WSR 13-13-008
PROPOSED RULES
SOUTHWEST CLEAN AIR AGENCY
[Filed June 6, 2013, 3:00 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-14-017.

Title of Rule and Other Identifying Information: SWCAA 802 SEPA procedures.

Hearing Location(s): Office of Southwest Clean Air Agency (SWCAA), 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, on October 3, 2013, at 3:00 p.m.

Date of Intended Adoption: October 3, 2013.

Submit Written Comments to: Wess Safford, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 98682, e-mail wess@swcleanair.org, fax (360) 574-0925, by September 20, 2013.

Assistance for Persons with Disabilities: Contact Tina Hallock by September 20, 2013, TTY (360) 574-3058.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule changes is to replace an existing local rule with a new local rule more consistent with currently applicable state regulations.

Reasons Supporting Proposal: The existing local regulation governing the use of SEPA for agency actions is outdated and does not cite state regulations that are appropriate for implementation of SEPA policy and procedure at the current time. The proposed rule change will replace the agency's existing SEPA policy resolution with a formal regulation consistent with the newest version of applicable state regulations.

Statutory Authority for Adoption: RCW 43.21C.120.

Statute Being Implemented: RCW 43.21C.120.

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

Name of Proponent: SWCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Wess Safford, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 986682 [98682], (360) 574-3058; Implementation: Paul Mairose, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 986682 [98682], (360) 574-3058; and Enforcement: Robert Elliott, 11815 N.E. 99th Street, Suite 1294, Vancouver, WA 986682 [98682], (360) 574-3058.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Changes proposed by SWCAA are consistent with federal or state rules already in effect. This agency is not subject to the small business economic impact provisions of chapter 19.85 RCW. A fiscal analysis has been performed to establish the basis for any proposed fee increases. Copies of this analysis are available from SWCAA.

A cost-benefit analysis is not required under RCW 34.05.328. Pursuant to RCW 34.05.328 (5)(b), this requirement does not apply to this rule adoption.

June 6, 2013
Robert D. Elliott
Executive Director

NEW SECTION

SWCAA 802-010 Purpose and Authority

This regulation contains the Agency's SEPA policies and procedures. This regulation is adopted under the authority of the State Environmental Policy Act (SEPA), RCW 43.21C.120. The statewide SEPA rules found in WAC 197-11 must be used in conjunction with this regulation.

[Statutory Authority: Chapter 43.21C.120 RCW, and WAC 197-11.]

NEW SECTION

SWCAA 802-020 Adoption by Reference

The Agency adopts the following sections of WAC 197-11 by reference:

197-11-040	Definitions
197-11-050	Lead Agency
197-11-055	Timing of the SEPA process
197-11-060	Content of environmental review
197-11-070	Limitations on actions during SEPA process
197-11-080	Incomplete or unavailable information
197-11-090	Supporting documents
197-11-100	Information required of applicants
197-11-300	Purpose of this part
197-11-305	Categorical exemptions
197-11-310	Threshold determination required
197-11-315	Environmental checklist
197-11-330	Threshold determination process
197-11-335	Additional information
197-11-340	Determination of nonsignificance (DNS)
197-11-350	Mitigated DNS
197-11-360	Determination of significance (DS)/initiation of scoping
197-11-390	Effect of threshold determination
197-11-400	Purpose of EIS
197-11-402	General requirements
197-11-405	EIS types
197-11-406	EIS timing
197-11-408	Scoping
197-11-410	Expanded scoping
197-11-420	EIS preparation
197-11-425	Style and size
197-11-430	Format
197-11-435	Cover letter or memo
197-11-440	EIS contents
197-11-442	Contents of EIS on nonproject proposals

197-11-443	EIS contents when prior nonproject EIS
197-11-444	Elements of the environment
197-11-448	Relationship of EIS to other considerations
197-11-450	Cost-benefit analysis
197-11-455	Issuance of DEIS
197-11-460	Issuance of FEIS
197-11-500	Purpose of this part
197-11-502	Inviting comment
197-11-504	Availability and cost of environmental documents
197-11-508	SEPA register
197-11-535	Public hearings and meetings
197-11-545	Effect of no comment
197-11-550	Specificity of comments
197-11-560	FEIS response to comments
197-11-570	Consulted agency costs to assist lead agency
197-11-600	When to use existing environmental documents
197-11-610	Use of NEPA documents
197-11-620	Supplemental environmental impact statement—Procedures
197-11-625	Addenda—Procedures
197-11-630	Adoption—Procedures
197-11-635	Incorporation by reference—Procedures
197-11-640	Combining documents
197-11-650	Purpose of this part
197-11-655	Implementation
197-11-660	Substantive authority and mitigation
197-11-680	Appeals
197-11-700	Definition
197-11-702	Act
197-11-704	Action
197-11-706	Addendum
197-11-708	Adoption
197-11-710	Affected tribe
197-11-712	Affecting
197-11-714	Agency
197-11-716	Applicant
197-11-718	Built environment
197-11-720	Categorical exemption
197-11-722	Consolidated appeal
197-11-724	Consulted agency
197-11-726	Cost-benefit analysis
197-11-728	County/city
197-11-730	Decisionmaker
197-11-732	Department
197-11-734	Determination of nonsignificance (DNS)
197-11-736	Determination of significance (DS)
197-11-738	EIS
197-11-740	Environment
197-11-742	Environmental checklist
197-11-744	Environmental document
197-11-746	Environmental review
197-11-750	Expanded scoping
197-11-752	Impacts
197-11-754	Incorporation by reference
197-11-756	Lands covered by water
197-11-758	Lead agency
197-11-760	License
197-11-762	Local agency
197-11-764	Major action
197-11-766	Mitigated DNS
197-11-768	Mitigation
197-11-770	Natural environment
197-11-772	NEPA
197-11-774	Nonproject
197-11-776	Phased review
197-11-778	Preparation
197-11-780	Private project
197-11-782	Probable
197-11-784	Proposal
197-11-786	Reasonable alternative
197-11-788	Responsible official
197-11-790	SEPA
197-11-792	Scope
197-11-793	Scoping
197-11-794	Significant
197-11-796	State agency
197-11-797	Threshold determination
197-11-799	Underlying governmental action
197-11-800	Categorical exemptions
197-11-880	Emergencies
197-11-890	Petitioning DOE to change exemptions
197-11-900	Purpose of this part
197-11-902	Agency SEPA Policies
197-11-916	Application to ongoing actions
197-11-920	Agencies with environmental expertise
197-11-922	Lead agency rules

197-11-924	Determining the lead agency
197-11-926	Lead agency for governmental proposals
197-11-928	Lead agency for public and private proposals
197-11-930	Lead agency for private projects with one agency with jurisdiction
197-11-932	Lead agency for private projects requiring licenses from more than one agency, when one of the agencies is a county/city
197-11-934	Lead agency for private projects requiring licenses from a local agency, not a county/city, and one or more state agencies
197-11-936	Lead agency for private projects requiring licenses from more than one state agency
197-11-938	Lead agencies for specific proposals
197-11-940	Transfer of lead agency status to a state agency
197-11-942	Agreements on lead agency status
197-11-944	Agreements on division of lead agency duties
197-11-946	DOE resolution of lead agency disputes
197-11-948	Assumption of lead agency status
197-11-960	Environmental checklist
197-11-965	Adoption notice
197-11-970	Determination of nonsignificance (DNS)
197-11-980	Determination of significance and scoping notice (DS)
197-11-985	Notice of assumption of lead agency status
197-11-990	Notice of action

[Statutory Authority: Chapter 43.21C.120 RCW, and WAC 197-11.]

NEW SECTION

SWCAA 802-030 Additional Definitions

In addition to the definitions contained in WAC 197-11-700 through 197-11-799, the following terms shall have the listed meanings:

(1) "Agency" means the Southwest Clean Air Agency.

(2) "Director" means the executive director of the Southwest Clean Air Agency.

[Statutory Authority: Chapter 43.21C.120 RCW, and WAC 197-11.]

NEW SECTION

SWCAA 802-040 Designation of Responsible Official

For proposals for which the Agency is the lead agency, the responsible official shall be the Director or an Agency employee designated by the Director. The responsible official shall make the threshold determination, supervise scoping and preparation of any required environmental impact statement (EIS), and perform any other functions assigned to the "lead agency" or "responsible official" by those sections of the SEPA rules adopted by reference in SWCAA 802-020. The Agency shall retain all documents required by the SEPA rules (WAC 197-11) and make them available in accordance with Chapter 42.17 RCW.

[Statutory Authority: Chapter 43.21C.120 RCW, and WAC 197-11.]

NEW SECTION

SWCAA 802-050 Lead Agency Determination and Responsibility

(1) When the Agency receives an application for, or initiates, a proposal that involves a nonexempt action, the Agency shall determine the lead agency for that proposal under WAC 197-11-050, 197-11-253, and 197-11-922 through 197-11-940; unless the lead agency has been previously determined or the Agency is aware that another agency is in the process of determining the lead agency. When the Agency is the lead agency for a proposal, the responsible official shall supervise compliance with the threshold determination requirements, and if an EIS is necessary, shall supervise preparation of the EIS.

(2) When the Agency is not the lead agency for a proposal, the Agency shall use and consider, as appropriate, either the DNS or the final EIS of the lead agency in making decisions on the proposal. The Agency shall not prepare or require preparation of a DNS or EIS in addition to that prepared by the lead agency, unless required under WAC 197-11-600. In some cases, the Agency may conduct supplemental environmental review under WAC 197-11-600.

(3) If the Agency receives a lead agency determination made by another agency that appears inconsistent with the criteria of WAC 197-11-253 or 197-11-922 through 197-11-940, it may object to the determination. Any objection must be made to the agency originally making the determination and resolved within 15 days of receipt of the determination, or the Agency must petition the Department of Ecology for a lead agency determination under WAC 197-11-946 within the 15-day time period. Any such petition on behalf of the Agency may be initiated by the Director.

(4) The Agency may make agreements as to lead agency status or shared lead agency duties for a proposal under WAC 197-11-942 and 197-11-944. The responsible official and any agency that will incur responsibilities as the result of such agreement must both approve the agreement.

(5) When the Agency makes a lead agency determination for a private project, the Agency shall require sufficient information from the applicant to identify which other agencies have jurisdiction over the proposal.

[Statutory Authority: Chapter 43.21C.120 RCW, and WAC 197-11.]

NEW SECTION

SWCAA 802-060 Additional Timing Considerations

Agency staff receiving a permit application will determine whether the proposal is an "action" and, if so, whether it is "categorically exempt" from SEPA. If the proposal is an

action and is not exempt, the staff person should ask the applicant to complete an environmental checklist. A checklist is not needed if the agency and applicant agree an EIS is required, SEPA compliance has been completed, SEPA compliance has been initiated by another agency, or a checklist is included with the application. The applicant should also complete an environmental checklist if the staff person is unsure whether the proposal is exempt.

