain or pressure; or
- Phlegm.

(B) Cardiovascular:

- Chest pain or discomfort;
- Fast or irregular heartbeat;
- Feeling weak, light-headed, faint, or dizzy; or
- Pain or discomfort in the jaw, neck, or back.

(C) Symptoms concerning for a stroke:

- Sudden numbness or weakness in the face, arm, or leg, especially on one side of the body;
- Sudden confusion, trouble speaking, or difficulty understanding speech;
- Sudden trouble seeing in one or both eyes;
- Sudden trouble walking, dizziness, loss of balance, or lack of coordination; or
- Sudden severe headache with no known cause.

(D) Headache; scratchy or irritated eyes; fatigue or tiredness.

(2) A wildfire smoke response plan must be included in the written accident prevention program before work that exposes the worker to a current  $\text{PM}_{2.5}$  concentration of 20.5  $\mu\text{g}/\text{m}^3$  (AQI (~~(69)~~) 72) or more. The wildfire smoke response plan must be tailored to the workplace and include at least the following elements:

(a) The health effects and symptoms of wildfire smoke exposure;

(b) The importance of informing the employer when the employee is experiencing symptoms of wildfire smoke exposure;

(c) The right to obtain medical attention without fear of reprisal;

(d) The requirements of WAC 296-820-805 through 296-820-860;

(e) The employer's methods of determining the current  $\text{PM}_{2.5}$  under WAC 296-820-815;

(f) How employees can obtain the current  $\text{PM}_{2.5}$ , and the employer's methods to communicate the current  $\text{PM}_{2.5}$ ;

(g) The employer's response plan for wildfire smoke, including methods to protect employees from wildfire smoke, and the exposure symptom response procedures;

(h) The importance, benefits, and limitations of using a properly fitted respirator when exposed to wildfire smoke;

- (i) The risks and limitations of using an unfitted respirator, and the risks of wearing a respirator without a medical evaluation; and
- (j) How to properly put on, use, and maintain the respirators provided by the employer.

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-820-825 Information and training.** The employer must provide all workers with information and training regarding wildfire smoke before work that exposes the worker to a current PM<sub>2.5</sub> concentration of 20.5 µg/m<sup>3</sup> (AQI ((69)) 72) or more. Training must be provided at least annually thereafter.

(1) Information and training must be provided in a manner and language readily understood by the workers.

(2) At a minimum, the training must include the following information found in WAC 296-820-850, Appendix A:

- (a) The health effects and symptoms of wildfire smoke exposure;
- (b) The importance of informing the employer when the employee is experiencing symptoms of wildfire smoke exposure;
- (c) The right to obtain medical attention without fear of reprisal;
- (d) The requirements of WAC 296-820-805 through 296-820-860;
- (e) The employer's methods of determining the current PM<sub>2.5</sub> under WAC 296-820-815;
- (f) How employees can obtain the current PM<sub>2.5</sub>, and the employer's methods to communicate the current PM<sub>2.5</sub>;
- (g) The employer's response plan for wildfire smoke, including methods to protect employees from wildfire smoke, and the exposure symptom response procedures;
- (h) The importance, benefits, and limitations of using a properly fitted respirator when exposed to wildfire smoke;
- (i) The risks and limitations of using an unfitted respirator, and the risks of wearing a respirator without a medical evaluation; and
- (j) How to properly put on, use, and maintain the respirators provided by the employer.

(3) Supervisor training. Prior to supervising employees performing work that exposes the worker to current PM<sub>2.5</sub> levels that are 20.5 µg/m<sup>3</sup> (AQI ((69)) 72) or more, supervisors must have training on the information in subsection (2) of this section, and the following topics:

- (a) The procedures the supervisor must follow to implement the applicable provisions of WAC 296-820-805 through 296-820-860;
- (b) The procedures the supervisor must follow if an employee exhibits symptoms of wildfire smoke exposure; and
- (c) Procedures for moving or transporting employees to an emergency medical service provider, or other appropriate level of care, if necessary.

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-820-830 Exposure symptom response.** (1) Employers must allow employees who display any symptoms that may potentially be related to wildfire smoke exposure to seek medical attention or follow medical advice they have been given, and must not retaliate against affected employees for seeking such medical attention, or following medical advice.

(2) Employers must monitor employees displaying symptoms of wildfire smoke exposure to determine whether medical attention is necessary.

(a) Symptoms requiring immediate medical attention include, but are not limited to:

- Wheezing, difficulty breathing, or shortness of breath, particularly when accompanied by greater use of accessory muscles;
- Asthma attacks;
- Chest pain or symptoms concerning for heart attack;
- Nausea or vomiting;
- Sudden numbness or weakness in the face, arm, or leg, especially on one side of the body;
- Sudden confusion, trouble speaking, or difficulty understanding speech;
- Sudden trouble seeing in one or both eyes;
- Sudden trouble walking, dizziness, loss of balance, or lack of coordination; or
- Sudden severe headache with no known cause.

(b) Except as required under subsection (3) of this section, while medical attention is being arranged or where medical attention is not necessary, employers must take steps to reduce or eliminate continued exposure to wildfire smoke as appropriate to employee symptoms; intensity of exposure; and exposure controls in place, including respiratory protections in place.

(3) Where the current PM<sub>2.5</sub> is 250.5 µg/m<sup>3</sup> (AQI (~~301~~) 351) or more, employers must ensure workers experiencing symptoms requiring immediate medical attention, including those described under subsection (2)(a) of this section, be moved to a location that ensures sufficient clean air such as:

- (a) A location where the current PM<sub>2.5</sub> is less than 20.5 µg/m<sup>3</sup>; or
- (b) An enclosed building, structure, or vehicle with HEPA filtration sufficient for the volume of the space.

(4) Employers must have effective provisions made in advance for prompt medical attention of employees who display symptoms of wildfire smoke exposure.

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-820-835 Exposure controls.** (1) Where the current PM<sub>2.5</sub> is 20.5 µg/m<sup>3</sup> (AQI (~~69~~) 72) or more, the employer is encouraged to implement exposure controls.

(2) Where the current PM<sub>2.5</sub> is 35.5 µg/m<sup>3</sup> (AQI 101) or more, the employer must implement effective exposure controls whenever feasible.

- (3) Such controls include, but are not limited to:
- (a) Providing enclosed buildings, structures, or vehicles where the air is adequately filtered;
  - (b) Providing portable HEPA filters in enclosed areas;
  - (c) Relocating work to a location with a lower ambient air concentration of PM<sub>2.5</sub>;
  - (d) Changing work schedules to a time with a lower ambient air concentration of PM<sub>2.5</sub>;
  - (e) Avoiding or reducing work that creates additional exposures to dust, fumes, or smoke;
  - (f) Reducing work intensity; and
  - (g) Providing additional rest periods.
- (4) WAC 296-820-835 is not required during emergency response.

Note: Exposure controls may be implemented to the extent that the work is no longer covered by the scope of this rule as listed in WAC 296-820-805 (1) or (2).

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-820-840 Respiratory protection.** (1) Where the current PM<sub>2.5</sub> is 20.5 µg/m<sup>3</sup> (~~((AQI 69))~~) to 35.4 µg/m<sup>3</sup> (AQI 72 to 100), the employer is encouraged to provide N95 filtering-facepiece respirators at no cost to employees upon request. Employees may provide and wear their own respiratory protection as long as voluntary use of these respirators does not introduce hazards to the work environment.

(2) Where the current PM<sub>2.5</sub> is 35.5 µg/m<sup>3</sup> (~~((AQI 101))~~) to 250.4 µg/m<sup>3</sup> (AQI ~~((300))~~ 101 to 350), the employer must provide N95 filtering-facepiece respirators at no cost to all exposed employees, and must encourage respirator use. Employers must provide respirators by either of the following methods:

- (a) Directly distribute to each exposed employee; or
- (b) Maintain a sufficient supply for all exposed employees at each work location where exposure occurs. Such respirator supply availability and locations must be made known, and be readily accessible, to all exposed employees in a manner that does not restrict or hinder employee access to obtain and replace respirators when needed.

