

**WSR 22-09-019**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**CHILDREN, YOUTH, AND FAMILIES**  
[Filed April 11, 2022, 10:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-15-028.

Title of Rule and Other Identifying Information: WAC 110-15-0003 Definitions, 110-15-0215 Infant enhanced rate, 110-15-0225 Special needs rates—Licensed or certified child care facilities and seasonal day camps, and 110-15-3770 Authorized SCC payments.

Hearing Location(s): On May 24, 2022, at telephonic. Oral comments may be made by calling 360-902-8084 and leaving a voicemail that includes the comment and an email or physical mailing address where department of children, youth, and families (DCYF) will send its response. Comments received through, and including, May 24, 2022, will be considered.

Date of Intended Adoption: May 25, 2022.

Submit Written Comments to: DCYF Rules Coordinator, email [dcyf.rulescoordinator@dcyf.wa.gov](mailto:dcyf.rulescoordinator@dcyf.wa.gov), <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by May 24, 2022.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-902-7956, email [dcyf.rulescoordinator@dcyf.wa.gov](mailto:dcyf.rulescoordinator@dcyf.wa.gov), by May 20, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: For child care providers participating in the working connections and seasonal child care programs, establish an incentive of \$90 per infant per month for providers who care for infants from birth to 11 months of age.

Reasons Supporting Proposal: The 2021 legislature found that Washington state suffers from an extreme shortage of infant child care, which impacts parents' ability to participate in the workforce, and that parents struggle to find access to high-quality care during a time of their infants' critical growth and brain development. In an effort to expand access to high-quality child care for infants, the 2021 legislature directed DCYF to provide an infant rate enhancement to the providers who care for infants from birth to 11 months of age.

Statutory Authority for Adoption: RCW 43.216.579.

Statute Being Implemented: RCW 43.216.579.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Toni Sebastian, 206-200-0824; Implementation and Enforcement: DCYF, statewide.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5) [(a)] (i). Further, DCYF does not voluntarily make that section applicable to the adoption of this rule.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards,

including fees set or adjusted under the authority of RCW 19.80.045.

April 11, 2022  
Brenda Villarreal  
Rules Coordinator

## OTS-3687.2

AMENDATORY SECTION (Amending WSR 22-05-007, filed 2/3/22, effective 3/6/22)

**WAC 110-15-0003 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

**"Able"** means being physically and mentally capable of caring for a child in a responsible manner.

**"Administrative error"** means an error made by DCYF through no fault of the consumer or provider.

**"Approved activity"** means an activity that a consumer is required to participate in at application and reapplication to be eligible to collect benefits.

**"Authorization"** means the transaction created by DCYF which allows the provider to claim payment during a certification period. The transaction may be adjusted based on the family need.

**"Available"** means being free to provide care when not participating in an approved activity under WAC 110-15-0040, 110-15-0045, or 110-15-0050 during the time child care is needed.

**"Benefit"** means a regular payment made by a government agency on behalf of a person eligible to receive it.

**"Calendar year"** means those dates between and including January 1st and December 31st.

**"Capacity"** means the maximum number of children the licensee is authorized to have in care at any given time.

**"Collective bargaining agreement"** or **"CBA"** means the most recent agreement that has been negotiated and entered into between the exclusive bargaining representative for all licensed and license-exempt family child care providers as defined in chapter 41.56 RCW.

**"Consumer"** means the person eligible to receive:

- (a) WCCC benefits as described in part II of this chapter; or
- (b) SCC benefits as described in part III of this chapter.

**"Copayment"** means the amount of money the consumer is responsible to pay the child care provider each month toward the cost of child care, whether provided under a voucher or contract.

**"Days"** means calendar days unless otherwise specified.

**"DCYF"** means the department of children, youth, and families.

**"DSHS"** means the department of social and health services.

**"Early achievers"** means a program that improves the quality of early learning programs and supports and rewards providers for their participation.

**"Electronic record"** means a record generated, communicated, received, or stored by electronic means for use in an information system or for transmission from one information system to another.

**"Electronic signature"** means a signature in electronic form attached to or logically associated with an electronic record including, but not limited to, a digital signature, symbol, or process executed by a person with the intent to sign the record.

**"Eligibility"** means that a consumer has met all of the requirements of:

- (a) Part II of this chapter to receive WCCC program subsidies; or
- (b) Part III of this chapter to receive SCC program subsidies.

**"Eligibility period"** means the months for which households are eligible to receive WCCC or SCC program subsidies.

**"Employment"** or **"work"** means engaging in any legal, income generating activity that is taxable under the U.S. Tax Code or that would be taxable with or without a treaty between an Indian Nation and the U.S. This includes unsubsidized employment, as verified by DCYF, and subsidized employment, such as:

- (a) Working in a federal or state paid work study program; or
- (b) VISTA volunteers, AmeriCorps, JobCorps, and Washington Service Corps (WSC) if the income is taxed.

**"Existing child care provider"** means a licensed or certified provider who received a state subsidy payment between July 1, 2015, and June 30, 2016.

**"Fraud"** means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefits to themselves or another person. See RCW 74.04.004.

**"Homeless"** means homeless as defined by the McKinney-Vento Homeless Assistance Act of 1987 without a fixed, regular, and adequate nighttime residence.

**"In-home/relative provider"** or **"family, friends, and neighbors (FFN) provider"** means an individual who is exempt from child care licensing standards and is approved for working connections child care (WCCC) payment under WAC 110-15-0125.

**"In loco parentis"** means the adult caring for an eligible child in the absence of the biological, adoptive, or step-parents, and who is not a relative, court-ordered guardian, or custodian, and is responsible for exercising day-to-day care and control of the child.

**"Infant"** means a child from birth to 11 months.

**"Living in the household"** means people who reside at the same physical address.

**"Lump-sum payment"** means a single payment that is not anticipated to continue.

**"Newly eligible consumer"** means a consumer that has at least one full calendar month break in benefit eligibility.

**"Night shift"** means employment for a minimum of six hours between the hours of 8 p.m. and 8 a.m.

**"Nonschool age child"** means a child who is six years of age or younger and is not enrolled in public or private school.

**"Overpayment"** means a payment or benefits received by a provider or consumer that exceeds the amount the provider or consumer is approved for or eligible to receive.

**"Parental control"** means a child is living with a biological or adoptive parent, stepparent, legal guardian verifiable by a legal or court document, adult sibling or step-sibling, nephew or niece, aunt, great-aunt, uncle, great-uncle, grandparent or great-grandparent, or an approved in loco parentis custodian responsible for exercising day-to-day care and control of the child.

**"Preschool age child"** means a child age 30 months through six years of age who is not attending kindergarten or elementary school.

**"Private school"** means a private school approved by the state under chapter 28A.195 RCW.

**"Program violation"** means a failure to adhere to program requirements, which results in an overpayment.

**"Sanction"** means deterrent action imposed by the department to address a program violation finding.

**"SCC"** means the seasonal child care program, which is a child care subsidy program described in part III of this chapter that assists eligible families who are seasonally employed in agriculturally related work outside of the consumer's home to pay for licensed or certified child care.

**"School age child"** means a child who is between five years of age through 12 years of age and who is attending public or private school or is receiving home-based instruction under chapter 28A.200 RCW.

**"Seasonally available agricultural related work"** means work that is directly related to the cultivation, production, harvesting, or processing of fruit trees or crops.

**"Second tier eligibility"** means an increased income limit for eligible families who reapply before the end of their current eligibility period.

**"Self-employment"** means engaging in a legal, income-generating activity earned directly from an individual's trade or business that is taxable under the U.S. Tax Code or that would be taxable with or without a treaty between an Indian Nation and the U.S.

**"Sign"** means placing a name or legal mark on a document by physically writing or using an electronic signature.

**"State median income (SMI)"** means an annual income figure representing the point at which there are as many families earning more than that amount as there are earning less than that amount. The Census Bureau publishes median family income figures for each state each year, depending on family size.

**"TANF"** means temporary assistance for needy families, a cash assistance program administered by DSHS.

**"Technical assistance"** means a strategy that is focused on the resolution of a specific concern or need. This may be in writing or by phone call.

**"To the extent of available funds"** means one or more of the following:

- (a) Limited or closed enrollment;
- (b) Subject to a priority list for new enrollees pursuant to applicable state and federal law and as described in WAC 110-15-2210; or
- (c) Subject to a waiting list.

**"Unintentional"** means not done willfully or on purpose.

**"Waiting list"** means a list of applicants or reapplicants eligible to receive subsidy benefits when funding becomes available.

**"WCCC"** means the working connections child care program, a child care subsidy program described in part II of this chapter that assists eligible families to pay for child care.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 22-05-007, § 110-15-0003, filed 2/3/22, effective 3/6/22. Statutory Authority: RCW 43.216.055, 43.216.065 and 42 U.S.C. 9858, et seq. WSR 19-08-020, § 110-15-0003, filed 3/26/19, effective 4/26/19. WSR 18-14-078, recodified as § 110-15-0003, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070 and 2017 3rd sp.s. c 1 § 615. WSR

17-23-033, § 170-290-0003, filed 11/7/17, effective 12/8/17. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 17-12-013, § 170-290-0003, filed 5/26/17, effective 6/26/17. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0003, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0003, filed 4/15/16, effective 5/16/16; WSR 14-12-050, § 170-290-0003, filed 5/30/14, effective 6/30/14; WSR 12-11-025, § 170-290-0003, filed 5/8/12, effective 6/8/12; WSR 11-12-078, § 170-290-0003, filed 5/31/11, effective 7/1/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0003, filed 10/28/09, effective 12/1/09.]

NEW SECTION

**WAC 110-15-0215 Infant enhanced rate.** Licensed and certified child care providers accepting state subsidy may receive an infant enhancement payment of \$90 per month for each infant who is enrolled in their child care and attends at least one day per month.

[ ]

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

**WAC 110-15-0225 Special needs rates—Licensed or certified child care ((facilities)) centers and seasonal day camps.** (1) In addition to the base rate for licensed or certified child care ((facilities)) centers and seasonal day camps listed in WAC ((170-290-0200, DSHS)) 110-15-0200, DCYF may authorize the following additional special needs daily rates which are reasonable and verifiable as provided in WAC ((170-290-0220)) 110-15-0220:

(a) **Level 1.** The daily rate listed in the table below:

		Infants (((One month)) Birth - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 6 yrs not attending kindergarten or school)	School-age (5 - 12 yrs attending kindergarten or school)
Region 1	Full-Day	\$7.30	\$6.14	\$5.80	\$5.45
	Half-Day	\$3.65	\$3.07	\$2.90	\$2.73
Region 2	Full-Day	\$7.36	\$6.15	\$5.70	\$5.05
	Half-Day	\$3.68	\$3.08	\$2.85	\$2.52
Region 3	Full-Day	\$9.75	\$8.13	\$7.02	\$6.82
	Half-Day	\$4.88	\$4.06	\$3.51	\$3.41
Region 4	Full-Day	\$11.35	\$9.48	\$7.95	\$7.16
	Half-Day	\$5.67	\$4.74	\$3.98	\$3.58
Region 5	Full-Day	\$8.32	\$7.16	\$6.30	\$5.59
	Half-Day	\$4.16	\$3.58	\$3.15	\$2.80
Region 6	Full-Day	\$8.18	\$7.02	\$6.14	\$6.00
	Half-Day	\$4.09	\$3.51	\$3.07	\$3.00

(i) Centers in Clark County are paid Region 3 rates;

(ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates;

(b) **Level 2.** A rate greater than Level 1, not to exceed \$15.89 per hour.

(2) If a provider is requesting one-on-one supervision or direct care for the child with special needs the person providing the one-on-one care must:

(a) Be at least (~~eighteen~~) 18 years of age;

(b) Meet the requirements for being an assistant under chapter (~~170-295~~) 110-300 WAC; and

(c) Maintain daily records of one-on-one care provided, to include the name of the employee providing the care.

(3) If the provider has an exception to care for a child who is age (~~thirteen~~) 13 years or older and has special needs according to WAC (~~170-290-0220, DSHS~~) 110-15-0220, DCYF authorizes the special needs payment rate as described in subsection (1) of this section using the five through (~~twelve~~) 12 year age range for comparison.

[WSR 18-14-078, recodified as § 110-15-0225, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0225, filed 4/15/16, effective 5/16/16; WSR 14-12-050, § 170-290-0225, filed 5/30/14, effective 6/30/14; WSR 14-03-060, § 170-290-0225, filed 1/13/14, effective 2/13/14. Statutory Authority: Chapter 43.215 RCW. WSR 12-21-008, § 170-290-0225, filed 10/5/12, effective 11/5/12. Statutory Authority: RCW 43.215.070, 43.215.060 and chapter 43.215 RCW. WSR 12-11-025, § 170-290-0225, filed 5/8/12, effective 6/8/12. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0225, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0225, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. WSR 04-08-021 and 04-08-134, § 388-290-0225, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. WSR 02-12-069, § 388-290-0225, filed 5/31/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0225, filed 12/19/01, effective 1/19/02.]

AMENDATORY SECTION (Amending WSR 22-05-007, filed 2/3/22, effective 3/6/22)

**WAC 110-15-3770 Authorized SCC payments.** The SCC program may authorize payments to licensed or certified child care providers as described in WAC 110-15-0190, 110-15-0200, (~~and~~) 110-15-0205, and 110-15-0215.

[Statutory Authority: RCW 43.216.055 and 43.216.065. WSR 22-05-007, § 110-15-3770, filed 2/3/22, effective 3/6/22; WSR 20-08-077, § 110-15-3770, filed 3/26/20, effective 4/26/20. WSR 18-14-078, recodified as § 110-15-3770, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-3770, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-3770, filed 4/15/16, effective 5/16/16; WSR 11-12-078, § 170-290-3770, filed 5/31/11, effective 7/1/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-3770, filed 10/28/09, effective 12/1/09.]

**WSR 22-09-020**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Filed April 11, 2022, 11:53 a.m.]

The department of fish and wildlife has withdrawn the proposed rule on 2022 Spring black bear, listed in WSR 22-04-107. Additional information about this proposal is at <https://wdfw.wa.gov/about/regulations/development/spring-black-bear-rule-making-petition>.

For more information, contact the agency rules coordinator, Annie Szvetecz, [rules.coordinator@dfw.wa.gov](mailto:rules.coordinator@dfw.wa.gov).

Annie Szvetecz  
Rules Coordinator

## WSR 22-09-023

## PROPOSED RULES

## DEPARTMENT OF AGRICULTURE

[Filed April 11, 2022, 2:45 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-15-098.

Title of Rule and Other Identifying Information: Chapter 16-171 WAC, Hemp extract certification.

ESB 5372 (chapter 104, Laws of 2021) directs the Washington state department of agriculture (WSDA) to regulate hemp extract processing the same as other food processing and to issue a hemp extract certification in lieu of a food processing license to a hemp processor who meets application requirements.

Hearing Location(s): On May 26, 2022, at 9:00 a.m., Microsoft Teams conference line [Date of Intended Adoption: June 2, 2022.](https://teams.microsoft.com/l/meetup-join/19%3ameeting_YjRiZTE4MjAtZjRiOC00NmJhLTNmZGQtMGU4MjQyMzk3MDRk%40thread.v2/0?context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%22Oid%22%3a%22838c55c7-c187-44ae-8de0-2be684ce5d4a%22%7d; or call-in (audio only) +1 564-999-2000, Phone Conference ID 408 229 862#. The public hearing will be held solely over video and teleconference.</p></div><div data-bbox=)

Submit Written Comments to: Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email [wsdarulescomments@agr.wa.gov](mailto:wsdarulescomments@agr.wa.gov), fax 360-902-2092, by May 26, 2022.

Assistance for Persons with Disabilities: Contact David Smith, phone 360-902-1952, fax 360-902-2087, TTY 800-833-6388, email [dsmith@agr.wa.gov](mailto:dsmith@agr.wa.gov), by May 19, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to establish application, certification, and inspection requirements for hemp processors to obtain hemp extract certification, and to establish a basis for enforcement action when registered hemp processors do not comply with certification requirements.

Hemp extract certification is voluntary.

WSDA's oversight is limited to certifying a hemp processor's compliance with applicable inspection and good manufacturing practices requirements.

Applicants for certification must meet the same requirements as applicants for a food processing license including, but not limited to, successful completion of an inspection by WSDA.

The anticipated effect of the rules will be to allow registered hemp processors becoming certified to use hemp extract as a food ingredient in products shipped to another state allowing such use. Neither Washington law nor federal law currently allow hemp extract as a food ingredient.

The rules are new and do not change existing rules.

Reasons Supporting Proposal: Other states that allow hemp derived ingredients in food, beverages, and nutraceuticals require such ingredients to be sourced from registered and certified processors. Processors must certify hemp-derived ingredients meet basic food safety and good manufacturing practices.

These rules will allow Washington hemp processors to enter markets in other states for hemp-derived ingredients. The rules align Washington requirements with those in other states.

Statutory Authority for Adoption: RCW 69.07.020, 69.07.220.



Statute Being Implemented: Chapter 69.07 RCW.

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

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Smith, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1952.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Is exempt under RCW [no information supplied].

Explanation of exemptions: WAC 16-171-120 outlines the process for applying for a new or renewed hemp extract certification. WAC 16-171-160 outlines WSDA's procedures for enforcement actions, which could lead to an administrative hearing. Both of these rule components are exempt from the requirements of chapter 19.85 RCW under RCW 19.85.025(3) and 34.05.310 (4)(g).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The rule is not exempt from the Regulatory Fairness Act in chapter 19.85 RCW. The agency will not prepare a small business economic impact statement (SBEIS).

RCW 19.85.030 (1)(a) requires WSDA to prepare an SBEIS "if the proposed rule will impose more-than-minor costs on businesses in an industry."

These rules do not impose any costs because businesses in the industry can, but are not required, to obtain certification.

RCW 19.85.040 requires WSDA to "compare the cost of compliance for small business with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules."

Industries identified by WSDA as being those most likely to be affected by this rule include North American Industry Classification System (NAICS) codes most commonly utilized by marijuana processors and hemp producers, listed below.

NAICS Code	Industry Description	Minor Cost Threshold
111998	All Other Misc. Crop Farming	\$9,125.33
325411	Medicinal and Botanical Manufacturing	\$10,275.35
339999	All Other Misc. Manufacturing	\$10,446.42
424590	Other Farm Product Raw Material Merchant Wholesalers	\$6,733.79

Hemp processors choosing to obtain certification will incur costs. The rules propose to establish an initial certification fee of \$4,400 (including both application and initial inspection fees) with an annual renewal fee of \$1,500 which includes additional inspections. The proposed fees do not exceed the minor cost threshold. No businesses are required to comply. No SBEIS is required.

A copy of the detailed cost calculations may be obtained by contacting Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-1802, fax 360-902-2092, TTY 800-833-6388, email wsdarulescomments@agr.wa.gov.

April 11, 2022  
Steve Fuller  
Assistant Director

OTS-3631.1

**Chapter 16-171 WAC  
HEMP EXTRACT CERTIFICATION**

NEW SECTION

**WAC 16-171-100 Hemp extract certification—Purpose.** The purpose of this chapter is to:

- (1) Establish requirements for new hemp extract certification applications and renewals.
- (2) Establish an inspection criteria and a rating system that will be used to determine whether a hemp extract certification applicant is in compliance with chapters 69.07 and 15.130 RCW, and regulations adopted thereunder, including Title 21 C.F.R.
- (3) Identify steps leading to enforcement actions by the department.

[]

NEW SECTION

**WAC 16-171-110 Hemp extract—Definitions.** (1) Definitions for terms used in this chapter may be found in chapters 69.07 and 15.130 RCW, and Title 21 C.F.R. as adopted in WAC 16-167-050, unless otherwise provided in this chapter.

(2) For the purposes of this chapter, the following definitions apply:

(a) "**Adequate**" means that which is needed to accomplish the intended purpose in keeping with good public health practice.

(b) "**Adulterate**" has the same meaning as provided in RCW 15.130.200 except that the department does not consider hemp extract itself to be adulterated when produced in compliance with RCW 69.07.220 and these rules for use as a food ingredient in another state that allows its use as a food ingredient.

(c) "**Certification criteria violation**" means any violation of the inspection criteria that must be met prior to the issuance of a hemp extract certification.

(d) **"Critical violation"** means a violation of the inspection criteria that results in hemp extract adulteration or that has the potential to contribute to conditions resulting in such adulteration.

(e) **"Department"** means the Washington state department of agriculture (WSDA).

(f) **"Director"** means the director of the department.

(g) **"Facility or hemp extract facility"** means any premise, plant, building, room, area, or facility which processes, prepares, or handles hemp for production of hemp extract for use as a food ingredient in another state that allows its use as a food ingredient.

(h) **"Hemp"** has the same meaning as provided for in RCW 15.140.020 and means the plant *Cannabis sativa L.* and any part of the plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

(i) **"Hemp extract"** means a substance or compound intended for human ingestion that is derived from, or made by, manufacturing hemp. The term does not include hemp seeds or hemp seed-derived ingredients that are generally recognized as safe by the United States Food and Drug administration.

(j) **"Hemp extract certification"** means a certification issued by the department to a hemp extract facility manufacturing hemp extract for export to other states, which certifies the hemp extract facility's compliance with Washington state's inspection and sanitation requirements.

(k) **"Hemp processor"** has the same meaning as provided for in RCW 15.140.020, and means a person who takes possession of raw hemp material with the intent to modify, package, or sell a transitional or finished hemp product.

(l) **"Sanitize"** means to adequately treat hemp extract contact surfaces by a process that is effective in destroying vegetative cells of microorganisms of public health significance, and in substantially reducing numbers of other undesirable microorganisms, but without adversely affecting the product or its safety for the consumer.

(m) **"Significant violation"** means any violation of the inspection criteria not deemed to be a critical violation as described in WAC 16-171-140.

[ ]

#### NEW SECTION

**WAC 16-171-120 Hemp extract facility certification—New application and renewals—Inspection criteria.** To qualify for a new hemp extract certification issued under chapter 69.07 RCW, the Washington Food Processing Act, a hemp processor must first make an application to the department. After the department receives a complete application, the department will inspect the facility. The facility must be in compliance with the following requirements prior to issuance of a certification:

(1) The applicant must submit an application that includes:

(a) The full name of the applicant and the location of the hemp extraction facility where the applicant intends to operate, and if the

applicant is an entity, the full name of each officer, managing member, or other responsible individuals;

(b) The principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant; and

(c) The type of hemp extracts to be processed, the method of manufacturing, and any other necessary information to make an evaluation.

(2) A hemp processor holding a hemp extract certification must apply for renewal of the certification annually.

(3) The appropriate fee must accompany the application submitted to the department, as follows:

(a) For new applications, the fee is \$1,400.

(b) For a new certification inspection, the fee is \$3,000.

(c) For renewal applications, the fee is \$1,500.

(4) The hemp extract facility must be in substantial compliance with inspection criteria as described in WAC 16-171-150(2). Refer to WAC 16-171-140 for the inspection and certification criteria and WAC 16-171-130 for definitions of certain inspection criteria. For the purposes of certification, a hemp extract facility may incur a one-point debit of a licensing criteria that has sliding scale.

(5) To renew a certification, a hemp extract manufacturer must submit a renewal application and fees before the manufacturer's current certification expires. If the department has received receipt of a submitted renewal application and fees before the certification expiration date, the time period of the prior certification extends until the department either issues the renewed certification or denies the renewal application. If a manufacturer does not timely submit a renewal application or fees, the prior certification expires upon the expiration date.

(6) Upon the approval of the application by the director the applicant shall be issued a new or renewal certification.

[ ]

#### NEW SECTION

**WAC 16-171-130 Hemp extract certification—Inspection criteria definitions.** This section provides definitions for certain criteria the department will use when conducting inspections to determine if a hemp extract facility complies with inspection criteria and good manufacturing practices for hemp extract certification. The complete set of inspection criteria is set forth in WAC 16-171-140.

(1) **"Clean and adequate protective clothing and hair restraints"** means the clothing, or the outside layer of clothing, which can occasionally or incidentally contact hemp extract, either directly or indirectly, is:

(a) Clean at the start of the work shift; and

(b) Changed when the clothing becomes so soiled during the course of the work shift that contamination of hemp extract, hemp extract packaging or hemp extract contact surfaces becomes imminent; and

(c) Suitable to the specific hemp extract manufacturing operation for protection against the contamination of hemp extract, hemp extract packaging, and hemp extract contact surfaces; and

(d) Clean and effective hair restraints, such as hairnets, or beard nets if appropriate, are worn for the protection of hemp extract from contamination. Hats, caps, scarves or other head cover are acceptable if the hair is properly contained to protect hemp extract from contamination. Hair spray and/or tying back the hair in pony-tails, etc., are not considered effective hair restraints.

(2) **"Adequate washing and sanitizing of hands as necessary"** means washing and sanitizing hands thoroughly to protect against contamination of hemp extract from undesirable microorganisms in an adequate hand wash facility by:

Using proper handwashing methods which consist of:

- (a) Applying soap to hands;
- (b) Using warm water;
- (c) Scrubbing hands thoroughly;
- (d) Rinsing and drying hands using methods that prevent hemp extract contamination;
- (e) Washing hands before beginning work, after each absence from the work station, and any time hands become soiled or contaminated; and
- (f) Sanitizing hands when appropriate in addition to, but not in place of, the proper handwashing methods.

(3) **"Garments and personal belongings stored appropriately; not a source of contamination"** means personal belongings and garments, either personal or supplied by the hemp extract facility, are stored or kept separately from hemp extract manufacturing, handling and storage operations such as in an area, locker, cupboard, or other closeable unit that is dedicated to the storing or hanging of personal belongings and clothing so not to become a source of contamination to hemp extract, hemp extract packaging or hemp extract contact surfaces; and

No hemp extract, packaging materials, utensils or equipment used in the hemp extract manufacturing operation are kept, stored or commingled with personal belongings or garments.

(4) **"Processes separated as required"** means there is a separation of processes for the purpose of reducing potential contamination in hemp extract manufacturing operations where contamination is likely to occur. One or more of the following means may accomplish this:

- (a) Location;
- (b) Time;
- (c) Partition;
- (d) Air flow;
- (e) Enclosed systems; or
- (f) Other effective method.

(5) **"Adequate light"** means lighting is provided in handwashing, dressing and locker rooms, toilet rooms and in all areas where hemp extract is examined, manufactured or equipment is cleaned. Shatter resistant light bulbs or fixtures are to be used to protect against hemp contamination.

(6) **"Detergents, sanitizers and toxic materials properly identified"** means:

- (a) Labeling any container containing detergent, sanitizer, or toxic material with the:
  - (i) Product name;
  - (ii) Chemical description;
  - (iii) Directions for use;
  - (iv) Any required precautionary and warning statements;
  - (v) First-aid instructions;
  - (vi) Name and address of the manufacturer or distributor; and

(vii) Any other additional information required by the federal Environmental Protection Agency or other laws or rules; and

(b) Small transport or use containers for detergents, sanitizers, or toxic materials are used only under the following conditions:

(i) The contents are properly identified on the container. Labeling the container with the common name is acceptable if the original storage container is on hand and properly identified;

(ii) No hemp extract container is used as a container for detergents, sanitizers, or toxic materials;

(iii) No container used for detergents, sanitizers, or toxic materials, is used as a hemp extract container.

(7) **"Product contact surfaces clean and maintained in a sanitary condition, cleaned and sanitized prior to each use or as essential"** means:

(a) Product contact surfaces of equipment, utensils, containers and other articles used in the manufacturing of hemp extract, when its continued use is apparent, are cleaned as frequently as necessary to protect against contamination of hemp extract;

(b) Hemp extract residues are removed from product contact surfaces frequently enough to prevent residues from becoming unwholesome or unfit for food, decomposed, filthy, putrid, or injurious to health; and

(c) The hemp extract product contact surfaces are sanitized prior to use and after cleaning as necessary.

(8) **"Product contact surfaces clean and maintained in a sanitary condition, cleaned and sanitized prior to each use or as essential: Critical violation"** means it is a critical violation if a hemp extract product contacts a surface that is not sanitized after cleaning or prior to use. Product contact surfaces that become contaminated, but are cleaned and sanitized prior to use, are not considered a critical violation.

(9) **"Nonproduct contact surfaces of equipment cleaned and maintained in a sanitary condition"** means nonproduct contact surfaces of equipment are kept reasonably free from dirt, old hemp extract residues, foreign material, dust, mold, mildew, slime and other accumulations that occur because of day-to-day hemp extract manufacturing operations.

(10) **"In-use hemp contact equipment and utensils appropriately stored: Protected from contamination between uses"** means the utensils used in the manufacturing of hemp, such as knives, scrapers, scoops, shovels, cutters, and other hand tools and equipment, are placed or stored in a manner to prevent hemp extract contact surfaces from being contaminated with filth. Filth includes, but is not limited to, nonpathogenic microorganisms, unsuitable toxic chemicals, and microscopic physical contaminants.

Storage and placement of utensils or equipment in the following manner is considered inappropriate storage:

(a) In contact with the floor, dirty equipment frames, other insanitary nonhemp extract contact surfaces;

(b) In contact with containers of nonpotable water (other than sterilizing solutions); and

(c) In contact with other contaminants.

(11) **"In-use hemp contact equipment and utensils appropriately stored: Protected from contamination between uses: Critical violation"** means that it is a critical violation when a utensil or piece of equipment is or has been stored in a manner that it becomes obviously contaminated with filth and its continued use is apparent.

Utensils and equipment that become contaminated are not considered a critical violation if the utensils and equipment are cleaned and sanitized prior to the next use.

(12) **"Water supply - Safe and of sanitary quality"** means the water supply used in the manufacturing of hemp is potable from an approved source and is monitored in accordance with applicable laws and rules with current satisfactory water tests as applicable. Water from an approved source and monitored in accordance with applicable laws and rules means:

(a) Hemp extract facilities with 25 or more employees and operating 60 days or more annually comply with the state department of health, division of drinking water requirements for a Group A water system (chapter 246-290 WAC).

(b) Hemp extract facilities with less than 25 employees or operating less than 60 days annually, comply with the state department of health, division of drinking water requirements for a Group B water system (chapter 246-291 WAC) unless connected to a Group A public water system.

(c) Private water supplies must meet the department of health, division of drinking water requirements for a Group B water system (chapter 246-291 WAC) with respect to monitoring for bacteriological properties. When water is incorporated into the product, chemical and physical properties must also be monitored.

(13) **"Current satisfactory water test"** means for water obtained from other than a municipal system, analysis verifying the bacteriological, physical and chemical safety of the water has been conducted according to appropriate Group A or B water system monitoring schedules and that reports of analysis are on file at the manufacturing facility and available for review by the department during routine facility inspection.

(14) **"No cross connections, no back siphonage"** means there is no backflow from or cross connection between piping systems that discharge waste water sewage and piping systems that carry water for hemp extract manufacturing. This includes any cross connection between a potable water system and a nonpotable system.

(15) **"Adequate floor drains and plumbing to convey wastes and sewage from the manufacturing facility, into approved sewage disposal system"** means:

(a) Plumbing is designed, sized, installed and maintained in accordance with applicable state and local plumbing codes so that sewage and liquid disposable waste is readily conveyed from the plant;

(b) Floor drainage is sufficient to prevent excessive pooling of water or other disposable waste;

(c) Plumbing and drains do not provide a source of contamination to hemp or hemp extract, potable water, hemp extract contact surfaces or hemp extract packaging material or create any insanitary condition; and

(d) Sewage is disposed into a municipal sewer system or other system approved by a federal, state or local agency having jurisdiction.

(16) **"Adequate, readily accessible toilet facilities"** means a hemp extract facility provides its employees with toilet facilities that are located within a reasonable distance to the work area, and are maintained in accordance with local zoning ordinances.

(a) Toilet facilities are located on the premises of a hemp extract facility.

(b) If the hemp extract facility shares space in a multiple building complex, toilet facilities are located within the complex and within a reasonable distance from the work area.

(c) Outhouses, chemical toilets, or other nonflushing toilets may not be used.