[Statutory Authority: Chapter 43.21C.120 RCW, and WAC 197-11.]

NEW SECTION

SWCAA 802-070 Use of Exemptions

(1) When the Agency receives an application for a permit or, in the case of governmental proposals, the Agency initiates the proposal, the Agency shall determine whether the permit and/or the proposal is exempt. The Agency's determination that a permit or proposal is exempt shall be final and not subject to administrative review. If a permit or proposal is exempt, none of the procedural requirements of this regulation apply to the proposal. The Agency shall not require completion of an environmental checklist for an exempt permit or proposal.

(2) In determining whether or not a proposal is exempt, the Agency shall make certain the proposal is properly defined and shall identify the governmental licenses required (WAC 197-11-060). If a proposal includes exempt and nonexempt actions, the Agency shall determine the lead agency, even if the license application that triggers the Agency's consideration is exempt.

(3) If a proposal includes both exempt and nonexempt actions, the Agency may authorize exempt actions prior to compliance with the procedural requirements of this regulation, except that:

(a) The Agency shall not give authorization for:

(i) Any nonexempt action,

(ii) Any action that would have an adverse environmental impact, or

(iii) Any action that would limit the choice of alternatives;

(b) The Agency may withhold approval of an exempt action that would lead to modification of the physical environment, when such modification would serve no purpose if nonexempt action(s) were not approved; and

(c) The Agency may withhold approval of exempt actions that would lead to substantial financial expenditures by a private applicant when the expenditures would serve no purpose if nonexempt action(s) were not approved.

[Statutory Authority: Chapter 43.21C.120 RCW, and WAC 197-11.]

NEW SECTION

SWCAA 802-080 Environmental Checklist

A completed environmental checklist (or a copy) shall be filed at the same time as an application for a permit, license, certificate, or other approval not specifically exempted in this regulation; except, a checklist is not needed if the Agency and applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency.

(1) The environmental checklist shall be in the form provided in WAC 197-11-960. As used throughout this regulation, environmental checklist means the environmental checklist required by this section.

(2) The Agency shall use the environmental checklist to determine the lead agency, and if SWCAA is to be the lead agency, for determining the responsible official and for making the threshold determination.

(3) For private proposals, the Agency will require the applicant to complete the environmental checklist, providing assistance as necessary. For Agency proposals, the Agency shall complete the environmental checklist. The Agency may require that it, and not the private applicant, will complete all or part of the environmental checklist for a private proposal, if either of the following occurs:

(a) The Agency has technical information on a question or questions that is unavailable to the private applicant; or

(b) The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

[Statutory Authority: Chapter 43.21C.120 RCW, and WAC 197-11.]

NEW SECTION

SWCAA 802-090 Mitigated DNS

(1) As provided in this section, and in WAC 197-11-350, the responsible official may issue a DNS based on conditions attached to the proposal by the responsible official or on changes to, or clarifications of, the proposal made by the applicant.

(2) An applicant may request early notice of whether issuance of a DS is likely for a proposal. This request for early notice must:

(a) Be written;

(b) Follow submission of a permit application and environmental checklist for a nonexempt proposal for which the Agency is lead agency; and

(c) Precede the Agency's actual threshold determination for the proposal.

(3) The responsible official or his designee shall respond to the request within 30 working days of receipt. The response shall:

(a) Be written;

(b) State whether the Agency currently considers issuance of a DS likely and, if so, indicate the general or specific area(s) of concern that is/are leading the Agency to consider a DS; and

(c) State that the applicant may change or clarify the proposal to mitigate the indicated impacts, revising the environmental checklist and/or permit application as necessary to reflect the changes or clarifications.

(4) The Agency's written response under subsection (3) of this section shall not be construed as a determination of significance. In addition, preliminary discussion of clarifications or changes to a proposal, as opposed to a written request for early notice, shall not bind the agency to consider the clarifications or changes in its threshold determination.

(5) The agency shall not continue with the threshold determination until after receiving a written response from the applicant changing or clarifying the proposal or asking that the threshold determination be based on the original proposal.

(6) When an applicant changes or clarifies the proposal, the clarifications or changes may be included in written attachments to the documents already submitted. If the environmental checklist and supporting documents would be difficult to read and/or understand because of the need to read them in conjunction with the attachment(s), the agency may require the applicant to submit a new checklist.

(7) If an applicant submits a changed or clarified proposal, along with a revised environmental checklist, the Agency shall base its threshold determination on the changed or clarified proposal and shall make the determination within 30 days of receiving the changed or clarified proposal.

(a) If the Agency indicated specific mitigation measures in its response to the request for early notice, and the applicant changed or clarified the proposal to include those specific mitigation measures, the Agency shall issue and circulate a DNS or mitigated DNS under WAC 197-11-340(2).

(b) If the Agency indicated areas of concern, but did not indicate specific mitigation measures that would allow it to issue a DNS, the Agency shall determine if the changed or clarified proposal may have a probable significant environmental impact, issuing a DNS or DS as appropriate.

(8) Mitigation measures that justify issuance of a mitigated DNS may be incorporated in the DNS by reference to Agency staff reports, studies, or other documents. Mitigation measures incorporated in the mitigated DNS shall be deemed conditions of approval of the permit decision and may be enforced in the same manner as any term or condition of the permit, or enforced in any manner specifically prescribed by the Agency.

(9) If the Agency's tentative decision on a permit or approval does not include mitigation measures that were incorporated in a mitigated DNS for the proposal, the Agency should evaluate the threshold determination to ensure consistency with WAC 197-11-340 (3)(a) (withdrawal of DNS).

[Statutory Authority: Chapter 43.21C.120 RCW, and WAC 197-11.]

NEW SECTION

SWCAA 802-100 EIS Preparation

(1) Preparation of draft and final EISs and SEISs is the responsibility of the responsible official. Before the Agency issues an EIS, the responsible official shall be satisfied that it complies with these rules and chapter 197-11 WAC.

(2) The Agency will normally prepare its own draft and final EISs. It may require an applicant to provide information that the Agency does not possess, including specific investigations. However, the applicant is not required to supply information that is not required under these rules.

(3) If the Agency is unable to prepare a draft and/or final EIS due to its commitments or other constraints, the Agency may allow an applicant the following option for preparation of the draft and/or final EIS for the applicant's proposal:

(a) The Agency retains a mutually agreed upon and independent outside party to prepare the document.

(b) The applicant and the Agency agree upon a method of funding in which the applicant will bear the expense of the EIS preparation, but the outside party will work directly for the Agency.

(c) The outside party prepares the document under the supervision of the responsible official.

(4) Whenever someone other than the Agency prepares a draft or final EIS, the agency shall:

(a) Direct the areas of research and examination to be undertaken and the content and organization of the document.

(b) Initiate and coordinate scoping, ensuring that the outside party preparing the EIS receives all substantive information submitted by any agency or person.

(c) Assist in obtaining information on file with another agency that is needed by the outside party preparing the EIS.

(d) Allow the outside party preparing the EIS access to agency records relating to the EIS (under chapter 42.17 RCW — Public disclosure and public records law).

[Statutory Authority: Chapter 43.21C.120 RCW, and WAC 197-11.]

NEW SECTION

SWCAA 802-110 Substantive Authority

The policies and goals set forth in this section supplement those in the existing authority of the Agency.

(1) The Agency designates and adopts by reference the following policies as the basis for the Agency's exercise of substantive authority under SEPA, pursuant to this section:

(a) The Agency shall use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

(i) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(ii) Ensure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(iii) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(iv) Preserve important historic, cultural, and natural aspects of our national heritage;

(v) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(vi) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(vii) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(b) The Agency recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

(2) The Agency may attach conditions to a permit or approval for a proposal if:

(a) The mitigation measures included in such conditions are reasonable and capable of being accomplished;

(b) Such conditions are necessary to mitigate specific probable adverse environmental impacts identified in environmental documents prepared pursuant to this ordinance;

(c) The Agency has considered whether other local, state, or federal mitigation measures applied to the proposal are sufficient to mitigate the identified impacts;

(d) Such conditions are in writing; and

(e) Such conditions are based on one or more policies in subsection (1) of this section and cited in the license or other decision document.

(3) The agency may deny a permit or approval for a proposal on the basis of SEPA if:

(a) Approving the proposal would result in probable significant adverse environmental impacts that are identified in a FEIS or final SEIS prepared pursuant to this ordinance;

(b) There are no reasonable mitigation measures capable of being accomplished that are sufficient to mitigate the identified impact; and

(c) The denial is based on one or more policies identified in subsection (1) of this section and identified in writing in the decision document.

[Statutory Authority: Chapter 43.21C.120 RCW, and WAC 197-11.]

NEW SECTION

SWCAA 802-120 Public Notice

(1) Whenever the Agency issues a DNS under WAC 197-11-340(2) or a DS under WAC 197-11-360(3), the Agency shall give public notice as follows:

(a) If public notice is required for a nonexempt license, the notice shall state whether a DS or DNS has been issued and when comments are due.

(b) If no public notice is required for the permit or approval, the city/county shall give notice of the DNS or DS by:

(i) Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered; and

(ii) Posting notice on the Agency website.

(2) Whenever the Agency issues a DS under WAC 197-11-360(3), the Agency shall state the scoping procedure for the proposal in the DS as required in WAC 197-11-408 and in the public notice.

(3) Whenever the Agency issues a DEIS under WAC 197-11-455(5) or a SEIS under WAC 197-11-620, notice of the availability of those documents shall be given by indicating the availability of the DEIS in any public notice required for a nonexempt license; and at least one of the following methods:

(a) Posting the property, for site-specific proposals;

(b) Publishing notice in a newspaper of general circulation in the county, city, or general area where the proposal is located;

(c) Notifying public or private groups which have expressed interest in a certain proposal or in the type of proposal being considered;

(d) Notifying the news media;

(e) Placing notices in appropriate regional, neighborhood, ethnic, or trade journals;

(f) Publishing notice in agency newsletters and/or sending notice to agency mailing lists; and/or

(g) Posting notice on the Agency website.

(4) Whenever possible, the Agency shall integrate the public notice required under this section with existing notice procedures for the Agency's nonexempt permit(s) or approval(s) required for the proposal.

(5) The Agency may require an applicant to complete the public notice requirements for the applicant's proposal at his or her expense.

[Statutory Authority: Chapter 43.21C.120 RCW, and WAC 197-11.]

NEW SECTION

SWCAA 802-130 Fees

The Agency may require the following fees for its activities in accordance with the provisions of this regulation.

(1) Threshold Determination. The Agency may charge and collect the fee specified below from any applicant to cover the costs incurred by the Agency in preparing an environmental checklist or other information needed for the Agency to make a threshold determination. In addition, The Agency may contract directly with a consultant for preparation of an environmental checklist or other information needed for the Agency to make a threshold determination, and may bill such costs and expenses directly to the applicant. The Agency may require the applicant to post bond or otherwise ensure payment of such costs and expenses. If the staff time required to make a threshold determination exceeds the number of work hours associated with the applicable fee, the applicant will be invoiced for each additional work hour at the rate of $70.00 per hour.