(3) Where the current PM<sub>2.5</sub> is 250.5 µg/m<sup>3</sup> (~~((AQI 301))~~) to 500.3 µg/m<sup>3</sup> (AQI ~~((499))~~ 351 to 848), the employer must distribute N95 filtering-facepiece respirators directly to each exposed employee, and must encourage respirator use.

(4) Required use of respiratory protection.

(a) Where the current PM<sub>2.5</sub> is 500.4 µg/m<sup>3</sup> (~~((AQI 500))~~) to 554.9 µg/m<sup>3</sup> (~~((beyond the))~~ AQI 849 to 957), employees must be enrolled in a complete respiratory protection program in accordance with chapter 296-842 WAC, *Respirators*, except as provided in (b) of this subsection. The employer must provide and require to be worn one of the following respirators:

- (i) N95 filtering-facepiece respirator;
- (ii) Half-facepiece air-purifying respirator equipped with P100 filters; or
- (iii) Other respirators equipped with P100 filters, with an assigned protection factor of 10 or greater as listed in WAC 296-842-13005 *Select and provide appropriate respirators.*

(b) This subsection does not apply to employees exposed to PM<sub>2.5</sub> for a total of 15 minutes or less during a 24-hour period.

(5) Where the current PM<sub>2.5</sub> is 555 µg/m<sup>3</sup> (~~((beyond the))~~ AQI 957) or more, employees must be enrolled in a complete respiratory protection program in accordance with chapter 296-842 WAC, *Respirators*. The employer must provide and require to be worn one of the following respirators equipped with P100 filters:

(a) Loose-fitting powered air-purifying respirator;  
 (b) Full-facepiece air-purifying respirator;  
 (c) Full-facepiece powered air-purifying respirator; or  
 (d) Other respirators with an assigned protection factor of 25 or more as listed in WAC 296-842-13005 *Select and provide appropriate respirators*, such that the PM<sub>2.5</sub> levels inside the respirator are less than 55.5 µg/m<sup>3</sup> (AQI 151).

(6) Respirators must be NIOSH-approved devices that effectively protect the wearers from inhalation of wildfire smoke.

(7) The employer must use WAC 296-820-825 in lieu of the advisory information in Table 2 of WAC 296-842-11005 *Make sure voluntary use of respirators is safe*, for training regarding voluntary use of respirators for wildfire smoke.

(8) Respirators must be cleaned, stored, maintained, and replaced so that they are in good working order, and do not present a health hazard to users. Replace or repair any respirator that is not functioning properly, and do not permit their use. Filtering-facepiece respirators must not be cleaned, repaired, or shared. Dispose of and replace any filtering-facepiece respirator that is dirty, damaged, or difficult to breathe through. Elastomeric respirators must be properly cleaned and disinfected before being worn by another employee.

- Notes:
- Respirator use is not considered voluntary when an employer requires respirators to be used. A complete respiratory protection program in accordance with chapter 296-842 WAC, *Respirators*, is required if the employer chooses to require respirator use.
  - For voluntary use of filtering-facepiece respirators, such as N95 respirators, some of the requirements of chapter 296-842 WAC, *Respirators*, such as fit-testing and medical evaluations, do not apply.
  - Elastomeric respirators equipped with P100 filters may be used in place of N95 filtering-facepiece respirators. If elastomeric respirators are used voluntarily, additional requirements apply from chapter 296-842 WAC, *Respirators*, such as medical evaluations and establishing a respiratory protection program.
  - For voluntary or required use of loose-fitting powered air-purifying respirators, some of the requirements of chapter 296-842 WAC, *Respirators*, do not apply, such as fit-testing and requiring workers to be clean-shaven.
  - During emergency response, required use of respirators must be implemented to the extent feasible.

AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-820-850 Appendix A: Protection from wildfire smoke information and training (mandatory).** (1) **The health effects and symptoms of wildfire smoke:**

(a) Although there are many hazardous chemicals in wildfire smoke, the main harmful pollutant for people who are not very close to the fire is "particulate matter," the tiny particles suspended in the air.

Particulate matter is a health risk whether you are exposed over a short period of time or a long period of time. The EPA has determined that particulate matter does cause, or likely causes cardiovascular disease, respiratory disease, cancer, and harm to the nervous system. In addition, particulate matter can irritate the eyes and lungs, causing eye irritation, phlegm, and persistent coughing. It can

also cause difficulty breathing, reduced lung function, wheezing, bronchitis, worsening of asthma, heart failure, and early death.

(b) Wildfire smoke can harm your health even if you cannot see or smell the smoke or do not feel any symptoms. Even healthy people can be harmed by wildfire smoke. The wildfire smoke rule is designed to limit the harm from wildfire smoke, and it is important to consider taking action to reduce your exposure to smoke whenever the rule's protections are in effect, whether or not you have symptoms. Watch for symptoms as an additional indication to reduce exposure to smoke, and reduce work intensity.

This appendix reviews many wildfire smoke symptoms, but not every possible symptom may be mentioned, and it is a good idea to talk to your doctor or other health care provider before being exposed to wildfire smoke to have a plan for protecting yourself, including what symptoms to watch out for and how to reduce your exposure. This is especially important if you have any medical conditions; are pregnant; or have questions about the health effects or symptoms of wildfire smoke exposure.

(c) The wildfire smoke rule has additional requirements in WAC 296-820-830 when workers experience symptoms requiring immediate medical attention. When the current PM<sub>2.5</sub> is 250.5 µg/m<sup>3</sup> or more, your employer must ensure workers experiencing such symptoms be moved to a location that ensures sufficient clean air as described in WAC 296-820-830(3). Symptoms requiring immediate medical attention include, but are not limited to:

- Symptoms concerning for a heart attack, such as:
  - Chest pain or discomfort;
  - Feeling weak, light-headed, faint, or dizzy;
  - Pain or discomfort in the jaw, neck, or back;
  - Pain or discomfort in one or both arms or shoulders;
  - Shortness of breath, especially if accompanied by chest discomfort;
- Symptoms concerning for a stroke, such as:
  - Sudden numbness or weakness in the face, arm, or leg, especially on one side of the body;
  - Sudden confusion, trouble speaking, or difficulty understanding speech;
  - Sudden trouble seeing in one or both eyes;
  - Sudden trouble walking, dizziness, loss of balance, or lack of coordination;
  - Sudden severe headache with no known cause;
- Wheezing, difficulty breathing, or shortness of breath, particularly when accompanied by greater use of accessory muscles;
- Asthma attacks; or
- Nausea or vomiting.

(d) In addition to symptoms that under this rule require immediate medical attention, wildfire smoke can also cause other symptoms, many of which are described below. Even if a symptom is not mentioned here, you have the right under the wildfire smoke rule to seek medical attention or follow medical advice if you develop any symptoms you think may potentially be related to wildfire smoke exposure, regardless of their severity.

Regardless of whether a symptom is serious enough to require immediate medical attention, employers covered by the wildfire smoke rule are required by WAC 296-820-830(4) to have effective provisions

made in advance for prompt medical attention of employees displaying symptoms of wildfire smoke exposure.

If you develop a symptom, you should follow the advice of your doctor or health care provider, and seek medical attention if necessary. Your employer must not retaliate against you for seeking medical attention or following medical advice you have been given.

In addition to the symptoms requiring immediate medical attention according to WAC 296-820-830, all of the following symptoms are also potentially related to wildfire smoke exposure. They may also require medical attention:

- Respiratory:
  - Cough;
  - Runny or irritated nose;
  - Sore throat;
  - Sinus pain or pressure;
  - Phlegm.
- Fast or irregular heartbeat;
- Headache;
- Scratchy or irritated eyes; or
- Fatigue or tiredness.