(17) **"Toilets clean, in good repair, not opening directly into process areas, self-closing doors"** means toilet rooms are kept clean, free of trash and litter, in good repair and all toilet room doors are self-closing and do not open directly into a hemp extract manufacturing area.

(18) **"Handwash facilities adequate and convenient, with hot and cold or tempered water"** means employees and visitors in a hemp extract facility have access to one or more handwashing facilities with hot, cold, or tempered running water, and there is at least one handwash facility located in each restroom and one in the hemp extract manufacturing area in a convenient location for use when hands become soiled.

(19) **"Hemp extract protected from contamination in storage"** means hemp and hemp extract is stored under conditions that protect against physical, chemical and microbial contamination, as well as against deterioration of the hemp extract and the container.

(20) **"Hemp extract protected from contamination in storage: Critical violation"** means it is a critical violation when a storage situation allows potential contamination of products.

(21) **"Packaging material properly handled and stored"** means packaging material is protected from potential sources of contamination during handling and storage. This includes, but is not limited to:

(a) Boxes, liners, and other primary containers are stored off floors or other insanitary surfaces;

(b) Top containers in a nested stack of lined or primary containers are inverted or otherwise protected;

(c) All single service containers, caps, roll stock, liner jars, bottles, jugs, and other preformed containers are stored in closed sanitary tubes, wrappings, boxes or cartons prior to use;

(d) The forming, make-up or other package assembly is conducted in a manner that prevents contamination;

(e) The handling of packaging material and containers prior to filling or wrapping is conducted as not to expose them to contamination by dust, foreign material, or other contaminants.

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NEW SECTION

**WAC 16-171-140 Hemp extract facility—Inspection criteria.** The following table identifies:

(1) Inspection criteria and whether each criterion also represents a certification requirement;

(2) Whether a violation is critical; and

(3) The debit value for each significant violation.

	<b>Criteria Item-Critical*</b>	<b>Debit Value</b>	<b>Certification Requirement?</b>
1	Hemp extract products free from adulteration.	C	Yes
2	Persons with apparent infections or communicable diseases properly restricted.	C	Yes



	<b>Criteria Item-Critical*</b>	<b>Debit Value</b>	<b>Certification Requirement?</b>
3	Adequate washing and sanitizing of hands as necessary, gloves used in food handling sanitary conditions.	C	Yes
4	Product contact surfaces clean and maintained in a sanitary condition; cleaned and sanitized prior to each use or as essential.	C	Yes
5	In use hemp contact equipment and utensils appropriately stored; protected from contamination between uses.	C	No
6	Water used is safe and of adequate sanitary quality; from approved source.	C	Yes
7	No cross connections; no back-siphonage.	C	Yes
8	Hot and cold water, under pressure, in areas where foods are processed or equipment washed.	C	Yes
9	Adequate, readily accessible toilet facilities provided.	C	Yes
10	No evidence of human defecation or urination about the premises.	C	Yes
11	Handwash facilities adequate and convenient, including hot and cold or tempered water.	C	Yes
12	Hemp protected from contamination in storage.	C	No
* A critical violation results in an establishment not being in substantial compliance.			

	<b>Criteria Item-Significant</b>	<b>Debit Value</b>	<b>Certification Requirement?</b>
1	Jewelry, watches other personal items not a source of contamination.	1	No
2	Clean and adequate protective clothing and hair restraints.	1-2	No
3	Use of tobacco, eating and drinking of food and beverages and gum chewing restricted to appropriate areas.	1	No
4	Garments and personal belongings stored appropriately, not a source of potential contamination.	2	No
5	Employee work procedures preclude contamination.	1-2	No
6	Grounds: Free from pest attractions, breeding places, harborage, excessive dust and other contaminants.	1	No
7	Suitable size and location, construction including walls, floors, ceiling, counters, shelving, other fixtures, smooth, readily cleanable and in good repair.	1-5	Yes
8	Processes separated as required.	1-2	Yes
9	No operations in domestic living or sleeping quarters (including domestic kitchens).	0	Yes
10	Adequate light.	1-2	Yes
11	Lights; glass over food protected; breakproof.	1	No
12	Adequate ventilation to minimize vapors, steams, noxious fumes.	1-2	Yes
13	Drip or condensate from ceiling, fixtures, pipes, ducts not a potential source of contamination.	1-3	No
14	Screened or protected to exclude pests.	1-2	No
15	Building, fixtures, facilities clean; including transport vehicles.	1-5	Yes
16	Detergents, sanitizers, toxic materials safely used and stored.	1-3	No
17	Detergents, sanitizers and toxic materials properly identified.	1-2	No
18	Product contact surfaces clean and maintained in a sanitary condition; cleaned and sanitized prior to each use or as essential.	1-2	No
19	Nonproduct contact surfaces of equipment clean and maintained in a sanitary condition.	1-2	No
20	In use hemp extract contact equipment and utensils appropriately stored; protected from contamination between uses.	1-2	No

	Criteria Item-Significant	Debit Value	Certification Requirement?
21	Effective measures taken to exclude pests from the facility. No harborage/breeding areas.	1-2	No
22	Pesticides safely used and stored.	1-3	No
23	No evidence of rodents, insects, birds or other animals.	1-5	Yes
24	Current satisfactory water supply test.	5	Yes
25	Water supply sufficient in quantity for intended operations.	2	Yes
26	Adequate floor drains and plumbing to convey wastes and sewage from plant.	1-2	Yes
27	Sewage and waste lines protected not a source of contamination.	1-2	Yes
28	Adequate offal, rubbish and waste disposal.	1-2	Yes
29	Toilet facilities clean and in good repair, no direct opening to process area, self-closing door.	1-2	Yes
30	Soap and single service towels or suitable drying devices provided at handwash facilities. Adequate refuse receptacles provided.	1-2	No
31	Readily understandable handwash signs provided at handwash facilities.	1	No
32	Hand dips provided as necessary.	1-2	No
33	Design, material and workmanship durable, readily cleanable and in good repair. Contact surfaces nontoxic and corrosion resistant.	1-3	Yes
34	Design and use preclude contamination with lubricants, fuel, contaminated water, paint, rust, compressed air/gas and other contaminants.	1-3	No
35	Freezers and cold storage units equipped with adequate thermometers.	1	No
36	Incoming raw materials or ingredients are from an approved source, in an obvious sanitary condition. Items inspected on receipt, suitable for intended use, segregated as necessary and properly stored (clean storage containers, facilities, products properly covered), ingredients properly identified; raw materials washed or cleaned as required.	1-5	No
37	No contaminating material used, stored or transported with supplies, ingredients or processed foods.	1-2	No
38	Packing material properly handled and stored.	1	No
39	Cleaning operations - Conducted to minimize contamination.	1-3	No

[ ]

#### NEW SECTION

**WAC 16-171-150 Hemp extract facility inspection rating system— Inspection score.** (1) A hemp extract facility is evaluated at the completion of an inspection conducted by the department as follows:

(a) A hemp extract facility will be debited the point value assigned to the inspection item listed in WAC 16-171-140 for each violation found during an inspection.

(b) The maximum point value possible is 100.

(c) The sum of the points debited for an inspection are subtracted from the maximum point value of 100. The remaining sum is the facility's score for that inspection.

(d) When the department identifies a critical violation during inspection of a hemp extract facility a failing score of "critical"

will be listed unless the violation is satisfactorily corrected during the inspection.

(2) A hemp extract facility is considered in substantial compliance with the inspection criteria if:

(a) No critical violations are found, or if critical violations are found, they are corrected prior to completion of the inspection; or

(b) The facility's inspection score is 90 points or above.

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NEW SECTION

**WAC 16-171-160 Hemp extract facilities—Basis for enforcement action.** (1) The department may issue a notice of correction for:

(a) Hemp extract facilities that score less than 90 points on an inspection; or

(b) Critical violations found during an inspection of a hemp extract facility.

(2) The department may review and consider initiating enforcement action, such as certification suspension, civil penalties, and/or other actions provided in chapter 69.07 or 15.130 RCW when:

(a) Hemp extract facilities score less than 90 points on two separate inspections within a consecutive three-year period; or

(b) Hemp extract facilities fail to correct critical violations during an inspection.

(3) Nothing herein shall prevent the department from:

(a) Choosing not to pursue a case administratively.

(b) Issuing a notice of correction in lieu of pursuing enforcement action.

(c) Negotiating settlement(s) of cases on such terms and for such reasons as it deems appropriate.

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**WSR 22-09-036**  
**PROPOSED RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

[Filed April 13, 2022, 11:00 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-22-042.

Title of Rule and Other Identifying Information: Chapter 314-55 WAC. The Washington state liquor and cannabis board (board) proposes amendments to modernize existing rule, and proposes a new rule section in response to recommendations of the social equity in cannabis task force, and requirements of RCW 69.50.335. The proposed rule amendments also implement 2SHB 1210, chapter 16, Laws of 2022, effective June 9, 2022, that changes the word "marijuana" to "cannabis" throughout Washington state law:

<b>Chapter 314-55 WAC: Amendments to Existing Rule</b>	
Amended	WAC 314-55-015 General information about marijuana licenses.
Amended	WAC 314-55-020 Marijuana license qualifications and application process—Licensing change requests.
Amended	WAC 314-55-040 Marijuana applicant or licensee background checks.
Amended	WAC 314-55-045 What marijuana law or rule violation history might prevent an applicant from receiving a marijuana license?
Amended	WAC 314-55-050 Reasons the WSLCB may seek denial, suspension, or cancellation of a marijuana license application or license.
Amended	WAC 314-55-055 Marijuana retailer license forfeiture.
Amended	WAC 314-55-070 Process if the WSLCB denies a marijuana license application.
Amended	WAC 314-55-079 Marijuana retailer license—Privileges, requirements and fees.
Amended	WAC 314-55-082 Insurance requirements.
Amended	WAC 314-55-110 What are my responsibilities as a marijuana licensee?
Amended	WAC 314-55-120 Ownership changes.
Amended	WAC 314-55-125 Change of location.
Amended	WAC 314-55-137 Receiverships.
<b>Chapter 314-55 WAC: New Sections Related to Establishing the Social Equity in Cannabis Program</b>	
New section	WAC 314-55-570 Social equity in cannabis program.

Hearing Location(s): On May 25, 2022, at 10:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the board will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Board members, presenters, and staff will all participate remotely. The public may log in using a computer or de-

vice, or call-in using a phone, to listen to the meeting through the Microsoft Teams application. The public may provide verbal comments during the specified public comment and rules hearing segments. For more information about board meetings, please visit [https://lcb.wa.gov/Boardmeetings/Board\\_meetings](https://lcb.wa.gov/Boardmeetings/Board_meetings).

Date of Intended Adoption: Not earlier than June 8, 2022.

Submit Written Comments to: Katherine Hoffman, Policy and Rules Manager, 1025 Union Avenue, Olympia, WA 98501, email [rules@lcb.wa.gov](mailto:rules@lcb.wa.gov), fax 360-704-5027, by May 25, 2022.

Assistance for Persons with Disabilities: Contact Anita Bingham, ADA coordinator, human resources, TTY 711 or phone 1-800-833-6388, fax 360-664-9689, email [anita.bingham@lcb.wa.gov](mailto:anita.bingham@lcb.wa.gov), by May 18, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to establish the social equity in cannabis program as described in RCW 69.50.335, concerning cannabis retailer licenses, and to implement RCW 69.50.336. These proposed rules create a regulatory framework for the distribution of licenses that are currently available from cannabis retailer licenses that have been subject to forfeiture, revocation, or cancellation by the board, or cannabis retailer licenses that were not previously issued by the board, but could have been issued without exceeding the limit on the statewide number of cannabis retailer licenses established by the board before January 1, 2020. The proposed rule amendments also implement 2SHB 1210, chapter 16, Laws of 2022, effective June 9, 2022, that changes the word "marijuana" to "cannabis" throughout Washington state law.

Reasons Supporting Proposal: E2SHB 2870, chapter 236, Laws of 2020, codified as RCW 69.50.335 and 69.50.336 found that in the interest of remedying harms resulting from the enforcement of cannabis-related laws in disproportionately impacted areas, creating a social equity in cannabis program will further an equitable cannabis industry by promoting business ownership among individuals who have resided in areas of high poverty and high enforcement of cannabis-related laws. The social equity in cannabis program is authorized by RCW 69.50.335 and 69.50.336 and consistent with these statutes, offers assistance to individuals most directly and adversely impacted by the enforcement of cannabis related laws who are interested in starting cannabis business enterprises.

Statutory Authority for Adoption: RCW 69.50.342 and 69.50.335.

Statute Being Implemented: RCW 69.50.335 and 69.50.336; 2SHB 1210, chapter 16, Laws of 2022.

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

Name of Proponent: Washington state liquor and cannabis board, governmental.

Name of Agency Personnel Responsible for Drafting: Katherine Hoffman, Policy and Rules Manager, 1025 Union Avenue, Olympia, WA 98501, 360-664-1622; Implementation: Rebecca Smith, Licensing and Regulation Director, 1025 Union Avenue, Olympia, WA 98501, 360-664-1615; Enforcement: Chandra Brady, Enforcement and Education Director, 1025 Union Avenue, Olympia, WA 98501, 360-664-1726.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328 because the subject of the proposed rule making does not qualify as a significant legislative rule or other rule requiring a cost-benefit analysis under RCW 34.05.328 (5) (c).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 34.05.310 (4) (e).

Explanation of exemptions: This rule proposal implements the social equity in cannabis program as required by RCW 69.50.335 and consistent with the social equity in cannabis task force recommendations as described in RCW 69.50.336. This proposal also implements 2SHB 1210, chapter 16, Laws of 2022, effective June 9, 2022, that changes the word "marijuana" to "cannabis."

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Agencies are required to consider costs imposed on business and costs associated with compliance with proposed rules. Agencies are not required under chapter 19.85 RCW to consider indirect costs not associated with compliance. The agency considered potential administrative costs that a licensee may incur complying with the proposed rules.

The board applied the North American Industry Classification System (NAICS) codes 453998 for marijuana stores. The industry description for this code is presented in the table below, and can be accessed at <https://www.census.gov/library/publications/2017/econ/2017-naics-manual.html>.

The board applied a default estimated compliance cost when analyzing whether the rules would have a disproportionate impact on small businesses as defined in RCW 19.85.020(3). This reflects four hours of administrative time at \$50 per hour, for a total of \$200. The agency assumes this activity would include activities such as completing and submitting forms to the board, and telephone calls.

2017 Industry NAICS Code	Estimated Cost of Compliance	Industry Description	NAICS Code Title	Minor Cost Estimate	1% of Avg Annual Payroll (Threshold)	0.3% of Avg Annual Gross Business Income (Threshold)
453998	\$200	Marijuana stores, medicinal and recreational	All Other Miscellaneous Store Retailers (except Tobacco Stores)	\$3,615.53	\$3,024.31 2018 Dataset pulled from ESD	\$3,615.53 2018 Dataset pulled from DOR

As the table demonstrates, the estimated cost of compliance does not exceed the thresholds for any of the license types. Therefore, implementation of these rules are not anticipated to result in more-than-minor costs on businesses as defined in RCW 19.85.020(2).

April 13, 2022  
David Postman  
Chair

OTS-3706.1

AMENDATORY SECTION (Amending WSR 18-22-055, filed 10/31/18, effective 12/1/18)

**WAC 314-55-015 General information about ((marijuana)) cannabis licenses.** (1) To be issued and maintain a license to produce, process, or sell cannabis at retail, a person or entity applying for a cannabis license must meet ((certain)) all of the qualifications ((under this chapter to receive a marijuana license, which are continuing qualifications required to maintain the license)) described in this chapter.

(2) All applicants, licensees, and employees working in each licensed establishment must be at least ~~((twenty-one))~~ 21 years of age. No one under ~~((twenty-one))~~ 21 years of age ~~((is allowed to))~~ may enter or remain on a ~~((marijuana))~~ cannabis licensed premises except as provided in RCW 69.50.357.

(3) ~~((Minors restricted signs must be posted at all marijuana))~~ Mandatory signs must be conspicuously posted at all cannabis licensed premises consistent with the requirements in WAC 314-55-086.

(4) ~~((A marijuana license applicant may not exercise any of the privileges of a marijuana license until the WSLCB approves the license application.))~~ The privileges of a board issued cannabis license may be used only after the board issues official written approval.

(5) The ~~((WSLCB))~~ board will not approve ~~((any marijuana license for a location where law enforcement access, without notice or cause, is limited. This includes a personal residence.~~

~~((6) The WSLCB will not approve any marijuana license for a location on federal lands.~~

~~((7) The WSLCB will not approve any marijuana license))~~ an application for a cannabis license under any of the following circumstances:

(a) The proposed cannabis location would limit law enforcement access without notice or cause, including a personal residence;

(b) The proposed cannabis business would be located on federal lands;

(c) The proposed cannabis business would be located within the exterior boundaries of the reservation of a federally recognized tribe without the express written consent of the tribe consistent with WAC 314-55-020(4). ~~((If a tribe receives written notice from the WSLCB of a license application or change request under RCW 69.50.331 and the tribe does not respond to the WSLCB within thirty days of the date of that notice, the WSLCB will assume the tribe does not consent to the location of the applicant or licensee and the applicant or licensee must find a different location.~~

~~((8))~~ (d) The ((WSLCB will not approve any marijuana retailer license for a location)) application for a cannabis retail license is located within another business ((with the exception of the)) unless that other business is a research license ((consistent with)) as described in WAC 314-55-073. More than one license may be located in the same building if each licensee has their own area separated by full walls with their own entrance, or if the same business entity holds a producer license and a processor license at the same location under a single license number. Product may not be commingled.

~~((9) Every marijuana licensee))~~ (6) The board may impose special conditions to an approval for a cannabis license. Special conditions include, but are not limited to, involvement of any former licensee in the operations of the licensed business, their former employees, or any person not qualifying for a cannabis license.

~~(7) All cannabis licensees must conspicuously post and keep posted its license, or licenses, and any additional correspondence (containing) issued by the board describing special conditions (and restrictions imposed by the WSLCB in a conspicuous place on the premises).~~

~~((10) In approving a marijuana license, the WSLCB reserves the right to impose special conditions as to the involvement in the operations of the licensed business of any former licensees, their former employees, or any person who does not qualify for a marijuana license.~~

~~(11) A marijuana producer, processor or retailer licensed by the WSLCB must conduct)~~ (8) A cannabis licensee must use sanitary practices in the production, processing, storage, and sale of (marijuana-infused products using sanitary practices) all cannabis products.

~~((12) Marijuana)~~ (9) Cannabis licensees may not allow the consumption of (marijuana or marijuana-infused) cannabis or cannabis-infused products on or within the licensed premises.

[Statutory Authority: RCW 69.50.325, 69.50.342, 69.50.345, and 69.50.369. WSR 18-22-055, § 314-55-015, filed 10/31/18, effective 12/1/18. Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-015, filed 5/18/16, effective 6/18/16; WSR 15-11-107, § 314-55-015, filed 5/20/15, effective 6/20/15. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-015, filed 10/21/13, effective 11/21/13.]

AMENDATORY SECTION (Amending WSR 21-02-096, filed 1/6/21, effective 2/6/21)

**WAC 314-55-020 ((Marijuana)) Cannabis license qualifications and application process—Licensing change requests.** Each ((marijuana)) cannabis license application is unique and ((investigated)) evaluated individually. The ((WSLCB)) board may inquire and request documents regarding all matters in connection with the ((marijuana)) cannabis license application. ((The application requirements for a marijuana license include, but are not limited to, the following:))

(1) ((Consistent with RCW 69.50.331 (7) and (10), the WSLCB shall send a notice to cities and counties, tribal governments, and port authorities regarding the marijuana license application within said jurisdiction. The local authority, tribal government, or port authority has twenty days to respond with a recommendation to approve the application or an objection to the applicant, location, or both.

(2) Consistent with RCW 69.50.331 (8) (f), the WSLCB shall send a notice to tribal governments when an applicant or licensee is proposed to be located within the exterior boundaries of the reservation of a federally recognized Indian tribe. The tribal government will have twenty days to respond with an approval to the application. If written approval is not received within thirty days, the WSLCB will assume the tribe does not consent to the applicant's location and the applicant must find a new location.

(3) Applicants for a new marijuana producer, processor, retailer, transportation, or research license and those who apply to change their location must display a sign provided by the WSLCB on the outside of the premises to be licensed notifying the public that the premises are subject to an application for a marijuana license. Post-



~~ing notices must occur within seven days of submitting the location confirmation form for new licenses or the change of location application for existing licensees. The WSLCB may check for compliance with this requirement at its discretion. The sign must:~~

~~(a) Not be altered. The licensee must post the sign sent by the WSLCB without changing, adding, or subtracting from the text;~~

~~(b) Be conspicuously displayed on, or immediately adjacent to, the premises subject to the application and in the location that is most likely to be seen by the public;~~

~~(c) Be of a size sufficient to ensure that it will be readily seen by the public, at a minimum these signs must be eight and one-half by eleven inches;~~

~~(d) Be posted within seven business days of the date the notice is sent to the applicant by the WSLCB; and~~

~~(e) The notice must be posted for fourteen consecutive days.~~

~~(4) All marijuana license applicants must meet the qualifications required by the WSLCB before they will be granted a license.~~

~~(5) The WSLCB will verify that the proposed business meets the minimum requirements for the type of marijuana license requested.~~

~~(6) Consistent with RCW 69.50.331 (8) (c), the WSLCB will issue a certificate of compliance if the proposed business premises meets the minimum distance requirements as of the date the application was received by the WSLCB. If the physical location changes during the application process, the certificate of compliance will be issued for the date that the premises change was received by the WSLCB. Applicants who were granted licenses prior to adoption of this rule are allowed to operate the business at the location notwithstanding a later occurring, otherwise disqualifying minimum distance factor.~~

~~(7) The WSLCB will conduct an investigation of the applicants' criminal history and administrative violation history, per WAC 314-55-040 and 314-55-045.~~

~~(a) The criminal history background check will consist of completion of a personal/criminal history form provided by the WSLCB and submission of fingerprints to a vendor approved by the WSLCB. 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) Financiers will also be subject to criminal history investigations equivalent to that of the license applicant. Financiers will also be responsible for paying all fees required for the criminal history check.~~

~~(8) The WSLCB will conduct a financial investigation in order to verify the source of funds used for the acquisition and startup of the business, the applicants' right to the real and personal property, and to verify the true party(ies) of interest.~~

~~(9) The WSLCB may require a demonstration by the applicant that they are familiar with marijuana laws and rules.~~

~~(10) The WSLCB may conduct an inspection of the proposed or currently licensed business location, to determine if the applicant has complied with all the requirements of the license or change to the license or premises requested.~~

~~(11) Under RCW 69.50.331 (1) (c), all applicants applying for a marijuana license must have resided in the state of Washington for at least six months prior to application for a marijuana license. All~~

business entities including, but not limited to, partnerships, employee cooperatives, associations, nonprofit corporations, corporations and limited liability companies, applying for a marijuana license must be formed in Washington. All members, governors, or agents of business entities must also meet the six month residency requirement. Managers or agents who manage a licensee's place of business must also meet the six month residency requirement.

(12)(a) As part of the application process, each applicant must submit an operating plan outlining required elements for the location as provided in this chapter pertaining to the license type being sought. The operating plan must be submitted using an operating plan format supplied by the WSLCB. This operating plan must also include a floor plan or site plan drawn to scale which illustrates the entire operation being proposed.

(b) After obtaining a license, the license holder must notify the WSLCB in advance of any change in their operating plan. Prior approval is required before the change may be implemented.

(13) The WSLCB may place licensing change applications made by a licensee on hold if the change application is reasonably related to an ongoing investigation.

(a) The WSLCB may withdraw licensing change applications pending the results of an adjudicative proceeding regarding a violation of chapter 314-55 WAC. Depending on the outcome of the adjudicative proceeding, the licensee may reapply for the withdrawn licensing change application(s).

(b) Examples of licensing change applications that may be affected under this subsection include:

- (i) Application for additional funding;
- (ii) Application for added medical marijuana endorsement;
- (iii) Assumption of a license;
- (iv) Change in governing people, percentage owned, or stock/unit ownership;
- (v) Change of location;
- (vi) Expanding plant canopy to maximum allotted;
- (vii) Request to alter marijuana site or operating plan;
- (viii) Request to add a processor license; and
- (ix) Splitting a producer and processor license.

(14)(a) To aid the WSLCB in monitoring the industry as it develops, the WSLCB requests that all applicants and licensees seeking renewal provide the following information:

(b) **Employees compensation and benefits data.**

- (i) Will the applicant/licensee provide a living wage (at least one hundred fifty percent of the state minimum wage) to eighty-five percent or more of its hourly employees?
- (ii) Will the applicant/licensee provide health insurance to at least eighty-five percent of its hourly employees?
- (iii) Will the applicant/licensee provide a defined benefit pension plan to at least eighty-five percent of its hourly employees?
- (iv) Will the applicant/licensee provide five or more paid sick days annually to at least eighty-five percent of its hourly employees?
- (v) Is there a signed labor peace agreement or collective bargaining agreement with a labor organization in place?

(15) Applicants applying for a marijuana license must be current in any tax obligations to the Washington state department of revenue and other state agencies, as an individual or as part of any entity in which they have an ownership interest. Applicants must sign an attes-

~~tation that, under penalty of denial or loss of licensure, that representation is correct.~~

~~(16) The issuance or approval of a license shall not be construed as a license for, or an approval of, any violations of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements.~~

~~(17) Upon failure to respond to the WSLCB licensing and regulation division's requests for information and/or documentation within the timeline provided, the application may be administratively closed or denial of the application will be sought.)~~ **Cannabis license qualification criteria and application process.** To be issued a license, all cannabis license applicants must meet the qualifications required by the board. The board will verify that the proposed business meets the minimum requirements for the type of cannabis license requested. The qualifications and application process for a cannabis license include:

(a) **A background check** to evaluate whether the applicant qualifies for a license, consistent with WAC 314-55-040 and 314-55-045.

(i) The background check includes completion of a personal and criminal history form provided by the board. The applicant is responsible for paying all fees required by the Washington state patrol and the Federal Bureau of Investigation.

(ii) Financiers are subject to background checks equivalent to that of a license applicant. Financiers are responsible for paying all fees required by the Washington state patrol and the Federal Bureau of Investigation.

(b) **Inquiry** to verify the source of funds used to acquire an existing business and start the business, the applicant's right to the real and personal property, and to verify the true party or parties of interest.

(c) **An inspection** of the proposed or currently licensed business location to determine if the applicant has met all of the requirements of the license or proposed changes to the licensed premises.

(d) **A residency check to confirm Washington state residency.** Under RCW 69.50.331 (1)(b), all applicants applying for a cannabis license must have resided in the state of Washington for at least six months prior to applying for a cannabis license.

(i) All business entities including, but not limited to, partnerships, employee cooperatives, associations, nonprofit corporations, corporations and limited liability companies applying for a cannabis license must be formed in Washington state.

(ii) All members, governors, or agents of business entities must also meet the six-month residency requirement. Managers or agents who manage a licensee's place of business must also meet the six-month residency requirement.

(e) **Applicants must be current in any tax obligations** to the Washington state department of revenue and other state agencies, as an individual or as part of any entity in which they have an ownership interest. Applicants must sign an attestation that, under penalty of denial or loss of licensure, statements concerning the status of tax obligations are true and correct.

(f) **Operating plan.** Each cannabis license applicant must submit an operating plan outlining required elements for the location as provided in this chapter pertaining to the type of license being sought. The operating plan must be submitted using an operating plan template supplied by the board. The operating plan must also include a floor plan or site plan drawn to scale that illustrates the entire operation being proposed.

After obtaining a license, the license holder must notify the board's licensing and regulation division and receive prior approval before making any changes in their operating plan, floor plan, or both.

(g) If an applicant does not respond to the board's licensing and regulation division requests for information, documentation, or both within the timelines provided, the application may be administratively withdrawn, closed or denied.

(2) **Certificate of compliance.** Consistent with RCW 69.50.331 (8) (e), the board will issue a certificate of compliance if the proposed business premises meets the minimum distance requirements as of the date the application was received by the board. If the physical location changes during the application process, the certificate of compliance will be issued for the date that the premises change was received by the board. Applicants who were granted licenses prior to adoption of this rule may operate their business at the location notwithstanding a later occurring, otherwise qualifying minimum distance factor.

(3) **Notice of cannabis license application.** Consistent with RCW 69.50.331 the board will send a notice to cities and counties, tribal governments, and port authorities regarding the cannabis license application within the jurisdiction. The local authority, tribal government, or port authority has 20 days to respond with a recommendation to approve the application or an objection to the applicant, location, or both.

(4) **Notice of cannabis license application to tribal governments.** Consistent with RCW 69.50.331, the board will send a notice to tribal governments when an applicant or licensee proposes to be located within the exterior boundaries of the reservation of a federally recognized Indian tribe. The tribal government has 20 days to respond with an approval to the application. If written approval is not received within 30 days, the board assumes the tribe does not consent to the applicant's location and the applicant must find a new location.

(5) **Displaying notice of new cannabis license application or application for change of location of an existing licensed business.** Applicants for a new cannabis producer, processor, retailer, transportation, or research license or those who apply to change their location must display a notice provided by the board on the outside of the premises to be licensed notifying the public that the premises are subject to an application for a cannabis license. The notice must be posted within seven days of submitting the location confirmation form for new licenses or the change of location application for existing licensees. The board may check for compliance with this requirement at its discretion. The notice must:

(a) Not be changed. The licensee must post the notice sent by the board without changing the text in any way;

(b) Be noticeably displayed on, or immediately next to, the premises subject to the application and in the location that is most likely to be seen by the public;

(c) Be of a size that can be readily seen by the public. At a minimum these notices must be 8 1/2 x 11 inches;

(d) Be posted within seven business days of the date the notice is sent to the applicant by the board; and

(e) The notice must be posted for 14 consecutive days.

(6) **Application holds and withdrawals.** The board may place licensing change applications made by a licensee on hold if the change application is reasonably related to an ongoing investigation.

(a) The board may withdraw licensing change applications pending the results of an adjudicative proceeding regarding a violation of this chapter. Depending on the outcome of the adjudicative proceeding, the licensee may reapply for the withdrawn licensing change application(s).

(b) Examples of licensing change applications that may be affected under this subsection include:

(i) Application for additional funding;

(ii) Application to add a medical cannabis endorsement;

(iii) Assumption of a license;

(iv) Change in governing people, percentage owned, or stock/unit ownership;

(v) Change of location;

(vi) Expanding plant canopy to maximum allotted;

(vii) Request to change cannabis site or operating plan;

(viii) Request to add a processor license; or

(ix) Splitting a producer or processor license.

**(7) Industry tracking.**

(a) To help the board track employment and personnel trends of the industry as it continues to develop, the board requests that applicants seeking new licensure and licensees seeking license renewal provide the following information:

(b) Employee compensation and benefit data:

(i) Whether the applicant/licensee provide a living wage (at least 150 percent of the state minimum wage) to 85 percent or more of its hourly employees;

(ii) Whether the applicant/licensee will provide health insurance to at least 85 percent of its hourly employees;

(iii) Whether the applicant/licensee will provide a defined benefit pension plan to at least 85 percent of its employees;

(iv) Whether the applicant/licensee will provide five or more paid sick days annually to at least 85 percent of its employees;

(v) Whether there is a signed labor peace agreement or collective bargaining agreement with a labor organization in place.

(8) The issuance or approval of a license is not a license for, or an approval of, any violation of local rules or ordinances including, but not limited to: Building and fire codes, zoning ordinances, and business licensing requirements.

(9) **Social equity applicant.** A person qualifying for the social equity in cannabis program under WAC 314-55-570 may apply for a cannabis license consistent with the provisions of this chapter.

[Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 21-02-096, § 314-55-020, filed 1/6/21, effective 2/6/21. Statutory Authority: RCW 69.50.325, 69.50.342, 69.50.345, and 69.50.369. WSR 18-22-055, § 314-55-020, filed 10/31/18, effective 12/1/18. Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-020, filed 5/18/16, effective 6/18/16; WSR 15-11-107, § 314-55-020, filed 5/20/15, effective 6/20/15. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-020, filed 10/21/13, effective 11/21/13.]