SEPA Threshold Determination Fee:

Minor project	$1,000.00	(14 associated work hours)
Major project	$2,500.00	(35 associated work hours)

(2) Environmental impact statement.

(a) When SWCAA is the lead agency for a proposal requiring an EIS, and the responsible official determines that the EIS shall be prepared by employees of the Agency, the staff time required to prepare the EIS will be invoiced to the applicant at the rate of $70.00 per hour. The Agency may also contract directly with a consultant for preparation of the EIS, and may bill such costs and expenses directly to the applicant. The responsible official shall advise the applicant(s) of the projected costs for the EIS prior to actual preparation; the applicant shall post bond or otherwise ensure payment of such costs.

(b) The responsible official may determine that the Agency will contract directly with a consultant for preparation of an EIS, or a portion of the EIS, for activities initiated by some persons or entity other than the Agency and may bill such costs and expenses directly to the applicant. The Agency may require the applicant to post bond or otherwise ensure payment of such costs.

(c) If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under (a) or (b) of this subsection which remain after incurred costs are paid.

(3) Public notice. The Agency may collect a reasonable fee from an applicant to cover the cost of meeting the public notice requirements of this regulation relating to the applicant's proposal.

(4) The Agency shall not collect a fee for performing its duties as a consulted agency, except as provided in WAC 197-11-570.

(5) The Agency may charge any person for copies of any document prepared under this ordinance, and for mailing the document, in a manner provided by Chapter 42.17 RCW.

[Statutory Authority: Chapter 43.21C.120 RCW, and WAC 197-11.]

NEW SECTION

SWCAA 802-140 Severability

If any provision of this regulation or its application to any person or circumstance is held invalid, the remainder of this regulation, or the application of the provision to other persons or circumstances, shall not be affected.

[Statutory Authority: Chapter 43.21C.120 RCW, and WAC 197-11.]

WSR 13-14-027
PROPOSED RULES
PARKS AND RECREATION COMMISSION
[Filed June 25, 2013, 12:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-10-041.

Title of Rule and Other Identifying Information: The agency has completed a review of the following chapters of administrative rules and has proposed amendments and a new section within chapter 352-32 WAC, Public use of state park areas and chapter 352-37 WAC, Ocean beaches.

Hearing Location(s): Anacortes City Hall, 904 6th Street, Anacortes, WA, on August 8, 2013, at 9:00 a.m.

Date of Intended Adoption: August 8, 2013.

Submit Written Comments to: Susan Kavanaugh, 1111 Israel Road, Olympia, WA 98504, e-mail susan.kavanaugh@parks.wa.gov, fax (360) 586-6651, by August 1, 2013.

Assistance for Persons with Disabilities: Contact Becki Ellison at becki.ellison@parks.wa.gov or by calling (360) 902-8502.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: State parks staff has reviewed the commission rules in consideration of changes to current business practices. The agency has proposed changes to selected sections of chapter 352-32 WAC in order to consider the maximum length of stay for recreational camping during high use seasons, temporary closures of parks/park areas for the protection of natural/cultural resources or public safety, eliminating reciprocity with other states in regard to sno-park permit fees and clarification of dates sno-park permit is valid and eliminating one section to simplify the rules. The agency is also proposing the addition of a new section to chapter 352-37 WAC allowing temporary closures of parks/park areas for the protection of natural/cultural resources or public safety.

Substantive changes are requested in WAC 352-32-030 Camping,352-32-050 Park periods, 352-32-260 Sno-park permit, 352-32-265 Sno-park permit—Display and 352-32-270 Sno-park permit—Fees; and new section WAC 352-37-325 Seashore conservation area closures.

Statutory Authority for Adoption: RCW 79A.05.030, 79A.05.035.

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

Name of Proponent: Washington state parks and recreation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Pamela McConkey, 1111 Israel Road, Olympia, WA 98504, (360) 902-8595; Operations: Susan Kavanaugh, 1111 Israel Road, Olympia, WA 98504, (360) 902-8847; and Parks Development: Lisa Lantz, 1111 Israel Road, Olympia, WA 98504, (360) 902-8641.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This chapter of administrative rule[s] does not regulate or have economic impact through regulations on small business. There are no compliance costs to small business as a result of the modifications to these rules.

A cost-benefit analysis is not required under RCW 34.05.328. Significant legislative rule-making requirements are not imposed on the state parks and recreation commission, nor has the commission voluntarily applied those requirements.

Valeria Evans
Management Analyst

AMENDATORY SECTION (Amending WSR 12-22-031, filed 10/31/12, effective 12/1/12)

WAC 352-32-030 Camping. (1) Camping facilities of the state parks within the Washington state parks and recreation commission system are designed and administered specifically to provide recreational opportunities for park visitors. Use of park facilities for purposes which are of a nonrecreational nature, such as long-term residency at park facilities, obstructs opportunities for recreational use, and is inconsistent with the purposes for which those facilities were designed.

No person or camping party may use any state park facility for residence purposes, as defined (WAC 352-32-010).

(2) No person shall camp in any state park area except in areas specifically designated and/or marked for that purpose or as directed by a ranger.

(3) Occupants shall vacate camping facilities by removing their personal property therefrom no later than 1:00 p.m., if the applicable camping fee has not been paid or if the time limit for occupancy of the campsite has expired or the site is reserved by another party. Remaining in a campsite beyond

the established checkout time shall subject the occupant to the payment of an additional camping fee.

(4) Use of utility campsites by tent campers shall be subject to payment of the utility campsite fee except when otherwise specified by a ranger.

(5) A campsite is considered occupied when it is being used for purposes of camping by a person or persons who have paid the camping fee within the applicable time limits or when it has been reserved through the appropriate procedures of the reservation system. No person shall take or attempt to take possession of a campsite when it is being occupied by another party, or when informed by a ranger that such site is occupied, or when the site is posted with a "reserved" sign or when the campsite has an incoming reservation. In the case of a reserved site, a person holding a valid reservation for that specific site may occupy it according to the rules relating to the reservation system for that park. In order to afford the public the greatest possible use of the state park system on a fair and equal basis, campsites in those parks not on the state park reservation system will be available on a first-come, first-serve basis. No person shall hold or attempt to hold campsite(s), for another camping party for present or future camping dates, except as prescribed for multiple campsites. Any site occupied by a camping party must be actively utilized for camping purposes.

(6) One person may register for one or more sites within a multiple campsite by paying the multiple campsite fee and providing the required information regarding the occupants of the other sites. An individual may register and hold a multiple campsite for occupancy on the same day by other camping parties. Multiple campsites in designated reservation parks may be reserved under the reservation system.

(7) In order to afford the general public the greatest possible use of the state park system, on a fair and equal basis, and to prevent residential use, continuous occupancy of facilities by the same camping party shall be limited. April 1 through September 30: The maximum length of stay during this period shall be established annually for each park by the director or designee and shall be no less than ten and no more than fourteen nights. Campers may stay ((~~ten~~)) the established maximum consecutive nights in one park, after which the camping party must vacate the park for three consecutive nights((~~, April 1 through September 30, not to exceed thirty days in a forty-day time period; provided that at the discretion of the park ranger the maximum stay may be extended to fourteen consecutive nights if the campground is not fully occupied~~)). October 1 through March 31: The maximum length of stay is twenty nights. Campers may stay twenty consecutive nights in one park, after which the camping party must vacate the park for three consecutive nights, ((~~October 1 through March 31,~~)) not to exceed forty days in a sixty-day time period. ((~~This~~)) These limitations shall not apply to those individuals who meet the qualifications of WAC 352-32-280 and 352-32-285.

(8) A maximum of eight people shall be permitted at a campsite overnight, unless otherwise authorized by a ranger. The number of vehicles occupying a campsite shall be limited to one car and one recreational vehicle: Provided, That one additional vehicle without built-in sleeping accommodations may occupy a designated campsite when in the judgment of a ranger the constructed facilities so warrant. The number of tents allowed at each campsite shall be limited to the number that will fit on the developed tent pad or designated area as determined by a ranger.

(9) Persons traveling by bicycles, motor bikes or other similar modes of transportation and utilizing campsites shall be limited to eight persons per site, provided no more than four motorcycles may occupy a campsite.

(10) Water trail camping sites are for the exclusive use of persons traveling by human and wind powered beachable vessels as their primary mode of transportation to the areas. Such camping areas are subject to the campsite capacity limitations as otherwise set forth in this section. Exceptions for emergencies may be approved by the ranger on an individual basis. Water trail site fees, as published by state parks, must be paid at the time the site is occupied.

(11) Overnight stays (bivouac) on technical rock climbing routes will be allowed as outlined in the park's site specific climbing management plan. All litter and human waste must be contained and disposed of properly.

(12) Emergency camping areas may be used only when all designated campsites are full and at the park ranger's discretion. Persons using emergency areas must pay the applicable campsite fee and must vacate the site when directed by the park ranger.

(13) Designated overflow camping areas may be used only when all designated campsites in a park are full and the demand for camping in the geographic area around the park appears to exceed available facilities. Persons using overflow camping areas must pay the applicable campsite fee.

(14) Overnight camping will be allowed in approved areas within designated sno-parks in Washington state parks, when posted, provided the appropriate required sno-park permit is displayed.

(15) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 07-03-121, filed 1/22/07, effective 2/22/07)

WAC 352-32-045 Reservations for use of designated group facilities. (1) All designated group facilities shall be reservable by groups as defined in WAC 352-32-010.

(2) All designated group facilities shall have a predetermined use capacity. No group exceeding this capacity in number shall use these areas. Groups making reservations shall be charged the applicable fee for a minimum of 20 people.

(3) Use of designated group facilities may be by reservation. Requests made at parks, not on central reservation system, for reservations for groups of 20 to 250 shall be made 15 days in advance and for groups in excess of 250 shall be made 30 days in advance of the proposed use date, using the group use permit. All conditions outlined on the group use permit shall be binding on the group.

(4) Submittal of the group use permit request and payment in full of appropriate fees are required for the use of these facilities. Fees must be paid by credit card, certified check or money order. Fees are published by state parks. Refunds will be made only to those groups which cancel their

reservations thirty or more days before the effective date of the reservations.

(5) For overnight group use, parking will be in the provided, defined areas. If additional parking is required, it may be available in the park's extra vehicle parking facility following the payment of the appropriate extra vehicle parking fee.

(6) The organization or delegated group leader making the reservation is responsible for any damages or extra cleaning that occurs as a result of the use of the facility(ies) beyond normal care and wear.

(7) Facility reservations for parks not on the central reservation system are made at the park and will be accepted ((~~for the calendar year, on or after the first working day in January of that calendar year~~)) nine months in advance. Reservations shall be made by a person of the age of majority, who must be in attendance during the group's activities. Reservations at the parks will be accepted in writing, in person, or by phone at the discretion of the park manager. In person and phone reservation requests shall only be accepted at the park during normal park operation hours. All reservation requests will be processed in order of arrival. Group facility areas not reserved are available on a first-come, first-serve basis.