(e) Developing wildfire smoke symptoms, even mild ones, indicates you are being overexposed to the smoke and should report your symptoms to your employer. In response, according to WAC 296-820-830 your employer must permit you to follow medical advice you have been given, seek medical attention if necessary, and must take appropriate steps to reduce your exposure. This may include providing you with access to clean air according to WAC 296-820-830(3) (your employer must ensure access to clean air when the current PM<sub>2.5</sub> is greater than 250.5 µg/m<sup>3</sup>); helping you use respiratory protection; or taking other steps to control your exposure.

(f) Sensitive groups:

L&I and the Washington state department of health consider all outdoor workers as a sensitive group at higher risk of experiencing adverse health effects from wildfire smoke exposure((1)).<sup>1</sup>

Sensitive groups include people who are at higher risk of experiencing adverse health effects as a result of exposure to wildfire smoke, including those with preexisting health conditions; those with increased duration of exposure; and those whose work results in an increased breathing rate, including outdoor workers((1)).<sup>1</sup> Although everyone is impacted by wildfire smoke exposure, sensitive groups are among those most likely to experience health problems from exposure to wildfire smoke.

Examples of sensitive groups include:

- Outdoor workers;
- People with lung diseases such as asthma or chronic obstructive pulmonary disease (COPD), including bronchitis and emphysema, and those who smoke;
- People with respiratory infections, such as pneumonia, acute bronchitis, bronchiolitis, colds, or flu; or those with, or recovering from COVID-19;
- People with existing heart or circulatory problems, such as irregular heartbeat, congestive heart failure, coronary artery disease, angina, and those who have had a heart attack or stroke;
- Children under 18 years old, and adults over age 65;
- People who are pregnant;
- People with diabetes;

- People with other medical or health conditions that can be worsened by exposure to wildfire smoke as determined by a physician;
- Tribal and indigenous people;
- People with low income.

<sup>1</sup> Washington Department of Health. April 2022, accessed ((April 2023)) March 14, 2024. Washington Air Quality Guide for Particle Pollution: [https://doh.wa.gov/sites/default/files/legacy/Documents/4300/waqa%20infographic\\_English.pdf?uid=64384c71c8715](https://doh.wa.gov/sites/default/files/legacy/Documents/4300/waqa%20infographic_English.pdf?uid=64384c71c8715)

**(2) The importance of informing the employer when the employee is experiencing symptoms of wildfire smoke exposure:**

Watch for symptoms of wildfire smoke exposure as a sign to reduce exposure. The particulate matter in wildfire smoke can harm your health, even at lower levels of exposure.

It is important to notify your employer when you are experiencing symptoms of wildfire smoke exposure so your employer can respond appropriately.

Your employer will have provisions made in advance for prompt medical attention for employees who are experiencing symptoms of wildfire smoke exposure.

Do not ignore your symptoms. Wildfire smoke can be hazardous even when you cannot see it or smell it. Your employer cannot retaliate against you for reporting symptoms, for seeking medical attention, or for following medical advice you have been given. This is true whenever the wildfire smoke rule's protections are in effect.

Wildfire smoke is a serious work-related hazard for outdoor workers, and you have the right to file a workers' compensation claim to have your symptoms evaluated. You may file a workers' compensation claim whether or not you have personal health insurance. Your employer cannot prevent you from or retaliate against you for filing a workers' compensation claim.

In most cases, L&I will pay for your initial medical evaluation, even if your claim is denied. If your claim is allowed, the workers' compensation system will cover medical bills directly related to your condition and partial wage replacement benefits if you cannot work.

When the current PM<sub>2.5</sub> is 250.5 µg/m<sup>3</sup> or more, your employer must ensure workers experiencing symptoms requiring immediate medical attention be moved to a location that ensures sufficient clean air as described in WAC 296-820-830(3).

**(3) The right to obtain medical attention without fear of reprisal:**

Employers must allow employees who show signs of injury or illness due to wildfire smoke exposure to seek medical attention or follow medical advice they have been given, and must not retaliate against affected employees for seeking such medical attention or following medical advice.

Employers must also have effective provisions made in advance for prompt medical attention of employees in the event of serious injury or illness caused by wildfire smoke exposure.

Additionally, when the current PM<sub>2.5</sub> is 250.5 µg/m<sup>3</sup> or more, employers must ensure workers experiencing symptoms requiring immediate medical attention be moved to a location that ensures sufficient clean air as described in WAC 296-820-830(3).

For more information on your workplace safety and health rights, discrimination protections, and filing a discrimination complaint, visit [www.Lni.wa.gov/WorkplaceDiscrimination](http://www.Lni.wa.gov/WorkplaceDiscrimination).

**(4) The requirements of WAC 296-820-805 through 296-820-860:**

The following table summarizes the key requirements of the rule. This is not an exhaustive list, and additional details are found in WAC 296-820-805 through 296-820-860.

CURRENT PM <sub>2.5</sub>	AQI	REQUIREMENTS AT CURRENT PM <sub>2.5</sub> LEVEL
0.0-20.4 µg/m <sup>3</sup>	<del>((0-68))</del> <u>0-71</u>	<ul style="list-style-type: none"> <li>• Prepare a written wildfire smoke response plan.</li> <li>• Provide wildfire smoke training to employees.</li> <li>• Watch the PM<sub>2.5</sub> conditions and forecasts.</li> <li>• Prepare a two-way communication system.</li> <li>• Make provisions for prompt medical attention, and permit such medical attention without retaliation.</li> </ul>
20.5-35.4 µg/m <sup>3</sup>	<del>((69-100))</del> <u>72-100</u>	<p>All of the above and:</p> <ul style="list-style-type: none"> <li>• Notify employees of PM<sub>2.5</sub> conditions.</li> <li>• Ensure only trained employees work outdoors.</li> <li>• Consider implementing exposure controls.</li> <li>• Consider providing voluntary use respirators.</li> </ul>
35.5-250.4 µg/m <sup>3</sup>	<del>((101-300))</del> <u>101-350</u>	<p>All of the above and:</p> <ul style="list-style-type: none"> <li>• Implement exposure controls.</li> <li>• Make N95 respirators available for voluntary use.</li> </ul>
250.5-500.3 µg/m <sup>3</sup>	<del>((301-499))</del> <u>351-848</u>	<p>All of the above and:</p> <ul style="list-style-type: none"> <li>• Ensure workers experiencing symptoms requiring immediate medical attention be moved to a location that ensures sufficient clean air.</li> <li>• Directly distribute N95 respirators to employees for voluntary use.</li> </ul>
500.4-554.9 µg/m <sup>3</sup>	<del>((500-beyond the AQI))</del> <u>849-956</u>	<p>All of the above and:</p> <ul style="list-style-type: none"> <li>• Implement a complete required use respiratory protection program, including fit-testing, medical evaluations, requiring employees to be clean-shaven, and requiring the use of particulate respirators.</li> </ul>
555 µg/m <sup>3</sup> <u>or more</u>	<del>((Beyond the AQI))</del> <u>957 or more</u>	<p>All of the above and:</p> <ul style="list-style-type: none"> <li>• Require respirators with an assigned protection factor (APF) of 25 or more.</li> </ul>

**(5) The employer's methods of determining the current PM<sub>2.5</sub> under WAC 296-820-815:**

The employer's methods of determining the current PM<sub>2.5</sub>:

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**(6) How employees can obtain the current PM<sub>2.5</sub>, and the employer's methods to communicate the current PM<sub>2.5</sub>:**

Various government agencies monitor the air quality at locations throughout Washington and provide information to the public on the current air quality. These monitoring sites measure several harmful pollutants, but the pollutant of particular concern for wildfire smoke is the current PM<sub>2.5</sub> which is reported as the hourly average of PM<sub>2.5</sub> in µg/m<sup>3</sup>. Some of these sites also report the NowCast Air Quality Index (AQI). The NowCast AQI uses the air quality data of all the pollutants from these regulatory monitors and the NowCast averaging time to attempt to provide a general index of the overall air quality.

Although these monitoring stations may measure several pollutants, this chapter only uses the hourly average of PM<sub>2.5</sub>. The NowCast AQI for PM<sub>2.5</sub> may also be used as an alternative.