AMENDATORY SECTION (Amending WSR 21-18-125, filed 9/1/21, effective 10/2/21)

**WAC 314-55-040 Cannabis applicant or licensee background checks.**

(1) The board conducts a background check of a new applicant or for license renewals to evaluate whether the applicant or licensee qualifies or requalifies for a license. The background check includes a criminal record check through the Washington state patrol and the Federal Bureau of Investigations database.

(2) **Review and evaluation of information produced by background checks.** The board will review the information produced by background checks to determine whether the applicant or licensee qualifies for a new or renewed license. Information from the background check may not preclude approval, but will be considered in determining the applicant's eligibility for licensure.

(3) The board will conduct a threshold review for the following types of convictions:

Conviction Type	Conviction Class	Time Consideration	Determination
Felonies	Class A and B convictions	10 years	Threshold review if 1 or more
	Class C convictions	7 years	Threshold review if 2 or more
Misdemeanors	Gross misdemeanors and misdemeanors	3 years	Threshold review if 3 or more

(a) Active state supervision and active federal supervision resulting in determination of threshold review.

(b) The board will conduct a threshold review of any license applicant or license renewal if the background check indicates that the applicant or renewing licensee is under active state supervision, active federal supervision, or both.

(4) **Pending criminal charge review and evaluation.** The board will review and evaluate the applicant or renewing licensee's pending criminal charges. Review and evaluation criteria include, but are not limited to:

(a) A determination of whether the convictions of pending charge(s) alone or compiled would put an individual over the conviction allowance above.

(b) The application may be placed on hold for (~~ninety~~) 90 days and if there is no disposition within (~~ninety~~) 90 days, the application will be withdrawn.

(5) **Threshold review evaluation criteria.** When a background check results in a determination for a threshold review, the board will consider the following criteria:

(a) Time since the conviction, or pending offenses;

(b) Nature and specific circumstances of the offense;

(c) Relationship of the offense or incident to the nature of the work performed;

(d) Number of offenses or incidents;

(e) If criminal, any relevant evidence of rehabilitation, such as information about compliance with conditions of parole or probation, including orders of no contact with victims and witnesses, and the individuals conduct and experience since the time of the offense; and

(f) Any other relevant information, including information submitted by the applicant or licensee, or requested by the board.

(6) **Continued reporting.** Cannabis licensees must report any criminal convictions to the board within (~~thirty~~) 30 days. New convictions will be considered upon receipt or at the time of renewal.

[Statutory Authority: RCW 69.50.331 and 69.50.342. WSR 21-18-125, § 314-55-040, filed 9/1/21, effective 10/2/21. Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-040, filed 5/18/16, effective 6/18/16; WSR 15-11-107, § 314-55-040, filed 5/20/15, effective 6/20/15. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-040, filed 10/21/13, effective 11/21/13.]

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-045** (~~What marijuana law or rule violation history might prevent an applicant from receiving a marijuana license?~~) **Cannabis license applicant administrative violation review.** (1) The ((WSLCB)) board will ((conduct an investigation of all applicants' marijuana law or rule administrative violation history. The WSLCB will not normally issue a marijuana license to)) determine if a cannabis license applicant has been issued any administrative violations under this chapter.

(2) The presence of administrative violation history will not result in automatic application denial, but will be considered in determining the applicant's eligibility for licensure. The board will not normally issue a cannabis license to a person, or ((to)) an entity with a true party of interest violation, ((who has)) or a person with the following violation history((; or to any person who has demonstrated a pattern of disregard for laws or rules.)) within the following periods of consideration:

<b>((Violation Type</b> (see WAC 314-55-515)	<b>Period of Consideration</b>
• <del>Three or more public safety violations;</del>	• <del>Violations issued within three years of the date the application is received by the board's licensing and regulation division.</del>
• <del>Four or more regulatory violations;</del> or	
• <del>One to four, or more license violations.</del>	• <del>Violations issued within the last three years the true party(ies) of interest were licensed.))</del>

<u>Violation Type</u> (See WAC 314-55-509)	<u>Period of Consideration</u>
<u>Three or more Category II violations (WAC 314-55-521) or Category III violations (WAC 314-55-522)</u>	<u>Violations issued within two years of the date the application is received by the board's licensing and regulation division.</u>
<u>Four or more Category IV violations (WAC 314-55-523)</u>	
<u>One to four or more Category V violations (WAC 314-55-524) or Category VI violations (WAC 314-55-525)</u>	

[Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-045, filed 5/18/16, effective 6/18/16. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-045, filed 10/21/13, effective 11/21/13.]

AMENDATORY SECTION (Amending WSR 18-22-055, filed 10/31/18, effective 12/1/18)

**WAC 314-55-050** (~~(Reasons the WSLCB may seek)~~) **Withdrawal, denial, suspension, or cancellation of a ((marijuana)) cannabis license application or license.** ((Following is a list of reasons the WSLCB may)) (1) The board has the discretion to withdraw, deny, suspend, or cancel a ((marijuana)) cannabis license application or license((- Per)) consistent with RCW 69.50.331, ((the WSLCB has broad discretionary authority to approve or deny a marijuana license application)) for reasons including, but not limited to, the following:

((1) ~~Failure to meet qualifications or requirements~~) (a) Not meeting the initial or ongoing qualifications, requirements, or both for ((the)) a specific ((marijuana)) cannabis license, as outlined in this chapter and chapter 69.50 RCW((-

~~(2) Failure or refusal to submit))~~;

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

~~(3) The applicant makes a misrepresentation of))~~;

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

~~(4) Failure to meet the criminal history))~~;

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

~~(5) Failure to meet the marijuana))~~;

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

~~(6) The source of funds identified by the applicant to be used))~~;

(f) Using funds that cannot be verified for the acquisition, startup and operation of the business ((is questionable, unverifiable)), or ((determined by the WSLCB to be gained in a manner which is in violation by)) obtained in a way that violates the law((-



~~(7) Denies the WSLCB)) ;~~

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

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

~~(8) Has been denied or)) ;~~

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

~~(9) Where)) ;~~

(j) The city, county, tribal government, or port authority has submitted a substantiated objection ((per the requirements in)) 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).

((+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 ((+11)) (3) of this section, the ((WSLCB shall)) board will not issue a new ((marijuana)) cannabis license if the proposed licensed business is within ((one thousand)) 1,000 feet of the perimeter of the grounds of any of the ((following entities)) facilities listed in (a) through (h) of this subsection. The distance ((shall)) will be measured as the shortest straight line distance from the property line of the proposed ((building/business)) 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 ((twenty-one)) 21 or older).

((+11)) (3) (a) A city or county may, by local ordinance, permit ((the licensing of marijuana)) cannabis businesses licensing within ((one thousand)) 1,000 feet but not less than ((one hundred)) 100 feet of the facilities listed in subsection ((+10)) (2) of this section except elementary and secondary schools, and playgrounds.

(b) If ((a licensee)) an applicant applies for a ((marijuana)) cannabis license at a location less than ((one thousand)) 1,000 feet

of a recreation center or facility, child care center, public park, public transit center, library, or game arcade, the ((licensee)) applicant must provide the WSLCB with a copy of the local ordinance that describes the distance required by the city or county where the facility will be located.

~~((12) Has failed to pay taxes or fees required under chapter 69.50 RCW or failed to provide production, processing, inventory, sales and transportation reports to documentation required under this chapter.~~

~~(13) Failure to submit an attestation that they are current in any tax obligations to the Washington state department of revenue.~~

~~(14) Has been denied a liquor or marijuana license or had a liquor license or marijuana license suspended or revoked in this or any other state.~~

~~(15) The operating plan does not demonstrate, to the satisfaction of the WSLCB, the applicant is qualified for a license.~~

~~(16) Failure to operate in accordance with the WSLCB approved operating plan.~~

~~(17) The WSLCB 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.)~~

[Statutory Authority: RCW 69.50.325, 69.50.342, 69.50.345, and 69.50.369. WSR 18-22-055, § 314-55-050, filed 10/31/18, effective 12/1/18. Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-050, filed 5/18/16, effective 6/18/16; WSR 14-06-108, § 314-55-050, filed 3/5/14, effective 4/5/14. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-050, filed 10/21/13, effective 11/21/13.]

AMENDATORY SECTION (Amending WSR 18-12-046, filed 5/30/18, effective 6/30/18)

**WAC 314-55-055 ((Marijuana)) Cannabis retailer license forfeiture.** (1) (a) A ((marijuana)) cannabis retailer's license is subject to forfeiture if the retailer is not fully operational and open to the public after ((twelve)) 12 months of issuance of the license ((or November 1, 2018, whichever is later)). No ((marijuana)) 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 ((twelve)) 12 consecutive weeks within a ((twelve-month)) 12-month period after issuance of the license ((before or after the effective date of this section)):

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

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

(2) ((-a-)) A ((marijuana)) cannabis retailer's license will not be subject to forfeiture if the licensee ((has been incapable of opening)) is not able to open a fully operational retail ((marijuana)) cannabis business ((due to)) based on actions by the city, town, or

county with jurisdiction over the licensed business ~~((to include))~~ including:

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

~~((ii))~~ (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 ~~((marijuana))~~ cannabis retailer from becoming operational.

~~((b))~~ (3) Exceptions to license forfeiture.

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

~~((c) Adequate))~~ (b) Sufficient documentation ~~((will be))~~ is required to verify any of the exceptions to license forfeiture in this section. ~~((It is the licensee's responsibility to))~~ Licensees must inform the ~~((WSLCB))~~ 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 ~~((marijuana))~~ cannabis retail license from forfeiture under subsection (2) ~~((a))~~ of this section or ~~((b))~~ (a) of this ~~((section))~~ subsection is removed, then the ~~((twelve-month))~~ 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.

~~((3))~~ (4) A ~~((retailer that))~~ cannabis retail licensee who receives a notice of license forfeiture under this section from the WSLCB 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 no later than ~~((twenty))~~ 20 days after service of the notice. Requests submitted in paper form may be delivered to the WSLCB in person during normal business hours at ~~((3000 Pacific))~~ 1025 Union Avenue S.E., Olympia, WA ((98501)) 98504, or mailed to the WSLCB. Mailed appeal requests must be addressed to: WSLCB, ATTN: Adjudicative Proceedings Coordinator, P.O. Box 43076, Olympia, WA 98504-3076 or, for certified mail, WSLCB, ATTN: Adjudicative Proceedings Coordinator, ~~((3000 Pacific))~~ 1025 Union Avenue S.E., Olympia, WA ((98501)) 98504.

[Statutory Authority: RCW 69.50.325, 69.50.342, and 69.50.345. WSR 18-12-046, § 314-55-055, filed 5/30/18, effective 6/30/18.]

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-070 ~~((Process if the WSLCB denies a marijuana)) Cannabis license application denial.~~** If the ~~((WSLCB))~~ board denies a ~~((marijuana))~~ cannabis license application, ~~((the))~~ an applicant or applicants may:

(1) Request an administrative hearing ~~((per))~~ consistent with chapter 34.05 RCW, the Administrative Procedure Act.

(2) Reapply for the license ~~((no sooner))~~ not earlier than one year from the date ~~((on))~~ of the final order of denial.

[Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-070, filed 5/18/16, effective 6/18/16. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-070, filed 10/21/13, effective 11/21/13.]

AMENDATORY SECTION (Amending WSR 21-15-124, filed 7/21/21, effective 8/21/21)

**WAC 314-55-079 ((Marijuana)) Cannabis retailer license—Privileges, requirements, and fees.** (1) A ((~~marijuana~~)) cannabis retailer license allows the licensee to sell only useable marijuana, ((~~marijuana~~)) cannabis concentrates, ((~~marijuana-infused~~)) cannabis-infused products, ((~~marijuana~~)) cannabis paraphernalia, and lockable boxes to store ((~~marijuana~~)) cannabis at retail in licensed retail outlets to persons ((~~twenty-one~~)) 21 years of age and older, except as allowed for persons under ((~~twenty-one~~)) 21 years of age consistent with RCW 69.50.357 and WAC 314-55-080.

(2) The ((~~WSLCB~~)) board may accept applications for ((~~marijuana~~)) cannabis retail licenses at time frames published on its website at [www.lcb.wa.gov](http://www.lcb.wa.gov). Using estimated consumption data and population data obtained from the office of financial management (OFM) population data, the ((~~WSLCB~~)) board will determine the maximum number of ((~~marijuana~~)) cannabis retail locations per county.

(a) The number of retail locations will be determined using a method that distributes the number of locations proportionate to the most populous cities within each county and to accommodate the medical needs of qualifying patients and designated providers. Locations not assigned to a specific city will be at large. At large locations can be used for unincorporated areas in the county or in cities within the county that have no retail licenses designated.

Consistent with WAC 314-55-570 (4) (d), social equity licenses that are currently designated to specific cities may be located anywhere within the county in which the city is located. A license may not be transferred outside of that county.

(b) The number of retail licenses determined by the board can be found on the ((~~WSLCB~~)) board website at [www.lcb.wa.gov](http://www.lcb.wa.gov).

(3) Any entity and/or principals within any entity are limited to no more than five retail ((~~marijuana~~)) cannabis licenses.

**(4) Application and license fees.**

(a) The application fee for a ((~~marijuana~~)) cannabis retailer's license is ((~~two hundred fifty dollars~~)) \$250 consistent with RCW 69.50.325 (3) (a). The applicant is responsible for fees required by the approved vendor for fingerprint evaluation.

(b) The annual fee for issuance and renewal of a ((~~marijuana~~)) cannabis retailer license is ((~~one thousand three hundred eighty-one dollars~~)) \$1,381 consistent with RCW 69.50.325 (3) (a). The ((~~WSLCB~~)) board will conduct random ((~~criminal history~~)) background 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~~)) background checks.

(5) Internet sales and delivery of product to customers ((~~are~~)) is prohibited.

(6) Sales of ~~((marijuana-infused))~~ cannabis-infused products not permissible under WAC 314-55-077 are prohibited.

(7) ~~((Marijuana))~~ Cannabis retailers may not sell ~~((marijuana))~~ cannabis products below the current acquisition cost.

(8) All ~~((marijuana))~~ cannabis products must be stored behind a counter or other barrier to ensure a customer does not have direct access to the product.

(9) A ~~((marijuana))~~ cannabis retailer may not sell lockable boxes for less than the cost of acquisition or sell boxes received as a donation. The donation of lockable boxes must come from a person or entity that is not a licensed ~~((marijuana))~~ cannabis producer, processor, or retailer.

(10) ~~((Marijuana))~~ Cannabis retailer licensees are allowed to have a maximum of four months of their average inventory on their licensed premises at any given time.

(11) A ~~((marijuana))~~ cannabis retailer may transport product to other locations operated by the licensee or to return product to a ~~((marijuana))~~ cannabis processor as outlined in WAC 314-55-085.

(12) A ~~((marijuana))~~ cannabis retailer may accept returns of open ~~((marijuana))~~ cannabis products. Products must be returned in their original packaging with the lot, batch, or inventory ID number fully legible.

(13) A ~~((marijuana))~~ cannabis retailer may dispose of ~~((marijuana))~~ cannabis products as provided in WAC 314-55-097.

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

[Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 21-15-124, § 314-55-079, filed 7/21/21, effective 8/21/21. Statutory Authority: RCW 69.50.325, 69.50.342, 69.50.345, and 69.50.369. WSR 18-22-055, § 314-55-079, filed 10/31/18, effective 12/1/18. Statutory Authority: RCW 69.50.342, 69.50.345, 2016 c 170, 2016 c 171, and 2016 c 17. WSR 16-19-102, § 314-55-079, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-079, filed 5/18/16, effective 6/18/16; WSR 15-11-107, § 314-55-079, filed 5/20/15, effective 6/20/15; WSR 14-10-044, § 314-55-079, filed 4/30/14, effective 5/31/14. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-079, filed 10/21/13, effective 11/21/13.]

AMENDATORY SECTION (Amending WSR 18-22-055, filed 10/31/18, effective 12/1/18)

**WAC 314-55-082 Insurance requirements.** ~~((Marijuana))~~ Cannabis licensees must obtain insurance coverage ~~((as set out in this section. The intent of the required))~~. Insurance is required to protect the consumer ~~((should there be))~~ if any claims, suits, actions, costs, damages or expenses ~~((arising))~~ arise from any negligent or intentional act or omission of the ~~((marijuana))~~ cannabis licensees. ~~((Marijuana))~~ Cannabis licensees ~~((shall furnish evidence in the form of))~~ will provide the board with a certificate of insurance ~~((satisfactory to the WSLCB that insurance, in))~~ demonstrating that the following ~~((kinds and minimum amounts, has been secured. Failure to provide~~

~~proof of insurance, as required, may result in license cancellation.))~~  
types and minimum amounts of insurance have been obtained:

(1) Commercial general liability insurance: The licensee (~~shall~~  
~~at all times~~) must carry and maintain commercial general liability  
 insurance or commercial umbrella insurance for bodily injury and prop-  
 erty damage arising out of licensed activities at all times. The lim-  
 its of liability insurance (~~shall~~) will not be less than (~~one mil-~~  
~~lion dollars~~) \$1,000,000. Upon board request, a licensee must provide  
proof of insurance.

(a) This insurance (~~shall~~) must cover such claims as may be  
 caused by any act, omission, or negligence of the licensee or its of-  
 ficers, agents, representatives, assigns, or servants.

(b) The insurance (~~shall~~) must also cover bodily injury, in-  
 cluding disease, illness and death, and property damage arising out of  
 the licensee's premises/operations, products, and personal injury.

(2) Insurance carrier rating: The insurance required in subsec-  
 tion (1) of this section (~~shall~~) must be issued by an insurance com-  
 pany authorized to do business within the state of Washington. Insur-  
 ance is to 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.

(3) Additional insured. The state and its employees, agents, and  
 volunteers shall be named as an additional insured on insurance poli-  
 cies required under this section. All policies shall be primary over  
 any other valid and collectable insurance.

(4) Failure to maintain or provide proof of insurance as required  
may result in license cancellation.

[Statutory Authority: RCW 69.50.325, 69.50.342, 69.50.345, and  
 69.50.369. WSR 18-22-055, § 314-55-082, filed 10/31/18, effective  
 12/1/18. Statutory Authority: RCW 69.50.342 and 69.50.345. WSR  
 16-11-110, § 314-55-082, filed 5/18/16, effective 6/18/16. Statutory  
 Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR  
 13-21-104, § 314-55-082, filed 10/21/13, effective 11/21/13.]

AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective  
 6/18/16)

**WAC 314-55-110** (~~What are my responsibilities as a marijuana li-~~  
~~censee?)) Licensee responsibilities. (1) ((~~Marijuana~~)) Cannabis li-  
 censees are responsible for the operation of their licensed business  
 in compliance with the ((~~marijuana~~)) cannabis laws and rules of the  
 ((~~WSLCB~~)) board, chapters 69.50 and 69.51A RCW, 314-55 WAC, and any  
 other applicable state laws and rules.~~

(2) The penalties for violations of ((~~marijuana~~)) cannabis laws  
 or rules are in WAC ((~~314-55-515~~)) 314-55-509 through ((~~314-55-535~~))  
314-55-525, as now or hereafter amended. The rules also outline aggra-  
 vating and mitigating circumstances that may affect what penalty is  
 applied if a licensee or employee ((~~violates a marijuana~~)) does not  
comply with a cannabis law or rule.

(3) Licensees and their employees must conduct the business and  
 maintain the licensed premises, surrounding area, and vehicles trans-

porting product, in compliance with the following laws, as they now exist or may later be amended:

- (a) Titles 9 and 9A RCW, the criminal code;
  - (b) Title 66 RCW, the liquor laws;
  - (c) Chapters 70.155, 70.345, 82.24, and 82.26 RCW and RCW 26.28.080, the tobacco laws;
  - (d) Chapter 69.50 RCW, the uniform controlled substances laws;
- and
- (e) Chapter 69.51A RCW, the medical (~~(marijuana)~~) cannabis laws.
- (4) Licensees (~~(have the responsibility to)~~) must control their conduct and the conduct of employees, customers, and visitors on the licensed premises at all times. Except as otherwise provided by law, licensees or employees may not:
- (a) Be disorderly or apparently intoxicated by liquor, marijuana, or controlled substances on the licensed premises;
  - (b) Permit any disorderly person to remain on the licensed premises;
  - (c) Engage in or allow behavior on the licensed premises (~~(that provokes conduct which presents)~~) that is a threat to public safety;
  - (d) Engage, or permit any employee or other person to engage in, conduct on the licensed premises which is prohibited by any portion of Title 9, 9A, or 66 RCW, or chapters 69.50 and 69.51A RCW;
  - (e) Engage in or permit any employee or other person to engage in the consumption of any type of (~~(marijuana, usable marijuana, marijuana)~~) cannabis, usable cannabis, cannabis concentrate, or (~~(marijuana-infused)~~) cannabis-infused product on the licensed premises.

[Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-110, filed 5/18/16, effective 6/18/16.]

AMENDATORY SECTION (Amending WSR 18-22-055, filed 10/31/18, effective 12/1/18)

**WAC 314-55-120 Ownership changes.** (1) Licensees must receive prior board approval before making any of the following ownership changes (see WAC 314-55-035 for the definition of "true party of interest"):

Type of change	Type of application	Fee
Change in the true parties of interest or owners in a: Sole proprietorship, general partnership, limited partnership, or limited liability partnership.	New application.	Application fee and annual fee for current license privilege.

Type of change	Type of application	Fee
Change in the true parties of interest or owners for a publicly or privately held corporation. The board will waive the fee for a corporate change when the proposed change consists solely of dropping an approved officer.	Application for change in corporate officer and/or stockholder.	\$75
Change in the true parties of interest or owners in a limited liability company.	Application for change of limited liability company member and/or manager.	\$75
Accepting additional funds from a new or previously approved financier.	Added financier.	\$75

(2) Licensees must notify the ((WSLCB)) board if there are any changes to marital status of any true party of interest in the license.

(3) The ((WSLCB)) board may inquire into all matters in connection with any ((such)) sale of stock/units or proposed change in officers/members.

(4) If the ((WSLCB)) board receives an application to change the ownership structure of a licensee, the application will be withdrawn unless one or more of the following is submitted:

- (a) Proof that the party being removed was notified that they were being removed and they did not object within ((ninety)) 90 days;
- (b) Signed documentation from the true party of interest being removed for the licensed entity that they agree with the removal; or
- (c) A final court document removing them.

[Statutory Authority: RCW 69.50.325, 69.50.342, 69.50.345, and 69.50.369. WSR 18-22-055, § 314-55-120, filed 10/31/18, effective 12/1/18. Statutory Authority: RCW 69.50.342 and 69.50.345. WSR 16-11-110, § 314-55-120, filed 5/18/16, effective 6/18/16. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-120, filed 10/21/13, effective 11/21/13.]

AMENDATORY SECTION (Amending WSR 18-22-055, filed 10/31/18, effective 12/1/18)

**WAC 314-55-125 Change of location.** (1) Changing a ((marijuana)) cannabis license to a new location requires a change request application to the ((WSLCB, per the process outlined)) board and initiated through business licensing services, as described in WAC 314-55-020. ((WSLCB)) Board approval for change request applications must be obtained prior to any change of location of the licensed business.

(2) A change of location occurs any time a move by the licensee results in any change to the physical location address.



[Statutory Authority: RCW 69.50.325, 69.50.342, 69.50.345, and 69.50.369. WSR 18-22-055, § 314-55-125, filed 10/31/18, effective 12/1/18. Statutory Authority: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345. WSR 13-21-104, § 314-55-125, filed 10/21/13, effective 11/21/13.]

AMENDATORY SECTION (Amending WSR 18-22-055, filed 10/31/18, effective 12/1/18)

**WAC 314-55-137 Receiverships. (1) Service and notice.**

(a) Any person who files any receivership or trustee action involving any ~~((marijuana))~~ cannabis licensee must serve ~~((WSLCB))~~ the board with original notice of the action. Service is accomplished by delivery of the original notice of action to ~~((WSLCB))~~ the board through one of the following methods:

(i) Delivery to the board at ~~((3000 Pacific))~~ 1025 Union Avenue S.E., Olympia, WA ~~((985017))~~ 98504; or

(ii) Mailed to the ~~((WSLCB))~~ board. Mailed notice must be addressed to: WSLCB, ATTN: Licensing - Receiverships, P.O. Box 43076, Olympia, WA 98504-3076 or, for certified mail, WSLCB, ATTN: Licensing - Receiverships, ~~((3000 Pacific))~~ 1025 Union Avenue S.E., Olympia, WA ~~((98501))~~ 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 ~~((WSLCB))~~ it receives original notice of the action and the receiver is selected ~~((in accordance with WSLCB's requirements will WSLCB treat the licensee as compliant with this section))~~ consistent with board requirements.

**(2) The role of a receiver when a licensee is placed in receivership.** If a ~~((marijuana))~~ cannabis licensee is placed under receivership, the receiver:

(a) Upon compliance with the requirements ~~((set forth below))~~ 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 ~~((WSLCB))~~ 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 ~~((marijuana))~~ 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 ~~((WSLCB))~~ 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 ~~((active status))~~ good standing on the preapproved receiver list maintained by the ~~((WSLCB))~~ board; or

(b) Is approved by the ((WSLCB)) board under the requirements in subsection (5) of this section to serve as a receiver of a ((~~marijuana~~)) cannabis licensee.

**(4) Qualifying for the ((WSLCB's)) board's preapproved receiver list.**

(a) The following requirements must be met to qualify for the ((WSLCB's)) board's preapproved receiver list:

(i) Submit a complete receiver application with the ((WSLCB)) 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 ((WSLCB)) board; and

(v) Disclose any interests the person has in any ((~~marijuana~~)) 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 ((WSLCB)) 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.**

(a) Within two days of filing of any action to appoint a receiver, a proposed receiver must:

(i) Submit a complete application with the ((WSLCB)) 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; and

(v) Disclose any interest the proposed receiver has in any ((~~marijuana~~)) 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 ((WSLCB)) the board at any time, a substitute receiver may be proposed for ((WSLCB)) board approval. The substitute receiver must provide all information required by this subsection.

(d) If the proposed receiver is not approved by ((WSLCB)) 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 ((WSLCB)) board.

**(6) Limitations on a person's ability to serve as a receiver.**

(a) As operators and controllers of licensed ((~~marijuana~~)) 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 ((~~marijuana~~)) cannabis producer or licensed ((~~marijuana~~)) cannabis processor shall have a financial interest in, or simultaneously serve as a receiver for, a licensed ((~~marijuana~~)) cannabis retailer; and

(ii) No person shall serve as a receiver for, or be a true party of interest in, more than five ((~~marijuana~~)) cannabis retail licensees or more than three ((~~marijuana~~)) cannabis producer, processor, or producer/processor licensees at the same time.

(b) If the ((~~WSLCB~~)) 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 ((~~WSLCB~~)) board.

[Statutory Authority: RCW 69.50.325, 69.50.342, 69.50.345, and 69.50.369. WSR 18-22-055, § 314-55-137, filed 10/31/18, effective 12/1/18.]

**OTS-3707.1**NEW SECTION**WAC 314-55-570 Social equity in cannabis program. (1) Definitions.**

(a) "**Disproportionately impacted area**" means a census tract within Washington state where community members were more likely to be impacted by the war on drugs. These areas are determined using a standardized statistical equation to identify areas of high unemployment, low income, and demographic indicators consistent with populations most impacted by the war on drugs, including areas with higher rates of arrest for drug charges. The board will provide maps to identify disproportionately impacted areas. The maps will reflect census tracts from different time periods to account for gentrification.

(b) "**Double blind lottery**" means a selection process conducted by an independent third party to determine the order in which applications will be processed in the event of a tie.

(c) "**Family member**" means:

(i) A biological, adopted, or foster child, a stepchild, a child's spouse, or a child to whom the applicant stands in loco parentis (in place of the parent), is a legal guardian, or is a de facto parent, regardless of age or dependency status;

(ii) Grandchild, grandparent, parent, sibling, or spouse;

(iii) Any individual who regularly resides in the applicant's home or where the relationship creates an expectation that the applicant care for the person and that individual depends on the applicant for care.

(d) "**Median household income**" means the most recent median household income within the state of Washington as calculated by the United States Census Bureau.

(e) **"Person"** means a real human being, distinguished from a corporation, company, or other business entity.

(f) **"Preliminary letter of approval"** means an approval letter issued to a social equity program applicant for purposes of securing a grant from the department of commerce and a location and other necessities to complete the licensing process.

(g) **"Social equity applicant"** means an applicant who meets the requirements for a social equity license.

(h) **"Social equity contractor"** means a third party responsible to review and score social equity applications and recommend social equity applicants.

(i) **"Social equity licensee"** means a person who meets the qualifications for licensure as described in this chapter.

(j) **"Social equity plan"** means a plan that addresses the following elements including, but not limited to:

(i) A description of how issuing a cannabis retail license to the social equity applicant will meet social equity goals;

(ii) The social equity applicant's personal or family history with the criminal justice system, including any offenses involving cannabis; and

(iii) Business plans involving partnerships or assistance to organizations or residents with connections or contributions to populations with a history of high rates of enforcement of cannabis prohibition.

(2) **Social equity applicant requirements.**

(a) To be considered for the social equity program under this chapter and RCW 69.50.335, the following requirements must be met by each applicant:

(b) At least a 51 percent majority, or controlling interest, in the applicant, must be held by a person, or persons, who has or have resided in Washington state for six months prior to the application date, consistent with RCW 69.50.331, and meets at least two of the following qualifications:

(i) **Qualification 1:** The social equity applicant or applicants have lived in a disproportionately impacted area in Washington state for a minimum of six months; or

(ii) **Qualification 2:** The social equity applicant or a family member of the applicant has been arrested or convicted of a cannabis offense; or

(iii) **Qualification 3:** The social equity applicant's household income is less than median household income within the state of Washington as calculated by the United States Census Bureau.

(3) **Social equity application process.**

(a) **Application window.**

(i) The board will open the application window for 30 calendar days.

(ii) At its sole discretion, the board may reopen the application window:

(A) After initial evaluation of applications received; or

(B) If allotments become available after the initial application window has closed pursuant to RCW 69.50.335.

(b) **Initial application requirements.**

(i) The social equity applicant must apply to the department of business licensing services within the 30-day application window. If the application is mailed to the department of licensing services, the application must be postmarked within the 30-day application window.

(ii) The social equity applicant, whether applying as a person, persons, or entity, may apply for a cannabis license once during the application window described in subsection (4)(a) of this section.

(iii) A location address is not required at the time of application.

(iv) The social equity applicant must select one county where they wish to operate their business.

(v) A social equity applicant may not change a selected county after initial application.

(vi) The board will provide a list of available counties on its website.

(c) **Social equity contractor review.** Once the application window is closed, the social equity contractor will evaluate and prioritize all applications.

(i) If additional materials are needed, the social equity applicant will receive a letter from the third-party contractor directing the applicant to submit additional application materials directly to the third-party contractor.

(ii) The social equity applicant must submit complete and accurate additional application materials directly to the third-party contractor within 15 business days of the date of the letter. It is the responsibility of the social equity applicant to comply with the application requirements in this section and ensure the application is complete, accurate, and successfully submitted to the third-party contractor.

(iii) If the application is determined to be incomplete by the third-party contractor, the social equity applicant will be provided with seven days to submit a complete application.

(iv) The third-party contractor will review the application materials provided by the social equity applicant to determine if the applicant meets the requirements of a social equity applicant and submittal of a social equity plan.