(8) Any group wishing to sell or dispense alcoholic beverages must request and obtain all appropriate licenses and permits. In order to sell alcoholic beverages, the group must obtain a temporary concession permit from the headquarters office of the commission.

(9) It shall be within the authority of the park manager, or his representative, to rescind the rights of a reservation, and remove from the park, any or all members of the group whose behavior, at any time, is in conflict with any state laws, becomes detrimental to the health and safety of the group or other park users, or becomes so unruly as to affect the reasonable enjoyment of the park by other park users.

AMENDATORY SECTION (Amending WSR 00-13-070, filed 6/16/00, effective 7/17/00)

WAC 352-32-080 Swimming. (1) Swimming areas in state park areas are marked with buoys, log booms, or other markers, clearly designating the boundaries of such areas.

(2) Any person swimming outside the boundaries of a designated swimming area, or in any area not designated for swimming, or in any area, whether designated for swimming or not, where no lifeguard is present, shall do so at his or her own risk.

(3) All persons using any designated swimming area shall obey all posted beach rules and/or the instructions of lifeguards, rangers, or other state parks employees.

Children twelve years of age or younger, must be accompanied by a responsible adult while using the swim area.

(4) No person shall swim in any designated watercraft launching area.

(5) No person shall give or transmit a false signal or false alarm of drowning in any manner.

(6) Use of ((~~inflated mattresses,~~)) rubber rafts, rubber boats, inner tubes, or other large floating objects, exceeding three feet in width are prohibited in designated swimming areas except U.S. Coast Guard approved life jackets, ((~~in state park areas~~)) small children's floatation devices or toys and one-person inflatable mattresses for the purpose of buoyancy while swimming or playing in any designated swimming area ((~~is prohibited~~)) are allowed. Concessionaires are not permitted to rent or sell ((~~such~~)) prohibited floating devices within state parks without written approval of the ((~~commission~~)) director or designee.

(7) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 08-24-006, filed 11/20/08, effective 12/21/08)

WAC 352-32-210 Consumption of alcohol in state park areas. (1) Opening, possessing alcoholic beverage in an open container, or consuming any alcoholic beverages in any state park or state park area is prohibited except in the following designated areas and under the following circumstances in those state parks or state park areas not posted by the director or designee as closed to alcohol pursuant to subsection (4) of this section:

(a) In designated campsites or in other overnight accommodations, by registered occupants or their guests; provided ELC users obtain written permission through state parks application process;

(b) In designated picnic areas, which shall include those sites within state park areas where picnic tables, benches, fireplaces, and/or outdoor kitchens are available, even though not signed as designated picnic areas and public meeting rooms;

(c) In any reservable group day use facility by any authorized group which has paid the reservation fee and applicable damage deposit and which has obtained prior permit authorization to have alcohol by the park manager; and

(d) In any building, facility or park area operated and maintained under a concession agreement, wherein the concessionaire has been licensed to sell alcoholic beverages by the Washington state liquor control board, and where the dispensation of such alcoholic beverages by such concessionaire has been approved by the commission.

(2) ((~~Opening,~~)) Possessing alcoholic beverage in an open container, or consuming any alcoholic beverages is prohibited at the following locations:

(a) Dash Point State Park;

(b) Saltwater State Park;

(c) Sacajawea State Park;

(d) Flaming Geyser State Park;

Except in the following designated areas and under the following circumstances:

(i) In designated campsites, or in other overnight accommodations by registered occupants or their guests.

(ii) In any building, facility or park area operated and maintained under a concession agreement wherein the concessionaire has been licensed to sell alcoholic beverages by the Washington state liquor control board, and where the dispensation of such alcoholic beverages by such concessionaire has been approved by the commission.

(iii) In any reservable group day use facility by any authorized group which has paid the reservation fee and

applicable damage deposit and which has obtained prior permit authorization to have alcohol by the park manager.

(3) The director or designee may, for a specified period or periods of time, close any state park or state park area to alcohol if the director or designee concludes that an alcohol closure is necessary for the protection of the health, safety and welfare of the public, park visitors or staff, or park resources. The director or designee shall consider factors including but not limited to the effect or potential effect of alcohol on public and employee safety, park appearance, atmosphere, and noise levels, conflicts with other park uses or users, the demand for law enforcement, and the demand on agency staff. Prior to closing any park or park area to alcohol, the director or designee shall hold a public hearing in the general area of the park or park area to be closed to alcohol. Prior notice of the meeting shall be published in a newspaper of general circulation in the area. In the event the director or designee determines that an immediate alcohol closure is necessary to protect against an imminent and substantial threat to the health, safety and welfare of the public, park visitors or staff, or park resources, the director or designee may take emergency action to close a park or park area to alcohol without first complying with the publication and hearing requirements of this subsection. Such emergency closure may be effective for only so long as ((~~is necessary for the director or designee to comply with the publication and hearing requirements of this subsection~~)) the imminent and substantial threat exists.

(4) The director or designee shall ensure that any park or park area closed to alcohol pursuant to subsection (3) of this section is conspicuously posted as such at the entrance to said park or park area. Additionally, the director or designee shall maintain for public distribution a current list of all parks and park areas closed to alcohol pursuant to subsection (3) of this section.

(5) Dispensing alcoholic beverages from containers larger than two gallons is prohibited in state park areas except when authorized in writing and in advance by the park manager.

(6) The provisions of this rule shall not apply to any part of the Seashore Conservation Area, as designated and established by RCW 79A.05.605.

(7) Opening, consuming, or storing alcoholic beverages in Fort Simcoe State Park and Squaxin Island State Park is prohibited.

(8) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 07-03-121, filed 1/22/07, effective 2/22/07)

WAC 352-32-237 Geocache. (1) In order to place a cache on state parks' property, an individual or organization must obtain a geocache placement permit from state parks. Any cache located on state parks' property that does not have a permit on file is subject to removal from its location, and after notification of the owner (if known) and Washington State Geocache Association (WSGA), may be disposed of within ten days.

(2) ((~~The geocache owner must check the geocache at least every ninety days unless an extension is approved by the park manager not to exceed one hundred eighty days. Proof of the check will be by e-mail, letter, or personal communication by the owner with the park manager or designee, and the owner's entry in the cache log book indicating the date of inspection.~~

~~(3)~~)) The following items shall not be placed in the geocache: Food items; illegal substances; medications; personal hygiene products; pornographic materials; inappropriate, offensive, or hazardous materials or weapons of any type. Log books are required for each cache and are to be provided by the owner of the cache.

((~~(4)~~)) (3) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending Order 27, filed 9/23/76)

WAC 352-32-240 Nondiscrimination certification. (1) This is to certify that the Washington state parks and recreation commission is an equal opportunity employer, and that no person in the United States is denied the benefits of full and equal enjoyment of the right of employment or any goods, services, facilities, privileges, advantages, and accommodations of, or on any property administered by the Washington state parks and recreation commission ((~~because of race, creed, color, age, sex, national origin, or physical disability~~)).

(2) The provisions of this certification shall apply to all contractors, lessees, licensees, and concessionaires operating under any legal instrument issued by the Washington state parks and recreation commission, as well as areas operated by the Washington state parks and recreation commission itself.

AMENDATORY SECTION (Amending WSR 04-01-067, filed 12/12/03, effective 1/12/04)

WAC 352-32-310 Penalties. Any violation designated in this chapter as a civil infraction ((~~shall constitute a misdemeanor until the violation is included in a civil infraction monetary schedule adopted by rule by the state supreme court~~)) pursuant to chapter 7.84 RCW, will be treated as infractions regardless of whether they appear in the IRLJ 6.2 penalty schedule, except that a violation of ((~~WAC 352-32-220, 352-32-260, and 352-32-265 shall at all times constitute a civil infraction, and~~)) WAC 352-32-120 shall at all times be a gross misdemeanor.

AMENDATORY SECTION (Amending WSR 00-13-070, filed 6/16/00, effective 7/17/00)

WAC 352-32-050 Park periods. (1) The director or designee shall establish for each state park area, according to existing conditions, times, and periods when it will be open or closed to the public. Such times and periods shall be posted at the entrance to the state park area affected and at the park office. No person shall enter or be present in a state park area after the posted closing time except:

(a) Currently registered campers who are camping in a designated campsite or camping area;

(b) Guests of a currently registered camper who may enter and remain until 10:00 p.m.;

(c) Guests of a state park employee;

(d) Technical rock climbers who bivouac on vertical climbing routes not otherwise closed to public use.

(2) The director or designee may, for a specified period or periods of time, close any state park area to public access if the director or designee concludes that such a closure is necessary for the protection of the health, safety and welfare of the public, park visitors or staff, or park resources.

(3) Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 92-19-098, filed 9/17/92, effective 10/18/92)

WAC 352-32-260 Sno-park ((~~permit~~)) display. Only those vehicles properly displaying a valid winter recreational area parking permit issued by the state of Washington ((~~or by another state or nation which honors a Washington state winter recreational area parking permit~~)) shall park in designated winter recreational parking areas: ((~~Provided, That Washington licensed vehicles shall be required to display a Washington state winter recreational area parking permit.~~)) Permits shall be displayed near the lower left corner and on the inside of the windshield of the vehicle when the vehicle is parked in a designated winter recreational parking area. Those vehicles in violation of this rule shall be subject to the application of RCW 46.61.587. Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 97-21-133, filed 10/21/97, effective 1/1/98)

WAC 352-32-270 Sno-park permit—Fees. Fees for the winter recreational area parking permits will be established by the commission and shall be published by state parks. These permits include:

(1) Seasonal permit - ((~~Commences October 1 and expires May 1~~)) Valid December 1st through April 30th of the winter season for which it is issued.

(2) One day permit - ((~~Commences on~~)) Valid for the date identified on the permit in the space provided ((~~and expires on that same date~~)).

(3) Special groomed trail permit - The director may designate certain sno-parks as requiring a special groomed trail permit. In making this designation the director may consider the following factors:

The facilities and services available;

The demand for facilities and services; user days; and

Such other considerations as the director deems appropriate.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 352-32-265 Sno-park permit—Display.

NEW SECTION

WAC 352-37-325 Seashore conservation area closures. The director or designee may, for a specified period or periods of time, close any portion of the seashore conservation area to public access if the director or designee concludes that such a closure is necessary for the protection of the health, safety and welfare of the public, park visitors or staff, or park resources.

WSR 13-14-028
PROPOSED RULES
TRANSPORTATION IMPROVEMENT BOARD
[Filed June 25, 2013, 12:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-07-063.

Title of Rule and Other Identifying Information: Amend WAC 479-14-011, 479-01-060, and chapter 479-10 WAC, where appropriate and develop new WACs necessary to implement the arterial preservation program.

Hearing Location(s): Quality Inn & Suites, 700 Port Drive, Clarkston, WA 99403, (509) 758-9500, on September 27, 2013, at 9:00 a.m.