One way to find the current and forecasted PM<sub>2.5</sub> is to go to [enviwa.ecology.wa.gov](http://enviwa.ecology.wa.gov) and find the nearest monitor on the map, or [fire.airnow.gov](http://fire.airnow.gov) and enter the zip code of the location where you will be working. The current PM<sub>2.5</sub> is also available from the Air Quality WA mobile app, or the AirNow mobile app.

Employees who do not have access to the internet can contact their employer for the current PM<sub>2.5</sub>. The U.S. EPA website [www.enviroflash.info](http://www.enviroflash.info) can transmit daily and forecasted air quality by email for your city or zip code.

While the requirements in this rule are based on the current PM<sub>2.5</sub>, employers may choose to use the NowCast Air Quality Index (AQI) for PM<sub>2.5</sub> to comply with this rule. Because the current PM<sub>2.5</sub> is based on a one-hour average, and the NowCast AQI averages data over a longer time, it is normal for the two values to differ over short periods of time. Your employer will tell you whether they use the current one-hour average PM<sub>2.5</sub>, or the NowCast AQI for PM<sub>2.5</sub>. The following table indicates the NowCast AQI values that may be used from the Washington state department of ecology, local clean air agency, or EPA to approximate the current PM<sub>2.5</sub>.

CURRENT PM <sub>2.5</sub>	NOWCAST AIR QUALITY INDEX FOR PM <sub>2.5</sub> (AQI)
20.5 µg/m <sup>3</sup>	<del>((69))</del> <u>72</u>
35.5 µg/m <sup>3</sup>	101
250.5 µg/m <sup>3</sup>	<del>((301))</del> <u>351</u>
500.4 µg/m <sup>3</sup>	<del>((500))</del> <u>849</u>
555 µg/m <sup>3</sup>	<del>((Beyond the AQI))</del> <u>957</u>

Your employer will establish a two-way communication system to communicate changing wildfire smoke conditions to you, and allowing you to communicate information to your employer such as: Worsening air quality; availability issues of exposure control measures and respirators; and any symptoms of wildfire smoke exposure. Your employer cannot retaliate or discriminate against you for raising safety concerns, or reporting symptoms.

The employer's communication system is: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**(7) The employer's response plan for wildfire smoke including methods to protect employees from wildfire smoke, and the exposure symptom response procedures:**

Your employer will provide training on the specific methods they will implement to protect you as part of their wildfire smoke response plan, and their procedures to respond when employees experience symptoms of wildfire smoke exposure.

The employer's methods to protect employees are: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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The employer's exposure symptom response procedures are: \_\_\_\_\_

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**(8) The importance, limitations, and benefits of using a properly fitted respirator when exposed to wildfire smoke:**

Respirators can be an effective way to protect employee health by reducing exposure to wildfire smoke, when they are properly selected and worn. Respirator use can be beneficial even when the current PM<sub>2.5</sub> is less than 35.5 µg/m<sup>3</sup>.

Respirator use is not voluntary, and a complete respiratory protection program in accordance with chapter 296-842 WAC, *Respirators*, is required in any of the following situations:

- The employer chooses to require respirator use;
- A respiratory hazard, such as exposure to a substance over the permissible exposure limit (PEL) or hazardous exposure to an airborne biological hazard, is present.
- Work under the scope of this rule where the current PM<sub>2.5</sub> is 500.4 µg/m<sup>3</sup> (AQI ((~~500~~) 849) or higher.

If respirator use is required, you will be enrolled in a complete respiratory protection program which includes additional training, fit-testing, and medical evaluations.

To evaluate respiratory hazards in your workplace, see chapter 296-841 WAC, *Airborne contaminants*.

Take the following precautions to ensure the best possible protection when using N95 respirators voluntarily for protection from wildfire smoke:

(a) Employers must select respirators certified for protection against the specific air contaminants at the workplace. For PM<sub>2.5</sub>, a National Institute for Occupational Safety and Health (NIOSH) certified respirator with at least an N95 particulate filter is required. A label or statement of certification should appear on the respirator or respirator packaging.

KN95 masks, surgical masks, or other items worn over the nose and mouth such as scarves, t-shirts, and bandannas will not provide protection against wildfire smoke. A NIOSH-approved N95 filtering-face-piece respirator, shown in the image below, is the minimum level of protection for wildfire smoke.

(b) Read and follow the manufacturer's instructions on the respirator's use, maintenance, cleaning and care, along with any warnings regarding the respirator's limitations.

For the best protection, follow the manufacturer's instructions for medical evaluations, fit-testing, and shaving. Fit-testing is done to ensure that you have the correct size respirator, and that it seals properly. Without fit-testing, wildfire smoke can leak around the seal of the respirator and increase your risk of experiencing adverse health effects. Because of this, you should not rely on voluntary use respirators alone to protect you from wildfire smoke. Take action to reduce your exposure to wildfire smoke in the other ways described in the wildfire smoke rule and in subsection (10) of this appendix, ask

your employer to voluntarily arrange for respirator fit-testing, or both.

(c) Tight-fitting respirators such as N95s cannot form a seal over facial hair. Small particles such as those in wildfire smoke will leak around the respirator if you are not clean-shaven. Be sure you are clean-shaven to ensure the respirator can seal to your face.

(d) Do not wear respirators in areas where the air contains contaminants for which the respirator is not designed. A respirator designed to filter particles will not protect you against gases or vapors, and it will not supply oxygen. Some filtering-facepiece respirators are equipped with a sorbent layer for absorbing "nuisance" organic vapors. These can be used for voluntary use, but are not NIOSH certified for protection against hazardous concentrations of organic vapor.

(e) Keep track of your respirator, so you do not mistakenly use someone else's respirator.

(f) If you have questions about whether it is safe for you to wear a respirator, you should talk to your doctor or other medical provider, particularly if you have a heart, lung, or other medical conditions.

**(9) The risks and limitations of using an unfitted respirator, and the risks of wearing a respirator without a medical evaluation:**

Respirators such as N95s must form a tight seal to the face to work properly. This is especially important for people at increased risk for severe disease, as exposure to wildfire smoke can worsen symptoms. A fit-test is conducted to verify that a respirator properly seals to your face so smoke does not leak around the seal.

It also ensures that the respirator be comfortable so you can wear it as long as you need. Your employer is not required to provide a fit-test for voluntary use of N95 respirators for wildfire smoke below a current  $PM_{2.5}$  of  $500.4 \mu\text{g}/\text{m}^3$  (AQI (~~500~~) 849) unless your employer chooses to require respirator use. Even without a fit-test, you can take steps to improve the respirator seal, and to reduce your exposure to wildfire smoke by following the steps in subsection (10) of this appendix.

While wearing a respirator provides protection from wildfire smoke, it increases breathing resistance, causing you to work harder to breathe. If you have heart or lung problems, talk to your doctor or other medical provider before using a respirator. A medical evaluation is conducted as part of evaluating respirator selection and use to ensure that the wearer is healthy enough to perform work while wearing a respirator. Your employer is not required to provide a medical evaluation for voluntary use of N95 respirators for wildfire smoke below a current  $PM_{2.5}$  of  $500.4 \mu\text{g}/\text{m}^3$  (AQI (~~500~~) 849) unless your employer chooses to require respirator use. If you have questions about whether it is safe for you to wear a respirator, you should talk to your doctor or other medical provider. This is particularly important if you have a heart or lung condition (including asthma), or if you have other medical conditions of concern. Follow your health care provider's advice if you have medical conditions that can be worsened by wildfire smoke exposure.

If, while wearing a respirator, you experience:

- Any symptoms your doctor, other health care provider, or employer has told you may limit or prevent the effective use of respirators; or

- Any respiratory (lung, breathing), cardiac (heart, circulation), or other symptoms (including, but not limited to, those listed under subsection (1) of this appendix) that may limit or prevent the effective use of respirators;

Then go to an area with clean air as described in WAC 296-820-830(3), take off the respirator, and get help. You should also do this if you are unsure whether a symptom you are experiencing may limit or prevent the effective use of respirators.