(v) After the social equity contractor determines that the requirements have been met, the social equity contractor will score social equity applications using the following scoring rubric to prioritize social equity applicants:

Social Equity Application Scoring Rubric		
Category	Criteria Elements	Point Scale
Eligibility Criteria	1. Lived in a disproportionately impacted area (DIA)	40
	1a. How long have you lived in a DIA? 6m-5y = 5 points 5y-10y = 10 points 10+ years = 20 points	20
	2. Convicted of a drug offense? (Self)	5
	2a. Convicted of a cannabis offense? (Self)	20
	3. Convicted of a drug offense? (Family)	5
	3a. Convicted of a cannabis offense? (Family)	5
	4. If you were convicted of a cannabis offense, what type of sentence did you receive: Fine = 5 points Served probation = 10 points Confined to home = 20 points Served time in jail or prison = 40 points	40
	5. Did you or your family member's incarceration keep you from getting employment?	5
	6. Did you lose your home or ability to purchase a home or rent a home as a result of your convictions?	5
	7. Is your household income less than the median household income within the state of Washington as calculated by the United States Census Bureau?	40
	8. Were you a member of a medical cannabis collective garden between 1998-2016?  or Do you have previous cannabis business experience that would make your business more viable?	5
	9. Have you held or do you currently hold 51 percent majority/controlling interest of a state cannabis (marijuana) retailer license? No = 10 points Yes = 0 points *Title certificate holder without another retail license = 10 points	10
<b>Total Points</b>	<b>200 points</b>	

(vi) The social equity contractor will provide the board with a list of eligible and scored social equity applicants.

(vii) Neither the social equity contractor nor its employees shall benefit from any license or licenses granted as a result of their review.

(d) **Board review.** Social equity applicants that are scored highest by the social equity contractor within the county selected by the social equity applicant will be processed by the board.

(e) **Double blind lottery.** In the event that the eligible social equity applicants share the highest score in a county and exceed the number of available licenses in that county, the board will use a double blind lottery conducted by an independent third party to identify the application(s) that will be processed.

(f) **Preliminary letter of approval.** Once the social equity applications that will be processed are identified as described in this section, eligible social equity applicants will be issued a preliminary letter of approval.

(4) **Additional provisions.**

(a) There are no time restrictions for a social equity applicant to select and secure a location.

(b) Social equity applicants may not make ownership changes to an application after the application has been reviewed, scored, and prioritized by the third-party contractor.

(c) Social equity applicants may apply for the social equity program once. If a social equity applicant applies more than once, the board will accept only the first application.

(d) Social equity licenses that are currently designated to specific cities may be located anywhere within the county in which the city is located. However, the license may not be transferred outside of that county.

(e) Qualifying for the Social Equity Program will not result in or guarantee cannabis business license approval. Social equity applicants must meet all license qualifications in this chapter to receive a license.

(f) Licenses awarded under this section may not be transferred within the first year of the license being issued and may only be transferred to individuals or groups of individuals who comply with the requirements for initial licensure as a social equity applicant for a period of five years from the date of the transfer.

(5) **Application withdrawal.** The board will withdraw a social equity application if:

(a) The social equity program application or additional materials are determined to be incomplete or incorrect by the social equity contractor;

(b) The social equity program application materials are not timely received by the social equity contractor; or

(c) The social equity applicant(s) requests withdrawal of the social equity program application at any time in the application process. The social equity applicant(s) must request withdrawal in writing. The voluntary withdrawal of a social equity program application does not result in a hearing right.

[]

**WSR 22-09-039**  
**PROPOSED RULES**  
**SECRETARY OF STATE**  
[Filed April 13, 2022, 1:25 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-13-076.

Title of Rule and Other Identifying Information: Permanent adoption of WAC changes related to risk limiting audit processes and procedures.

Hearing Location(s): On May 24, 2022, at 3:00 p.m., at 520 Union Avenue, Olympia, 98504. The hearing will be conducted using Microsoft Teams. To join the hearing, call phone 206-899-2560 and enter attendance code 899 460 273#. People will be able to hear and comment.

Date of Intended Adoption: May 25, 2022.

Submit Written Comments to: Fina Ormond, P.O. Box 40229, Olympia, WA 98504, email fina.ormond@sos.wa.gov, fax 360-664-4169.

Assistance for Persons with Disabilities: Contact Fina Ormond, phone 360-902-4146, fax 360-664-4169, email Fina.ormond@sos.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Update rules to make the post-election risk limiting audit more easily understood and efficient.

Reasons Supporting Proposal: Consistency in operation in all county election offices within the state.

Statutory Authority for Adoption: RCW 29A.04.611.

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

Name of Proponent: Randy Bolerjack, deputy secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Stuart Holmes, Olympia, 360-902-4151.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party.

April 13, 2022  
Randy Bolerjack  
Deputy Secretary of State

**OTS-3105.6**

AMENDATORY SECTION (Amending WSR 19-01-102, filed 12/18/18, effective 1/18/19)

**WAC 434-261-114 Definitions.** As used in this rule, unless stated otherwise:

(1) "Audit board" means a team of two people assigned to review voter choices on ballots selected for audit.



(2) "Ballot comparison audit" means a type of risk-limiting audit in which the audit board examines and reports voter markings for a designated contest (or contests) on randomly selected ballots, then compares them to the corresponding cast vote records until the audit results reflect with a strong amount of certainty that the reported tabulation outcome is correct.

~~(3) "Ballot manifest" means a ((report that describes in detail)) document that indicates how the ballots are organized and stored, including identification of each batch of ballots by the voting system batch number, as well as the number of ballots in each batch.~~

~~((2)) (4) "Ballot polling audit" means a type of risk-limiting audit in which the audit board examines and reports ((to the secretary of state)) voter markings for a ((particular race)) designated contest on ballots selected randomly until the audit results reflect with a strong amount of certainty that the reported tabulation outcome is correct.~~

~~((3)) (5) "Cast vote record" or "CVR" means a record of all ((votes)) voter markings produced by a single voter on a ballot card, presented in electronic form, and is defined as a ballot in accordance with RCW 29A.04.008.~~

~~((4) "Comparison audit" means a type of risk-limiting audit in which the audit board examines and reports to the secretary of state voter markings on randomly selected ballots, then compares them to the voting system's tabulation as reflected in the corresponding cast vote records.~~

~~(5) "Hash" is a number generated from a string of text. The hash must be generated by a formula in such a way that it is extremely unlikely that some other text will produce the same hash value.)~~

(6) "Reported tabulation outcome" means the presumed winning and losing candidates or voting choices of a ballot contest as reflected in preliminary results.

(7) "Unofficial results" means the tabulation results produced by the voting system at a specific point in time that will be used for comparison during the audit process.

(8) "Risk limit" means the largest statistical probability that an incorrect reported tabulation outcome is not detected ~~((and corrected))~~ in a risk-limiting audit.

~~((8)) (9) "Risk-limiting audit" or "RLA" means a post-election audit of votes on paper ballots and voter-verifiable paper audit trail (VVPAT) records that makes use of statistical principles and methods, is designed to limit the risk of certifying an incorrect election outcome, and is conducted in accordance with RCW 29A.60.185. ((Ballot polling audits and comparison audits are two types of risk-limiting audits.~~

~~(9) "RLA tabulation" means the tabulation of all randomly selected ballots cast by voters registered in the county, and any accepted provisional ballots that the county opts to include.)~~

(10) "Risk-limiting audit tool" or "RLA tool" means the software and user interfaces provided by the secretary of state in order to ((compare the randomly selected ballots to the cast vote record for the RLAs)) conduct the risk-limiting audit.

(11) "Target contest" means a contest selected by the secretary of state or county auditor for a risk-limiting audit that will determine whether the risk limit has been met.

[Statutory Authority: RCW 29A.04.611, 29A.24.091, 29A.24.311, 29A.60.021, 29A.60.185, 29A.60.170, 29A.60.110, and 29A.60.235. WSR 19-01-102, § 434-261-114, filed 12/18/18, effective 1/18/19.]

AMENDATORY SECTION (Amending WSR 19-01-102, filed 12/18/18, effective 1/18/19)

**WAC 434-261-115 Post-election audits.** If the county auditor chooses to conduct a post-election risk-limiting audit under RCW 29A.60.185, the auditor must ((conduct)) use one of the types of audits listed in RCW 29A.60.185. ((The county auditor may choose a risk-limiting audit, one of the options available under RCW 29A.60.185 and this rule.

~~(1) If choosing a risk-limiting audit, counties that use a voting system capable of exporting CVRs must conduct a comparison audit.~~

~~(2) If choosing a risk-limiting audit, counties that use a voting system incapable of exporting CVRs must conduct a ballot polling audit.)~~

[Statutory Authority: RCW 29A.04.611, 29A.24.091, 29A.24.311, 29A.60.021, 29A.60.185, 29A.60.170, 29A.60.110, and 29A.60.235. WSR 19-01-102, § 434-261-115, filed 12/18/18, effective 1/18/19.]

AMENDATORY SECTION (Amending WSR 19-19-033, filed 9/11/19, effective 10/12/19)

**WAC 434-261-116 Preparing for a risk-limiting audit.** (1) At least ((ninty)) 45 days before a primary or election, a county intending to conduct a risk-limiting audit must notify the secretary of state. This notification must include information about the districts and offices to be included in the audit.

(2) After receiving notice from a county of the intent to conduct a risk-limiting audit and no later than ((thirty)) 30 days before the primary or election, the secretary of state will establish and publish the risk limit(s) that will apply in ((RLAs)) risk-limiting audits for that election. The secretary of state may establish different risk limits for ballot comparison audits and ballot polling audits, and for audits of statewide and county contests. In ballot comparison audits, the risk limit will not exceed five percent for statewide contests, and ((ten)) 10 percent for county contests.

~~(3) ((No later than eighteen days before the primary or election, the county auditor must appoint an audit board to conduct the risk-limiting audit. Observers nominated by the major political party county chairpersons in accordance with RCW 29A.60.170 may be present during the audit. Members of the canvassing board may serve as members of the audit board. The county auditor or members of their staff may assist the audit board in conducting the audit. All))~~ Observers are allowed in ((accordance with)) the same manner as RCW 29A.60.170 and WAC 434-261-020.

(4) The county must maintain an accurate ballot manifest in a form approved by the secretary of state and independent of the voting system.

~~((a) In the case of centrally counted paper ballots, the ballot manifest must uniquely identify for each tabulated ballot the scanner on which the ballot is scanned, the ballot batch of which the ballot is a part, the number of ballots in the batch, and the storage container in which the ballot batch is stored after tabulation.))~~

(5) The county must secure and maintain in sealed ballot containers all tabulated ballots in the batches and order they are scanned. The county must maintain and document uninterrupted chain-of-custody for each ballot storage container.

~~((b) In the case of electronic ballots cast on direct recording electronic voting devices (DREs), the ballot manifest must uniquely identify the device on which the ballot was cast or tabulated, the number of ballots cast or tabulated on the device, and the storage container or location in which each paper ballot or VVPAT is stored. The county must maintain and document uninterrupted chain-of-custody for each DRE and VVPAT. Ballots cast on each DRE and VVPAT must constitute a single batch.~~

~~(5-))~~ (6) No later than the sixth day after election day, the county must pause or finish tabulating all ballots cast by voters registered in the county received ((through that day)) and ready for counting. The results produced at this time constitute the unofficial results to be used in the risk-limiting audit. The county may, but is not required to, include in the ((RLA tabulation)) unofficial results any provisional ballots that have been verified and accepted on or before the sixth day after election day. Immediately after ((completing)) producing the ((RLA tabulation)) unofficial results, and to the extent permitted by its voting system, the county must also generate and preserve:

(a) ((A summary)) An unofficial results report, showing overvotes, undervotes, and the number of valid write-in votes, if conducting a ballot polling audit; or

(b) ((A results file export suitable for uploading to the secretary of state's election night reporting system; and

(c-)) A ((CVR)) cast vote record export, if conducting a ballot comparison audit.

~~((6-))~~ (7) Counties conducting a ballot comparison audit must verify that

(a-)) the number of individual ((CVRs)) cast vote records in its ((CVR)) cast vote record export equals the aggregate number of ballot((s)) cards reflected in the county's ballot manifest ((as of the sixth day after election day; and

(b) The vote totals for all choices in all ballot contests in the CVR export equals the vote totals in the summary results report for the RLA tabulation.

After verifying the accuracy of the CVR export, the county must apply a hash value to the CVR export file using the hash value utility provided by the secretary of state.

(7) Comparison audit uploads-)) at the time the unofficial results are produced.

(8) Copies of cast vote records used during the risk-limiting audit will be destroyed no later than 10 days following county certification.

(9) No later than 5:00 p.m. on the sixth day after election day, each county conducting a ballot comparison audit must ((upload)) submit as directed by the secretary of state:

(a) Its verified ((and hashed)) ballot manifest ((, and the ballot manifest's hash value, to the secretary of state's office)); and

~~(b) Its verified ((and hashed CVR)) cast vote record export ((, and the CVR export's hash value, to the secretary of state's office; and~~

~~(c) Its RIA tabulation results export to the secretary of state's election night reporting system.~~

~~(8) Ballot polling audit uploads)).~~

The secretary of state may direct counties to submit additional materials as required to conduct the risk-limiting audit.

~~(10) No later than 5:00 p.m. on the sixth day after election day, each county conducting a ballot polling audit must submit ((or upload: (a-)) as directed by the secretary of state:~~

~~(a) Its verified ((and hashed)) ballot manifest ((, and the ballot manifest's hash value, to the secretary of state's office;~~

~~(b) Its cumulative tabulation report, to the secretary of state's office; and~~

~~(c) Its RIA tabulation results export to the secretary of state's election night reporting system)); and~~

~~(b) Its unofficial results report, showing overvotes, undervotes, and the number of valid write-in votes.~~

The secretary of state may direct counties to submit additional materials as required to conduct the risk-limiting audit.

~~((9)) (11) The secretary of state will convene a public meeting on the seventh day after election day to establish a random seed for use with the ((secretary of state's RIA)) risk-limiting audit tool's ((random)) pseudorandom number generator.~~

~~((10)) The seed is a number consisting of at least ((twenty)) 20 digits, and each digit will be selected in order by sequential rolls of a ((ten-sided)) 10-sided die. The secretary of state will designate ((one or more staff members)) individuals to take turns rolling the die. The secretary of state will publish online the random seed after it is established.~~

~~((11)) (12) No later than 5:00 p.m. on the Friday after election day, the secretary of state will create a list of potential statewide contests using the criteria in (a) through (e) of this subsection, and then select by lot a statewide contest from that list. The secretary of state will also create for each county a list of potential contests wholly contained within that county using the criteria in (a) through (e) of this subsection, and select a contest by lot for each county ((at least one ballot contest other than the selected statewide contest. The county auditor shall randomly select a ballot contest for audit if in any particular election there is no statewide contest. These will be considered the target contests for the RIA. The secretary of state will publish online a complete list of all target contests.~~

~~(12) The target contest with the closest diluted margin for each county determines the number of ballots that must be examined during the RIA.~~

~~(13) The secretary of state will determine the number of ballots to audit to satisfy the risk limit for the target contests based on the ballot manifests submitted by the counties. The number of ballots to audit will be determined according to the formulas maintained on file in the secretary of state's office.) from that list. These will be considered the target contests for the risk-limiting audit. The secretary of state will publish online a complete list of all target contests.~~

The secretary of state will consider at least the following factors in selecting the potential target contests:

- (a) Contests that contain two or more positions/candidates;
- (b) The geographical scope of the contests;
- (c) The number of ballots counted in the contests;
- (d) The closeness of the reported tabulation outcome of the contests; and
- (e) The ability of the county staff to complete the audit before the canvass deadline.

(13) In addition to the randomly selected contest(s) and in coordination with the secretary of state's office, counties may choose to conduct a risk-limiting audit of a congressional or legislative district if all counties represented by the district agree to participate.

(14) The ((secretary of state)) risk-limiting audit tool will randomly select the individual ballots to audit. The ((secretary of state)) risk-limiting audit tool will use a ((random)) pseudorandom number generator with the seed established under ((subsection (10) of)) this section to identify individual ballots as reflected in the county ballot manifests. No later than the seventh day after election day, the secretary of state will notify each county of the randomly selected ballots that each county must audit ((no later than the seventh day after election day)).

[Statutory Authority: RCW 29A.04.611. WSR 19-19-033, § 434-261-116, filed 9/11/19, effective 10/12/19. Statutory Authority: RCW 29A.04.611, 29A.24.091, 29A.24.311, 29A.60.021, 29A.60.185, 29A.60.170, 29A.60.110, and 29A.60.235. WSR 19-01-102, § 434-261-116, filed 12/18/18, effective 1/18/19.]

AMENDATORY SECTION (Amending WSR 19-01-102, filed 12/18/18, effective 1/18/19)

**WAC 434-261-117 Conducting a risk-limiting audit.** ~~((The audit board))~~ County elections staff must locate and retrieve ~~((, or observe as county election staff locate and retrieve,))~~ each randomly selected ballot ~~((or VVPAT record))~~ from the appropriate storage container. ~~((The audit board))~~ This process may be observed according to WAC 434-261-020. County elections staff must verify that the seals on the appropriate storage containers are those recorded on the applicable chain-of-custody logs.

(1) ((In counties conducting comparison audits,)) The county auditor will determine the number of audit boards needed to perform the audit and assign two people to each audit board. The audit board(s) will review each randomly selected paper ballot ((must be examined)) and report voter markings or choices in ((all)) the designated contests ((must be reported)) using the ((RLA)) risk-limiting audit tool or other means specified by the secretary of state. ((The audit board may refer to the digital image of the audited ballot captured by the voting system in order to confirm it retrieved the correct ballot randomly selected for audit.)) The audit board(s) must complete the audit of all ballots randomly selected for audit within ~~((four))~~ two business days to allow time for additional ballots to be included if a discrepancy is identified in accordance with RCW 29A.60.185(3).

(2) ((In counties conducting ballot polling audits, the audit board must examine and report the voter markings or choices in only the target contest on each randomly selected ballot in a form approved

by the secretary of state. The audit board may refer to the digital image of the audited ballot captured by the voting system in order to confirm it retrieved the correct ballot. The audit board must complete its reports of all ballots randomly within four business days to allow time for additional ballots to be included if a discrepancy is identified in accordance with RCW 29A.60.185(3).

~~(3-))~~ The audit board(s) must interpret voter markings on ballots selected for audit in accordance with WAC 434-261-086. If the audit board members cannot unanimously agree on the voter's intent, they must indicate the inability to agree in the appropriate contest in the ((RLA)) risk-limiting audit tool's audit board user interface, or ((the ballot polling audit form approved)) other means specified by the secretary of state.

~~((To the extent applicable, the secretary of state will compare the audit board's reports of the audited ballots to the corresponding CVRs))~~ (3) In order to maintain voter privacy, the secretary of state will review the results of the audit as presented by the risk-limiting audit tool, and post the summary results of the ((comparison)) audit online.

(4) If there is a discrepancy in a target contest that exceeds the risk limit, the ((RLA)) risk-limiting audit will continue until the risk limit for the target contest((s)) is met or until a full hand count results. ((If the county audit reports reflect that the risk limit has not been satisfied in a target contest, the secretary of state will randomly select additional ballots for audit using the same procedures described in WAC 434-261-116.

The formula used to determine if the risk limit has been satisfied will be maintained on file in the secretary of state's office.

The audit board)) The secretary of state may order a full hand recount of a target contest at the secretary's discretion if that decision would be more efficient than multiple iterations of risk-limiting audit processes.

(5) Each audit board participating in a risk-limiting audit must sign, date, and submit to the secretary of state a report of the results of the risk-limiting audit on the approved form within ((four)) two business days. The report must include any discrepancies found.

~~((The secretary of state will review the audit board's report and may direct the county auditor to conduct additional audit rounds, a random audit, a full hand count, or other action. The secretary of state may instruct the county to delay canvass until it completes any additional audit or other action.))~~

[Statutory Authority: RCW 29A.04.611, 29A.24.091, 29A.24.311, 29A.60.021, 29A.60.185, 29A.60.170, 29A.60.110, and 29A.60.235. WSR 19-01-102, § 434-261-117, filed 12/18/18, effective 1/18/19.]

AMENDATORY SECTION (Amending WSR 19-01-102, filed 12/18/18, effective 1/18/19)

**WAC 434-261-118 Risk-limiting audit reports.** ~~((The designated election official))~~ At the conclusion of a risk-limiting audit, the county auditor must segregate and seal the materials used during the post-election audit, including copies of all tabulation reports, the audited ballots, and a copy of the audit board report. These materials must be returned to secure storage with the ballots from that election

and are subject to the same retention period as the materials for that election.

[Statutory Authority: RCW 29A.04.611, 29A.24.091, 29A.24.311, 29A.60.021, 29A.60.185, 29A.60.170, 29A.60.110, and 29A.60.235. WSR 19-01-102, § 434-261-118, filed 12/18/18, effective 1/18/19.]

AMENDATORY SECTION (Amending WSR 19-01-102, filed 12/18/18, effective 1/18/19)

**WAC 434-261-119 Removal of risk-limiting audit board members.**

~~((Removal and replacement of audit board members.))~~ The county auditor may remove from the audit board any persons who indicate to the county auditor that they cannot or do not wish to serve as audit board members, and/or who, in the judgment of the county auditor, lack the ability to properly serve as audit board members. ~~((If the county auditor removes an audit board member, the auditor must notify the secretary of state and appoint a replacement in the same manner as described in WAC 434-261-116.))~~

[Statutory Authority: RCW 29A.04.611, 29A.24.091, 29A.24.311, 29A.60.021, 29A.60.185, 29A.60.170, 29A.60.110, and 29A.60.235. WSR 19-01-102, § 434-261-119, filed 12/18/18, effective 1/18/19.]

**WSR 22-09-044**  
**PROPOSED RULES**  
**MILITARY DEPARTMENT**  
[Filed April 14, 2022, 12:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-24-003 [22-06-033].

Title of Rule and Other Identifying Information: WAC 323-10-070 Costs of providing copies of public records.

Hearing Location(s): On May 24, 2022, at 10:00 a.m., Microsoft Teams meeting <https://bit.ly/3OrmNCv>. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the military department will not provide a physical location for this hearing in order to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Please join the hearing online at the Microsoft Teams link provided here.

Date of Intended Adoption: May 24, 2022.

Submit Written Comments to: Cynthia Whaley, Building 1, Camp Murray, WA 98430, email [Cynthia.whaley@mil.wa.gov](mailto:Cynthia.whaley@mil.wa.gov), by May 3, 2022.

Assistance for Persons with Disabilities: Contact Cynthia Whaley, phone 253-640-4966, email [Cynthia.whaley@mil.wa.gov](mailto:Cynthia.whaley@mil.wa.gov), by May 3, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Prior to the adoption of the emergency rule CR-103E filed November 17, 2021, the military department has not required public records requesters to pay for the costs of copies as permitted by RCW 42.56.120, as amended in 2017 by EHB 1596. The purpose of this proposed permanent rule is to allow the department to charge statutory fees under RCW 42.56.120 and mitigate current costs to the agency in responding to public records requests.

Reasons Supporting Proposal: EHB 1596 (2017) authorized agencies to assess statutory costs for copies of public records if the agency has adopted a rule or regulation declaring the reasons that determining the actual cost of copies would be unduly burdensome. The military department is initiating permanent rule making that would make that determination and accordingly authorize the military department to assess statutory costs for copies, as permitted by RCW 42.56.120.

Statutory Authority for Adoption: RCW 42.56.120.

Statute Being Implemented: RCW 42.56.120.

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

Name of Proponent: Washington state military department, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Cynthia Whaley, Building 1, Camp Murray, WA 98430, 253-640-4966.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. The proposal is not a significant legislative rule for the purposes of RCW 34.05.328.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Per RCW 42.56.120, costs are determined as follows: Fifteen cents per page for photocopies of public records, printed copies of electronic public records when requested by the person



requesting records, or for the use of agency equipment to photocopy public records;

Ten cents per page for public records scanned into an electronic format or for the use of agency equipment to scan the records;

Five cents per each four electronic files or attachment uploaded to email, cloud-based data storage service, or other means of electronic delivery; and

Ten cents per gigabyte for the transmission of public records in an electronic format or for the use of agency equipment to send the records electronically. The agency shall take reasonable steps to provide the records in the most efficient manner available to the agency in its normal operations.

April 14, 2022  
Cynthia Whaley  
Public Records Officer  
Rules Coordinator

### OTS-3479.1

AMENDATORY SECTION (Amending WSR 14-22-096, filed 11/4/14, effective 12/5/14)

**WAC 323-10-070 Costs of providing copies of public records.** (1) ~~((Costs for paper copies.))~~ **Inspection.** There is no fee for inspecting public records. ~~((A requestor may obtain standard black and white photocopies for fifteen cents per page. Copies in color or larger sized documents cost will be based on the actual cost to reproduce them at the time of the request.~~

~~(2) Costs for electronic records. The cost of scanning existing office paper or other nonelectronic records is six cents per page. There will be no charge for emailing electronic records to a requestor, unless another cost applies such as a scanning fee. The charge for electronic records provided on any medium other than email will be in the amount necessary to reimburse the actual cost to the agency.~~

~~(3) Deposits. Before beginning to make copies or scanning responsive records,))~~

(2) **Statutory default costs.** Pursuant to RCW 42.56.120(2), the department declares for the following reasons that it would be unduly burdensome for it to calculate the actual costs it charges for providing copies of public records:

(a) Funds were not allocated for performing a study to calculate such actual costs and the agency lacks the necessary funds to perform a study and calculations;

(b) Staff resources are insufficient to perform a study and to calculate such actual costs; and

(c) A study would interfere with and disrupt other essential agency functions.

(3) **Fee schedule.**

(a) The department will charge for copies of records pursuant to the default fees in RCW 42.56.120 and as published in the department's fee schedule available on the agency website at <https://mil.wa.gov/public-record-disclosure>.

(b) The department will charge the actual amount charged by an external vendor for records copied by an external vendor.

(c) The charges for copies under this subsection may be combined to the extent that more than one type of charge applies to copies produced in response to a particular request.

(4) **Customized electronic access services.** At the department's sole discretion, the department may provide customized electronic access to public records if the department estimates that the request would require the use of information technology expertise to prepare data compilations or provide customized electronic access services when such compilations and customized access services are not used by the department for other agency purposes. The department will charge the actual costs, including staff time, necessary to reimburse the department for providing customized electronic access services.

(5) **Deposits.** The public records officer or designee may require ((a)) an advance deposit of ((up to ten)) 10 percent of the estimated ((costs of copying all the records selected by the requestor)) fees when preparing records for an installment or an entire request. The public records officer or designee may also require the payment of the remainder of the copying or scanning costs before providing all the records, or the payment of the costs of copying or scanning an installment before providing that installment. The ((military)) department will not charge sales tax when it makes copies of or scans public records.

((+4)) (6) **Payment of fees.** The department will not release any requested copies of public records unless and until the requestor has paid all copying and other charges as set forth in this section.

(7) **Waiver of fees.** The public records officer may waive the fee when the expenses of processing payment exceeds the costs of providing copies.

(8) **Costs of mailing.** The ((military)) department may ((also)) charge actual costs of mailing, including the cost of the shipping container.

((+5)) (9) **Payment.** Payment may be made by cash, check, or money order to the ((military)) department.

[Statutory Authority: RCW 42.56.040. WSR 14-22-096, § 323-10-070, filed 11/4/14, effective 12/5/14. Statutory Authority: RCW 42.56.010 and 42.56.100. WSR 12-09-089, § 323-10-070, filed 4/18/12, effective 5/19/12; § 323-10-070, filed 2/13/74.]

**WSR 22-09-055**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed April 18, 2022, 10:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-14-116.

Title of Rule and Other Identifying Information: The department proposes amending WAC 388-412-0046 What is the purpose of DSHS cash and food assistance benefits and how can I use my benefits?

Hearing Location(s): On May 24, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>; or virtual. Due to the impacts of the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than May 25, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov) [[Tencza@dshs.wa.gov](mailto:Tencza@dshs.wa.gov)], fax 360-664-6185, by May 24, 2022, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules coordinator, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email [Tencza@dshs.wa.gov](mailto:Tencza@dshs.wa.gov) [[Tencza@dshs.wa.gov](mailto:Tencza@dshs.wa.gov)], by May 10, 2022, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments more closely align rule with federal regulations that permit households to select who may use their food assistance benefits to purchase food for the household.

Reasons Supporting Proposal: Supplemental Nutrition Assistance Program regulations 7 C.F.R. §§ 273.2 (n) (3) and 274.7(a), permit households to select who is allowed to purchase food for the household.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Patrick Budde, P.O. Box 45470, Olympia, WA 98504-5470, 360-764-0068.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.["]

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: These amendments do not impact small businesses. They only impact DSHS clients.

April 14, 2022  
Katherine I. Vasquez  
Rules Coordinator

**SHS-4918.1**

AMENDATORY SECTION (Amending WSR 20-23-044, filed 11/12/20, effective 12/13/20)

**WAC 388-412-0046 What is the purpose of DSHS cash and food assistance benefits and how can I use my benefits?** (1) What is the purpose of DSHS cash benefits?

(a) DSHS cash assistance benefits are provided to low-income residents who qualify for public assistance programs. These benefits are intended to help pay for basic living expenses as described under RCW 74.04.770. TANF cash grants must be used for the sole benefit of the children, and we may require proof that you are using your TANF cash assistance to benefit your children as allowed under RCW 74.12.260.

(b) Your electronic benefit transfer (EBT) card or cash assistance benefits may only be used by you, an eligible member of your household, an authorized non-member, or an authorized representative/protective payee for the purposes of your cash assistance program. You are not allowed to sell, attempt to sell, exchange, or donate your EBT card or benefits to any other person or entity.

(i) An authorized non-member is a person selected, by the household, to use the EBT card and make purchases for the sole benefit of the household, on behalf of the household, on an as-needed basis.

(c) You may use your cash benefits to pay a reasonable amount of basic living expenses such as:

- (i) Shelter;
- (ii) Utilities such as heating, telephone, water, sewer, garbage, and recycling;
- (iii) Food;
- (iv) Transportation;
- (v) Clothing;
- (vi) Household maintenance;
- (vii) Personal hygiene;
- (viii) Employment\_ or school\_-related items; and
- (ix) Other necessary incidentals and items.

(d) It is (~~not legal~~) illegal to use electronic benefit transfer (EBT) cards or cash obtained with EBT cards to:

- (i) Gamble. Gambling includes:
  - (A) The purchase of lottery tickets;
  - (B) The purchase of pull tabs;
  - (C) Use of punch boards;
  - (D) Purchase of bingo cards;
  - (E) Betting on horse racing;
  - (F) Participating in casino games; and
  - (G) Participating in other games of chance as found in chapters 9.46, 67.16 and 67.70 RCW.
- (ii) Purchase cigarettes as defined in RCW 82.24.010 or tobacco products as defined in RCW 82.26.010;

(iii) Purchase any items regulated under Title 66 RCW;

(iv) Purchase or participate in any activities in any of the following locations:

(A) Taverns licensed under RCW 66.24.330;

(B) Beer/wine specialty stores licensed under RCW 66.24.371, except if the store is an authorized supplemental nutrition assistance program or women, infants, and children retailer;

(C) Nightclubs licensed under RCW 66.24.600;

(D) Bail bond agencies regulated under chapter 18.185 RCW;

(E) Gambling establishments licensed under chapter 9.46 RCW;

(F) Tattoo, body piercing, or body art shops regulated under chapter 18.300 RCW;

(G) Adult entertainment venues with performances that contain erotic material where minors under the age of (~~eighteen~~) 18 are prohibited under RCW 9.68A.150;

(H) Any establishments where persons under the age of (~~eighteen~~) 18 are not permitted.

(e) If you use your electronic benefit transfer (EBT) card or cash obtained from your EBT card illegally we may:

(i) Assign a protective payee to manage your cash assistance benefits under WAC 388-460-0035;

(ii) For households receiving TANF, require proof that your benefits are being used for the benefit of the children in the household;

(iii) Terminate your cash benefits; or

(iv) Pursue legal action, including criminal prosecution.

(2) What is the purpose of DSHS food assistance benefits?

(a) DSHS food assistance benefits, including those from the basic food program, state funded basic food program for legal immigrants (FAP), Washington state combined application project (WASHCAP), and transitional food assistance (TFA), help low-income individuals and families have a more nutritious diet by providing food assistance benefits through EBT cards for eligible households to buy groceries.