Date of Intended Adoption: September 27, 2013.

Submit Written Comments to: Alicia Seegers Martinelli, P.O. Box 40901, Olympia, WA 98504-0901, e-mail aliciam @tib.wa.gov, fax (360) 586-1165, by August 9, 2013.

Assistance for Persons with Disabilities: Contact Eileen Bushman by September 9, 2013, (360) 586-1146.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Develop rules to support RCW 47.26.084 [(1)](c), which directs the transportation improvement board (TIB) to use funds from the transportation improvement account to maintain, preserve, and extend the life and utility in transportation systems and services. These rules will align TIB preservation programs under one chapter, outline the arterial preservation program's intent, provide parameters for eligibility, and define requirements for local agency matching funds.

Reasons Supporting Proposal: Chapter 306, Laws of 2013, provides funding for the arterial preservation program to help low tax-based, medium-sized cities preserve arterial pavements.

Statutory Authority for Adoption: Chapter 47.26 RCW.

Statute Being Implemented: RCW 47.26.084 [(1)](c).

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

Name of Proponent: [TIB], governmental.

Name of Agency Personnel Responsible for Drafting: Alicia Seegers Martinelli, P.O. Box 40901, Olympia, WA

98504-0901, (360) 586-1155; Implementation and Enforcement: Stevan Gorcester, P.O. Box 40901, Olympia, WA 98504-0901, (360) 586-1139.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Customers are local government entities.

A cost-benefit analysis is not required under RCW 34.05.328. Not required under RCW 34.05.328(5).

June 25, 2013
Stevan Gorcester
Executive Director

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-01-060 Executive director—Powers and duties. The board appoints an executive director who will serve at its pleasure to carry out the board priorities and the mission of the agency including the following administrative duties:

(1) The executive director will direct and supervise all day-to-day activities of the staff.

(2) The executive director is the appointing authority of the staff and may authorize subordinates to act in the executive director's place to carry out administrative duties.

(3) The executive director has sidewalk deviation authority as described in WAC 479-14-200.

(4) The executive director has administrative increase authority for projects up to the following levels:

(a) Urban program – Fifteen percent of project costs or seven hundred fifty thousand dollars whichever is less.

(b) Small city arterial program – Up to one hundred twenty-five thousand dollars.

(c) City hardship assistance program – Up to seventy-five thousand dollars.

(d) Sidewalk program – Up to fifty thousand dollars ((~~for small city projects; zero for urban projects~~)).

(e) Small city preservation program – Up to two hundred thousand dollars within available funding limitations.

(f) Arterial preservation program – Up to fifteen percent of original TIB grant.

(g) Small city federal match within the limits set by the board in accordance with WAC 479-14-215.

Chapter 479-10 WAC

((~~SMALL CITY PAVEMENT~~)) PRESERVATION ((~~AND SIDEWALK ACCOUNT~~)) PROGRAMS

AMENDATORY SECTION (Amending WSR 08-21-005, filed 10/2/08, effective 11/2/08)

WAC 479-10-005 Purpose ((~~and~~)), authority, and funding. The board adopts reasonable rules necessary to administer the:

(1) Small city ((~~pavement~~)) preservation ((~~and sidewalk account~~)) program pursuant to RCW 47.26.340, 47.26.345 and 47.26.164 and funded by the small city pavement preservation and sidewalk account;

(2) Arterial preservation program pursuant to RCW 47.26.084 and funded by the highway safety account or the transportation improvement account; and

(3) City hardship assistance program pursuant to RCW 47.26.164 and funded by the small city pavement preservation and sidewalk account.

AMENDATORY SECTION (Amending WSR 10-14-027, filed 6/28/10, effective 7/29/10)

WAC 479-10-011 ((~~Programs funded from the~~)) Small city pavement preservation and sidewalk account additional uses. ((~~The small city pavement preservation and sidewalk account funds:~~

~~(1) Small city preservation program and if funds are~~)) If available, ((~~for use on a project-by-project basis for the~~)) funds from the small city pavement preservation and sidewalk account may be provided to small cities to match federal funding provided for local government federal aid of transportation, on a first come/first served basis((~~; and~~

~~(2) City hardship assistance program~~)).

NEW SECTION

WAC 479-10-300 Intent of the arterial preservation program. The intent of the arterial preservation program is to aid urban cities with low assessed property valuation preserve arterial pavement.

NEW SECTION

WAC 479-10-310 Who is eligible for arterial preservation program funds. Incorporated cities with a population of more than five thousand and an assessed property valuation below a maximum valuation established annually by the board are eligible to receive arterial preservation program funding.

NEW SECTION

WAC 479-10-320 Projects eligible for arterial preservation program funds. Eligible roadway projects are:

(1) Improvements on city-owned federally classified arterials;

(2) City-owned federal arterial functional classification projects within cities qualifying for urban designation upon the next federal census; and

(3) City-owned urban streets, not functionally classified at the time of award, but meeting federal functional classification prior to approval to expend board funds.

NEW SECTION

WAC 479-10-323 Arterial preservation program allowable street system treatments and funding uses. The type of treatment allowed will be based on the pavement condition rating, treatment types available in the area, and concurrence by the local agency. Funding can be used for resurfacing of existing streets, required ADA ramp upgrades, and minor associated sidewalk repairs.

NEW SECTION

WAC 479-10-330 Consideration of arterial preservation program funding requests. To be considered for funding a project under the arterial preservation program, an eligible agency must submit a funding application in response to a TIB call for projects.

NEW SECTION

WAC 479-10-370 Arterial preservation program city matching funds. The arterial preservation program provides funding when program funds are matched by any other non-TIB funds as follows:

(1) If the city assessed valuation is less than one billion dollars, the matching rate is ten percent of the total project costs;

(2) If the city valuation is one billion dollars to two and one-half billion dollars, the matching rate is fifteen percent of the total project costs;

(3) If the city valuation is over two and one-half billion dollars, the matching rate is twenty percent of the total project costs.

AMENDATORY SECTION (Amending WSR 12-08-060, filed 4/3/12, effective 5/4/12)

WAC 479-14-011 Programs funded from the transportation improvement account. The transportation improvement account funds the following programs:

(1) The urban program;

(2) The small ((~~arterial~~)) city arterial program:

(a) Grants; and

(b) Federal match funding.

(3) The sidewalk programs:

(a) Urban sidewalk program; and

(b) Small city sidewalk program.

(4) The arterial preservation program.

WSR 13-14-034
PROPOSED RULES
PROFESSIONAL EDUCATOR STANDARDS BOARD
[Filed June 26, 2013, 3:52 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-23-036.

Title of Rule and Other Identifying Information: Amends WAC 181-78A-100 and 181-78A-110 to clarify program review team membership in reviews for existing programs. Clarifies that limited approval is based on results of board action in response to reviews and may include recommendations.

Hearing Location(s): Red Lion at the Park, 303 West North River Drive, Spokane, WA 99201, on September 19, 2013, at 8:30.

Date of Intended Adoption: September 19, 2013.

Submit Written Comments to: David Brenna, Old Capitol Building, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by September 12, 2013.

Assistance for Persons with Disabilities: Contact David Brenna by September 12, 2013, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Defines review team membership based on changes to review schedules. Provides for a board response to include recommendations for improvement.

Reasons Supporting Proposal: Strengthens requirements; stakeholder.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No fiscal impact.

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

June 26, 2013
David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 12-23-023, filed 11/13/12, effective 12/14/12)

WAC 181-78A-100 Existing approved programs. Chapter 181-78A WAC rules shall govern all policies related to programs upon adoption by the professional educator standards board, which shall provide assistance to programs in the revision of their existing programs.

(1) The professional educator standards board shall determine the schedule for such approval reviews and whether an on-site visit or other forms of documentation and validation shall be used for the purposes of granting approval under program approval standards. In determining the schedule for site visits, the board shall take into consideration the partnership agreement between the state and national accreditation organizations as such agreement relates to the accreditation cycle and allow CAEP accredited colleges/universities to follow the CAEP schedule for their state site visit. Non-CAEP accredited colleges/universities shall have a state approval site visit every five years. The professional educator standards board may require more frequent site visits at their discretion pursuant to WAC 181-78A-110(2). The professional educator standards board will not consider requests for site visit delays.

(2) Each institution shall submit its program for review when requested by the professional educator standards board to ensure that the program meets the state's program approval standards as follows:

(a) At least six months prior to a scheduled on-site visit, the institution shall submit an institutional report that pro-

vides evidence and narrative, as needed, that addresses how the program approval standards are met for each preparation program undergoing review. Evidence shall include such data and information from the annual data submissions required per WAC 181-78A-255(2) as have been designated by the professional educator standards board as evidence pertinent to the program approval process.

(b) The institutional report shall be reviewed by ((~~an off-site~~)) a team whose membership is composed of:

(i) One member of the professional educator standards board;

(ii) One peer institution representative;

(iii) One individual with assessment expertise;

(iv) Two K-12 practitioners with expertise related to the programs scheduled for review; and

(v) A designated professional educator standards board staff member who shall serve as team leader.

(vi) Substitutions, drawn from (b)(i) through (iv) of this subsection, may be assigned when individuals are not available. Additions to the team shall be drawn from (b)(i) through (iv) of this subsection when necessary. The professional educator standards board liaison for that institution may be present, but shall not serve in an evaluative role. All members, including substitutes, shall be trained.

(vii) Team membership may be reduced to regular continuing visits in which fewer than five standards are being reviewed, initial visits, and focus visits. At a minimum, the team must consist of one P-12 practitioner and one member representing higher education.

(c) The review of the off-site team shall identify additional evidence and clarifications that may be needed to provide adequate support for the institutional report.

(d) The report of the off-site team shall be submitted to the institution, which shall provide an addendum to the institutional report no later than five weeks preceding the on-site review.

(e) The on-site visit shall be conducted in compliance with the protocol and process adopted and published by the professional educator standards board. The team shall be comprised of members of the off-site review team.

(f) The final site visit report and other appropriate documentation will be submitted to the professional educator standards board.

(g) Institutions may submit a reply to the report within two weeks following receipt of the report. The reply may address issues for consideration, including a request for appeal per this subsection (g), limited to evidence that the review disregarded state standards, failed to follow state procedures for review, or failed to consider evidence that was available at the time of the review.

(h) In considering the report, the professional educator standards board may grant approval according to WAC 181-78A-110 and 181-78A-100(1).

(i) Institutions may request a hearing in instances where it disagrees with the professional educator standards board's decision. The hearing will be conducted through the office of administrative hearings by an administrative law judge per chapter 34.05 RCW. The institution seeking a hearing will provide a written request to the professional educator standards board in accordance with WAC 10-08-035.

(3) Institutions seeking Council for the Accreditation of Educator Preparation, Council for Accreditation of Counseling and Related Education Programs, and National Association of School Psychologist accreditation may request from the professional educator standards board approval for concurrent site visits which would utilize the same documentation with the exception of material submitted by the institution to the state for the professional education advisory boards and the accountability standards.