**(10) How to properly put on, use, and maintain the respirators provided by the employer:**

A tight-fitting respirator such as an N95 will not be able to seal to your face if facial hair interferes with the seal. Make sure you are clean-shaven to allow a better seal and more reliable protection. Loose-fitting powered air-purifying respirators do not rely on a tight seal to provide protection, so they may be worn by people with facial hair.

Always inspect your respirator for damage or defects before use, and follow the manufacturer's instructions. Replace respirators that are damaged, dirty, or wet.

The proper way to put on a respirator depends on the type and model of the respirator. For those who use a filtering-facepiece respirator such as an N95 follow these steps to put on the respirator:

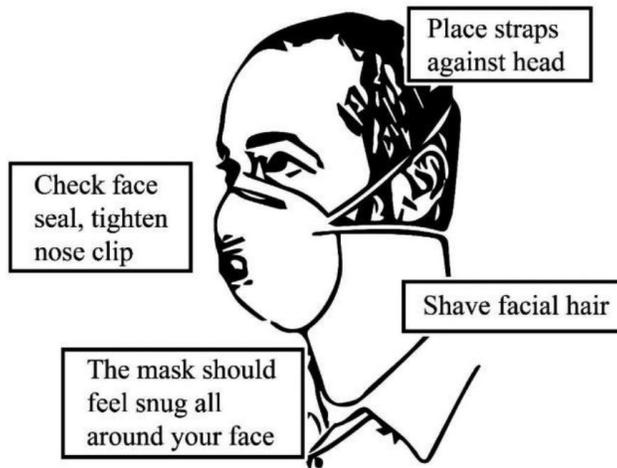
- (a) With clean, dry hands, inspect the respirator and straps for any damage or defect.
- (b) Hold the respirator with the straps facing you, and the metal or foam nosebridge facing up.
- (c) Place the mask with the top over your nose and the bottom under your chin. Hold the mask in place with one hand.
- (d) While holding the mask to your face with one hand, grab the top strap with the other hand.
- (e) Pull the top strap over your head and place it so the strap goes above your ears.
- (f) While continuing to hold the mask to your face, pull the bottom strap over your head and place it so the strap goes below your ears.
- (g) Bend the nosepiece of the respirator over the top of the nose, so it fits securely.
- (h) Perform a seal check:
  - (i) The mask should sit snug on your face, with the top strap above your ears, the bottom strap below.
  - (ii) Cover the respirator with both hands and exhale. If you feel air leaking where the respirator seals against your face, adjust the respirator and nosepiece and try again. The respirator should bulge from the face and not leak around the seal.
  - (iii) Next, cover the respirator with both hands and inhale. If you feel air leaking where the respirator seals against the face, adjust the respirator and nosepiece and try again. The respirator should collapse slightly and not leak around the seal.

Filtering-facepiece respirators are disposable respirators that cannot be cleaned or disinfected. Best practice is to replace filtering-facepiece respirators at the beginning of each shift.

Respirator filters need to be replaced if they get damaged, deformed, dirty, or difficult to breathe through. If, while wearing a respirator, you experience:

- Any symptoms your doctor, other health care provider, or employer has told you may limit or prevent the effective use of respirators; or
- Any respiratory (lung, breathing), cardiac (heart, circulation), or other symptoms (including, but not limited to, those listed under subsection (1) of this appendix) that may limit or prevent the effective use of respirators;

Then go to an area with clean air as described in WAC 296-820-830(3), take off the respirator, and get help. You should also do this if you are unsure whether a symptom you are experiencing may limit or prevent the effective use of respirators.



AMENDATORY SECTION (Amending WSR 24-01-070, filed 12/14/23, effective 1/15/24)

**WAC 296-820-860 Appendix B: Calculating the Air Quality Index for PM<sub>2.5</sub> (nonmandatory).** The Air Quality Index (AQI) for PM<sub>2.5</sub> is calculated as follows:

$$((I_{PM2.5})) I_p = \frac{I_{Hi} - I_{Lo}}{BP_{Hi} - BP_{Lo}} (C_p - BP_{Lo}) + I_{Lo}$$

Where:

$((I_{PM2.5})) I_p$  is the Air Quality Index value for PM<sub>2.5</sub>

$C_p$  is the concentration of PM<sub>2.5</sub> in µg/m<sup>3</sup> truncated to 1 decimal place

$BP_{Hi}$  is the concentration breakpoint that is greater than or equal to  $C_p$

$BP_{Lo}$  is the concentration breakpoint that is less than or equal to  $C_p$

$I_{Hi}$  is the AQI value corresponding to  $BP_{Hi}$

$I_{Lo}$  is the AQI value corresponding to  $BP_{Lo}$

PM <sub>2.5</sub> ((THRESHOLDS)) BREAKPOINT <sup>1</sup>	AQI <sup>1</sup>	AQI CATEGORY <sup>1</sup>	WA DOH HEALTH MESSAGING <sup>2</sup>
<del>((0.0-12.0))</del> <u>0.0-9.0</u>	0-50	Good	It is a great day to be active outside and a good time to make a plan if worse air quality is in the forecast.
<del>((12.1-35.4))</del> <u>9.1-35.4</u>	51-100	Moderate	Some people are especially sensitive to lower levels of particle pollution and should reduce exposure. For example, limit time outside and avoid strenuous outdoor activity. All sensitive groups should watch for symptoms.
35.5-55.4	101-150	Unhealthy for sensitive groups	Sensitive groups should take steps to reduce exposure. Limit time outside, avoid strenuous outdoor activity, and follow tips for cleaner indoor air. Everyone should watch for symptoms as a sign to reduce exposure.
<del>((55.5-150.4))</del> <u>55.5-125.4</u>	151-200	Unhealthy	Everyone should reduce exposure. Limit time outside, avoid strenuous outdoor activity, and follow tips for cleaner indoor air.
<del>((150.5-250.4))</del> <u>125.5-225.4</u>	201-300	Very unhealthy	Everyone should reduce exposure. Stay inside and filter indoor air to keep it cleaner. Go elsewhere for cleaner air, if needed.
<del>((250.5-350.4))</del> <u>225.5</u> <u>or more</u>	<del>((301-400))</del> <u>301 or more</u>	Hazardous	Everyone should reduce exposure. Stay inside and filter indoor air to keep it cleaner. Go elsewhere for cleaner air, if needed.
<del>((350.5-500.4</del>	401-500	<del>Hazardous</del>	<del>Everyone should reduce exposure. Stay inside and filter indoor air to keep it cleaner. Go elsewhere for cleaner air, if needed.</del>
<del>&gt;500.4</del>	<del>Beyond the AQI</del>	<del>Hazardous (beyond the AQI))</del>	

<sup>1</sup> ((U.S. EPA. September 2018. Technical Assistance Document for the Reporting of Daily Air Quality – The Air Quality Index (AQI). EPA 454/B-18-007. Research Triangle Park, North Carolina.)) Federal Register Vol. 89, No. 45, Page 16405, March 6, 2024: <http://www.govinfo.gov/content/pkg/FR-2024-03-06/pdf/2024-02637.pdf>.

<sup>2</sup> Washington Department of Health. April 2022, accessed ((April 2023)) March 14, 2024. Washington Air Quality Guide for Particle Pollution: <https://doh.wa.gov/sites/default/files/legacy/Documents/4300/waqa%20infographic%5fEnglish.pdf?uid=64384c71c8715>.

**WSR 24-11-149**  
**EXPEDITED RULES**  
**COUNTY ROAD**  
**ADMINISTRATION BOARD**  
[Filed May 22, 2024, 8:18 a.m.]

Title of Rule and Other Identifying Information: WAC 136-165-020 Requirements for consideration of RATA fund increases.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Eliminate 25 percent cap on requests for additional grant funds on a project. This change was previously adopted as an emergency WAC amendment as published in WSR 24-08-008.