(b) You, members of your household, an authorized non-member, or an authorized representative may use your food assistance benefits to buy food items for your household from a food retailer authorized to accept supplemental nutrition assistance program (SNAP) benefits by the U.S. Department of Agriculture Food and Nutrition Service (FNS).

(i) An authorized non-member is a person selected by the household to use the EBT card and make purchases for the sole benefit of the household, on behalf of the household, on an as-needed basis.

(c) You can use your food assistance benefits to buy items such as:

(i) Breads and cereals;

(ii) Fruits and vegetables;

(iii) Cheese, milk, and other dairy products;

(iv) Meats, fish, poultry, and eggs;

(v) Most other food items that are not prepared hot foods; and

(vi) Seeds and plants that produce food.

(d) It is (~~not legal~~) illegal to:

(i) Give your EBT card or benefits to anyone who is not in your food assistance household, not an authorized non-member, or not your authorized representative.

(ii) Use food benefits for any purpose other than to buy food for eligible household members.

(iii) Exchange food benefits for anything of value (trafficking). Examples of illegal trafficking include exchanging (~~food benefits~~)

or attempting to exchange food benefits for cash, drugs, weapons, or anything other than food from an authorized retailer.

(iv) Sell, attempt to sell, exchange, or donate an EBT card, EBT card number, personal identification numbers (PINs), or any benefits to any person or entity.

(v) Buy, attempt to buy, or steal someone's EBT card, EBT card number, or PIN.

(vi) Sell or trade any food that was purchased using food assistance benefits for cash, drugs, alcohol, tobacco products, firearms, or anything of value.

(vii) Use food benefits to buy nonfood items such as cigarettes, tobacco, beer, wine, liquor, household supplies, soaps, paper products, vitamins, medicine, or pet food.

(viii) Commit any other act in violation of the Food Nutrition Act of 2008, regulations for the supplemental nutrition assistance program (SNAP) under Title 7 of the Code of Federal Regulations or any Washington state administrative code relating to the use, presentation, transfer, acquisition, receipt, trafficking, or possession of food assistance benefits.

(e) If you intentionally misuse food assistance benefits, you may be:

(i) Disqualified for an intentional program violation under WAC 388-446-0015 and 388-446-0020. If you are disqualified you will lose your benefits for at least one year and up to a lifetime. The disqualification continues even if you move to another state.

(ii) Subject to fines.

(iii) Subject to legal action, including criminal prosecution. DSHS will cooperate with state, local, and federal prosecuting authorities to prosecute trafficking in food assistance/SNAP benefits.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 74.08.580 and 7 C.F.R. §§ 271.2 and 273.16. WSR 20-23-044, § 388-412-0046, filed 11/12/20, effective 12/13/20. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090 and 7 C.F.R. §§ 271.2 and 273.16. WSR 19-03-054, § 388-412-0046, filed 1/10/19, effective 2/10/19. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 C.F.R. § 271.2. WSR 14-05-063, § 388-412-0046, filed 2/18/14, effective 3/21/14. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, 74.04.770, 74.12.260, 74.08.580, 9.91.142, 7 C.F.R. 273.16, the Food and Nutrition Act of 2008 as amended and 42 U.S.C. 601a; and 2011 c 42. WSR 11-19-047, § 388-412-0046, filed 9/13/11, effective 10/14/11.]

**WSR 22-09-056**  
**PROPOSED RULES**  
**OFFICE OF THE**  
**INSURANCE COMMISSIONER**

[Insurance Commissioner Matter R 2021-17—Filed April 18, 2022, 11:15 a.m.]

Supplemental Notice to WSR 21-20-107.

Preproposal statement of inquiry was filed as WSR 21-14-097.

Title of Rule and Other Identifying Information: Health care sharing ministries rule making.

Hearing Location(s): On May 26, 2022, at 2:00 p.m., Zoom meeting. Detailed information for attending the Zoom meeting is posted on the office of insurance commissioner (OIC) website <https://www.insurance.wa.gov/health-care-sharing-ministries-r-2021-17>. Due to the COVID-19 public health emergency, this meeting will be held via the Zoom platform.

Date of Intended Adoption: May 31, 2022.

Submit Written Comments to: Jane Beyer, P.O. Box 40260, Olympia, WA 98504-0260, email [rulescoordinator@oic.wa.gov](mailto:rulescoordinator@oic.wa.gov), fax 360-586-3109, by May 24, 2022.

Assistance for Persons with Disabilities: Contact Katie Bennett, phone 360-725-7013, fax 360-586-2023, TTY 360-586-0241, email [Katie.Bennett@oic.wa.gov](mailto:Katie.Bennett@oic.wa.gov), by May 26, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The commissioner is adopting rules relating to the exemption of health care sharing ministries (HCSM) from the definition of health carrier or insurer under RCW 48.43.009 to reduce confusion related to entities' status as HCSMs and increase transparency.

Reasons Supporting Proposal: The rule making is adopting new WAC to reduce confusion related to entities' status as HCSMs, increase transparency, and codify all applicable rules related to HCSM in one location.

Statutory Authority for Adoption: RCW 48.02.060, 48.17.005, and 48.15.015.

Statute Being Implemented: RCW 48.43.009.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Jane Beyer, P.O. Box 40260, Olympia, WA 98504, 360-725-7043; Implementation: Molly Nollette, P.O. Box 40260, Olympia, WA 98504, 360-725-7000; and Enforcement: Charles Malone, P.O. Box 40260, Olympia, WA 98504, 360-725-7000.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Simon Casson, P.O. Box 40260, Olympia, WA 98504, phone 360-725-7038, fax 360-586-3109, email [Simon.Casson@oic.wa.gov](mailto:Simon.Casson@oic.wa.gov).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. HCSMs are defined, in part, as organizations that have existed since December 31, 1999, are described in Section 501 (c) (3) of the Internal Revenue Code, and are exempt from taxation under Section 501(a) of the Internal Revenue Code. These entities gen-

erally need to file form 990 with the Internal Revenue Service (IRS). The form is used by the IRS to gather information about tax-exempt organizations. OIC used IRS 990 form information to determine number of employees, as well as annual payroll and annual gross business income of these entities.

The number of employees reported in the most recent 990 forms available for each entity that to the best of OIC's knowledge claims to be a health care sharing ministry, including some entities that OIC disputes are legitimate HCSMs, is detailed in the table below.

Table 1

HCSM	Number of Employees	990 Form Year
<i>Samaritan Ministries</i>	423	2020
<i>Christian Healthcare Ministries</i>	292	2020
<i>Christian Care Ministries</i>	713	2020
<i>Liberty Healthshare<sup>1</sup></i>	568	2019
<i>OneShare Health<sup>2</sup></i>	236	2019
<i>Zion Health<sup>3</sup></i>	25	2020

<sup>1</sup> OIC is currently investigating Liberty Healthshare to determine whether they meet the requirements of RCW 48.43.009 or 26 U.S.C. § 5000A (d)(2)(B).

<sup>2</sup> In 2021, OneShare Health, LLC, entered into a voluntary consent order with OIC in which OIC asserted it has reason to believe OneShare Health, LLC, does not satisfy the requirements to be a valid HCSM, and in which OneShare Health, LLC, agreed to cease soliciting Washington residents and to not renew existing agreements, contracts, or memberships with Washington state residents.

<sup>3</sup> OIC is currently investigating Zion Health to determine whether they meet the requirements of RCW 48.43.009 or 26 U.S.C. § 5000A (d)(2)(B).

Given the above data for each identifiable health care sharing ministry, the average number of employees per business is 376. This is well above the threshold of a small business, which is defined as 50 or fewer employees. However, because purported HCSMs are not required to report their existence or operation to OIC under current law, it is possible that there may be other small businesses in this industry that OIC is not aware of. This rule is intended to address this issue, in part, by giving OIC authority to request information from these entities.

Determining which HCSMs operate in Washington was difficult, and not all the identified ministries had readily available 990 forms. Therefore, OIC was able to determine the annual payroll and annual gross business income for six entities that hold themselves out as HCSMs. Even if there are entities in this industry that would be considered small employers, this analysis indicates that this rule would not result in more-than-minor costs for these employers.

The annual payroll and the annual gross business income for each of the six companies is detailed in Table 2 below. Per the definitions mentioned in RCW 19.85.020, a "minor cost" means a cost per business that is less than three-tenths of one percent of annual revenue or income, or \$100, whichever is greater, or one percent of annual payroll. Given this definition, three-tenths of one percent of annual gross business income and one percent of annual payroll have been calculated in Table 2.

Table 2



<i>HCSM</i>	<i>Annual Payroll</i>	<i>Total Revenue</i>	<i>1% of Annual Payroll</i>	<i>0.3% of Annual Revenue</i>	<i>990 Form Year</i>
Samaritan Ministries	\$27,561,127.00	\$45,878,483.00	\$275,611.27	\$137,635.45	2020
Christian Healthcare Ministries	\$16,549,206.00	\$633,361,869.00	\$165,492.06	\$1,900,085.61	2020
Christian Care Ministries	\$54,000,000.00	\$784,000,000.00	\$540,000.00	\$2,352,000.00	2020
Liberty Healthshare	\$18,168,498.00	\$54,725,576.00	\$181,684.98	\$164,176.73	2019
OneShare Health	\$11,256,146.00	\$59,871,001.00	\$112,561.46	\$179,613.00	2019
Zion Health	\$646,527.00	\$9,267,936.00	\$6,465.27	\$27,803.81	2020

Measuring the cost of responding to an inquiry from the insurance commissioner is difficult given the variation in responses. For some entities, the information typically requested by OIC, such as proof of the date of formation, statements of common beliefs, membership terms, and annual audits, may be readily available. For others, this information may not be readily available or well organized. For this reason, OIC used a minimum minor cost and a maximum minor cost to set a cost threshold for this analysis. The employee hourly rate for each HCSM was calculated using the number of employees and the payroll information provided in the 990 forms. The cost parameters for the minimum minor cost calculations can be seen below:

Table 3

<i>Parameter for Inquiry Response</i>	<i>Value</i>
<i>Number of employees involved</i>	1
<i>Hours per Employee</i>	8

Similarly, a maximum minor cost was calculated, which included additional employees and hours, as well as legal counsel. For the legal cost estimate, OIC used an hourly rate of \$350. This estimate is within the range of hourly rates for attorneys in Washington state, which is estimated to be between \$175 and \$378.<sup>4</sup> The cost calculations for the maximum minor cost can be seen below:

<sup>4</sup> "How Much Does a Lawyer Charge in Washington? (2021)." Clio, June 3, 2021. <https://www.clio.com/resources/legal-trends/compare-lawyer-rates/wa/#:~:text=The%20typical%20lawyer%20in%20Washington,hire%20an%20attorney%20in%20Washington.>

Table 4

<i>Parameter for Inquiry Response</i>	<i>Value</i>
<i>Number of employees involved</i>	3
<i>Hours per Employee</i>	8
<i>Attorney Hours</i>	16
<i>Attorney Hourly Rate</i>	\$350.00

Given these parameters, the minor cost assumes one inquiry per HCSM per year. This estimate is greater than OIC's current practice. In 2021, OIC issued eight inquiries to different HCSMs operating in Washington state. Given that more than eight ministries operate in the state, the assumption that each HCSM will receive an inquiry and therefore bear the cost is an overestimate. OIC was unable to determine exactly how many ministries operate in Washington state. However, by examining customer inquiries and the known HCSMs associated with the Alliance of Health Care Sharing Ministries, we estimate that at

least 14 ministries sell health sharing arrangements in Washington state. According to the Alliance of Health Care Sharing Ministries' website, there are 108 health care sharing ministries that meet the federal definition, indicating that there are likely more than 14 operating in Washington state. With this information, we assume each HCSM will receive 0.57 inquiries per year (8 inquiries/14 known HCSM).

Both the maximum and minimum minor cost for each HCSM are shown, along with the one percent of annual payroll and 0.3 percent of annual revenue. The lesser of either one percent of annual payroll or 0.3 percent of annual revenue is bolded.

Table 5

<i>HCSM</i>	<i>1% of Annual Payroll</i>	<i>0.3% of Annual Revenue</i>	<i>Min Cost</i>	<i>Max Cost</i>
<i>Samaritan Ministries</i>	\$275,611.27	<b>\$137,635.45</b>	\$74.46	\$6,046.79
<i>Christian Healthcare Ministries</i>	<b>\$165,492.06</b>	\$1,900,085.61	\$64.77	\$5,988.63
<i>Christian Care Ministries</i>	<b>\$540,000.00</b>	\$2,352,000.00	\$86.56	\$6,119.33
<i>Liberty Healthshare</i>	\$181,684.98	<b>\$164,176.73</b>	\$36.56	\$5,819.34
<i>OneShare Health</i>	<b>\$112,561.46</b>	\$179,613.00	\$54.51	\$5,927.06
<i>Zion Health</i>	<b>\$6,465.27</b>	\$27,803.81	\$29.56	\$5,777.33

For all the entities whose data OIC had access to, the maximum minor cost estimate for each identified HCSM is well below the lesser of either one percent of annual payroll or 0.3 percent of annual revenue.

Based upon the foregoing information, OIC determines that this rule is exempt from small business economic impact statement requirements, as the businesses that must comply with the proposed rule are not small businesses. OIC has found that HCSMs may not be considered small businesses under RCW 19.85.020(2).

Additionally, it is concluded that the proposed rule does not impose more-than-minor costs on businesses as defined by RCW 19.85.020(2) based on OIC's analysis of 990 forms filed by known entities holding themselves out as HCSMs.

A copy of the detailed cost calculations may be obtained by contacting Simon Casson, P.O. Box 40260, Olympia, WA 98504, phone 360-725-7038, email Simon.Casson@oic.wa.gov.

April 18, 2022  
Mike Kreidler  
Insurance Commissioner

OTS-3371.3

## SUBCHAPTER N

**HEALTH CARE SHARING MINISTRIES**NEW SECTION

**WAC 284-43-8210 Definitions.** For the purposes of this subchapter:

- (1) "Annual audit" means an audit occurring once a year at approximately the same time each year for the preceding calendar year.
- (2) "Certified public accounting firm" means a firm licensed by state boards of accountancy, the District of Columbia, and U.S. territories.
- (3) "Continuously" means without a break or interruption.
- (4) "Generally accepted accounting principles" means the compulsory accrual method of accounting for a public company.
- (5) "Health care sharing ministry" means an organization:
  - (a) That is described in Section 501 (c) (3) of the Internal Revenue Code and is exempt from taxation under Section 501(a) of the Internal Revenue Code;
  - (b) That has members who share a common set of ethical or religious beliefs and share medical expenses among members in accordance with those beliefs and without regard to the state in which a member resides or is employed;
  - (c) Whose members retain membership in the health care sharing ministry even after the member develops a medical condition;
  - (d) Which, or a predecessor of which, has been in existence at all times since December 31, 1999, and medical expenses of its members have been shared continuously and without interruption since at least December 31, 1999; and
  - (e) That conducts an annual audit, which is performed by an independent certified public accounting firm in accordance with generally accepted accounting principles and which is made available to the public upon request.
- (6) "Independent certified public accounting firm" means a certified public accounting firm that meets the standards of independence set forth by the American Institute of Certified Public Accountants (AICPA), the Public Company Accounting Oversight Board (PCAOB), or another similar body that oversees or sets standards for the accounting or auditing professions.
- (7) "Organization" means an entity organized as a corporation, a limited liability company (LLC), an unincorporated association, or a trust. Entities must be organized under United States federal or state law.
- (8) "Predecessor" means an organization that was acquired, merged with, or otherwise replaced by a successor organization, and the predecessor organization no longer shares medical expenses.
- (9) "Share medical expenses" means providing for the medical needs and financial needs related to medical expenses of a participant through member contributions.

[]

NEW SECTION

**WAC 284-43-8220 Prompt reply to the commissioner required.** Any entity claiming to be a health care sharing ministry shall timely reply in writing to an inquiry of the commissioner regarding their compliance with RCW 48.43.009, and any potential violations of RCW 48.05.030(1) and 48.15.020(1) and related regulations, including this regulation. A timely response is one that is received by the commissioner within 15 business days from receipt of the inquiry.

[]

NEW SECTION

**WAC 284-43-8230 Continuously sharing medical expenses.** A health care sharing ministry must share medical expenses among its members, and this sharing must be continuous and without interruption. In order for sharing between a predecessor organization and its successor organization to be continuous and without interruption, remaining predecessor organization members must share medical expenses with successor organization members, if any, at the time the successor organization acquires, merges with, or otherwise replaces the predecessor's medical expense sharing activities.

[]

## WSR 22-09-061

## PROPOSED RULES

## DEPARTMENT OF HEALTH

(Board of Osteopathic Medicine and Surgery)

[Filed April 19, 2022, 8:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-09-070.

Title of Rule and Other Identifying Information: New WAC

246-853-655 Administration of deep sedation and general anesthesia by osteopathic physicians in dental offices. The board of osteopathic medicine and surgery (board) is proposing a new rule section to regulate the provision of anesthesia by osteopathic physicians in a dental setting.

Hearing Location(s): On June 3, 2022, at 9:00 a.m. In response to the coronavirus disease 2019 (COVID-19), the department of health will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Register in advance for this webinar. Register for osteopathic medicine and surgery board meeting and rules hearing on June 3, 2022, 9:00 a.m. PDT, at <https://attendee.gotowebinar.com/register/8819286542656181516>. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: June 3, 2022.

Submit Written Comments to: Becky McElhiney, P.O. Box 47852, Olympia, WA 98504-7852, email <https://fortress.wa.gov/doh/policyreview>, fax 360-236-2850, by May 27, 2022.

Assistance for Persons with Disabilities: Contact Becky McElhiney, phone 360-236-4766, fax 360-236-2901, TTY 711, email [osteopathic@doh.wa.gov](mailto:osteopathic@doh.wa.gov), by May 27, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board is proposing to adopt new WAC 246-853-655 to regulate the use of anesthesia by osteopathic physicians in a dental setting. This is an area that is currently unregulated by the board. Osteopathic physicians can currently provide anesthesia services in dental offices, as anesthesia services are within the scope of practice for all osteopathic physicians. Regulating the provision of anesthesia in a dental setting would place the board in an active patient safety role. Currently there are no rules in place to ensure that osteopathic physicians that may be providing anesthesia in dental settings have any training or experience in providing anesthesia. Because a dental setting often has no other staff available with specialized anesthesia training, this may put patients at risk if the patient suffers an event that requires rescue. Requiring specific anesthesiology training will ensure that the provider has the necessary training needed to rescue a patient in case of a negative anesthesia event.

The Washington medical commission (WMC) recently adopted dental anesthesia rules. The board works to remain consistent with WMC rules, as osteopathic physicians and allopathic physicians regularly provide care in the same settings. Furthermore, striving for consistency with WMC makes rules easier for licensees to understand and comply with in the complex health care regulatory environment. The proposed section mirrors the WMC rules, except that these proposed rules require the osteopathic physician to also complete an anesthesiology residency.

The board believes specific anesthesiology training is necessary to ensure the safety of patients.

The new section being proposed would promote effective perioperative communication and appropriately timed interventions, establish competency requirements, and mitigate adverse events and outcomes.

The proposed section would benefit the public's health by ensuring participating providers are informed and regulated by current national industry and best practice standards.

Reasons Supporting Proposal: The proposed rules are necessary to ensure best practice and standards of care when administering anesthesia in a dental setting. The rules align osteopathic physician rules to those of allopathic physicians, with the exception of an additional competency requirement, which avoids confusion for physicians practicing in the same settings. The rules include a competency requirement which effectively protects the public health and safety by ensuring that only osteopathic physicians who are proven competent provide these services within a dental office.

Statutory Authority for Adoption: RCW 18.57.005 and 18.130.050.

Statute Being Implemented: Not applicable.

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

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

Name of Proponent: Washington state board of osteopathic medicine and surgery, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Becky McElhiney, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-4766.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Becky McElhiney, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-4766, fax 360-236-2901, TTY 711, email osteopathic@doh.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rules do not impose any costs on businesses. Osteopathic physicians are paid to attend residency.

April 8, 2022

Renee Fullerton  
Executive Director

**OTS-3142.3**

NEW SECTION

**WAC 246-853-655 Administration of deep sedation and general anesthesia by osteopathic physicians in dental offices.** (1) The purpose of this section is to govern the administration of deep sedation and general anesthesia by osteopathic physicians in dental offices. The board establishes these standards to promote effective perioperative

communication and appropriately timed interventions, and mitigate adverse events and outcomes.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Administering osteopathic physician" means an individual licensed under chapter 18.57 RCW, who has successfully completed an accredited anesthesiology residency, who administers deep sedation or general anesthesia to a patient in a dental office.

(b) "Deep sedation" has the same meaning as in WAC 246-853-650.

(c) "Dental office" means any facility where dentistry is practiced, as defined in chapter 18.32 RCW, except a hospital licensed under chapter 70.41 RCW or ambulatory surgical facility licensed under chapter 70.230 RCW.

(d) "General anesthesia" has the same meaning as in WAC 246-853-650.

(e) "Perioperative" includes the three phases of surgery: Preoperative, intraoperative, and postoperative.

(3) An administering osteopathic physician is responsible for the perioperative anesthetic management and monitoring of a patient and shall ensure patient care, recordkeeping, equipment, personnel, facilities, and other related matters are in accordance with acceptable and prevailing standards of care including, but not limited to, the following:

(a) Preoperative requirements. An administering osteopathic physician shall ensure the patient has undergone a preoperative health evaluation and document review of the evaluation. The administering osteopathic physician shall also conduct and document a risk assessment to determine whether a patient is an appropriate candidate for deep sedation or general anesthesia and discussion of the risks of deep sedation or general anesthesia with the patient. For a pediatric patient, this assessment must include:

(i) Whether the patient has specific risk factors that may warrant additional consultation before administration of deep sedation or general anesthesia, and how each patient meets criteria for deep sedation or general anesthesia in an outpatient environment. This must include a specific inquiry into whether the patient has signs and symptoms of sleep-disordered breathing or obstructive sleep apnea;

(ii) A discussion with a parent or guardian of a pediatric patient of the particular risks of deep sedation or general anesthesia for a patient who: (A) Is younger than six years old; (B) has special needs; (C) has airway abnormalities; or (D) has a chronic condition. This discussion must include reasoning why the pediatric patient can safely receive deep sedation or general anesthesia in an outpatient environment and any alternatives.

(b) Medical record. The administering osteopathic physician must ensure the anesthesia record be complete, comprehensive, and accurate for each patient, including documentation at regular intervals of information from intraoperative and postoperative monitoring. The recordkeeping requirements under WAC 246-853-650 and 246-817-770 apply to an administering osteopathic physician, including the elements of a separate anesthesia record. The anesthesia record must also include temperature measurement and a heart rate and rhythm measured by electrocardiogram. For a pediatric patient, the administering osteopathic physician shall ensure vital signs are postoperatively recorded at least at five-minute intervals until the patient begins to awaken, then recording intervals may be increased to 10 to 15 minutes.

(c) Equipment. An administering osteopathic physician shall ensure the requirements for equipment and emergency medications under WAC 246-817-724 and 246-817-770 are met, regardless of any delineated responsibility for furnishing of the equipment or medications in a contract between the administering osteopathic physician and dental office. Additionally, for a pediatric patient, an administering osteopathic physician shall ensure there is a complete selection of equipment for clinical application to the pediatric patient. The administering osteopathic physician shall also ensure equipment is available in the recovery area to meet the requirements in this section for monitoring during the recovery period. The administering osteopathic physician shall ensure all equipment and medications are checked and maintained on a scheduled basis.

(d) Recovery and discharge requirements. An administering osteopathic physician shall ensure that:

(i) An osteopathic physician licensed under chapter 18.57 RCW, having successfully completed an accredited anesthesiology residency, allopathic physician licensed under chapter 18.71 RCW, or a certified registered nurse anesthetist licensed under chapter 18.79 RCW, capable of managing complications, providing cardiopulmonary resuscitation, and currently certified in advanced cardiac life support measures appropriate for the patient age group is immediately available for a patient recovering from anesthesia. For a pediatric patient, the osteopathic physician, allopathic physician, or certified registered nurse anesthetist shall also be trained and experienced in pediatric perioperative care;

(ii) At least one licensed health care practitioner experienced in postanesthetic recovery care and currently certified in advanced cardiac life support measures appropriate for the patient age group visually monitors the patient, at all times, until the patient has met the criteria for discharge from the facility. Consideration for prolonged observation must be given to a pediatric patient with an anatomic airway abnormality, such as significant obstructive sleep apnea. A practitioner may not monitor more than two patients simultaneously, and any such simultaneous monitoring must take place in a single recovery room. If a practitioner is qualified to administer deep sedation or general anesthesia, the practitioner may not simultaneously administer deep sedation or general anesthesia and perform recovery period monitoring functions. The practitioner shall provide: (A) Continuous respiratory monitoring via pulse oximetry and cardiovascular monitoring via electrocardiography during the recovery period; (B) monitoring, at regular intervals, during the recovery period of the patient for color of mucosa, skin, or blood, oxygen saturation, blood pressure, and level of consciousness; and (C) measurement of temperature at least once during the recovery period. If a patient's condition or other factor for the patient's health or safety preclude the frequency of monitoring during the recovery period required by this section, the practitioner shall document the reason why such a departure from these requirements is medically necessary;

(iii) Emergency equipment, supplies, medications, and services comply with the provisions of WAC 246-817-770 and are immediately available in all areas where anesthesia is used and for a patient recovering from anesthesia. Resuscitative equipment and medications must be age and size-appropriate, including for care of a pediatric patient, pediatric defibrillator paddles, and vasoactive resuscitative medications and a muscle relaxant such as dantrolene sodium, which must be immediately available in appropriate pediatric concentrations,



as well as a written pediatric dose schedule for these medications. The administering osteopathic physician shall ensure that support personnel have knowledge of the emergency care inventory. All equipment and medications must be checked and maintained on a scheduled basis; and

(iv) Before discharge, the patient is awake, alert, and behaving appropriately for age and developmental status, normal patient vital signs, and if applicable, a capable parent or guardian present to assume care of the patient.

(e) Emergency care and transfer protocol. An administering osteopathic physician shall monitor for, and be prepared to treat, complications involving compromise of the airway and depressed respiration, particularly with a pediatric patient. The administering osteopathic physician shall ensure that in the event of a complication or emergency, his or her assistive personnel and all dental office clinical staff are well-versed in emergency recognition, rescue, and emergency protocols, and familiar with a written and documented plan to timely and safely transfer a patient to an appropriate hospital.

(4) (a) An administering osteopathic physician shall submit to the board a report of any patient death or serious perioperative complication, which is or may be the result of anesthesia administered by the osteopathic physician.

(b) The administering osteopathic physician shall notify the board or the department of health, by telephone, email, or fax within 72 hours of discovery and shall submit a complete written report to the board within 30 days of the incident. The written report must include the following:

(i) Name, age, and address of the patient;

(ii) Name of the dentist and other personnel present during the incident;

(iii) Address of the facility or office where the incident took place;

(iv) Description of the type of anesthetic being utilized at the time of the incident;

(v) Dosages, if any, of any other drugs administered to the patient;

(vi) A narrative description of the incident including approximate times and evolution of symptoms; and

(vii) Additional information which the board may require or request.

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## WSR 22-09-069

## PROPOSED RULES

## DEPARTMENT OF HEALTH

[Filed April 19, 2022, 12:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-13-095.

Title of Rule and Other Identifying Information: Chapter 246-455 WAC, Hospital patient discharge information reporting. The department of health (department) is proposing amending existing rules and creating new rules on hospital patient discharge information reporting. The proposed rules prescribe new patient demographic information reported by hospitals; establish a waiver process; strengthen protections of patient health care information to align with federal law changes; clarify and add requirements for data collection and reporting; establish formalized procedures for requesting hospital patient discharge data; prescribe direct and indirect patient identifiers; update or add definitions; make technical updates and clarifications to existing rules; and establish fees for data files and analysis.

Hearing Location(s): On May 24, 2022, at 11:00 a.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the department will not provide a physical location for this hearing. This is to promote social distancing and the safety of the residents of Washington state. A virtual public hearing, without a physical meeting space, will be held instead. Register in advance for this hearing/webinar [https://us02web.zoom.us/webinar/register/WN\\_EeSuwngSQES5OSGK51Mbjw](https://us02web.zoom.us/webinar/register/WN_EeSuwngSQES5OSGK51Mbjw). After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: May 30, 2022.

Submit Written Comments to: Katitza Holthaus, Department of Health, Center for Health Statistics, P.O. Box 47814, Olympia, WA 98504, email <https://fortress.wa.gov/doh/policyreview>, fax 360-753-4135, by May 24, 2022.

Assistance for Persons with Disabilities: Contact Katitza Holthaus, phone 360-236-4311, fax 360-753-4135, TTY 711, email [katitza.holthaus@doh.wa.gov](mailto:katitza.holthaus@doh.wa.gov), by May 10, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules prescribe new patient demographic information reported by hospitals and establish a waiver process to implement E2SHB 1272 (chapter 162, Laws of 2021). In addition to implementation of E2SHB 1272, the department is proposing revisions that support compliance with federal law and improve program administration. The proposed revisions include strengthening protections of patient health care information to align with federal law changes; clarifying and adding requirements for data collection and reporting; repeal an obsolete section of rule; establishing formalized procedures for requesting hospital patient discharge data; prescribing direct and indirect patient identifiers; updating and adding definitions; making technical updates and clarifications to existing rules; and establishing fees for data files and analysis.

Reasons Supporting Proposal: E2SHB 1272 requires hospitals to report race, ethnicity, gender identity, sexual orientation, preferred language, any disability, and zip code of primary residence in patient discharge information to the department starting January 1, 2023. E2SHB 1272 amended various statutes, including RCW 43.70.052, with the intent of improving health systems transparency. As authorized by RCW 43.70.052, the center for health statistics within the department col-

lects information on inpatient and observation patient hospital stays through the comprehensive hospital abstract reporting system (CHARS). CHARS provides public health personnel, consumers, purchasers, payers, providers, and researchers access to information that can inform health care decisions.

In addition to implementation of E2SHB 1272, the department is proposing revisions to chapter 246-455 WAC that support compliance with federal law and improve program administration. The department last revised the rules in 2015 and, since then, there have been several advances and developments that can only be addressed in rule.

Statutory Authority for Adoption: E2SHB 1272 (chapter 162, Laws of 2021); and RCW 43.70.052.

Statute Being Implemented: E2SHB 1272 (chapter 162, Laws of 2021); and RCW 43.70.052.

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

Name of Proponent: Washington state department of health, governmental.

Name of Agency Personnel Responsible for Drafting: Katitza Holthaus, 101 Israel Road S.E., Tumwater, WA 98501, 360-236-4311; Implementation: Katie Hutchinson, 101 Israel Road S.E., Tumwater, WA 98501, 360-236-4324; and Enforcement: Jean Remsbecker, 101 Israel Road S.E., Tumwater, WA 98501, 360-236-4307.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Katitza Holthaus, Department of Health, Center for Health Statistics, P.O. Box 47814, Olympia, WA 98504-7814, phone 360-236-4311, fax 360-753-4135, TTY 711, email katitza.holthaus@doh.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: The proposed rules that strengthen protections of patient health care information to align with 42 U.S.C. Sec. 290dd-2, 42 C.F.R Part 2, and chapter 70.02 RCW are exempt under RCW 19.85.061 and 34.05.310 (4)(e). If the rule is not adopted, the department will be out of compliance with limiting disclosure of substance use disorder and mental health data and could be subject to federal violations.