AMENDATORY SECTION (Amending WSR 10-23-078, filed 11/15/10, effective 12/16/10)

WAC 181-78A-110 Length of time for which program approval status shall be granted. (1) Existing programs. Based upon review of the program site visit report and other documentation requested, and taking into consideration: The degree to which previously identified issues have been successfully addressed, the relationship and balance between program strengths and weaknesses, and the relative importance of specific unmet criteria to the overall function of the program, the professional educator standards board shall exercise professional judgment in taking one of the following actions:

(a) Limited, approval of up to one year in length. In issuing limited approval, and depending on the nature of evidence that must be considered to regain full approval, the board may specify the requirement of a:

(i) Focused-site visit related to unmet standards and recommendations; or

(ii) Written report, related to unmet standards and recommendations.

(b) Full approval of either:

(i) Five years; or

(ii) Seven years, per provisions of WAC 181-78A-100(6); or

(c) Disapproval (WAC 181-78A-115):

(i) A program with full five- or seven-year approval prior to the site visit shall not receive a disapproval rating, except under the provisions of subsection (3) of this section.

(ii) A program awarded a disapproval rating may request a hearing conducted through the office of administrative hearings under WAC 181-78A-100 (7)(g) and 10-08-035.

(2) New programs. All new programs shall be conditionally approved for up to twenty-seven months under WAC 181-78A-105.

(3) The professional educator standards board, upon receipt of a serious complaint from any source or upon its own initiative prompted by indications of the need for response, may at any time review all or any part of a preparation program for compliance with the provisions of this chapter. If deviations are found, the professional educator standards board is authorized to change the program's current approval status, including full disapproval.

WSR 13-14-043
PROPOSED RULES
SUPERINTENDENT OF PUBLIC INSTRUCTION
[Filed June 27, 2013, 1:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-06-043 and 13-08-074.

Title of Rule and Other Identifying Information: Amending sections of chapter 392-172A WAC, Rules for the provision of special education, to include charter schools and educational service agencies; amend notification and consent requirements for medicaid reimbursement; clarify procedural protections for students not yet identified or no longer eligible for special education services; clarify due process and complaint procedures; clarify the term referral; add requirements for aversive intervention plans; clarify the nonpublic agency approval procedures; amend sections related to monitoring, enforcement and reporting procedures for public agencies; and, make housekeeping changes to correct typographical errors or make rule changes that are technical in nature.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Brouillet Conference Room, Room 430, 4th Floor, 600 Washington Street S.E., Olympia, WA 98504, on August 6, 2013, at 1:30 p.m.

Date of Intended Adoption: September 4, 2013.

Submit Written Comments to: Douglas H. Gill, Director, Special Education, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, attn: Special Education Section, e-mail speced@k12.wa.us (please put "2013 Rulemaking" in the subject line), fax (360) 586-0247, by August 6, 2013.

Assistance for Persons with Disabilities: Contact Thinh Le by July 25, 2013, TTY (360) 586-0126 or (360) 725-6075.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The amendments are in response to changes in federal and state law, federal case law, and federal interpretation of the Individuals with Disabilities Education Act (IDEA). Changes to the nonpublic agency approval process are proposed to be consistent with the provisions of elementary and secondary private schools, and state board approval of private schools. Other changes clarify requirements under the IDEA or are technical proposals or housekeeping changes. The proposed changes include:

- Adding charter schools as a public agency serving students under the IDEA.
- Revising WAC 372-172A-07005 to address federal changes for consent and notification to parents with public insurance such as medicaid.
- Clarifying due process requirements regarding the date of service for holding a resolution meeting; clarifying the role of attorneys and advocates hearing; and specifying that although reconsideration of due process hearing decisions is allowed in the Washington Administrative Procedure Act under RCW 34.05.470, reconsideration of due process hearing decisions under WAC 392-172A-05110 are not allowed due to the timeline for finality of decisions.
- Clarifying the definition of an educational service agency when it assumes administrative control and funding of school districts to provide services to students under the IDEA.
- Amending the nonpublic agency approval process to allow consistency with the state definition of private schools and allowing contracts with other public and private agencies meeting licensure requirements of other state agencies that do not have an educational component as part of the private school or facility.
- Clarifying that procedural safeguards apply to students who are being identified or evaluated to determine eligibility.
- Changing the definition of aversive interventions and including notification and follow-up procedures under ESHB 1688.
- Making technical changes to district reporting, monitoring, and enforcement provisions for consistency with state practice and federal requirements.

Reasons Supporting Proposal: The proposed amendments regarding charter schools; aversive interventions; treatment of educational service agencies; procedural protections; due process procedures; and, timelines for and consent and notification requirements for parents with public insurance are in response to state initiatives, state law, and/or federal interpretation of the IDEA. Other changes are in response to internal review for implementation, or stakeholder requests, in addition to housekeeping changes.

Statutory Authority for Adoption: RCW 28A.155.090.

Statute Being Implemented: Chapter 28A.155 RCW.

Rule is necessary because of federal law and federal court decision, 129 S.Ct. 2484 (2009); 78 F.R. 10525; 20 U.S.C. §§ 1400 et. seq.

Name of Proponent: OSPI, governmental.

Name of Agency Personnel Responsible for Drafting: Pamela McPartland, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, (360) 725-6075; Implementation and Enforcement: Douglas H. Gill, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, (360) 725-6075.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules address requirements for school districts and other public agencies. There are no application changes to the nonpublic agency rules for private schools meeting the definition of a small business. There are no fees associated with the application for nonpublic agency approval. The joint adminstrative [administrative] rules review committee has not requested the preparation of a small business economic impact statement. Section 1, chapter 201, Laws of 2012, applies only to rules proposed by the state board of education.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to OSPI rules unless requested by the joint administrative rules review committee or applied voluntarily.

June 27, 2013
Randy Dorn
State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01010 Applicability. (1)(a) The provisions of this chapter apply to all political subdivisions and public institutions of the state that are involved in the education of students eligible for special education, including:

(i) The OSPI to the extent that it receives payments under Part B and exercises supervisory authority over the provision of the delivery of special education services by school districts and other public agencies;

(ii) School districts ((and)), charter schools, educational service agencies, and educational service districts; and

(iii) State residential education programs established and operated pursuant to chapter 28A.190 RCW, the state school((s)) for the ((deaf and)) blind and the center for childhood deafness and hearing loss established and operated pursuant to chapter 72.40 RCW, and education programs for juvenile inmates established and operated pursuant to chapters 28A.193 ((RCW)) and 28A.194 RCW; and

(b) Are binding on each public agency or public institution in the state that provides special education and related services to students eligible for special education, regardless of whether that agency is receiving funds under Part B of the act.

(2) Each school district ((or public)), charter school, and educational service agency is responsible for ensuring that the rights and protections under Part B of the act are given to students eligible for special education who are((:

(a))) referred to or placed in private schools and facilities by that public agency under the provisions of WAC 392-172A-04080 through 392-172A-04110((; or

(b))).

(3) Each school district and educational service agency is responsible for ensuring that the rights and protections under Part B of the act are given to students eligible for special education who are placed in private schools by their parents under the provisions of WAC 392-172A-04000 through 392-172A-04060.

NEW SECTION

WAC 392-172A-01032 Charter school. A charter school means a public school governed by a charter school board and operated according to the terms of a charter contract executed under chapter 28A.710 RCW and includes a new charter school and a conversion charter school. A charter school also has the same meaning given in section 5210(1) of the Elementary and Secondary Education Act of 1965, as amended, 29 U.S.C. 6301, et. seq.

AMENDATORY SECTION (Amending WSR 11-06-052, filed 3/1/11, effective 4/1/11)

WAC 392-172A-01035 Child with a disability or student eligible for special education. (1)(a) Child with a disability or as used in this chapter, a student eligible for special education means a student who has been evaluated and determined to need special education because of having a disability in one of the following eligibility categories: Intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), an emotional behavioral disability, an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, multiple disabilities, or for students, three through eight, a developmental delay and who, because of the disability and adverse educational impact, has unique needs that cannot be addressed exclusively through education in general education classes with or without individual accommodations, and needs special education and related services.

(b) The term, "student eligible for special education" also includes a student not yet identified as eligible for special education or a student who has been evaluated or reevaluated and not eligible for special education for the purpose of providing the student procedural safeguard protections under WAC 392-172A-05015 for matters involving the identification, evaluation, placement and the provision of a free appropriate public education.

(c) If it is determined, through an appropriate evaluation, that a student has one of the disabilities identified in subsection (1)(a) of this section, but only needs a related service and not special education, the student is not a student eligible for special education under this chapter. School districts and other public agencies must be aware that they have obligations under other federal and state civil rights laws and rules, including 29 U.S.C. 764, RCW 49.60.030, and 43 U.S.C. 12101 that apply to students who have a disability regardless of the student's eligibility for special education and related services.

(((c))) (d) Speech and language pathology, audiology, physical therapy, and occupational therapy services, may be provided as specially designed instruction, if the student requires those therapies as specially designed instruction, and meets the eligibility requirements which include a disability, adverse educational impact and need for specially designed instruction. They are provided as a related service under WAC 392-172A-01155 when the service is required to allow the student to benefit from specially designed instruction.

(2) The terms used in subsection (1)(a) of this section are defined as follows:

(a)(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a student's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.

(ii) Autism does not apply if a student's educational performance is adversely affected primarily because the student has an emotional behavioral disability, as defined in subsection (2)(e) of this section.

(iii) A student who manifests the characteristics of autism after age three could be identified as having autism if the criteria in (a)(i) of this subsection are satisfied.

(b) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for students with deafness or stu-

dents with blindness and adversely affect a student's educational performance.

(c) Deafness means a hearing impairment that is so severe that the student is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a student's educational performance.

(d)(i) Developmental delay means a student three through eight who is experiencing developmental delays that adversely affect the student's educational performance in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development or adaptive development and who demonstrates a delay on a standardized norm referenced test, with a test-retest or split-half reliability of .80 that is at least:

(A) Two standard deviations below the mean in one or more of the five developmental areas; or

(B) One and one-half standard deviations below the mean in two or more of the five developmental areas.

(ii) The five developmental areas for students with a developmental delay are:

(A) Cognitive development: Comprehending, remembering, and making sense out of one's experience. Cognitive ability is the ability to think and is often thought of in terms of intelligence;

(B) Communication development: The ability to effectively use or understand age-appropriate language, including vocabulary, grammar, and speech sounds;

(C) Physical development: Fine and/or gross motor skills requiring precise, coordinated, use of small muscles and/or motor skills used for body control such as standing, walking, balance, and climbing;

(D) Social or emotional development: The ability to develop and maintain functional interpersonal relationships and to exhibit age appropriate social and emotional behaviors; and

(E) Adaptive development: The ability to develop and exhibit age-appropriate self-help skills, including independent feeding, toileting, personal hygiene and dressing skills.

(iii) A school district is not required to adopt and use the category "developmentally delayed" for students, three through eight.