Reasons Supporting Proposal: The county road administration board administers the rural arterial program (RAP), which provides grant funds for capital improvements on county road arterials and collectors. Counties may request an increase in funding for a project. Currently, that request is capped at 25 percent of the original grant amount. This WAC amendment will eliminate the 25 percent cap on the amount a county may request.

Statutory Authority for Adoption: RCW 36.79.060(1) and 36.78.070(6).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: County road administration board, governmental.

Name of Agency Personnel Responsible for Drafting and Enforcement: Drew Woods, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98502, 360-753-5989; and Implementation: Steve Johnson, 2404 Chandler Court S.W., Suite 240, Olympia, WA 98502, 360-753-5989.

This notice meets the following criteria to use the expedited adoption process for these rules:

Relates only to internal governmental operations that are not subject to violation by a person.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: This change is regarding a grant management process that will not negatively impact any person. The change is fully supported by the county road departments that are the recipients of the grant funds.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Drew Woods, Deputy Director, County Road Administration Board, 2404 Chandler Court S.W., phone 360-753-5989, email drew.woods@crab.wa.gov, AND RECEIVED BY July 23, 2024.

May 21, 2024  
Jane Wall  
Executive Director

**OTS-5287.1**

AMENDATORY SECTION (Amending WSR 23-23-013, filed 11/2/23, effective 12/3/23)

**WAC 136-165-020 Requirements for consideration of RATA fund increases.** (1) When a county submits its final prospectus as described in WAC 136-161-050, the county road administration board presumes that the amount of RATA funds requested, plus any non-RATA funds that may be designated for the project, are sufficient to fully, and in a timely manner, complete the project as described.

(2) All cost increases during the course of construction shall be the responsibility of the county. In extraordinary circumstances, a county may request an increase in the amount of RATA funds allocated to a project. A county may request an increase in a project's RATA allocation once during the course of a project's development, and such request may occur only after completion of preliminary engineering, but prior to commencing construction. A project shall be considered to have commenced construction if:

(a) The construction contract for the work has been awarded; or

(b) If done by county forces, the work has commenced, except for construction engineering.

~~((Requests for increases in excess of 25 percent of the original RATA allocation will not be considered or granted; the county must secure other funds, withdraw or request the termination of the project, or request a change in scope and/or project limits. If current funding sources are not sufficient to cover the costs beyond a 25 percent increase, the county may resubmit the same project for funding in the next funding period. Upon funding of the new project by the county road administration board, the previous contract shall become void. All RATA funds expended on the previous contract shall be repaid to the county road administration board unless waived by the county road administration board in keeping with provisions of WAC 136-167-030.))~~

(3) A request by a county for an increase in RATA funds allocated to a project shall demonstrate that:

(a) The county at the time of preparing its final project prospectus considered the factors listed in subsection (4) of this section;

(b) The request for an increased allocation is based on extraordinary and unforeseeable circumstances of the type listed in subsection (5) of this section;

(c) It is not feasible to reduce the scope and/or project limits so the project can be substantially constructed within the initial RATA allocation;

(d) The request is not to pay for an expansion of the originally approved project;

(e) If the work is to be done by contract, the county has supplied to the CRABoard, an updated engineer's cost estimate prior to, and within three months of, advertisement of the project for construction bids; and

(f) If the work is to be done by county forces, the county has supplied to the CRABoard, an updated engineer's cost estimate prior to, and within three months of, commencement of the work.

(4) At the time of preparation and submittal of the final project prospectus, a county is expected to consider all information which may affect the cost of the project. In cases where the information is incomplete or poorly defined, the county is to exercise good professional judgment and/or seek outside professional assistance and advice in order to prepare a reasonable RATA fund request. The information which

a county is expected to consider includes, but is not limited to, the following:

- (a) The availability at the needed time of matching funds and other supplementary funds;
- (b) All technical data reasonably available such as topographic maps, reconnaissance reports, surface and subsurface geotechnical data, hydraulic and hydrological data, sources of materials, applicable design standards, and any earlier preliminary engineering;
- (c) Required permits, including preproject scoping consultations with the permitting agencies and an estimate of the costs of complying with permit requirements;
- (d) Required right of way or other easements, and the time and cost of acquisition;
- (e) Availability of qualified contractors to perform the work;
- (f) Ownership, type, amount, and time requirements of any required utility relocation;
- (g) Historical and projected labor, equipment and material costs; and
- (h) The project development timetable leading to completed construction and the interrelation of this project to all other work activities under the control of the county engineer.

(5) The county road administration board will increase RATA funds allocated to a project only if it finds that the request for an increased allocation is based on extraordinary and unforeseeable circumstances, including but not limited to the following:

- (a) The county relied on existing technical data which were later found to be in error, and which will necessitate a significant design change prior to proceeding with construction;
- (b) Project permit requirements were substantially changed, or new permits were required;
- (c) Supplementary funds, such as impact fees, developer contributions, grants, etc., which were forecasted to be available for the project, were withdrawn or otherwise became unavailable;
- (d) Design or other standards applicable to the project were changed;
- (e) The start of construction will be significantly delayed or additional construction requirements will be added as a direct result of legal action; provided however, that the failure of a county to exercise its statutory powers, such as condemnation, will not be grounds for increasing RATA funds; and/or
- (f) The lowest responsive bid for construction exceeds the amount of available funding for construction; provided that said bid is determined by the county engineer to be reasonable and the increased cost of the bid can be justified.

**WSR 24-11-152**  
**EXPEDITED RULES**  
**DEPARTMENT OF HEALTH**  
(Pharmacy Quality Assurance Commission)  
[Filed May 22, 2024, 9:01 a.m.]

Title of Rule and Other Identifying Information: Incorporation by reference of federal statutes or regulations and national consensus codes in pharmacy rules. The pharmacy quality assurance commission (commission) is proposing revisions to update references to regulations from other entities that have been incorporated into chapter 246-945 WAC and to make other clarifying changes that do not change the effect of the rule.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: As well as housekeeping changes, the proposed rules amend:

- WAC 246-945-010 to incorporate the updated Title 21 C.F.R., Sections 1300 through 1399;
- WAC 246-945-013 to incorporate the updated 21 C.F.R. 1306.23, the updated 21 C.F.R. 1306.13, and the updated Title 21 U.S.C., Section 829;
- WAC 246-945-030 to incorporate the updated United States Food and Drug Administration (FDA) "Orange Book," "Green Book," and "Purple Book";
- WAC 246-945-550 to incorporate the updated 21 C.F.R. 210, 21 C.F.R. 211, and 21 U.S.C. 353b (d) (A); and
- WAC 246-945-565 to incorporate the updated United States Pharmacopeia—National Formulary.

The commission is also proposing to create new WAC 246-945-034 to incorporate updates to FDA drug classifications by identifying drugs that would be considered over-the-counter (OTC) drugs in Washington state.

Reasons Supporting Proposal: As currently written, WAC 246-945-010, 246-945-013, 246-945-030, 246-945-550, and 246-945-565 do not account for changes made to the federal laws and national standards incorporated by reference after chapter 246-945 WAC went into effect on July 1, 2020. The proposed rule amendments reference these new federal requirements. The commission is ensuring that substances (drugs) are classified in the same manner as federal law.

Also, since August 11, 2023, the commission has had an emergency rule in place that temporarily creates WAC 246-945-034 to clarify that certain FDA approved OTC drugs are classified as OTC in Washington state. The proposed rule would permanently adopt WAC 246-945-034 to classify the drugs approved for OTC distribution by the FDA, as listed as legend drugs in the Orange Book, as an OTC drug in Washington state.

The proposed rule language qualifies for expedited rule making under RCW 34.05.353 (1)(b) as the language would incorporate by reference federal statutes or regulations and national consensus codes that generally establish industry standards without material change.

Other housekeeping changes have been made to provide clarifications without changing the effect of the rules.

Statutory Authority for Adoption: RCW 18.64.005, 69.41.075, and 69.50.201.