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Explanation of exemptions: The following sections of rule are exempt under RCW 19.85.025(3):

WAC, Title	Description of Change	Exemption from RCW 19.85.025(3)
246-455-001 Purpose.	Updates RCW citations.	Correction of errors and addition of clarifying language that does not change the effect of the rule.
246-455-010 Definitions.	Adds definitions.	Clarifies the meaning of terms used throughout the chapter. Incorporation of language explicitly and specifically dictated by statute.
246-455-040 Acceptable media for submission of data.	Language revisions and updated RCW citations.	Correction of errors and addition of clarifying language that does not change the effect of the rule. Incorporation of language explicitly and specifically dictated by RCW 43.70.052 (1)(a).
246-455-050 Time deadline for submission of data.	Language revisions and updated RCW citations.	Clarifying language that does not change the effect of the rule. Incorporation of language explicitly and specifically dictated by RCW 43.70.052 (1)(a).
246-455-060 Edits to data.	Language revisions and updated RCW citations.	Clarifying language that does not change the effect of the rule. Incorporation of language explicitly and specifically dictated by RCW 43.70.052 (1)(a).
246-455-070 Revisions to submitted data.	Language revisions and updated RCW citations.	Correction of errors and addition of clarifying language that does not change the effect of the rule. Incorporation of language explicitly and specifically dictated by RCW 43.70.052 (1)(a).
Repealed 246-455-080 Security of the data.	Removes outdated rule.	Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party.
246-455-085 Data files— Release of data files and data use agreements.	Adds direct and indirect patient identifiers, clarifies data sharing, and incorporates federal requirements.	Adoption of federal requirements without material change. Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party.
New section 246-455-105 Requests from government agencies for patient discharge data files containing direct patient identifiers.	Describes the process for a government agency to request identifying data.	Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party.
New section 246-455-200 Requests for patient discharge data files containing direct patient identifiers for research.	Describes the process for a researcher to request identifying data.	Procedural rules not considered significant rule amendments.
New section 246-455-300 Requests from individuals or entities for patient discharge data files containing indirect identifiers.	Describes the process for an individual or organization to request de-identified data.	Procedural rules not considered significant rule amendments.
New section 246-455-400 Patient discharge data use agreements.	Requirements for data use agreements.	Incorporation of language explicitly and specifically dictated by statute.
New section 246-455-500 Data file production.	Preserves the department's discretion to determine file formats.	Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party.
New section 246-455-990 Data file fees.	Sets a fee schedule as dictated by RCW 43.70.052.	Incorporation of language explicitly and specifically dictated by statute. Sets fees pursuant to legislative standards.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rules do not impact small businesses. The proposed rules only impact hospitals; businesses with more than 50 employees.

April 18, 2022  
 Kristin Peterson, JD  
 Deputy Secretary  
 Policy and Planning  
 for Umair A. Shaw, MD, MPH  
 Secretary

## OTS-3630.2

AMENDATORY SECTION (Amending WSR 07-09-091, filed 4/18/07, effective 5/23/07)

**WAC 246-455-001 Purpose.** This chapter is adopted by the Washington state department of health pursuant to RCW 43.70.040(~~(r)~~) and 43.70.052(~~(r)~~ and ~~70.170.010~~) relating to the collection and maintenance of patient discharge data, including data necessary for identification of discharges by diagnosis-related groups.

[Statutory Authority: RCW 43.70.040 and 43.70.052. WSR 07-09-091, § 246-455-001, filed 4/18/07, effective 5/23/07. Statutory Authority: RCW 43.70.040 and [43.]70.170. WSR 03-13-029, § 246-455-001, filed 6/10/03, effective 7/11/03. Statutory Authority: RCW 43.70.040 and chapter 70.170 RCW. WSR 94-12-090, § 246-455-001, filed 6/1/94, effective 7/2/94. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-455-001, filed 12/27/90, effective 1/31/91. Statutory Authority: Chapter 70.39 RCW. WSR 84-20-067 (Order 84-06, Resolution No. 84-06), § 261-50-010, filed 10/1/84.]

AMENDATORY SECTION (Amending WSR 15-19-152, filed 9/22/15, effective 10/23/15)

**WAC 246-455-010 Definitions.** The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise:

(1) "CHARS" means comprehensive hospital abstract reporting system.

(2) "CHARS Companion Guide" means the written technical guidelines for creating and submitting hospital patient discharge data from the hospital to the department or the department's designee as required for CHARS.

(3) "CHARS Procedure Manual" means the written instructions for reporting hospital discharge data to the department.

~~((3) "CHARS 837 Companion Guide" means the written technical guidelines for creating the ASC X12 837 Health Care Claim file for CHARS.))~~

(4) "Custom data file" means a specialized patient discharge data file created and released by the department upon request of an individual. Custom data file does not mean standard data file.

(5) "Data" means a data file containing multiple patient discharge records submitted to the department as required for CHARS.

(6) "Data use agreement" means a signed agreement with the department for transmitting, receiving and using records containing individually identifiable or potentially identifiable health information. The agreement specifies, at a minimum, what information will be exchanged, the conditions or restrictions under which the information will be used and protected, restrictions on redisclosure of data and restrictions on attempts to locate information associated with a specific individual.

~~((5))~~ (7) "Department" means Washington state department of health.

~~((6))~~ (8) "Designee" means a private entity contracted by the department to perform data collection on behalf of the department as authorized by RCW 43.70.052(1).

(9) "Diagnosis-related groups (DRG)" is a classification system that groups hospital patients according to principal and secondary diagnosis, presence or absence of a surgical procedure, age, presence or absence of significant comorbidities or complications, and other relevant criteria.

~~((7))~~ (10) "Direct patient identifier" means information that identifies a patient.

(11) "Discharge data" means a collection of patient records in which each record represents a single patient discharged from the hospital following an inpatient or observation stay.

~~((8))~~ (12) "Government agencies" include state boards, commissions, committees, departments, educational institutions, or other state agencies which are created by or pursuant to statute, other than courts and the legislature; county or city agencies, federally recognized tribes and tribal organizations, and United States federal agencies.

(13) "Hospital" means any health care institution (~~which is required to qualify for a license~~) licensed under chapter 70.41 RCW or (~~as~~) a psychiatric hospital licensed under chapter 71.12 RCW.

~~((9))~~ (14) "Human research review board" is the standing institutional review board operating under chapter 42.48 RCW.

(15) "Indirect patient identifier" means information that may identify a patient when combined with other information.

(16) "Office of Management and Budget" means a body within the Executive Office of the President of the United States which is tasked with coordinating United States Federal agencies and can be found at <http://www.whitehouse.gov/omb>.

~~((10))~~ (17) "Patient discharge" means the termination of an inpatient admission or observation stay, including an admission as a result of a birth, in a Washington hospital.

~~((11) Uniform Billing)~~ (18) "Research" means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research for purposes of this rule, whether or not they are conducted or supported under a program that is considered research for other purposes.

(19) "Standard data file" means the routine patient discharge data file created and released by the department, and does not mean custom data file.

(20) "State" means Washington state unless otherwise specified.

(21) "UB-04 data set" means the uniform billing data element specifications developed by the National Uniform Billing Committee which can be found at www.NUBC.org. (~~Data elements are completely defined in the CHARS Procedure Manual which may be obtained on the department's website or by contacting the department.~~)

[Statutory Authority: RCW 43.70.052, 2014 c 220. WSR 15-19-152, § 246-455-010, filed 9/22/15, effective 10/23/15. Statutory Authority: RCW 43.70.040 and 43.70.052. WSR 07-09-091, § 246-455-010, filed 4/18/07, effective 5/23/07. Statutory Authority: RCW 43.70.040 and [43.]70.170. WSR 03-13-029, § 246-455-010, filed 6/10/03, effective 7/11/03. Statutory Authority: RCW 43.70.040 and chapter 70.170 RCW. WSR 94-12-090, § 246-455-010, filed 6/1/94, effective 7/2/94. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-455-010, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.39.180. WSR 85-17-020 (Order 85-05, Resolution No. 85-05), § 261-50-020, filed 8/13/85. Statutory Authority: Chapter 70.39 RCW. WSR 84-20-067 (Order 84-06, Resolution No. 84-06), § 261-50-020, filed 10/1/84.]

AMENDATORY SECTION (Amending WSR 15-19-152, filed 9/22/15, effective 10/23/15)

**WAC 246-455-020 Reporting (~~of UB-04~~) data set information.**

(1) Hospitals shall collect and report the following data set elements to the department:

(a) Patient control number: Patient's unique alpha-numeric number assigned by the hospital to facilitate retrieval of individual patient records;

(b) Patient medical record number;

(c) Type of bill;

~~((e))~~ (d) National Provider Identifier (UB-04), or department assigned identifier, as applicable;

~~((d))~~ (e) Patient last name (~~at least the first four letters~~);

~~((e))~~ (f) Patient first name (~~at least the first three letters~~);

~~((f))~~ (g) Patient middle initial;

~~((g))~~ (h) Patient Social Security number (at least the last four digits);

~~((h))~~ (i) Patient address;

(j) Patient zip code (U.S.A.);

~~((i))~~ (k) Patient country code (outside U.S.A.) International Organization for Standardization (ISO) 3166-1;

~~((j))~~ (l) Patient's date of birth;

~~((k))~~ (m) Sex assigned at birth;

~~((l))~~ (n) Admission date;

~~((m))~~ (o) Type of admission;

~~((n))~~ (p) Admitting diagnosis code;

(q) Patient's ICD code (1-3) reason for visit;

(r) Point of origin for admission;

~~((o))~~ (s) Patient discharge status;

~~((p))~~ (t) Statement covers period (from - through);

~~((q))~~ (u) Revenue code;

- ~~((r))~~ (v) Units of service;  
~~((s))~~ (w) Total charges;  
~~((t))~~ (x) Payer identification (up to three): Payer identification number per the CHARS procedure manual identifying each payer group from which the hospital may expect some payment of the bill;  
~~((u))~~ (y) Principal diagnosis code;  
~~((v))~~ (z) Other diagnosis codes;  
~~((w))~~ (aa) External cause of injury (ECI) code;  
~~((x))~~ (bb) Principal procedure code;  
~~((y))~~ (cc) Other procedure code;  
~~((z))~~ (dd) Referring provider's National Provider Identifier (NPI), as applicable;  
(ee) Attending ~~((provider identifier))~~ provider's National Provider Identifier (NPI) according to Centers for Medicare and Medicaid Services (CMS) schedule;  
~~((aa))~~ (ff) Operating ~~((physician identifier))~~ physician's National Provider Identifier (NPI) according to CMS schedule, as applicable;  
~~((bb))~~ (gg) Other ~~((provider identifiers))~~ provider's National Provider Identifier (NPI) according to CMS schedule, as applicable;  
~~((ee))~~ (hh) Admission hour;  
~~((dd))~~ Race - Per minimum Office of Management and Budget (OMB) standards  
~~(ee)~~ Ethnicity - Per minimum OMB standards  
~~(ff))~~ (ii) Race - Until hospitals are required to report race consistent with WAC 246-455-025, race shall be reported per minimum office of management and budget (OMB) standards;  
(jj) Ethnicity - Until hospitals are required to report ethnicity consistent with WAC 246-455-025, ethnicity shall be reported per minimum OMB standards;  
(kk) Discharge hour;  
~~((gg))~~ (ll) Procedure date;  
~~((hh))~~ (mm) Present on admission status;  
~~((ii))~~ (nn) Health care provider taxonomy code;  
~~((jj))~~ (oo) Health care common procedure coding system (HCPCS);  
~~((kk))~~ (pp) Service date;  
(qq) Facility federal tax number;  
(rr) Insured last name, first name, middle name, suffix;  
(ss) Patient's relationship to insured code;  
(tt) Insured ID.

(2) The hospital shall report all patient discharge data ~~((described in WAC 246-455-010 and 246-455-020))~~ required in this section according to UB-04 specifications unless noted otherwise.

(3) If the department has a designee, the hospital shall report all patient discharge data required in this section to the designee. The designee will report the patient discharge data required in this section submitted by the hospital to the department in the format prescribed by the department.

[Statutory Authority: RCW 43.70.052, 2014 c 220. WSR 15-19-152, § 246-455-020, filed 9/22/15, effective 10/23/15. Statutory Authority: RCW 43.70.040 and 43.70.052. WSR 07-09-091, § 246-455-020, filed 4/18/07, effective 5/23/07. Statutory Authority: RCW 43.70.040 and [43.]70.170. WSR 03-13-029, § 246-455-020, filed 6/10/03, effective 7/11/03. Statutory Authority: RCW 43.70.040 and chapter 70.170 RCW. WSR 94-12-090, § 246-455-020, filed 6/1/94, effective 7/2/94. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as



§ 246-455-020, filed 12/27/90, effective 1/31/91. Statutory Authority: Chapter 70.39 RCW. WSR 87-08-037 (Order 87-02, Resolution No. 87-02), § 261-50-030, filed 3/30/87; WSR 87-04-008 (Order 87-01, Resolution No. 87-01), § 261-50-030, filed 1/23/87. Statutory Authority: RCW 70.39.180. WSR 86-14-081 (Order 86-03, Resolution No. 86-03), § 261-50-030, filed 7/1/86; WSR 85-17-020 (Order 85-05, Resolution No. 85-05), § 261-50-030, filed 8/13/85. Statutory Authority: Chapter 70.39 RCW. WSR 84-20-067 (Order 84-06, Resolution No. 84-06), § 261-50-030, filed 10/1/84.]

NEW SECTION

**WAC 246-455-025 Reporting of additional patient demographic information.** (1) In addition to the data elements required by WAC 246-455-020, hospitals must collect additional information on patient's ethnicity, race, preferred language, disability, gender identity, and sexual orientation. When requesting demographic information under this section, hospitals must inform patients that providing the information is voluntary.

(2) Patient's ethnicity shall be identified by the patient and reported using one of the following categories:

- (a) Hispanic, Latino/a, Latinx;
- (b) Non-Hispanic, Latino/a, Latinx;
- (c) Patient declined to respond; or
- (d) Unknown to patient.

(3) Patient's race shall be identified by the patient and reported using one or more of the following categories. If the patient self-identifies as more than one race, each race shall be reported.

- (a) Afghan;
- (b) Afro-Caribbean;
- (c) Alaska Native;
- (d) American Indian;
- (e) Arab;
- (f) Asian;
- (g) Asian Indian;
- (h) Bamar/Burman/Burmese;
- (i) Bangladeshi;
- (j) Bhutanese;
- (k) Black or African American;
- (l) Central American;
- (m) Cham;
- (n) Chicano/a or Chicanx;
- (o) Chinese;
- (p) Congolese;
- (q) Cuban;
- (r) Dominican;
- (s) Egyptian;
- (t) Eritrean;
- (u) Ethiopian;
- (v) Fijian;
- (w) Filipino;
- (x) First Nations;
- (y) Guamanian or Chamorro;
- (z) Hmong/Mong;
- (aa) Indigenous-Latino/a or Indigenous-Latinx;

- (bb) Indonesian;
- (cc) Iranian;
- (dd) Iraqi;
- (ee) Japanese;
- (ff) Jordanian;
- (gg) Karen;
- (hh) Kenyan;
- (ii) Khmer/Cambodian;
- (jj) Korean;
- (kk) Kuwaiti;
- (ll) Lao;
- (mm) Lebanese;
- (nn) Malaysian;
- (oo) Marshallese;
- (pp) Mestizo;
- (qq) Mexican/Mexican American;
- (rr) Middle Eastern;
- (ss) Mien;
- (tt) Moroccan;
- (uu) Native Hawaiian;
- (vv) Nepalese;
- (ww) North African;
- (xx) Oromo;
- (yy) Pacific Islander;
- (zz) Pakistani;
- (aaa) Puerto Rican;
- (bbb) Romanian/Rumanian;
- (ccc) Russian;
- (ddd) Samoan;
- (eee) Saudi Arabian;
- (fff) Somali;
- (ggg) South African;
- (hhh) South American;
- (iii) Syrian;
- (jjj) Taiwanese;
- (kkk) Thai;
- (lll) Tongan;
- (mmm) Ugandan;
- (nnn) Ukrainian;
- (ooo) Vietnamese;
- (ppp) White;
- (qqq) Yemeni;
- (rrr) Other race;
- (sss) Patient declined to respond; and
- (ttt) Unknown to patient.

(4) Patient's preferred language either written or spoken or both shall be identified by the patient and reported to the department. Preferred language shall be reported using the following categories:

- (a) Amharic;
- (b) Arabic;
- (c) Balochi/Baluchi;
- (d) Burmese;
- (e) Cantonese;
- (f) Chinese (unspecified);
- (g) Chamorro;
- (h) Chuukese;
- (i) Dari;

- (j) English;
- (k) Farsi/Persian;
- (l) Fijian;
- (m) Filipino/Pilipino;
- (n) French;
- (o) German;
- (p) Hindi;
- (q) Hmong;
- (r) Japanese;
- (s) Karen;
- (t) Khmer/Cambodian;
- (u) Kinyarwanda;
- (v) Korean;
- (w) Kosraean;
- (x) Lao;
- (y) Mandarin;
- (z) Marshallese;
- (aa) Mixteco;
- (bb) Nepali;
- (cc) Oromo;
- (dd) Panjabi/Punjabi;
- (ee) Pashto;
- (ff) Portuguese;
- (gg) Romanian/Rumanian;
- (hh) Russian;
- (ii) Samoan;
- (jj) Sign languages;
- (kk) Somali;
- (ll) Spanish/Castilian;
- (mm) Swahili/Kiswahili;
- (nn) Tagalog;
- (oo) Tamil;
- (pp) Telugu;
- (qq) Thai;
- (rr) Tigrinya;
- (ss) Ukrainian;
- (tt) Urdu;
- (uu) Vietnamese;
- (vv) Other language;
- (ww) Patient declined to respond; or
- (xx) Unknown.

(5) Patient's disability shall be identified by the patient and reported consistent with the categories in this subsection. If the patient self-identifies as more than one disability, each disability shall be reported.

(a) The patient experiences any of the following in their daily living:

- (i) Difficulty hearing;
- (ii) Difficulty seeing, even when wearing glasses;
- (iii) Limitations in any activities because of a physical, mental, or emotional condition;
- (iv) Uses a cane, a wheelchair, a trained service animal, adaptive bed, adaptive telephone, or some other device;
- (v) Difficulty concentrating, remembering, or making decisions because of a physical, mental, or emotional condition;
- (vi) Difficulty walking or climbing stairs;
- (vii) Difficulty dressing or bathing;

(viii) Difficulty doing errands alone such as visiting a doctor's office or shopping;

(ix) Not listed above;

(x) Not applicable (no limitations);

(xi) Patient declined to respond; or

(xii) Unknown.

(b) The patient has any of the following disabilities or conditions:

(i) Intellectual disability;

(ii) Developmental disability;

(iii) Physical disability;

(iv) Brain injury;

(v) Mental health disability;

(vi) Neurocognitive disability;

(vii) Deaf, d/Deaf, or hard of hearing;

(viii) Blind, low vision, or visually impaired;

(ix) Chronic medical condition;

(x) Not listed above;

(xi) Not applicable (no disability or condition);

(xii) Patient declined to respond; or

(xiii) Unknown.

(6) Patient's gender identity shall be identified by the patient and reported using one or more of the following options. If the patient self-identifies as more than one gender, each gender shall be reported.

(a) Male;

(b) Female;

(c) Man or Masculine/Masc;

(d) Woman or Feminine/Femme;

(e) Trans\* or transgender;

(f) Cis or cisgender;

(g) Genderqueer;

(h) Nonbinary;

(i) Two spirit;

(j) Gender fluid;

(k) Bigender;

(l) Agender;

(m) Demigirl;

(n) Demiboy;

(o) Gender not listed above, please specify;

(p) Patient declined to respond; or

(q) Unknown.

(7) Patient's sexual orientation shall be identified by the patient and reported using one or more of the following categories. If the patient self-identifies with more than one sexual orientation, each sexual orientation shall be reported.

(a) Straight;

(b) Gay;

(c) Lesbian;

(d) Queer;

(e) Bisexual;

(f) Pansexual/Bi+;

(g) Asexual;

(h) Sexual orientation not listed above, please specify;

(i) Patient declined to respond; or

(j) Unknown.

[]

NEW SECTION

**WAC 246-455-035 Waiver for reporting the additional patient demographic information.** (1) Beginning October 1, 2022, a hospital that is certified by the Centers for Medicare and Medicaid Services as a critical access hospital, is certified by the Centers of Medicare and Medicaid Services as a sole community hospital, or qualifies as a medicare dependent hospital must comply with this section.

(2) (a) A hospital subject to the additional patient demographic information reporting requirements in RCW 43.70.052 (6) (a) and WAC 246-455-025, and is experiencing an economic hardship, technological limitations that are not reasonably in the control of the hospital, or other exceptional circumstance demonstrated by the hospital, may submit an attestation to the department requesting a waiver of the additional patient demographic information reporting requirements in RCW 43.70.052 (6) (a) and WAC 246-455-025.

(b) The waiver attestation with supporting documentation must be submitted on forms provided by the department. The waiver is deemed granted upon written or electronic approval from the department. The department may request additional information to complete the attestation. The department, in its discretion, may deny the waiver request if the hospital fails to comply with the requirements in RCW 43.70.052(6) and this section.

(c) A hospital that has been granted a waiver shall be exempt from reporting the additional patient discharge information outlined by WAC 246-455-025 for one calendar year. The one calendar year starts at the beginning of the next calendar month after the waiver is approved. The waiver is effective when the department sends written or electronic approval to the hospital.

(d) A hospital seeking an extension on its approved waiver must apply for an extension before the waiver expires. If the hospital does not apply for an extension before the waiver expires, the hospital must collect and report the additional patient discharge information in RCW 43.70.052 (6) (a) and WAC 246-455-025 and will not be eligible for an additional waiver.

(e) For economic hardship or technological limitations that are not reasonably in the control of the hospital, a hospital may only submit up to a total of three waiver attestations to the department.

(f) For other exceptional circumstances, there is no limit on the number of waiver attestations that a hospital may submit to the department.

(g) The hospital must begin collecting the additional patient discharge information in RCW 43.70.052 (6) (a) and WAC 246-455-025 immediately following the waiver expiration.

(h) Data collected under a waiver must be reported consistent with WAC 246-455-020, and data collected after the waiver expiration must be reported consistent with both WAC 246-455-020 and 246-455-025. Data must be submitted according to the deadline for submission required by WAC 246-455-050.

(3) For the purposes of this section:

(a) Economic hardship means:

(i) A hospital with less than 30 days of operating days in cash as of December 31st based on audited financial statements;

(ii) A hospital with a net loss or a negative change in net assets for two consecutive years based on audited financial statements;

(iii) A bankruptcy in the previous year or a waiver submitted under this section due to bankruptcy in the previous year;

(iv) Opening a new hospital after January 1, 2022;

(v) Operating a low-income hospital, that is defined as a hospital serving a minimum of 30 percent medicaid patients; or

(vi) Intent to discontinue operating in Washington prior to January 1, 2023.

(b) Technological limitation that is not reasonable in the control of the hospital means the integration of electronic health records system changes, switching electronic health record system vendors, or updating the hospital's current electronic health record system to comply with the requirements of this section and is in progress but has not yet been completed; and

(c) Other exceptional circumstance means unforeseen circumstances that stress the hospital in such a way that compliance is not possible. Examples may include, but are not limited to, natural disasters, widespread health care emergencies, unforeseen barriers to integration, or unforeseen events that results in a statewide emergency.

[ ]

AMENDATORY SECTION (Amending WSR 07-09-091, filed 4/18/07, effective 5/23/07)

**WAC 246-455-040 Acceptable media for submission of data.** (1) A hospital((s)) shall submit data in the ((form)) format prescribed by the department. The data must comply with the requirements in the CHARS Procedure Manual and CHARS ((837)) Companion Guide. Additional information not listed in WAC 246-455-020 and 246-455-025 may be required by the department to successfully process data submission files. Copies of the CHARS Procedure Manual and CHARS ((837)) Companion Guide may be obtained on the department's website or by contacting the department.

(2) A department designee shall submit data to the department in the format prescribed by the department.

[Statutory Authority: RCW 43.70.040 and 43.70.052. WSR 07-09-091, § 246-455-040, filed 4/18/07, effective 5/23/07. Statutory Authority: RCW 43.70.040 and [43.]70.170. WSR 03-13-029, § 246-455-040, filed 6/10/03, effective 7/11/03. Statutory Authority: RCW 43.70.040 and chapter 70.170 RCW. WSR 94-12-090, § 246-455-040, filed 6/1/94, effective 7/2/94. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-455-040, filed 12/27/90, effective 1/31/91. Statutory Authority: Chapter 70.39 RCW. WSR 88-16-043 (Order 88-05, Resolution No. 88-05), § 261-50-040, filed 7/29/88; WSR 87-04-008 (Order 87-01, Resolution No. 87-01), § 261-50-040, filed 1/23/87. Statutory Authority: RCW 70.39.180. WSR 86-14-081 (Order 86-03, Resolution No. 86-03), § 261-50-040, filed 7/1/86; WSR 85-17-020 (Order 85-05, Resolution No. 85-05), § 261-50-040, filed 8/13/85. Statutory Authority: Chapter 70.39 RCW. WSR 84-20-067 (Order 84-06, Resolution No. 84-06), § 261-50-040, filed 10/1/84.]

AMENDATORY SECTION (Amending WSR 07-09-091, filed 4/18/07, effective 5/23/07)

**WAC 246-455-050 Time deadline for submission of data.** (1) A hospital((s)) shall submit data to the department or ((its)) the department's designee within ((forty-five)) 45 calendar days following the end of each calendar month.

(2) The department designee shall submit the data to the department after receiving the data from the hospital in the time frame prescribed by the department.

[Statutory Authority: RCW 43.70.040 and 43.70.052. WSR 07-09-091, § 246-455-050, filed 4/18/07, effective 5/23/07. Statutory Authority: RCW 43.70.040 and chapter 70.170 RCW. WSR 94-12-090, § 246-455-050, filed 6/1/94, effective 7/2/94. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-455-050, filed 12/27/90, effective 1/31/91. Statutory Authority: Chapter 70.39 RCW. WSR 88-16-043 (Order 88-05, Resolution No. 88-05), § 261-50-050, filed 7/29/88; WSR 87-04-008 (Order 87-01, Resolution No. 87-01), § 261-50-050, filed 1/23/87; WSR 84-20-067 (Order 84-06, Resolution No. 84-06), § 261-50-050, filed 10/1/84.]

AMENDATORY SECTION (Amending WSR 94-12-090, filed 6/1/94, effective 7/2/94)

**WAC 246-455-060 Edits to data.** The department or the department's designee shall edit the data as follows:

(1) Record layout compatibility edits on data submitted in accordance with WAC 246-455-020 and 246-455-025; and

(2) Verification of the data set elements set forth in WAC 246-455-020 and 246-455-025.

[Statutory Authority: RCW 43.70.040 and chapter 70.170 RCW. WSR 94-12-090, § 246-455-060, filed 6/1/94, effective 7/2/94. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-455-060, filed 12/27/90, effective 1/31/91. Statutory Authority: Chapter 70.39 RCW. WSR 88-16-043 (Order 88-05, Resolution No. 88-05), § 261-50-060, filed 7/29/88; WSR 87-04-008 (Order 87-01, Resolution No. 87-01), § 261-50-060, filed 1/23/87; WSR 84-20-067 (Order 84-06, Resolution No. 84-06), § 261-50-060, filed 10/1/84.]

AMENDATORY SECTION (Amending WSR 15-19-152, filed 9/22/15, effective 10/23/15)

**WAC 246-455-070 Revisions to submitted data.** (1) All data revisions required as a result of the edits performed pursuant to WAC ((246-455-020)) 246-455-060 shall be corrected by the hospital and returned to the department or ((its)) the department's designee within ((fourteen)) 14 working days after the submission deadline in WAC 246-455-050.

(2) The department's designee shall submit the data to the department after receiving the revised data from the hospital in the time frame prescribed by the department.

[Statutory Authority: RCW 43.70.052, 2014 c 220. WSR 15-19-152, § 246-455-070, filed 9/22/15, effective 10/23/15. Statutory Authority: RCW 43.70.040 and chapter 70.170 RCW. WSR 94-12-090, § 246-455-070, filed 6/1/94, effective 7/2/94. Statutory Authority: RCW 43.70.040. WSR 91-02-049 (Order 121), recodified as § 246-455-070, filed 12/27/90, effective 1/31/91. Statutory Authority: RCW 70.39.180. WSR 85-17-020 (Order 85-05, Resolution No. 85-05), § 261-50-065, filed 8/13/85. Statutory Authority: Chapter 70.39 RCW. WSR 84-20-067 (Order 84-06, Resolution No. 84-06), § 261-50-065, filed 10/1/84.]

AMENDATORY SECTION (Amending WSR 15-19-152, filed 9/22/15, effective 10/23/15)

**WAC 246-455-085 Data files—Release of data files and data use agreements.** (1) The department may create and release data files with patient discharge information as allowed under RCW 43.70.052 and this chapter. The type of information contained in the file, including direct and indirect patient identifiers, determines the category and permitted release of the data file.

~~((1) Confidential data files contain one or more direct patient identifiers.~~

~~(a))~~ (2) The department may aggregate data from patient discharge information, and may release such aggregated data with either direct patient identifiers or indirect patient identifiers, or both, in accordance with RCW 43.70.052 and this chapter.

(3) In order to maintain the confidentiality of patient discharge data, for individual requests for data the department in its discretion may designate any of the patient discharge data collected under RCW 43.70.052 and this chapter as either a direct patient identifier or an indirect patient identifier in addition to the elements already designated by the department in subsection (6) of this section.

(4) The department may distribute a ((confidential)) data file with direct patient identifiers only to:

~~((i))~~ (a) Government agencies after entering into a data use agreement; or

~~((ii))~~ (b) Researchers with approval from the Washington state ((IRB)) institutional review board and a signed confidentiality agreement with the department.

(5) The department may distribute a data file that contains indirect patient identifiers only to agencies, researchers, and other persons upon receipt of a signed data use agreement with the department.

~~((b))~~ (6) Direct and indirect patient identifiers ((means information that identifies a patient. Direct identifiers include:

~~(i) Patient first name;~~

~~(ii) Patient middle name(s);~~

~~(iii) Patient last name;~~

~~(iv) Social Security number;~~

~~(v) Patient control number or medical record number;~~

~~(vi) Patient zip code + four digits;~~

~~(vii) Dates that include day, month, and year; and~~

~~(viii) Admission and discharge dates in combination.~~

~~(c) Government agencies include: Washington state boards, commissions, committees, departments, educational institutions, or other~~



Washington state agencies which are created by or pursuant to statute, other than courts and the legislature; Washington county or city agencies, U.S. federal agencies.

(d) In order to comply with RCW 70.02.240 protecting mental health information for youth, for patients under age eighteen, the confidential data file will not include mental health related diagnosis or procedure codes or any diagnosis related groups or major diagnosis category.