(iv) If a school district uses the category "developmentally delayed," the district must conform to both the definition and age range of three through eight, established under this section.

(v) School districts using the category "developmentally delayed," for students three through eight may also use any other eligibility category.

(vi) Students who qualify under the developmental delay eligibility category must be reevaluated before age nine and determined eligible for services under one of the other eligibility categories.

(vii) The term "developmentally delayed, birth to three years" are those infants and toddlers under three years of age who:

(A) Meet the eligibility criteria established by the state lead agency under Part C of IDEA; and

(B) Are in need of early intervention services under Part C of IDEA. Infants and toddlers who qualify for early intervention services must be evaluated prior to age three in order to determine eligibility for special education and related services.

(e)(i) Emotional/behavioral disability means a condition where the student exhibits one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance:

(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.

(C) Inappropriate types of behavior or feelings under normal circumstances.

(D) A general pervasive mood of unhappiness or depression.

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) Emotional/behavioral disability includes schizophrenia. The term does not apply to students who are socially maladjusted, unless it is determined that they have an emotional disturbance under (e)(i) of this subsection.

(f) Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a student's educational performance but that is not included under the definition of deafness in this section.

(g) Intellectual disability means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a student's educational performance.

(h) Multiple disabilities means concomitant impairments, the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term, multiple disabilities does not include deaf-blindness.

(i) Orthopedic impairment means a severe orthopedic impairment that adversely affects a student's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

(j) Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that:

(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

(ii) Adversely affects a student's educational performance.

(k)(i) Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and develop-

mental aphasia, that adversely affects a student's educational performance.

(ii) Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

(l) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a student's educational performance.

(m) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(n) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a student's educational performance. The term includes both partial sight and blindness.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01055 Educational service ((~~district~~)) agency. Educational service ((~~district~~)) agency means:

(1) A regional public multiservice agency:

((~~(1)~~)) (a) Authorized ((~~under chapter 28A.310 RCW~~)) to develop, manage, and provide services or programs to students eligible for special education within school districts((~~.~~));

((~~(2)~~)) (b) Recognized as an administrative agency by the OSPI for purposes of the provision of special education and related services provided within public elementary schools and secondary schools; and

(2) Includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-01060 Elementary or secondary school. Elementary or secondary school means a public school, a nonprofit institutional day or residential school((~~,~~)) including a private school, and a public charter school that provides education to students in any combination of kindergarten through twelfth grade. The definition does not include any education beyond grade twelve.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01085 Highly qualified special education teachers. (1)(a) For any public elementary or secondary school special education teacher teaching core academic subjects, the term highly qualified has the meaning given the term in section 9101 of the ESEA and 34 C.F.R. 200.56; and in addition, to meet the definition of highly qualified, public elementary school or secondary school special education teachers must have a bachelors degree and obtained full certification as a teacher and a special education endorsement, which can include certification obtained through alternative routes to certification, or a continuing certificate. When used with respect to any teacher teaching in a charter school, highly qualified means that the teacher meets the certification requirements contained in RCW 28A.710.040 (2)(c).

(b) A teacher does not meet the highly qualified definition if he or she is teaching pursuant to a temporary out-of-endorsement assignment or is teaching special education with a preendorsement waiver.

(c) A teacher will be considered to meet the highly qualified standard in (a) of this subsection if that teacher is participating in an alternative route to special education certification program under which the teacher:

(i) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;

(ii) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

(iii) Assumes functions as a teacher only for a specified period of time not to exceed three years; and

(iv) Demonstrates satisfactory progress toward full certification according to the state professional standards board rules, and the state ensures, through its certification and endorsement process, that the provisions of subsection (2) of this section are met.

(2) Any public elementary school or secondary school special education teacher who is not teaching a core academic subject is highly qualified if the teacher meets the state certification requirements and has an endorsement in special education, or holds a continuing certificate.

(3) Requirements for special education teachers teaching to alternate achievement standards. When used with respect to a special education teacher who teaches core academic subjects exclusively to students who are assessed against alternate achievement standards established under 34 C.F.R. 200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either:

(a) Meet the applicable requirements of section 9101 of the ESEA and 34 C.F.R. 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or

(b) Meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the

level of instruction being provided and needed to effectively teach to those standards, based on the state professional standards board's certification requirements.

(4) Requirements for special education teachers teaching multiple subjects. Subject to subsection (5) of this section, when used with respect to a special education teacher who teaches two or more core academic subjects exclusively to students eligible for special education, highly qualified means that the teacher may:

(a) Meet the applicable requirements of section 9101 of the ESEA and 34 C.F.R. 200.56 (b) or (c);

(b) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, which may include a single, high objective uniform state standard of evaluation (HOUSSE) covering multiple subjects; or

(c) In the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 C.F.R. 200.56(c), which may include a single HOUSSE covering multiple subjects.

(5) Teachers may meet highly qualified standards through use of the state's HOUSSE which meets all the requirements for a HOUSSE for a general education teacher.

(6) Notwithstanding any other individual right of action that a parent or student may maintain under this chapter, nothing in this section shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular school district employee to be highly qualified, or to prevent a parent from filing a state citizen complaint under WAC 392-172A-05025 through 392-172A-05040 about staff qualifications with the OSPI.

(7)(a) A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.

(b) A certified general education teacher who subsequently receives a special education endorsement is a new special education teacher when first hired as a special education teacher.

(8) Teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by school districts to provide equitable services to parentally placed private school students eligible for special education are not required to meet highly qualified standards addressed in this section. However, nonpublic agencies are required to ensure that teachers providing services to students placed by a school district meet the certification and special education endorsement standards established by the professional educators standards board in Title 181 WAC and in accordance with WAC 392-172A-04095.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01115 Local educational agency or school district. (1) Local educational agency or the term "school district" as used in this chapter, means a public board of education ((~~with~~)) or other public authority legally constituted for either administrative control ((~~and~~)) or direction of, or to perform a service function for, any combination of public ((~~kindergarten through grade 12 in a~~)) elementary and secondary schools, or for a combination of school districts.

(2) The term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including ((~~the school for the deaf~~)) charter schools, educational service agencies, the center for childhood hearing loss and deafness and the school for the blind.

((~~(3) For the purposes of this chapter, use of the term school district includes public agencies described in WAC 392-172A-01150 who provide special education and/or related services.~~))

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-01150 Public agency. Public agency includes school districts, ((~~ESDs~~)) educational service agencies, charter schools, state operated programs identified in WAC 392-172A-02000 and any other political subdivisions of the state that are responsible for providing special education or related services or both to students eligible for special education.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-02000 Students' rights to a free appropriate public education (FAPE). (1) Each school district((~~, public agency,~~)) and residential or day schools operated ((~~pursuant to~~)) under chapters 28A.190 and 72.40 RCW shall provide every student who is eligible for special education between the age of three and twenty-one years, a free appropriate public education program (FAPE). The right to a FAPE includes special education for students who have been suspended or expelled from school. A FAPE is also available to any student determined eligible for special education even though the student has not failed or been retained in a course or grade and is advancing from grade to grade. The right to special education for eligible students starts on their third birthday with an IEP in effect by that date. If an eligible student's third birthday occurs during the summer, the student's IEP team shall determine the date when services under the individualized education program will begin.

(2) A student who is determined eligible for special education services shall remain eligible until one of the following occurs:

(a) A group of qualified professionals and the parent of the student, based on a reevaluation, determines the student is no longer eligible for special education; or

(b) The student has met high school graduation requirements established by the school district pursuant to rules of the state board of education, and the student has graduated from high school with a regular high school diploma. A regular high school diploma does not include a certificate of high school completion, or a general educational development credential. Graduation from high school with a regular high

school diploma constitutes a change in placement, requiring written prior notice in accordance with WAC 392-172A-05010; or

(c) The student enrolled in the public school system or is receiving services pursuant to chapter 28A.190 or 72.40 RCW has reached age twenty-one. The student whose twenty-first birthday occurs on or before August 31 would no longer be eligible for special education. The student whose twenty-first birthday occurs after August 31, shall continue to be eligible for special education and any necessary related services for the remainder of the school year; or

(d) The student stops receiving special education services based upon a parent's written revocation to a school district pursuant to WAC 392-172A-03000 (2)(e).

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-02005 Exceptions to a student's right to FAPE. (1) A student eligible for special education residing in a state adult correctional facility is eligible for special education services pursuant to chapter 28A.193 RCW. The department of corrections is the agency assigned supervisory responsibility by the governor's office for any student not served pursuant to chapter 28A.193 RCW.

(2)(a) Students determined eligible for special education services and incarcerated in other adult correctional facilities will be provided special education and related services under chapter 28A.194 RCW.

(b) Subsection (2)(a) of this section does not apply to students aged eighteen to twenty-one if they:

(i) Were not actually identified as being a student eligible for special education; and

(ii) Did not have an IEP; unless the student:

(A) Had been identified as a student eligible for special education and had received services in accordance with an IEP, but who left school prior to incarceration; or

(B) Did not have an IEP in his or her last education setting, but who had actually been identified as a student eligible for special education.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-02040 Child find. (1) ((~~The~~)) School districts shall conduct child find activities calculated to reach all students with a suspected disability for the purpose of locating, evaluating and identifying students who are in need of special education and related services, regardless of the severity of their disability. The child find activities shall extend to students residing ((~~in~~)) within the school district boundaries whether or not they are enrolled in the public school system((~~.~~)); except that students attending nonprofit private elementary or secondary schools located within the school district boundaries shall be located, identified and evaluated consistent with WAC 392-172A-04005. School districts will conduct any required child find activities for infants and toddlers, consistent with the child find requirements of the lead agency for Part C of the act.

(2) Child find activities must be calculated to reach students who are homeless, wards of the state, highly mobile students with disabilities, such as homeless and migrant students and students who are suspected of being a student with a disability and in need of special education, even though they are advancing from grade to grade.

(3) The ((~~local~~)) school district shall have policies and procedures in effect that describe the methods it uses to conduct child find activities in accordance with subsections (1) and (2) of this section. Methods used may include but are not limited to activities such as:

(a) Providing written notification to all parents of students in the school district's jurisdiction regarding access to and the use of its child find system;

(b) Posting notices in school buildings, other public agency offices, medical facilities, and other public areas, describing the availability of ((~~special education programs~~)) child find;

(c) Offering preschool developmental screenings;

(d) Conducting local media informational campaigns;

(e) Coordinating distribution of information with other child find programs within public and private agencies; and

(f) Using internal district child find methods such as screening, reviewing district-wide test results, providing in-service education to staff, and other methods developed by the school district to identify, locate and evaluate students including a systematic, intervention based, process within general education for determining the need for a special education referral.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-03000 Parental consent for initial evaluations, initial services and reevaluations. (1)(a) A school district proposing to conduct an initial evaluation to determine if a student is eligible for special education services must provide prior written notice consistent with WAC 392-172A-05010 and obtain informed consent from the parent before conducting the evaluation.