Statute Being Implemented: RCW 18.64.005.

Rule is necessary because of federal law, U.S.C. (March 7, 2024). *USC - United States Code* Title 21. <https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-2015-title21&saved=%7CZ3JhbnVsZWlkOlVTQy0yMDE1LXRpdGx1MjEtc2VjdGlvbjgyOQ%3D%7C%7C0%7Cfalse%7C2015&edition=2015>.

U.S. Food and Drug Administration (March 7, 2024). *CFR - Code of Federal Regulations* Title 21. <https://www.ecfr.gov/current/title-21/chapter-II/part-1306?toc=1>.

U.S. Food and Drug Administration (March 7, 2024). Approved Drug Products with Therapeutic Equivalence Evaluations "Orange Book." <https://www.fda.gov/drugs/drug-approvals-and-databases/approved-drug-products-therapeutic-equivalence-evaluations-orange-book>.

U.S. Food and Drug Administration (March 7, 2024). Approved Animal Drug Products "Green Book." <https://www.fda.gov/animal-veterinary/products/approved-animal-drug-products-green-book>.

U.S. Food and Drug Administration (March 7, 2024). 2024 List of Licensed Biological Products with Reference Product Exclusivity and Biosimilarity or Interchangeability Evaluations "Purple Book." <https://www.fda.gov/drugs/therapeutic-biologics-applications-bla/purple-book-lists-licensed-biological-products-reference-product-exclusivity-and-biosimilarity-or>.

Name of Proponent: Washington state pharmacy quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Haleigh Mauldin, 111 Israel Road S.E., Tumwater, WA 98501, 360-890-0720; Enforcement: Marlee O'Neill, 111 Israel Road S.E., Tumwater, WA 98501, 360-480-4946.

This notice meets the following criteria to use the expedited adoption process for these rules:

Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Corrects typographical errors, makes address or name changes, or clarifies language of a rule without changing its effect.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The proposed amending language incorporates by reference federal statutes and regulations without material change in WAC 246-945-010, 246-945-013, 246-945-030, 246-945-550, 246-945-565, and new WAC 246-945-034. The proposed amendments acknowledge changes to the incorporated references made after the effective dates of chapter 246-945 WAC.

#### NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Haleigh Mauldin, Department of Health, Pharmacy Quality Assurance Commission, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-890-0720, fax

360-236-2901, email PharmacyRules@doh.wa.gov, https://fortress.wa.gov/doh/policyreview, AND RECEIVED BY July 22, 2024.

May 22, 2024

Ken Kenyon, PharmD, BCPS, Chair  
Pharmacy Quality Assurance Commission

#### OTS-4740.4

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

**WAC 246-945-010 Prescription and chart order—Minimum requirements.** (1) For the purposes of this section, prescription does not include chart orders as defined in RCW 18.64.011(3).

(2) For the purposes of WAC 246-945-010 through 246-945-013, prescription includes written and electronic prescriptions.

(3) A prescription for a noncontrolled legend drug must include, but is not limited to, the following:

(a) Prescriber's name;

(b) Name of patient, authorized entity, or animal name and species;

(c) Date of issuance;

(d) Drug name, strength, and quantity;

(e) Directions for use;

(f) Number of refills (if any);

(g) Instruction on whether or not a therapeutically equivalent generic drug or interchangeable biological product may be substituted, unless substitution is permitted under a prior-consent authorization;

(h) Prescriber's manual or electronic signature, or prescriber's authorized agent signature if allowed by law; and

(i) If the prescription is written, it must be written on tamper-resistant prescription pad or paper approved by the commission pursuant to RCW 18.64.500;

(4) A prescription for a controlled substance must include all the information listed in subsection ~~((1))~~ (3) of this section and the following:

(a) Patient's address;

(b) Dosage form;

(c) Prescriber's address;

(d) Prescriber's DEA registration number; and

(e) Any other requirements listed in 21 C.F.R. ~~((, Chapter II))~~ Secs. 1300 through 1399 in effect as of March 7, 2024.

(5) A chart order must meet the requirements of RCW 18.64.550 and any other applicable requirements listed in 21 C.F.R. ~~((, Chapter II))~~ Secs. 1300 through 1399 in effect as of March 7, 2024.

(6) A controlled substance listed in Schedule II can only be dispensed pursuant to a valid prescription in accordance with WAC 246-945-011 unless there is an "emergency."

(a) For the purposes of this subsection, an "emergency" exists when the immediate administration of the drug is necessary for proper treatment and no alternative treatment is available, and further, it

is not possible for the practitioner to provide a written or electronic prescription for the drug at that time.

(b) If a Schedule II drug is dispensed in an emergency, the practitioner (~~(must)~~) shall deliver a signed prescription to the dispenser within seven days after authorizing an emergency oral prescription or if delivered by mail it must be postmarked within the seven day period, and further the pharmacist (~~(must)~~) shall note on the prescription that it was filled on an emergency basis.

(7) A controlled substance listed in Schedule III, IV, or V, can only be dispensed pursuant to a valid prescription in accordance with WAC 246-945-011, or an oral prescription. An oral prescription for a controlled substance listed in Schedule III, IV, or V must be promptly reduced to a written or electronic prescription that complies with WAC 246-945-011.

(8) A noncontrolled legend drug can only be dispensed pursuant to a valid prescription in accordance with WAC 246-945-011, or an oral prescription. An oral prescription for a noncontrolled legend drug must be promptly reduced to a written or electronic prescription that complies with WAC 246-945-011.

(9) Copies of the reference material listed in this section are available for public inspection at the commission's office at Department of Health, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501.

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

**WAC 246-945-013 Partial filling of prescriptions.** (1) A pharmacist may partially fill a prescription for noncontrolled legend drugs and controlled substances listed in Schedule III through V provided that:

(a) The partial fill is requested by the patient or the prescriber;

(b) The partial filling is recorded in the same manner as a refilling;

(c) The total quantity dispensed and delivered in all partial fillings must not exceed the total quantity prescribed; and

(d) Partial fills for controlled substances listed in Schedule III through V comply with 21 C.F.R. Sec. 1306.23 in effect as of March 7, 2024.

(2) A pharmacist may partially fill a prescription for a controlled substance listed in Schedule II within the limits of RCW 18.64.265, 21 U.S.C. Sec. 829, and 21 C.F.R. Sec. 1306.13 in effect as of March 7, 2024, as applicable.

(3) Copies of the reference material listed in this section are available for public inspection at the commission's office at Department of Health, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501.

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

**WAC 246-945-030 Identification of legend drugs for purposes of chapter 69.41 RCW.** (1) Those drugs determined by the FDA to require a prescription under federal law should be classified as legend drugs under state law because their toxicity, potential for harmful effect, methods of use, or collateral measures necessary to their use indicate they are only safe for use under the supervision of a practitioner.

(2) The commission finds that under state law, legend drugs are those drugs designated as legend drugs under federal law, as of the date of adoption of this rule, and listed in at least one of the following publications in effect as of March 7, 2024, unless the drug is identified as an over-the-counter drug by the commission in WAC 246-945-034:

(a) The (~~(39th)~~) 44th Edition, including supplements, of the *Approved Drug Products with Therapeutic Equivalence Evaluations "Orange Book"* (available at <https://www.fda.gov/drugs/drug-approvals-and-databases/approved-drug-products-therapeutic-equivalence-evaluations-orange-book>).

(b) The (~~(2019)~~) 2024 version, including monthly updates, of the *Approved Animal Drug Products "Green Book"* (available at <https://www.fda.gov/animal-veterinary/products/approved-animal-drug-products-green-book>).

(c) The (~~(2019 List of Licensed Biological Products with Reference Product Exclusivity and Biosimilarity or Interchangeability Evaluations "Purple Book")~~) 2024 Purple Book: Database of FDA-Licensed Biological Products (available at <https://www.fda.gov/drugs/therapeutic-biologics-applications-bla/purple-book-lists-licensed-biological-products-reference-product-exclusivity-and-biosimilarity-or>).