(e)) are as follows:

<u>Patient Discharge Data Element</u>	<u>Direct or Indirect Patient Identifier</u>
<u>Patient control number</u>	<u>Direct</u>
<u>Patient medical record number</u>	<u>Direct</u>
<u>Patient first name</u>	<u>Direct</u>
<u>Patient middle initial</u>	<u>Direct</u>
<u>Patient last name</u>	<u>Direct</u>
<u>Patient Social Security number</u>	<u>Direct</u>
<u>Patient address</u>	<u>Direct</u>
<u>Patient city</u>	<u>Indirect</u>
<u>Patient county</u>	<u>Indirect</u>
<u>Patient zip code and four digits</u>	<u>Direct</u>
<u>Patient zip code (five digits only)</u>	<u>Indirect</u>
<u>Patient state</u>	<u>Indirect</u>
<u>Patient country code</u>	<u>Indirect</u>
<u>Patient's date of birth (month, day, year)</u>	<u>Direct</u>
<u>Age in years</u>	<u>Indirect</u>
<u>Sex assigned at birth</u>	<u>Indirect</u>
<u>Race</u>	<u>Indirect</u>
<u>Ethnicity</u>	<u>Indirect</u>
<u>Gender identity</u>	<u>Indirect</u>
<u>Sexual orientation</u>	<u>Indirect</u>
<u>Preferred language</u>	<u>Indirect</u>
<u>Disability</u>	<u>Indirect</u>
<u>Admission date (month, day, year)</u>	<u>Direct</u>
<u>Admission hour</u>	<u>Indirect</u>
<u>Type of admission</u>	<u>Indirect</u>
<u>Point of origin for admission</u>	<u>Indirect</u>
<u>Patient discharge status</u>	<u>Indirect</u>
<u>Discharge hour</u>	<u>Indirect</u>
<u>Statement covers period (from... through...)</u>	<u>Direct</u>
<u>Type of bill</u>	<u>Indirect</u>
<u>Revenue code</u>	<u>Indirect</u>
<u>Units of service</u>	<u>Indirect</u>
<u>Total charges</u>	<u>Indirect</u>
<u>Payer identification</u>	<u>Indirect</u>
<u>Principal diagnosis code</u>	<u>Indirect</u>

<u>Patient Discharge Data Element</u>	<u>Direct or Indirect Patient Identifier</u>
<u>Other diagnosis code</u>	<u>Indirect</u>
<u>External cause of injury code</u>	<u>Indirect</u>
<u>Principal procedure code</u>	<u>Indirect</u>
<u>Other procedure code</u>	<u>Indirect</u>
<u>Admitting diagnosis code</u>	<u>Indirect</u>
<u>Patient's reason for visit ICD code (1-3)</u>	<u>Indirect</u>
<u>Procedure date (month, day, year)</u>	<u>Direct</u>
<u>Present on admission status</u>	<u>Indirect</u>
<u>Service date (month, day, year)</u>	<u>Direct</u>
<u>Insured last name, first name, middle name, suffix</u>	<u>Direct</u>
<u>Patient's relationship to insured (code)</u>	<u>Indirect</u>
<u>Insured ID</u>	<u>Direct</u>
<u>Facility federal tax number</u>	<u>Indirect</u>
<u>National Provider Identifier for provider(s)</u>	<u>Indirect</u>
<u>First and last name of provider(s)</u>	<u>Indirect</u>
<u>Health care provider taxonomy code</u>	<u>Indirect</u>
<u>Health care common procedure coding system</u>	<u>Indirect</u>

(7) In order to comply with 42 U.S.C. Sec. 290dd-2 and 42 C.F.R. Part 2, for any hospitalization that includes substance abuse disorder related diagnosis or procedure codes or any diagnosis related groups or major diagnosis category to the extent collected by the department, the department will remove substance abuse disorder related diagnosis or procedure codes or any diagnosis related groups or major diagnosis category from the direct patient identifier data file.

(8) Information and records related to mental health services will be disclosed consistent with both RCW 43.70.052 and chapter 70.02 RCW.

(9) In order to comply with WAC 246-490-110 protecting the identity of facilities that provide abortions, for any hospitalization that includes a diagnosis or procedure code indicating an induced termination of pregnancy, the ~~((confidential))~~ data file with direct patient identifiers will not include patient name, facility ID, provider identifiers, or geographic identifiers less than state.

~~((f))~~ (10) The department may provide the fewest data elements necessary for the stated purpose of the project.

~~((2))~~ Potentially identifiable data files contain indirect patient identifiers.

~~(a)~~ The department may distribute a potentially identifiable data file to anyone after entering into a data use agreement with the requestor or requesting organization.

~~(b)~~ Indirect patient identifier means information that may identify a patient when combined with other information. Identification of a specific patient is more likely when a file contains a group of ten or fewer similar hospitalizations.

~~(c) Indirect patient identifiers include the following data elements, in combination or individually, when they create a group of ten or fewer similar hospitalizations in a file:~~

- ~~(i) Hospital or provider identifiers;~~
- ~~(ii) Five digit zip code;~~
- ~~(iii) County, state, and country of residence;~~
- ~~(iv) Dates that include month and year;~~
- ~~(v) Admission and discharge hour;~~
- ~~(vi) Secondary diagnosis, procedure, present on admission, external cause of injury, and payer codes;~~
- ~~(vii) Age in years;~~
- ~~(viii) Race and ethnicity.~~

~~(d) The potentially identifiable data file does not contain any direct identifiers listed in subsection (1)(b)(i) through (viii) of this section.~~

~~(3) Public data file with no patient identifiers:~~

~~(a) The department may release an unrestricted public data file that does not contain information that alone or in combination with other information identifies a patient.~~

~~(b)) (11) The department may release an unrestricted public data file that does not contain direct or indirect patient identifiers to anyone. The department may create a public file by:~~

~~((i)) (a) Removing all data elements ((identified)) designated as indirect in subsection ((2)(e)(i) through (viii)) (6) of this section; or~~

~~((ii) By) (b) Aggregating or anonymizing data ((identified)) designated as indirect in subsection ((2)(e)(i) through (v), (vii), and (viii)) (6) of this section so that each combination of indirect patient identifiers remaining in the public file must appear at least ((ten)) 10 times((-)); and~~

~~(c) ((The public data file does not contain any)) Removing all data elements designated as direct ((identifiers listed)) in subsection ((1)(b)(i) through (viii)) (6) of this section.~~

[Statutory Authority: RCW 43.70.052, 2014 c 220. WSR 15-19-152, § 246-455-085, filed 9/22/15, effective 10/23/15.]

## NEW SECTION

**WAC 246-455-105 Requests from government agencies for patient discharge data files containing direct patient identifiers.** (1) A government agency requesting data files that contain direct patient identifiers for nonresearch purposes must comply with the requirement of RCW 43.70.052 and this section. The department will not release data to a government agency requesting data from the department pursuant to this section until all requirements of this section have been completed to the satisfaction of the department.

(2) A government agency submitting a data request under this section for nonresearch purposes must submit all of the following to the department in the form or format required by the department:

(a) A completed application on the form provided by the department;

(b) A signed data use agreement with the department that conforms with WAC 246-455-400;

- (c) All information required in subsection (3) of this section;  
and
- (d) All fees required by WAC 246-455-990.
- (3) A government agency submitting a data request under this section for nonresearch purposes must submit to the department all of the following information:
- (a) Name, title, organizational affiliation, and contact information (mailing address, telephone number, and email address) of the requestor, the organization official authorized to execute agreements, the organization information technology security officer, and organization privacy officer;
  - (b) Purpose or intended use of the data being requested, including any proposed redisclosure of the data;
  - (c) Length of time and frequency of the data being requested;
  - (d) Physical and electronic security measures to be taken to assure confidentiality and security of identifying information, including stored information;
  - (e) Provision for return or destruction of the information at the conclusion of use;
  - (f) Population of interest;
  - (g) Names and titles of all persons who will have access to the data;
  - (h) The plan for use of the data and certification to abide by the department's small numbers guidelines;
  - (i) Patient discharge data elements needed to achieve the purpose; and
  - (j) Years of the requested data.
- (4) The department may request additional information regarding the request for patient discharge data containing direct identifiers. If additional information is requested, the government agency must submit the information within 30 days of the department's request or the request for data may be denied.
- (5) If the department determines the request for data submitted pursuant to this section is in fact for research purposes, the department will require the government agency to comply with the provisions of WAC 246-455-200.
- (6) If the department suspects or is unsure if the request for data submitted pursuant to this section is for research purposes, the department may require the government agency to comply with the provisions of WAC 246-455-200.
- (7) The department may deny a request for data if the government agency submitting a data request under this section fails to meet any of the requirements of this chapter or RCW 43.70.052.

[ ]

NEW SECTION

**WAC 246-455-200 Requests for patient discharge data files containing direct patient identifiers for research.** (1) A researcher requesting data files that contains direct patient identifiers for research must comply with the requirements of RCW 43.70.052 and this section. The department will not release data to a researcher requesting data from the department until all the requirements of this section have been completed to the satisfaction of the department.

(2) A researcher submitting a data request under this section must submit all of the following to the department:

- (a) A completed records request form associated with the human research review board application that contains all the information required in subsection (3) of this section;
- (b) Approval from the human research review board of the research proposal for which the data is being requested;
- (c) A signed confidentiality agreement with the department; and
- (d) All fees required by WAC 246-455-990.

(3) A researcher submitting a data request under this section must submit all of the following information on the records request forms provided by the human research review board to the department for review and approval:

- (a) Project title;
- (b) Principal investigator name, title, and contact information (telephone number and email address);
- (c) Study abstract that includes:
  - (i) Description of the proposed research study and objectives;
  - (ii) Research study design and analysis plan;
  - (iii) Duration of research study;
  - (iv) The plan for dissemination of the results and a certification that the researcher will abide by the department's small numbers guidelines in the dissemination of results; and
  - (v) A plan for the return or destruction of the information at the conclusion of the research study.
- (d) Patient discharge data elements needed to complete the research study;
- (e) Years of the requested data; and
- (f) Geographic area of interest of the research study.

(4) The department may request additional information regarding the research proposal. If additional information is requested, the researcher must submit the information within 30 days of the department's request or the request for data may be denied.

(5) If the researcher submitting a data request under this section receives an exempt determination letter from the human research review board, the researcher may:

- (a) If the researcher is a governmental agency, comply with the provisions of WAC 246-455-105; or
- (b) Submit a request to receive data pursuant to WAC 246-455-300.

(6) The department may deny a request for data for research purposes if the researcher submitting a data request under this section fails to meet any of the requirements of this chapter or RCW 43.70.052.

[]

#### NEW SECTION

#### **WAC 246-455-300 Requests from individuals or entities for patient discharge data files containing indirect patient identifiers.**

(1) All requests for data under this section must comply with the requirements of RCW 43.70.052 and this section. The department will not release data to an individual or entity requesting data from the department pursuant to this section until all the requirements of this section have been completed to the satisfaction of the department.

(2) The data released pursuant to this section will only be in the data file format prescribed by the department.

(3) An individual or entity submitting a data request under this section must submit all of the following on the form or in the format required by the department:

(a) A completed application on the form provided by the department;

(b) A signed data use agreement with the department that conforms with WAC 246-455-400;

(c) All information required in subsection (4) of this section; and

(d) All fees required by WAC 246-455-990.

(4) An individual or entity submitting a data request under this section must submit all of the following information to the department:

(a) Name, title, organizational affiliation, and contact information (mailing address, telephone number, and email address) of the requestor, the organization official authorized to execute agreements, the organization information technology security officer, and the organization privacy officer;

(b) Purpose or intended use of the data being requested, including any proposed redisclosure of the data;

(c) Length of time data is needed or length of the project;

(d) Physical and electronic security measures to be taken to assure confidentiality and security of identifying information including storage of data, and provision for return or destruction of the information at the conclusion of use;

(e) Names and titles of all persons who will have access to the data;

(f) The plan for dissemination of the results and certification to abide by the department's small numbers guidelines; and

(g) Years of data requested.

(5) The department may request additional information regarding the request for data under this section. If additional information is requested, the individual or entity must submit the information within 30 days of the department's request or the request for data may be denied.

(6) The individual or entity must download the data from the secured file transfer site within two weeks. If after the two weeks, the requestor has not retrieved the data, the individual or entity must submit a new request and payment.

(7) The department may deny a request for data if the individual or entity submitting a data request under this section fails to meet any of the requirements of this chapter or RCW 43.70.052.

[]

#### NEW SECTION

**WAC 246-455-400 Patient discharge data use agreements.** (1) All written data use agreements with the department for the release of patient discharge data must comply with the requirements of RCW 43.70.052 and this section.

(2) A data use agreement with the department is required for the following:

(a) Government agencies requesting data that contains direct patient identifiers for nonresearch purposes; and

(b) Individuals or entities requesting data that contains only indirect patient identifiers.

(3) The department may use standard form data use agreements for all data requests, consistent with the provisions of this section and RCW 43.70.052. If the department chooses to use a standard form data use agreement for data requests, the requestor shall sign the standard form data use agreement prepared by the department pursuant to this subsection. If the department chooses to negotiate the terms of the standard form data use agreement for data requests, the ultimate decision to modify the standard form data use agreement to accommodate a data request lies solely with the department.

(4) An individual or entity requesting data under this section must comply with all the terms and conditions of the data use agreement. If the individual or entity violates the data use agreement, it will result in the immediate termination of the data use agreement and result in denial of patient discharge data in the future.

[]

#### NEW SECTION

**WAC 246-455-500 Data file production.** (1) The department retains the discretion to determine what form or format is most appropriate to provide to a particular requestor. Where the department provides data files on a routine schedule, the department may automate file production. The department may manually produce data files when deemed appropriate. Nothing in this chapter should be deemed to entitle any requestor to receive data in a particular form or format, and nothing in this chapter should be deemed to require the department to produce the data in a particular form or format.

(2) Where the department provides data files on a routine schedule, the department may allow a requestor to update their original data request with the department. If the department permits a requestor to update their data request, the requestor must pay the fee required by WAC 246-455-990(4).

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#### NEW SECTION

**WAC 246-455-990 Data file fees.** (1) The department may not charge a fee for state officials and agencies receiving data funded through the state general appropriation.

(2) The department shall collect nonrefundable fees as follows:

(a) One hundred ten dollars per standard data file;

(b) Fifty dollars per standard data file for students with proof of valid student status; and

(c) One hundred ten dollars per custom data file.

(3) For data requests where data files are provided on a routine schedule to an entity, the department may enter into an agreement with

that entity and charge a fee equivalent to the actual costs incurred by the department for reimbursement of the data request.

(4) Updates to data requests allowed by WAC 246-455-500(2) will be assessed a fee by the department equivalent to the actual costs incurred by the department to update the data request.

(5) The department may waive fees for the following:

(a) Local health jurisdictions receiving standard data files;

(b) Tribes, tribal organization within the state, and Indian health service designated tribal epidemiology centers serving tribes within the state receiving standard data files; and

(c) Patient discharge data sharing initiated by the department.

[]

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-455-080          Security of the data.



**WSR 22-09-071**

**PROPOSED RULES**

**DEPARTMENT OF HEALTH**

(Washington Medical Commission)

[Filed April 19, 2022, 1:31 p.m.]

Continuance of WSR 22-05-083.

Preproposal statement of inquiry was filed as WSR 20-08-070.

Title of Rule and Other Identifying Information: WAC 246-918-801 Exclusions (physician assistants), and 246-919-851 Exclusions (physicians). The Washington medical commission (commission) is proposing amendments to expand the types of patients who are exempt from certain provisions of rule when being prescribed opioid drugs.

Hearing Location(s): On May 27, 2022, at 4:00 p.m. In response to the coronavirus disease 2019 (COVID-19) public health emergency, the Washington medical commission will not provide a physical location for this hearing to promote social distancing and the safety of the citizens of Washington state. A virtual public hearing, without a physical meeting space, will be held instead.

Please register for opioid prescribing patient exemptions rules hearing on May 27, 2022, 4:00 p.m. PST, at <https://attendee.gotowebinar.com/register/5336471307862283024>. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: May 27, 2022.

Submit Written Comments to: Amelia Boyd, P.O. Box 47866, Olympia, WA 98504-7866, email <https://fortress.wa.gov/doh/policyreview>, by May 20, 2022.

Assistance for Persons with Disabilities: Contact Amelia Boyd, phone 800-525-0127, TTY 711, email [medical.rules@wmc.wa.gov](mailto:medical.rules@wmc.wa.gov), by May 20, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this filing is to continue the hearing to a date and time a commission quorum is available to participate.

April 19, 2022  
Melanie de Leon  
Executive Director

**WSR 22-09-075**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed April 19, 2022, 3:52 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-21-107.

Title of Rule and Other Identifying Information: The department proposes amending WAC 388-310-0350 WorkFirst—Other exemptions from mandatory participation.

Hearing Location(s): On May 24, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the impacts of the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than May 25, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, by May 24, 2022, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email [Tencza@dshs.wa.gov](mailto:Tencza@dshs.wa.gov) [[Tencza@dshs.wa.gov](mailto:Tencza@dshs.wa.gov)], by May 10, 2022, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing these amendments to clarify that the inability to participate in WorkFirst activities during a declared state of emergency is determined by the department.

Reasons Supporting Proposal: Proposed amendments to WAC 388-310-0350 clarify the department's responsibility to determine participation requirements while considering the nature of a declared state of emergency.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.010.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jake Deskins, P.O. Box 45470, Olympia, WA 98504-5770, 360-480-3411.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: These amendments do not impact small business[es], only DSHS clients.

April 14, 2022  
Katherine I. Vasquez  
Rules Coordinator

## SHS-4917.2

AMENDATORY SECTION (Amending WSR 21-12-004, filed 5/19/21, effective 7/1/21)

**WAC 388-310-0350 WorkFirst—Other exemptions from mandatory participation. (1) When am I exempt from mandatory participation?**

Except as provided in subsection (4) of this section, you are exempt from mandatory participation if you are:

(a) A caretaker relative as defined by WAC 388-454-0010, included in the assistance unit and:

(i) You are (~~(fifty-five)~~) 55 years of age or older and caring for a child and you are not the child's parent; and

(ii) Your age is verified by any reliable documentation (such as a birth certificate or a driver's license).

(b) An adult with a severe and chronic disability as defined below:

(i) You have been assessed by a DSHS SSI facilitator as likely to be approved for SSI or other benefits and are required to apply for SSI or another type of federal disability benefit (such as railroad retirement or Social Security disability) in your individual responsibility plan. Your SSI application status may be verified through the SSI facilitator and/or state data exchange; or

(ii) Your disability is a severe and chronic mental, physical, emotional, or cognitive impairment that prevents you from participating in work activities for more than (~~(ten)~~) 10 hours a week and is expected to last at least (~~(twelve)~~) 12 months. Your disability and ability to participate must be verified by documentation from the division of developmental disabilities (DDD), division of vocational rehabilitation (DVR), home and community services division (HCS), division of mental health (MHD), behavioral health organization (BHO), and/or regional service area (RSA), or evidence from one of the medical or mental health professionals listed in subsection (2) of this section.

(c) Required in the home to care for a child with special needs when:

(i) The child has a special medical, developmental, mental, or behavioral condition; and

(ii) The child is determined by a public health nurse, school professional, one of the medical or mental health professionals listed in subsection (2) of this section, HCS, MHD, BHO, and/or an RSA to require specialized care or treatment that prevents you from participating in work activities for more than (~~(ten)~~) 10 hours per week.

(d) Required to be in the home to care for another adult with disabilities when:

- (i) The adult with disabilities cannot be left alone for significant periods of time; and
- (ii) No adult other than yourself is available and able to provide the care; and
- (iii) The adult with the disability is related to you; and
- (iv) You are unable to participate in work activities for more than ~~((ten))~~ 10 hours per week because you are required to be in the home to provide care; and
- (v) The disability and your need to care for your disabled adult relative is verified by documentation from DDD, DVR, HCS, MHD, BHO and/or an RSA, or evidence from one of the medical or mental health professionals listed in subsection (2) of this section.

(e) ~~((Unable))~~ Determined by the department to be unable to participate in WorkFirst activities due to a declared state of emergency.

**(2) What types of medical or mental health professionals can provide medical evidence when I have a disability?**

We accept medical evidence from the following sources when considering disability:

- (a) For a physical impairment:
  - (i) A physician, which includes:
    - (A) Medical doctor (M.D.); and
    - (B) Doctor of osteopathy (D.O.);
  - (ii) An advanced registered nurse practitioner (ARNP) for physical impairments;
  - (iii) A physician's assistant (P.A.);
  - (iv) A doctor of optometry (O.D.) for visual acuity impairments;
- or
- (v) Doctor of podiatry (D.P.) for foot disorders;
- (b) For a mental impairment:
  - (i) A psychiatrist;
  - (ii) A psychologist;
  - (iii) An ARNP certified in psychiatric nursing;
  - (iv) A mental health professional provided the person's training and qualifications at a minimum include a master's degree; or
  - (v) A physician who is currently treating you for a mental impairment.

(c) We do not accept medical evidence from the medical professionals listed in subsections (2)(a) and (b), unless they are licensed in Washington state or the state where the examination was performed.

**(3) Who reviews and approves an exemption from participation?**

(a) If it appears that you may qualify for an exemption or you ask for an exemption, your case manager or social worker will review the information and we may use the case staffing process to determine whether the exemption will be approved. Case staffing is a process to bring together a team of multidisciplinary experts including relevant professionals and the client to identify participant issues, review case history and information, and recommend solutions.

(b) If additional medical or other documentation is needed to determine if you are exempt, your IRP will allow between ~~((thirty))~~ 30 days and up to ~~((ninety))~~ 90 if approved to gather the necessary documentation.

(c) Information needed to verify your exemption should meet the standards for verification described in WAC 388-490-0005. If you need help gathering information to verify your exemption, you can ask us for help. If you have been identified as needing NSA services, under chapter 388-472 WAC, your accommodation plan should include information on how we will assist you with getting the verification needed.

(d) After a case staffing, we will send you a notice that tells you whether your exemption was approved, how to request a fair hearing if you disagree with the decision, and any changes to your IRP that were made as a result of the case staffing.

**(4) If I am an adult who is exempt due to my severe and chronic disability, can I still be required to participate in the WorkFirst program?**

When you are exempt due to your severe and chronic disability, you may be required to do one or both of the following:

(a) Pursue SSI or another type of federal disability benefit; ((and/or))

(b) Participate in available treatment that is recommended by your treating medical or mental health provider or by a chemical dependency professional.

**(5) Can I participate in WorkFirst while I am exempt?**

(a) You may choose to fully participate in WorkFirst while you are exempt.

(b) Your WorkFirst case manager may refer you to other service providers who may help you improve your skills and move into employment.

(c) If you decide later to stop participating, and you still qualify for an exemption, you will be put back into exempt status with no financial penalty.

**(6) Does an exemption from participation affect my ((sixty-)) 60-month time limit for receiving TANF/SFA benefits?**

Even if exempt from participation, each month you receive a TANF/SFA grant counts toward your ((sixty-)) 60-month limit as described in WAC 388-484-0005.

**(7) How long will my exemption last?**

Unless you are an older caretaker relative, your exemption will be reviewed at least every ((twelve)) 12 months to make sure that you still meet the criteria for an exemption. Your exemption will continue as long as you continue to meet the criteria for an exemption.

**(8) What happens when I am no longer exempt?**

If you are no longer exempt, then:

(a) You will become a mandatory participant under WAC 388-310-0400; and

(b) If you have received ((sixty)) 60 or more months of TANF/SFA, your case will be reviewed for an extension. (See WAC 388-484-0006 for a description of TANF/SFA time limit extensions.)

(9) For time-limited extensions, see WAC 388-484-0006.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.010 and C.F.R. 20 § 416.2095 through § 416.2099. WSR 21-12-004, § 388-310-0350, filed 5/19/21, effective 7/1/21. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.08A.010. WSR 15-24-056, § 388-310-0350, filed 11/24/15, effective 1/1/16. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW. WSR 10-24-013, § 388-310-0350, filed 11/18/10, effective 12/19/10. Statutory Authority: RCW 74.04.050, 74.08.090, and 74.08A.340. WSR 09-16-079, § 388-310-0350, filed 7/31/09, effective 9/1/09; WSR 03-24-057, § 388-310-0350, filed 12/1/03, effective 1/1/04. Statutory Authority: RCW 74.08A.010(4), 74.08A.340, 74.08.090, 74.04.050. WSR 02-12-068, § 388-310-0350, filed 5/31/02, effective 6/1/02.]

## WSR 22-09-076

## PROPOSED RULES

## DEPARTMENT OF AGRICULTURE

[Filed April 20, 2022, 6:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-01-006.

Title of Rule and Other Identifying Information: Chapter 16-610 WAC, Livestock identification.

Hearing Location(s): On May 24, 2022, at 9:00 a.m., Microsoft Teams conference line. Join by link <https://teams.microsoft.com/l/meetup-join/>

19%3ameeting\_NGNlNWE1YzYtYjQyOC00NDgzLTg3ZWEtNzg2YmJhYmEzMmVk%40thread.v2/0?

context=%7b%22Tid%22%3a%2211d0e217-264e-400a-8ba0-57dcc127d72d%22%2c%22Oid%22%3a%228067d4fb-227d-4cd5-a00a-7902df280a3c%22%7d; join by phone + 1 564-999-2000, ID 189384717#. The public hearing will be held solely over video and teleconference.

Date of Intended Adoption: June 1, 2022.

Submit Written Comments to: Gloriann Robinson, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email [WSDARulesComments@agr.wa.gov](mailto:WSDARulesComments@agr.wa.gov), fax 360-902-2092, by 5:00 p.m., May 24, 2022.

Assistance for Persons with Disabilities: Contact Nicole Schoch, animal services division coordinator, phone 360-725-5642, fax 360-902-2087, TTY 800-833-6388, email [Nicole.M.Schoch@agr.wa.gov](mailto:Nicole.M.Schoch@agr.wa.gov), by May 17, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend chapter 16-610 WAC in response to a rule-making petition received from the Washington state department of agriculture's (WSDA) livestock identification advisory committee to:

- Reduce the electronic cattle transaction reporting (ECTR) per head fee; and
- Allow veterinarians and field livestock inspectors certified by the department to conduct inspections at public livestock markets, certified feedlots, slaughter facilities, or special sales when the facilities have received written notification from the department that department inspectors are not available.

The department is also proposing to amend WAC 16-610-021 to clarify the requirement that sellers using ECTR must provide proof of ownership by describing how the seller must provide that documentation.

Reasons Supporting Proposal: ECTR system is a web-based platform for Washington cattle owners to electronically report change of ownership or out-of-state movement of their cattle. All cattle reported in ECTR must have electronic official individual identification (RFID), commonly known as an "840" RFID tag. Users must submit proof of ownership documentation for all branded cattle that are reported in ECTR. The proposal reduces the ECTR fee from \$1.30 per head to \$0.80 per head. Reduction in the ECTR per head fee will incentivize more private sales of cattle to be conducted without the use of a livestock inspector. With more cattle producers utilizing ECTR, the program may see reduced expenditures as the need for department livestock inspectors conducting physical inspections may decrease.

An increased use of the ECTR system by producers will also advance animal disease traceability (ADT) in the state. ADT is critical

to ensuring a rapid response when animal disease events take place. An efficient and accurate traceability system reduces the number of animals and response time involved in a disease investigation, reducing the economic impact on cattle producers. ADT is based on individual identification and the ability to trace an individual, as opposed to a group of animals, allows fewer farms to face quarantine in the face of a disease event and secures continuity of business. The ECTR system requires individual identification in the form of RFID for every transaction.

In response to recent transactions and the expected increase of future transactions within the ECTR system, the need to put parameters around submitting original proof of ownership is important. Currently, the rule requires ECTR users to provide proof of ownership when the brand is not recorded in Washington to the seller, but does not specify how to do so. The department is proposing to clarify the rule by stating that ECTR users are required to upload a copy of proof of ownership at the time the transaction is reported and requiring that the department receive the original in the mail within seven days of the transaction. When ECTR users sell branded cattle that have a brand that is not recorded to the seller, it is important that the seller send the department the original proof of ownership so that the seller cannot continue to use that original proof of ownership when selling cattle in the future and more importantly so that the department can issue a duplicate certificate to the seller showing the number of animals remaining in their possession from the original certificate. This practice is also required when owners request a physical inspection of their branded cattle.

Certified veterinarians and private field inspectors are not authorized to conduct inspections at public livestock markets, certified feedlots, slaughter facilities, or special sales under the current permanent rule. During the COVID-19 pandemic, the department experienced a lack of staff availability to perform livestock inspections. This staffing shortfall resulted in the department issuing an emergency rule-making order that allowed certified veterinarians and private field inspectors to conduct inspections at the licensed facilities when the department notified those licensed facilities in writing that WSDA inspectors were not available. This proposed rule making makes the emergency rule permanent and ensures that the livestock industry is able to continue functioning even when department staff are unavailable to conduct inspections.

Statutory Authority for Adoption: RCW 16.57.350, 16.57.450, 16.58.030, and 16.65.020.

Statute Being Implemented: Chapters 16.57 and 16.58 RCW.

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

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting: Brennan Kimbel, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1808; Implementation and Enforcement: Jodi Jones, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1889.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i).

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The proposed rule provides an option for li-

censed facilities, such as public livestock markets and slaughter facilities, to utilize certified veterinarians and field livestock inspectors to conduct proof of ownership inspections in the absence of a WSDA inspector, if they chose to do so. The rule does not require them to do so. Certified veterinarians and field livestock inspectors are considered private businesses, so providing this allowance in the rule would give these businesses more opportunities to generate additional revenue. Providing this alternative to these facilities allows them to continue operating when WSDA inspectors are not available. Without this option, these facilities would have to cease operations for the period of time WSDA inspectors are unavailable.

The proposed rule reduces the per head fee for ownership transactions using the ECTR system from \$1.30 to \$0.80 thus reducing overall costs for cattle producers.

The proposed rule clarifies the current requirement that sellers using the ECTR system must provide proof of ownership by adding instructions stating that the proof of ownership must be uploaded at the time the transaction is reported as well as received by WSDA within seven days of the transaction. In order to comply with these instructions, a seller selling cattle bearing a brand not recorded to them in Washington state would incur the cost of postage to mail the original proof of ownership document to WSDA. The current cost for postage is \$0.58 per stamp. Since the proposed rule is also decreasing the per head transaction fee for using ECTR from \$1.30 to \$0.80 (-\$0.50 per head), the difference between the per head fee for using the ECTR system and the cost for postage is \$0.08 per head (if the seller sent each proof of ownership document separately). Since the requirement to submit proof of ownership only applies to transactions affecting cattle bearing a brand that is not recorded to the seller in Washington state, it only applies to an extremely limited number of transactions occurring in the ECTR system. In fact, only a total of two transactions have been recorded thus far that would require proof of ownership to be submitted. All other transactions recorded in ECTR have been by sellers of cattle bearing brands recorded to them in Washington. Since both of the affected transactions were by the same seller, that seller would have an increased cost of \$0.16 under the proposed rule and would not exceed the minor cost threshold minimum of \$100 established in RCW 19.85.020(2).

None of the components of the proposed rule impose more-than-minor costs. Therefore, WSDA concludes that the proposed rule is exempt from requirements under chapter 19.85 RCW.

A copy of the detailed cost calculations may be obtained by contacting Gloriann Robinson, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-1802, fax 360-902-2092, email WSDARulesComments@agr.wa.gov.

April 20, 2022

Jodi Jones

Animal Services Operations Director

**OTS-3732.2**



AMENDATORY SECTION (Amending WSR 19-20-022, filed 9/23/19, effective 10/24/19)

**WAC 16-610-021 Electronic cattle transaction reporting.** (1) Individual private sales, trades, gifting, barter, or any other action that constitutes a change of ownership or movement out of state of cattle are required to obtain inspections under WAC 16-610-020 except when the seller holds an electronic cattle transaction reporting license under chapter 16.57 RCW and reports transactions through that system.

(2) (a) Any person may apply for an electronic cattle transaction reporting license. Applications shall be made on a form provided by the department to include:

(i) First and last name of the applicant.

(ii) Business name, physical address, mailing address, email address, and phone number.

(b) The license expires annually on June 30th.

(3) The initial license application fee is (~~thirty-three dollars~~) \$33. The annual renewal fee is (~~thirty-three dollars~~) \$33.

(4) The director may deny, suspend, or revoke an electronic cattle transaction reporting license for failure to comply with any condition of licensure under this section or any requirement of this chapter or chapter 16.57 RCW.

(5) All holders of an electronic cattle transaction reporting license must transmit to the department a record of each transaction containing the unique identification of each individual animal included in the transaction as assigned through a department-authorized identification method. All transactions reported to the department through the electronic cattle transaction reporting system must be reported within (~~twenty-four~~) 24 hours of the transaction and include the following information:

(a) Buyer's first and last name, email address, phone number, mailing address, and physical address of destination;

(b) Number of cattle sold;

(c) Electronic official individual identification tag number of each head of cattle sold;

(d) Type and sex of each head of cattle sold;

(e) Breed and color of each head of cattle sold; and

(f) Date the transaction occurred.

(6) The following information is required for cattle that are branded in addition to the requirements in subsection (~~(4)~~) (5) of this section:

(a) Design and location of the brand(s) on each head of cattle sold; and

(b) Washington brand number if the brand is recorded to the seller.