(3) Copies of the reference material listed in subsection (2) of this section are available for public inspection at the commission's office at Department of Health, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501.

(4) The commission also identifies those ephedrine products specified in WAC 246-945-031 as legend drugs under state law.

(5) There may be changes in the marketing status of drugs after the publication of the above references. Upon application of a manufacturer or distributor, the commission may grant authority for the over-the-counter distribution of certain drugs designated as legend drugs in these references. These determinations will be made after public hearing and will be published as an amendment to this chapter.

#### NEW SECTION

##### **WAC 246-945-034 Identification of the over-the-counter drugs.**

(1) The commission identifies the following as an over-the-counter drug in Washington:

(a) 4 mg naloxone hydrochloride nasal spray, approved by the FDA for marketing as an OTC drug product.

(b) 3 mg naloxone hydrochloride nasal spray, approved by the FDA for marketing as an OTC drug product.

(2) Any conflicts between this section and the publications incorporated by reference in WAC 246-945-030(2) should be resolved in favor of this section.

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

**WAC 246-945-550 Manufacturers—Minimum standards.** (1) Manufacturers shall comply with the applicable requirements in 21 C.F.R., (~~Part~~) Sec. 210, "Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding of Drugs"; and 21 C.F.R., (~~Part~~) Sec. 211, "Current Good Manufacturing Practice for Finished Pharmaceuticals; General(~~-~~)" in effect as of March 7, 2024.

(2) Manufacturers required to register with the FDA as an outsourcing facility as defined in 21 U.S.C. Sec. 353b (d) (4) (A) in effect as of March 7, 2024, shall also comply with FDA guidance document.

(3) Virtual manufacturers shall ensure its own drugs are manufactured in compliance with this section.

(4) Copies of the reference material listed in this section are available for public inspection at the commission's office at Department of Health, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501.

AMENDATORY SECTION (Amending WSR 20-12-072, filed 6/1/20, effective 7/1/20)

**WAC 246-945-565 Wholesaler—Drug storage.** (1) Drugs must be stored at temperatures and under conditions required by the labeling of the drugs, if any, or by the requirements of the 43rd edition of USP and 38th edition of the National Formulary (USP/NF) in effect as of March 7, 2024, to preserve product identity, strength, quality, and purity. The USP/NF is available for public inspection at the commission's office at Department of Health, Town Center 2, 111 Israel Road S.E., Tumwater, WA 98501. Requestors may also contact USP directly to obtain copies.

(2) If no storage requirements are established for a drug, the drug may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.

(3) Temperature and humidity recording equipment, devices, (~~and/or~~) logs, or a combination thereof shall be used to document proper storage of drugs.

(4) Controlled substance drugs should be isolated from noncontrolled substance drugs and stored in a secured area.

(5) Drugs that are outdated, damaged, deteriorated, misbranded, or adulterated must be physically separated from other drugs in a designated quarantine area until destroyed or returned to the original manufacturer or third party returns processor.

(6) Used drugs and those whose immediate or sealed outer or sealed secondary containers have been opened are adulterated and must be quarantined.

(7) Drugs must be quarantined under any condition that causes doubt as to a drug's safety, identity, strength, quality, or purity unless under examination, testing, or other investigation the drug is proven to meet required standards.

## WSR 24-11-161

## EXPEDITED RULES

## DEPARTMENT OF TRANSPORTATION

[Filed May 22, 2024, 11:46 a.m.]

Title of Rule and Other Identifying Information: WAC 468-06-060 Requesting public records and 468-06-140 Department index.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 468-06-060; fixing a broken web address link, changing the fax number, and adding an email address where the public can submit a new request for records.

WAC 468-06-140 Index, cites a statute that does not apply to state agencies. We are rewriting this WAC to align with the statute requirements in RCW 42.56.070(5) System of indexing requirement for state agencies.

Reasons Supporting Proposal: WAC 468-06-060 has missing and incorrect information on the ways a member of the public can submit a public records request to the Washington state department of transportation (WSDOT). This proposal corrects that information.

WAC 468-06-140; rewriting the WAC to reflect the correct law and rule requirements of state agencies to establish a system of indexing for certain records.

Statutory Authority for Adoption: Chapter 42.56 RCW, Public Records Act.

Statute Being Implemented: Chapter 42.56 RCW, Public Records Act.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WSDOT, governmental.

Name of Agency Personnel Responsible for Drafting and Enforcement: Ashley Holmberg, Olympia, Washington, 360-870-2869; and Implementation: Sam Wilson, Olympia, Washington, 360-704-6366.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: This update is required to ensure the public has the correct information to be able to submit a public records request and to establish our retention schedule as WSDOT's system of indexing records as required by statute.

This notice meets the following criteria to use the expedited adoption process for these rules:

Corrects typographical errors, makes address or name changes, or clarifies language of a rule without changing its effect.

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: WAC 468-06-060 has incorrect and missing contact information needed by members of the public to file a public records request.

WAC 468-06-140 has incorrect information regarding WSDOT's requirement for a system of indexing records.

## NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Ashley Holmberg, WSDOT, 310 Maple Park Avenue, P.O. Box 47410, Olympia, WA

98504-7410, phone 360-870-2869, fax 360-705-6805, email  
ashley.holmberg@wsdot.wa.gov, AND RECEIVED BY July 22, 2024.

May 22, 2024  
Sam Wilson, Director  
Business Support Services

## OTS-5444.1

AMENDATORY SECTION (Amending WSR 19-24-068, filed 11/27/19, effective 12/28/19)

**WAC 468-06-060 Requesting public records.** (1) Submitting a request. Requests for public records to the department or the commission can be made by:

(a) Using the public disclosure request center ~~((7))~~ by ~~((clicking on the link on the website at <http://www.wsdot.wa.gov/Contact/PublicDisclosure>, or))~~ going to <https://wsdot.mycusthelp.com/WEBAPP/rs/supporthome.aspx>; or

(b) Submitting a written request to the department that includes:

(i) The name, address, telephone number, and email address of the person requesting the records;

(ii) The date and time of the request;

(iii) A description of the public records sought adequate for the department to identify and locate all responsive records;

(iv) Language stating that the request for records is intended as a public records request or a similar statement placing the department on fair notice that records are being sought under the ~~((PRA))~~ Public Records Act chapter 42.56 RCW; and

(v) A statement indicating whether copies ~~((or))~~ of the records are sought or if the requestor wants to arrange to inspect records.

Requests not submitted through the public disclosure request center identified in (a) of this subsection can be submitted via U.S. mail, hand delivery, email, or facsimile at:

Public Records Office  
Transportation Building  
310 Maple Park Avenue S.E.  
P.O. Box 47410  
Olympia, WA 98504-7410  
Email: [HQPDRCoordinators@wsdot.wa.gov](mailto:HQPDRCoordinators@wsdot.wa.gov)  
Facsimile: 360-705-((6808)) 6805

(2) A request not submitted in a manner identified in subsection (1) of this section will not be considered a public records request under chapter 42.56 RCW, but will be responded to as an informal routine inquiry or a general request for information.

(3) Requested production. Nonexempt records are available through inspection, paper copies, or electronic copies. The requestor should indicate the production preference and make arrangements to pay the fees, if any.

OTS-5451.2

AMENDATORY SECTION (Amending WSR 15-24-130, filed 12/2/15, effective 1/2/16)

**WAC 468-06-140 Department index.** (~~The department finds that it would be unduly burdensome and would interfere with department operations to maintain an index of records as specified in RCW 42.56.070 because of the complexity and diversity of its operations and the resulting volume of correspondence, reports, studies, and other materials.~~) (1) The state general records retention schedule and the department's unique records retention schedule, as established and approved by the state records committee, serve as the system of indexing for the identification and location of the department's records, including those described in RCW 42.56.070(5).

(2) The current system of indexing, as described in subsection (1) of this section, is available through the secretary of state's website at <http://www.sos.wa.gov>.