(i) If the brand is not recorded in Washington to the seller, the seller must provide proof of ownership under WAC 16-610-018. Proof of ownership must be uploaded at the time the transaction is reported. Original proof of ownership must be received by the department within seven days of the report of the transaction. Proof of ownership must be mailed to:

Washington State Department of Agriculture  
Livestock Identification Program  
P.O. Box 42577  
Olympia, WA 98504-2577

(ii) A fee of (~~one-dollar and thirty~~) 80 cents per head will be assessed for electronically reported transactions, along with any other applicable fees including, but not limited to, the fees listed in subsection (7) of this section. The fees are due and collected at the time of reporting through the electronic cattle transaction reporting system.

(7) Exemptions from mandatory inspections do not exempt cattle owners or sellers from paying beef promotion fees owed to the Washington state beef commission under chapter 16.67 RCW or the animal disease traceability fee owed to the department under chapter 16.36 RCW.

[Statutory Authority: RCW 16.57.025, [16.57.]350, [16.57.]450(8), 16.58.030, 16.65.020, and [16.65.]350. WSR 19-20-022, § 16-610-021, filed 9/23/19, effective 10/24/19.]

AMENDATORY SECTION (Amending WSR 19-20-022, filed 9/23/19, effective 10/24/19)

**WAC 16-610-060 Veterinarian and field livestock inspector certification.** (1) (a) The director may certify veterinarians, who are licensed and accredited in Washington state and field livestock inspectors who comply with the requirements of this section, to issue livestock inspection certificates.

(b) Certified veterinarians and field livestock inspectors may not conduct inspections at certified feedlots, slaughter plants, public livestock markets, or special sales unless the department has notified the facility in writing that department inspectors are not available to conduct inspections. If the department notifies a facility that its inspectors are not available to conduct inspections, the facility may use a certified veterinarian or field livestock inspector to conduct inspections during the period, as specified by the department, in which department inspectors are not available.

(c) (i) Certified veterinarians and field livestock inspectors may not perform livestock inspections for an individual or business if a conflict of interest exists.

(ii) For the purpose of this rule, a "conflict of interest" includes, but is not limited to, a financial or other interest, direct or indirect, in the livestock, the facility in which the livestock are presented for sale, or the event at which the livestock are being exhibited.

(2) Veterinarians licensed and accredited in Washington state and field livestock inspectors who wish to issue inspection certificates for livestock must apply for certification on the department's application form (WSDA form #7028). The application must include the following:

(a) The full name, address, telephone number, and email address of the individual applying for certification;

(b) The applicant's Washington state veterinary license number if the applicant is a veterinarian;

(c) The geographic area in which the applicant will issue inspection certificates for livestock;

(d) A statement describing the applicant's experience with large animals, especially cattle and horses;

(e) A brief statement indicating that the applicant is requesting certification to issue inspection certificates for cattle, horses or both;

(f) The signature of the applicant; and

(g) Any other additional information as requested by the director.

(3) All applications must be accompanied by a check or money order for the amount of the certification fee of (~~sixty dollars~~) \$60 per applicant.

(4) Certifications expire on the third December 31st following the date of issuance. For example, if a certification was issued on October 14, 2003, it would expire on December 31, 2005. All applications for renewal of certification must be submitted on AGR Form 930-7089 and accompanied by a check or money order for the amount of the certification fee of (~~sixty dollars~~) \$60 per applicant.

(5) All applicants applying for certification or renewal of certification must complete department-provided training and pass a written test with no less than a score of (~~ninety~~) 90 percent. The department will provide to each person applying for certification or renewal of certification a copy of the most current brand book and any supplements issued to date to each certified veterinarian or field livestock inspector. Training will include, but will not be limited to, the:

(a) Reading of printed brands;

(b) Reading of brands or other marks on animals, including the location of brands on animals;

(c) Reading of a microchip or other electronic official individual identification;

(d) Completion of official documents; and

(e) Review of satisfactory ownership documents.

(6) The director will maintain a list of veterinarians and field livestock inspectors certified to perform livestock inspections. Interested parties may request a copy of the list by contacting the department at:

Washington State Department of Agriculture

Animal Services Division

1111 Washington Street S.E.

P.O. Box 42577

Olympia, WA 98504-2577

Email: [livestockid@agr.wa.gov](mailto:livestockid@agr.wa.gov)

Phone: 360-902-1855

Website: <https://agr.wa.gov/departments/animals-livestock-and-pets/livestock>

(7) Inspections by certified veterinarians and field livestock inspectors are conducted upon request and provided at the discretion of the veterinarian or field livestock inspector.

(8) Certified veterinarians and field livestock inspectors must submit all required inspection fees to the director and copies of each inspection certificate within (~~thirty~~) 30 days of the date of issue.

(9) The director may deny certification or renewal of certification to issue inspection certificates if the veterinarian or field livestock inspector fails to meet the requirements of this section or knowingly makes false or inaccurate statements regarding his or her qualifications on the certification application.

[Statutory Authority: RCW 16.57.025, [16.57.]350, [16.57.]450(8), 16.58.030, 16.65.020, and [16.65.]350. WSR 19-20-022, § 16-610-060, filed 9/23/19, effective 10/24/19. Statutory Authority: RCW 16.57.160 and chapter 34.05 RCW. WSR 16-21-008, § 16-610-060, filed 10/7/16, effective 11/7/16. Statutory Authority: Chapters 16.57, 16.58, 16.65, and 34.05 RCW. WSR 10-21-016, § 16-610-060, filed 10/7/10, effective 11/7/10; WSR 07-14-057, § 16-610-060, filed 6/28/07, effective 7/29/07; WSR 04-01-171, § 16-610-060, filed 12/23/03, effective 1/23/04.]

**WSR 22-09-077**  
**PROPOSED RULES**  
**BOARD OF**  
**PILOTAGE COMMISSIONERS**  
[Filed April 20, 2022, 7:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-06-007.

Title of Rule and Other Identifying Information: WAC 363-116-081

Rest period.

Hearing Location(s): On June 21, 2022, at 12:00 p.m., virtual via Microsoft Teams. Contact the board of pilotage commissioners (BPC) to request video link at 206-515-3904 or at PilotageInfo@wsdot.wa.gov.

Date of Intended Adoption: June 21, 2022.

Submit Written Comments to: Jaimie C. Bever, Executive Director, 2901 3rd Avenue, Suite 500, Seattle, WA 98121, email BeverJ@wsdot.wa.gov, fax 206-515-3906, by June 14, 2022.

Assistance for Persons with Disabilities: Contact Jolene Hamel, phone 206-515-3904, email HamelJ@wsdot.wa.gov [HamelJ@wsdot.wa.gov], by June 12, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making will amend the types of pilotage assignments subject to the requirement for 10 hours rest with the opportunity for eight hours of sleep after completion of an assignment. Puget Sound pilots (PSP) recently approved several measures to increase dispatching efficiency and pilot availability while observing state mandated rest rules. One of those measures is to allow a pilot to be dispatched to multiple assignments, as long as the combined duration of the assignments does not exceed 13 hours. The board adopted these changes via emergency rule at the March 17, 2022, regular monthly meeting. This rule-making initiative is to consider and codify that change.

Reasons Supporting Proposal: Currently, there is a pilot shortage in both the Puget Sound and Grays Harbor Pilotage Districts. PSPs adopted the measures listed above in order to enhance pilot availability, improve on-watch productivity, reduce need for "call-back" pilots, and adhere to expert recommended work/rest best practices.

Statutory Authority for Adoption: Chapter 88.16 RCW, Pilotage Act.

Statute Being Implemented: Chapter 88.16 RCW, Pilotage Act.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Discussions regarding proposed amendments to this rule will occur at regular session BPC meetings as well as the BPC's pilot safety committee (PSC) meetings, with the initial language recommendation coming from PSC. Public comments are welcome and encouraged. Upon review and consideration of recommended revisions, a public hearing will be scheduled pursuant to formal notice requirements.

Name of Proponent: BPC, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: BPC, 2901 3rd Avenue, Seattle, WA 98121, 206-515-3904.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the adoption of these rules. BCP is not a listed agency in RCW 34.05.328 (5) (a) (i).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

April 20, 2022  
Jaimie C. Bever  
Executive Director

## OTS-3692.1

AMENDATORY SECTION (Amending WSR 21-07-088, filed 3/19/21, effective 4/19/21)

**WAC 363-116-081 Rest period.** (1) Pilots shall observe rest period requirements as set out in RCW 88.16.103 as now or hereafter amended. Pilots shall have a mandatory rest period of at least ~~((ten))~~ 10 hours with an opportunity for eight hours of uninterrupted sleep after completion of an assignment ~~((; excluding))~~ or multiple assignments ~~((within a harbor area, provided the combined total duration of assignment time does not exceed thirteen hours))~~.

(2) An assignment is a billable pilotage service, including cancellations and ship movements, regardless of duration.

(3) An assignment begins at call time and ends at check-in time and includes preparation time and travel time to and from the ship in addition to bridge time. Call time allows one to two hours of preparation before the start of travel time to the ship. Check-in time occurs when travel time from the ship is completed. In the Puget Sound Pilotage district travel times are documented in the Puget Sound pilots operating rules and may be reviewed by the board from time to time.

(4) When there are multiple assignments ~~((within a harbor area (multiple harbor shifts), call time is before the first harbor shift and check-in time occurs when the travel time has been completed after the final harbor shift. Harbor area geographic definitions outlined by the utilities and transportation commission are used to distinguish harbor shifts from other ship moves.~~

~~((5) Pilots shall not complete more than three consecutive night assignments, a night assignment being one in which)), the combined total duration of the assignments shall not exceed 13 hours. The total duration of multiple assignments shall be measured from the call time before the first assignment to check-in time after the final assignment.~~

(5) An assignment is a night assignment if any part occurs between 0100 and 0459 hours. After three consecutive nights with night assignments, pilots shall have a mandatory rest period of at least ~~((twelve))~~ 12 hours, including at least one period between 2000 and 0800 hours.

[Statutory Authority: Chapter 88.16 RCW. WSR 21-07-088, § 363-116-081, filed 3/19/21, effective 4/19/21. WSR 97-08-042, recodified as §

363-116-081, filed 3/28/97, effective 3/28/97. Statutory Authority:  
RCW 88.16.035. WSR 79-05-023 (Order 79-2, Resolution No. 79-2), §  
296-116-081, filed 4/17/79; Order 73-6, § 296-116-081, filed 5/11/73.]

**WSR 22-09-081**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed April 20, 2022, 10:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-17-099.

Title of Rule and Other Identifying Information: Chapter 392-162 WAC, Special service program—Learning assistance.

Hearing Location(s): On May 25, 2022, at 1:00 p.m., Webinar via Zoom. Due to ongoing public health emergency related to the COVID-19 virus pandemic, this public hearing will be held by webinar via Zoom (with a call-in option). There will be no physical location for the hearing. For information on registering and participating, please visit the office of superintendent of public instruction (OSPI)'s website at <https://www.k12.wa.us/policyfunding/ospi-rulemaking-activity>. For questions, please email [Kristin.murphy@k12.wa.us](mailto:Kristin.murphy@k12.wa.us).

Date of Intended Adoption: May 27, 2022.

Submit Written Comments to: Annie Pennell, OSPI, P.O. Box 47200, Olympia, WA 98504, email [annie.pennell@k12.wa.us](mailto:annie.pennell@k12.wa.us), by May 25, 2022.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-753-4201, TTY 360-664-3631, email [Kristin.murphy@k12.wa.us](mailto:Kristin.murphy@k12.wa.us), by May 18, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI is proposing revisions to chapter 392-162 WAC concerning the learning assistance program (LAP) to (1) align the rules with the amended requirements under chapter 28A.165 RCW through the passage of HB [SHB] 1208; (2) clarify requirements in HB [SHB] 1208, including specific guidance on the timeline and use of the Washington integrated student supports protocol (WISSP) for determining LAP services; and (3) provide regulatory guidelines to districts who choose to use LAP funds to implement the K-2 literacy screening and intervention requirements under RCW 28A.320.260.

Reasons Supporting Proposal: The legislature passed HB [SHB] 1208, a bill that significantly modifies state laws pertaining to the LAP, in the 2021 legislative session. These modifications address the effects of the COVID-19 pandemic by granting greater local control over, accountability for, and flexibility with program funds, and to authorize continued flexible use of program funds through the framework of the Washington integrated student supports protocol. The proposed revisions to LAP rules reflect the legislative modifications and clarify specific requirements.

Statutory Authority for Adoption: RCW 28A.165.075.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Annie Pennell, OSPI, 600 South Washington Street, Olympia, WA, 360-725-6190; Enforcement: OSPI, 600 South Washington Street, Olympia, WA.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.030.



Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business[es] and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

April 20, 2022  
Chris P. S. Reykdal  
State Superintendent of Public Instruction

## OTS-3068.2

AMENDATORY SECTION (Amending WSR 18-02-082, filed 1/2/18, effective 2/2/18)

**WAC 392-162-005 Authority.** The authority for this chapter is RCW 28A.165.075, which authorizes the superintendent of public instruction to adopt rules (~~and regulations~~) for the administration of the learning assistance program.

[Statutory Authority: RCW 28A.165.075 and 28A.150.290. WSR 18-02-082, § 392-162-005, filed 1/2/18, effective 2/2/18; WSR 16-16-078, § 392-162-005, filed 7/29/16, effective 9/1/16. Statutory Authority: RCW 28A.165.075. WSR 14-08-067, § 392-162-005, filed 3/31/14, effective 5/1/14; WSR 08-21-053, § 392-162-005, filed 10/9/08, effective 11/9/08. Statutory Authority: RCW 28A.300.070. WSR 07-02-015, § 392-162-005, filed 12/21/06, effective 1/21/07. Statutory Authority: 1987 c 478. WSR 87-22-001 (Order 87-14), § 392-162-005, filed 10/22/87. Statutory Authority: RCW 28A.41.408. WSR 84-14-038 (Order 84-21), § 392-162-005, filed 6/28/84.]

AMENDATORY SECTION (Amending WSR 18-02-082, filed 1/2/18, effective 2/2/18)

**WAC 392-162-010 Purpose.** The learning assistance program requirements in this chapter are designed to:

(1) (~~Guide school districts in addressing the needs of students in grades kindergarten through four who are deficient in reading or reading readiness skills to improve reading literacy;~~

~~(2))~~ Promote the use of data when developing programs to assist students who are not meeting academic standards (~~and reduce disruptive behaviors in the classroom~~); and

~~((3))~~ (2) Guide school districts in providing the most effective and efficient practices when implementing supplemental instruction and services to assist students who are not meeting academic standards (~~and reduce disruptive behaviors in the classroom; and~~

~~(4) Guide school districts in providing extended learning opportunities to assist K-12 students who are not meeting academic standards in English language arts or mathematics, students identified in eighth grade in need of high school transition services which could continue up through the end of ninth grade, and students in grades~~

eleven and twelve who are at risk of not meeting state and local graduation requirements)).

[Statutory Authority: RCW 28A.165.075 and 28A.150.290. WSR 18-02-082, § 392-162-010, filed 1/2/18, effective 2/2/18; WSR 16-16-078, § 392-162-010, filed 7/29/16, effective 9/1/16. Statutory Authority: RCW 28A.165.075. WSR 14-08-067, § 392-162-010, filed 3/31/14, effective 5/1/14; WSR 09-24-075, § 392-162-010, filed 11/30/09, effective 12/31/09; WSR 08-21-053, § 392-162-010, filed 10/9/08, effective 11/9/08. Statutory Authority: RCW 28A.300.070. WSR 07-02-015, § 392-162-010, filed 12/21/06, effective 1/21/07. Statutory Authority: 1987 c 478. WSR 87-22-001 (Order 87-14), § 392-162-010, filed 10/22/87. Statutory Authority: RCW 28A.41.408. WSR 84-14-038 (Order 84-21), § 392-162-010, filed 6/28/84.]

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

**WAC 392-162-015 Definitions (~~Basic skills~~)**. As used in this chapter, the ~~((term "basic skills" means English language arts or mathematics, as well as readiness associated with these skills.))~~ terms:

(1) "District" means a school district, public charter school, or school authorized to operate as a state-tribal education compact school in accordance with chapter 28A.715 RCW.

(2) "Literacy screening tool" means one of the literacy screening tools identified and approved by the dyslexia advisory council and the office of the superintendent of public instruction in accordance with RCW 28A.300.700.

[Statutory Authority: RCW 28A.165.075 and 28A.150.290. WSR 16-16-078, § 392-162-015, filed 7/29/16, effective 9/1/16. Statutory Authority: RCW 28A.300.070. WSR 07-02-015, § 392-162-015, filed 12/21/06, effective 1/21/07. Statutory Authority: 1987 c 478. WSR 87-22-001 (Order 87-14), § 392-162-015, filed 10/22/87. Statutory Authority: RCW 28A.41.408. WSR 84-14-038 (Order 84-21), § 392-162-015, filed 6/28/84.]

NEW SECTION

**WAC 392-162-016 Application.** As described in RCW 28A.165.057, two application periods exist:

(1) The first timeline applies immediately and continues through the later of:

(a) The expiration or termination of Proclamation 20-05, and any subsequent orders extending or amending the proclamation, declaring a state of emergency on February 29, 2020, for all counties in Washington due to COVID-19; or September 1, 2025, whichever is later.

(b) During the first timeline described in subsection (1)(a) of this section, school districts must budget and expend the appropriations for the learning assistance program, under RCW 28A.165.005 through 28A.165.065, to identify students who are not meeting academic

standards and address their academic and nonacademic needs resulting from and exacerbated by the COVID-19 pandemic.

(c) During the first timeline described in subsection (1)(a) of this section, school districts are encouraged to budget and expend the appropriations for the learning assistance program, under RCW 28A.165.005 through 28A.165.065, using the framework of the Washington integrated student supports protocol, established under RCW 28A.300.139.

(2) The second timeline applies after the first timeline expires as described in subsection (1)(a) of this section. During the second timeline, school districts must budget and expend the appropriations for the learning assistance program, under RCW 28A.165.005 through 28A.165.065, using the framework of the Washington integrated student supports protocol, established under RCW 28A.300.139.

[]

AMENDATORY SECTION (Amending WSR 18-02-082, filed 1/2/18, effective 2/2/18)

**WAC 392-162-054 Allocation, supplement not supplant, and use of funds.** (1) The funds for the learning assistance program shall be allocated according to WAC 392-122-605 for the learning assistance program base allocation and the learning assistance program high poverty-based school allocation.

(2) The learning assistance high poverty-based school allocation must be ~~((distributed to))~~ expended by the district for the schools ((building)) that generated the funding and may not supplant the learning assistance program base allocation expenditures for those schools.

(3) All learning assistance program funds must be expended for the purposes of RCW 28A.165.005 through 28A.165.065.

[Statutory Authority: RCW 28A.165.075 and 28A.150.290. WSR 18-02-082, § 392-162-054, filed 1/2/18, effective 2/2/18; WSR 16-16-078, § 392-162-054, filed 7/29/16, effective 9/1/16. Statutory Authority: RCW 28A.165.075. WSR 14-08-067, § 392-162-054, filed 3/31/14, effective 5/1/14; WSR 09-24-075, § 392-162-054, filed 11/30/09, effective 12/31/09; WSR 08-21-053, § 392-162-054, filed 10/9/08, effective 11/9/08. Statutory Authority: RCW 28A.300.070. WSR 07-02-015, § 392-162-054, filed 12/21/06, effective 1/21/07.]

AMENDATORY SECTION (Amending WSR 16-16-078, filed 7/29/16, effective 9/1/16)

**WAC 392-162-110 Program requirements—((District)) Reporting.** ~~((1)) Individual student records shall be recorded, beginning with the 2014-15 school year, in the statewide individual student data system annual entrance and exit performance data for each student participating in the learning assistance program according to specifications established by the office of the superintendent of public instruction's CEDARS manual.~~

~~(2) Districts shall submit to the superintendent of public instruction by the established due date an annual report in the electronic format provided by the superintendent of public instruction. The report must include the following:~~

~~(a) The amount of academic growth gained by students participating in the learning assistance program;~~

~~(b) The number of students who gain at least one year of academic growth;~~

~~(c) The specific practices, activities, and programs used by each school building that received learning assistance program funds; and~~

~~(d) The number of students served by the learning assistance program during the school year who were able to exit the program because student academic growth resulted in meeting the academic standard for grade level.~~

~~(3)) The superintendent of public instruction ((will)) may withhold the monthly learning assistance program apportionment payment to a school district, public charter school, or state-tribal education compact school ((operated pursuant to a state-tribe education compact)) if the school district, charter school, or state-tribal education compact school fails to submit its annual report for the prior school year to the superintendent of public instruction by the established due date. The first learning assistance program apportionment payment of the school year and subsequent allocations may be withheld until the annual reports are completed in approvable form.~~

[Statutory Authority: RCW 28A.165.075 and 28A.150.290. WSR 16-16-078, § 392-162-110, filed 7/29/16, effective 9/1/16. Statutory Authority: RCW 28A.165.075. WSR 14-08-067, § 392-162-110, filed 3/31/14, effective 5/1/14. Statutory Authority: RCW 28A.300.070. WSR 07-02-015, § 392-162-110, filed 12/21/06, effective 1/21/07. Statutory Authority: 1987 c 478. WSR 95-19-031 (Order 95-08), § 392-162-110, filed 9/12/95, effective 10/13/95; WSR 87-22-001 (Order 87-14), § 392-162-110, filed 10/22/87. Statutory Authority: RCW 28A.41.408. WSR 84-14-038 (Order 84-21), § 392-162-110, filed 6/28/84.]

AMENDATORY SECTION (Amending WSR 18-02-082, filed 1/2/18, effective 2/2/18)

**WAC 392-162-112 Carry over of funds.** (1) Districts may carry over from one year to the next up to ten percent of the learning assistance program base allocation provided ((allocated)) under WAC 392-122-605 ((; however,)). Carry-over funds ((shall)) must be expended solely for the ((learning assistance program)) purposes of RCW 28A.165.005 through 28A.165.065.

(2) Districts may carry over from one year to the next up to ten percent of the learning assistance program high poverty-based school allocation provided under WAC 392-122-605. Carry-over funds must be expended solely for the ((learning assistance program)) purposes of RCW 28A.165.005 through 28A.165.065 and for the specific schools ((generating)) that generated the ((allocation)) funding.

[Statutory Authority: RCW 28A.165.075 and 28A.150.290. WSR 18-02-082, § 392-162-112, filed 1/2/18, effective 2/2/18. Statutory Authority: RCW 28A.300.070. WSR 07-02-015, § 392-162-112, filed 12/21/06, effective 1/21/07.]

NEW SECTION

**WAC 392-162-120 Implementation of K-2 literacy screening requirements—Use of funds.** (1) A school district that chooses to expend learning assistance program funds to implement the screening and intervention requirements under RCW 28A.320.260 may use the district's learning assistance program base allocation under WAC 392-122-605 to fund the purchase of a literacy screening tool as defined under this chapter.

(2) A school district that chooses to expend learning assistance program funds as permitted under this section must submit data according to specifications established by the office of the superintendent of public instruction in accordance with RCW 28A.165.100 and 28A.320.270.

[ ]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 392-162-020	Definition—Learning assistance program (LAP).
WAC 392-162-023	Definition—District.
WAC 392-162-025	Definition—Statewide student assessments.
WAC 392-162-032	Definition—Participating student.
WAC 392-162-033	Definition—Students who are not meeting academic standards.
WAC 392-162-036	Definition—Extended learning opportunities.
WAC 392-162-041	Best practices.
WAC 392-162-080	Program requirement—Selection of students.

**WSR 22-09-084**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed April 20, 2022, 11:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-05-034.

Title of Rule and Other Identifying Information: WAC 392-401-020

Excused absences.

Hearing Location(s): On May 24, 2022, at 3:00 p.m., webinar via Zoom. Due to [the] ongoing public health emergency related to the COVID-19 virus pandemic, this public hearing will be held by webinar via Zoom (with a call-in option). There will be no physical location for the hearing. For information on registering and participating, please visit the office of superintendent of public instruction (OSPI)'s website at <https://www.k12.wa.us/policyfunding/ospi-rulemaking-activity>. For questions, please email [Kristin.murphy@k12.wa.us](mailto:Kristin.murphy@k12.wa.us).

Date of Intended Adoption: May 26, 2022.

Submit Written Comments to: Bridget Underdahl, OSPI, P.O. Box 47200, Olympia, WA 98504, email [bridget.underdahl@k12.wa.us](mailto:bridget.underdahl@k12.wa.us), by May 24, 2022.

Assistance for Persons with Disabilities: Contact Kristin Murphy, phone 360-725-6133, fax 360-753-4201, TTY 360-664-3631, email [Kristin.murphy@k12.wa.us](mailto:Kristin.murphy@k12.wa.us), by May 17, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI is proposing amendments to WAC 392-401-020 to include absences due to mental and behavioral health as excusable absences in compliance with HB 1834 (2022).

Reasons Supporting Proposal: The proposed amendments are intended to include absences due to mental health reasons as excused absences. Including language specifying mental health would make clear that mental health has as much significance as physical health and is similarly important to one's overall well-being. In addition, the ability to compile data concerning absences due to mental health will provide important information in developing and improving strategies for student support systems. OSPI has engaged, and will continue to engage, student advisory groups and Graduation: A Team Effort (GATE) in developing and implementing the proposed rule change.

Statutory Authority for Adoption: RCW 28A.300.046.

Statute Being Implemented: RCW 28A.300.046.

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

Name of Agency Personnel Responsible for Drafting: Bridget Underdahl, OSPI, 600 South Washington Street, Olympia, WA; Implementation: Krissy Johnson, OSPI, 600 South Washington Street, Olympia, WA; and Enforcement: OSPI, 600 South Washington Street, Olympia, WA.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.030.

Explanation of exemptions: No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does

not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

April 20, 2022  
Chris P. S. Reykdal  
State Superintendent of Public Instruction

## OTS-3701.2

AMENDATORY SECTION (Amending WSR 21-17-088, filed 8/13/21, effective 9/13/21)

**WAC 392-401-020 Excused absences.** (1) Absences due to the following reasons must be excused:

(a) Physical health or mental health symptoms, illness, health condition or medical appointment ((including, but)) for the student or person for whom the student is legally responsible. Examples of symptoms, illness, health conditions, or medical appointments include, but are not limited to, medical, counseling, mental health wellness, dental, optometry, pregnancy, and behavioral health treatment (which can include in-patient or out-patient treatment for chemical dependency or mental health) ((for the student or person for whom the student is legally responsible));

(b) Family emergency including, but not limited to, a death or illness in the family;

(c) Religious or cultural purpose including observance of a religious or cultural holiday or participation in religious or cultural instruction;

(d) Court, judicial proceeding, court-ordered activity, or jury service;

(e) Post-secondary, technical school or apprenticeship program visitation, or scholarship interview;

(f) State-recognized search and rescue activities consistent with RCW 28A.225.055;

(g) Absence directly related to the student's homeless or foster care/dependency status;

(h) Absences related to deployment activities of a parent or legal guardian who is an active duty member consistent with RCW 28A.705.010;

(i) Absences due to suspensions, expulsions or emergency expulsions imposed pursuant to chapter 392-400 WAC if the student is not receiving educational services and is not enrolled in qualifying "course of study" activities as defined in WAC 392-121-107;

(j) Absences due to student safety concerns, including absences related to threats, assaults, or bullying;

(k) Absences due to a student's migrant status;

(l) Absences due to an approved activity that is consistent with district policy and is mutually agreed upon by the principal or designee and a parent, guardian, or emancipated youth; and

(m) Absences due to the student's lack of necessary instructional tools, including internet access or connectivity.

(2) In the event of emergency school facility closure due to COVID-19, other communicable disease outbreak, natural disaster, or other

event when districts are required to provide synchronous and asynchronous instruction, absences due to the following reasons must be excused:

(a) Absences related to the student's illness, health condition, or medical appointments due to COVID-19 or other communicable disease;

(b) Absences related to caring for a family member who has an illness, health condition, or medical appointment due to COVID-19, other communicable disease, or other emergency health condition related to school facility closures;

(c) Absences related to the student's family obligations during regularly scheduled school hours that are temporarily necessary because of school facility closures, until other arrangements can be made; and

(d) Absences due to the student's parent's work schedule or other obligations during regularly scheduled school hours, until other arrangements can be made.

(3) Districts may define additional categories or criteria for excused absences. A school principal or designee has the authority to determine if an absence meets the criteria in subsections (1) and (2) of this section and school district policy for an excused absence.

[Statutory Authority: RCW 28A.300.046 and 2021 c 119 § 3. WSR 21-17-088, § 392-401-020, filed 8/13/21, effective 9/13/21. Statutory Authority: RCW 28A.300.046. WSR 18-11-011, § 392-401-020, filed 5/3/18, effective 8/1/18.]



**WSR 22-09-087**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**CHILDREN, YOUTH, AND FAMILIES**  
[Filed April 20, 2022, 11:59 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-12-013.

Title of Rule and Other Identifying Information: WAC 110-14-1326

Can I get a license to care for a specific child, and what are the requirements?

Hearing Location(s): On May 24, 2022, telephonic. Oral comments may be made by calling 360-902-8084 and leaving a voicemail that includes the comment and an email or physical mailing address where the department of children, youth, and families (DCYF) will send its response. Comments received through and including May 24, 2022, will be considered.

Date of Intended Adoption: May 25, 2022.

Submit Written Comments to: DCYF Rules Coordinator, email [dcyf.rulescoordinator@dcyf.wa.gov](mailto:dcyf.rulescoordinator@dcyf.wa.gov), <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by May 24, 2022.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-902-7956, email [dcyf.rulescoordinator@dcyf.wa.gov](mailto:dcyf.rulescoordinator@dcyf.wa.gov), by May 20, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule affirms DCYF's authority to issue child-specific foster family home licenses granted by RCW 74.15.125(7), and establishes the limitations of the license; namely, that licensing and child placement is at the discretion of DCYF, and placement is limited to children identified prior to the issuance of the license. The proposed rule also requires reassessment in cases where a child-specific license holder wants to receive placement of a child not identified prior to licensure or wants to receive a general foster family home license.

Reasons Supporting Proposal: The proposed rule is necessary to establish:

- Criteria for a child-specific license so that licensees and potential applicants understand how it is different from a general foster family home license,
- The placement limitations of a child-specific license, and
- The steps a child-specific license holder must complete in order to be granted a general foster family home license.

Statutory Authority for Adoption: RCW 74.15.125 (7)(b).

Statute Being Implemented: RCW 74.15.125.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Tyler Farmer, 360-628-2151; Implementation and Enforcement: DCYF, statewide.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328 (5)[(a)](i). Further, DCYF does not voluntarily make that section applicable to the adoption of this rule.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed rule impacts only foster family homes, none of which are small businesses as defined in RCW 19.85.020.

April 20, 2022  
Brenda Villarreal  
Rules Coordinator

## OTS-3694.2

### NEW SECTION

**WAC 110-148-1326 Can I get a license to care for a specific child, and what are the requirements?** (1) Pursuant to RCW 74.15.125(7), the department may issue a child-specific license to relatives or suitable persons, as defined in RCW 13.36.020, to provide foster care services to a specified child and that child's siblings or relatives in the department's care and authority.

(a) Such placement is at the discretion of the department.

(b) A licensee under this section may only receive placement of one or more specific children identified prior to the issuance of a license.

(2) The department must reassess licensees issued under this section if licensees want to:

(a) Add a child to their child specific license and that child was not identified prior to licensure; or

(b) Receive a general foster family home license.

(3) Reassessment under subsection (2) of this section may require licensees to give up their current child specific licenses, complete new or additional training, or submit new licensing applications as a condition of receiving new or different licenses.

(4) Licensees under this section must meet the licensing requirements detailed in RCW 74.15.030(2) and this chapter.

(5) A child-specific license does not grant licensees:

(a) The right to have a specific child placed in their care; or

(b) The right to be a party in any juvenile court proceeding under chapter 13.34 RCW.

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