(b) Parental consent for an initial evaluation must not be construed as consent for initial provision of special education and related services.

(c) The school district must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the student is eligible for special education.

(d) If the student is a ward of the state and is not residing with the student's parent, the school district or public agency is not required to obtain informed consent from the parent for an initial evaluation to determine eligibility for special education services if:

(i) Despite reasonable efforts to do so, the school district cannot discover the whereabouts of the parent of the child;

(ii) The rights of the parents of the child have been terminated; or

(iii) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

(e) If the parent of a student enrolled in public school or seeking to be enrolled in public school does not provide con-

sent for an initial evaluation under subsection (1) of this section, or the parent fails to respond to a request to provide consent, the school district may, but is not required to, pursue the initial evaluation of the student by using due process procedures or mediation.

(f) The school district does not violate its child find and evaluation obligations, if it declines to pursue the initial evaluation when a parent refuses to provide consent under (e) of this subsection.

(2)(a) A school district that is responsible for making FAPE available to a student must obtain informed consent from the parent of the student before the initial provision of special education and related services to the student.

(b) The school district must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the student.

(c) If the parent of a student fails to respond to a request for or refuses to consent to the initial provision of special education and related services, the school district may not use the due process procedures or mediation in order to obtain agreement or a ruling that the services may be provided to the student.

(d) If the parent of the student refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the school district:

(i) Will not be considered to be in violation of the requirement to make available FAPE to the student for the failure to provide the student with the special education and related services for which the school district requests consent; and

(ii) Is not required to convene an IEP team meeting or develop an IEP.

(e) If at any time after the initial provision of special education and related services, the parent revokes consent in writing for the continued provision of special education and related services, the school district:

(i) Must provide prior written notice to the parent in accordance with WAC ((~~392-172A-05015~~)) 392-172A-05010 before ceasing to provide special education and related services and may not continue to provide special education and related services after the effective date of the prior written notice;

(ii) May not use mediation or the due process procedures in order to obtain an agreement or a ruling that the services may be provided to the student;

(iii) Will not be considered to be in violation of the requirement to make FAPE available to the student because of the failure to provide the student with further special education and related services; and

(iv) Is not required to convene an IEP team meeting or develop an IEP for the student for further provision of special education services.

(3)(a) A school district must obtain informed parental consent, prior to conducting any reevaluation of a student eligible for special education services, subject to the exceptions in (d) of this subsection and subsection (4) of this section.

(b) If the parent refuses to consent to the reevaluation, the school district may, but is not required to, pursue the reevaluation by using the due process procedure((~~s~~)) to override the refusal to provide consent or mediation to obtain an agreement from the parent to provide consent.

(c) The school district does not violate its child find obligations or the evaluation and reevaluation procedures if it declines to pursue the evaluation or reevaluation.

(d) A school district may proceed with a reevaluation and does not need to obtain informed parental consent if the school district can demonstrate that:

(i) It made reasonable efforts to obtain such consent; and

(ii) The child's parent has failed to respond.

(4)(a) Parental consent for an initial or a reevaluation is not required before:

(i) Reviewing existing data as part of an evaluation or a reevaluation; or

(ii) Administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students.

(b) A school district may not use a parent's refusal to consent to one service or activity of an initial evaluation or reevaluation to deny the parent or student any other service, benefit, or activity of the school district, except as required by this chapter.

(c) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures and the public agency is not required to consider the student as eligible for special education services.

(d) To meet the reasonable efforts requirements to obtain consent for an evaluation or reevaluation the school district must document its attempts to obtain parental consent using the procedures in WAC 392-172A-03100(6).

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03005 Referral and timelines for initial evaluations. (1) A parent of a child, a school district, a public agency, or other persons knowledgeable about the child may initiate a request for an initial evaluation to determine if the student is eligible for special education. The request will be in writing, unless the person is unable to write.

(2) The school district must document the ((~~referral~~)) request for an initial evaluation and:

(a) Notify the parent that the student has been referred because of a suspected disability and that the district, with parental input, will determine whether or not to evaluate the student;

(b) Collect and examine existing school, medical and other records in the possession of the parent and the school district; and

(c) Within twenty-five school days after receipt of the ((~~referral~~)) request for an initial evaluation, make a determination whether or not to evaluate the student. The school district will provide prior written notice of the decision that complies with the requirements of WAC 392-172A-05010.

(3) When the student is to be evaluated to determine eligibility for special education services and the educational needs of the student, the school district shall provide prior written notice to the parent, obtain consent, fully evaluate the student and arrive at a decision regarding eligibility within:

(a) Thirty-five school days after the date written consent for an evaluation has been provided to the school district by the parent; or

(b) Thirty-five school days after the date the ((~~refusal~~)) consent of the parent is obtained by agreement through mediation, or the refusal to provide consent is overridden by an administrative law judge following a due process ((~~procedures~~)) hearing; or

(c) Such other time period as may be agreed to by the parent and documented by the school district, including specifying the reasons for extending the timeline.

(d) Exception. The thirty-five school day time frame for evaluation does not apply if:

(i) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or

(ii) A student enrolls in another school district after the consent is obtained and the evaluation has begun but not yet been completed by the other school district, including a determination of eligibility.

(e) The exception in (d)(ii) of this subsection applies only if the subsequent school district is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent school district agree to a specific time when the evaluation will be completed.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03025 Review of existing data for evaluations and reevaluations. As part of an initial evaluation, if appropriate, and as part of any reevaluation, the IEP team and other qualified professionals, as appropriate, must:

(1) Review existing evaluation data on the student, including:

(a) Evaluations and information provided by the parents of the student;

(b) Current classroom-based, local, or state assessments, and classroom-based observations; and

(c) Observations by teachers and related services providers.

(2)(a) On the basis of that review, and input from the student's parents, identify what additional data, if any, are needed to determine:

(i) Whether the student is eligible for special education services, and what special education and related services the student needs; or

(ii) In case of a reevaluation, whether the student continues to meet eligibility, and whether the educational needs of the student including any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the IEP of the student and to participate, as appropriate, in the general education curriculum; and

(b) The present levels of academic achievement and related developmental needs of the student.

(3) The group described in this section may conduct its review without a meeting.

(4) The school district must administer such assessments and other evaluation measures as may be needed to produce the data identified in subsection ((~~(1)~~)) (2) of this section.

(5)(a) If the IEP team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the student continues to be a student eligible for special education services, and to determine the student's educational needs, the school district must notify the student's parents of:

(i) That determination and the reasons for the determination; and

(ii) The right of the parents to request an assessment to determine whether the student continues to be a student eligible for special education, and to determine the student's educational needs.

(b) The school district is not required to conduct the assessment described in this subsection (5) unless requested to do so by the student's parents.

AMENDATORY SECTION (Amending WSR 11-06-052, filed 3/1/11, effective 4/1/11)

WAC 392-172A-03105 When IEPs must be in effect. (1) At the beginning of each school year, each school district must have an IEP in effect for each student eligible for special education that it is serving through enrollment in the district.

(2) For an initial IEP, a school district must ensure that:

(a) The school district holds a meeting to develop the student's IEP within thirty days of a determination that the student is eligible for special education and related services; and

(b) As soon as possible following development of the IEP, special education and related services are made available to the student in accordance with the student's IEP.

(3) Each school district must ensure that:

(a) The student's IEP is accessible to each general education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and

(b) Each teacher and provider described in (a) of this subsection is informed of:

(i) His or her specific responsibilities related to implementing the student's IEP; and

(ii) The specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

(4) If a student eligible for special education transfers from one school district to another school district within the state and has an IEP that was in effect for the current school year from the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until the new school district either:

(a) Adopts the student's IEP from the previous school district; or

(b) Develops, adopts, and implements a new IEP that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.

(5) If a student eligible for special education transfers from a school district located in another state to a school district within the state and has an IEP that is in effect for the current school year from the previous school district, the new school district, in consultation with the parents, must provide FAPE to the student including services comparable to those described in the student's IEP, until the new school district:

(a) Conducts an evaluation to determine whether the student is eligible for special education services in this state, if the school district ((~~believes~~)) determines an evaluation is necessary to ((~~determine~~)) establish eligibility requirements under state standards; and

(b) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in WAC 392-172A-03090 through 392-172A-03110.

(6) To facilitate the transition for a student described in subsections (4) and (5) of this section:

(a) The new school in which the student enrolls must take reasonable steps to promptly obtain the student's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the student, from the school district in which the student was previously enrolled, pursuant to RCW 28A.225.330 and consistent with applicable Family Education Rights and Privacy Act (FERPA) requirements; and

(b) The school district in which the student was enrolled must take reasonable steps to promptly respond to the request from the new school district, pursuant to RCW ((~~28A.225.335~~)) 28A.225.330 and applicable FERPA requirements.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03120 Aversive interventions definition and purpose. (1) The term "aversive interventions" means ((~~the systematic use of stimuli or other treatment which a student is known to find unpleasant~~)) use of isolation or restraint practices for the purpose of discouraging undesirable behavior on the part of the student. The term does not include the use of reasonable force, restraint, or other treatment to control unpredicted spontaneous behavior which poses one of the following dangers:

(a) A clear and present danger of serious harm to the student or another person.

(b) A clear and present danger of serious harm to property.

(c) A clear and present danger of seriously disrupting the educational process.

(2) The purpose of requiring an aversive intervention plan is to assure that students eligible for special education are safeguarded against the ((~~use and~~)) misuse of various forms of aversive interventions, and that the aversive interventions are used with a goal of teaching appropriate behaviors. Each school district shall take steps to ((~~assure~~)) ensure that each employee, volunteer, contractor, and other agent of the district or other public agency responsible for the education, care, or custody of a special education student is aware of aversive intervention requirements and the conditions under which they may be used. ((~~No~~)) A school district ((~~or other public agency and no educational service district shall~~)) must not authorize, permit, or condone the use of aversive interventions which violates WAC 392-172A-03120 through 392-172A-03135 by any employee, volunteer, contractor or other agent of the school district ((~~or other public agency~~)) responsible for the education, care, or custody of a special education student. Aversive interventions, to the extent permitted, shall only be used as a last resort. Positive behavioral supports and interventions shall be used by the school district and described in the ((~~individualized education program~~)) aversive intervention plan prior to the determination that the use of aversive intervention is a necessary part of the student's individualized education program, in addition to the use of positive behavioral supports.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03125 Aversive intervention prohibitions. There are certain interventions that are manifestly inappropriate by reason of their offensive nature or their potential negative physical consequences, or their legality. The purpose of this section is to uniformly prohibit their use with students eligible for special education as follows:

(1) Electric current. No student may be stimulated by contact with electric current.

(2) Food services. ((~~No~~)) A student who is willing to consume subsistence food or liquid when the food or liquid is customarily served ((~~may~~)) must not be denied or subjected to an unreasonable delay in the provision of the food or liquid.

(3)(a) Force and restraint in general. ((~~No~~)) A district may not use force or restraint which is either unreasonable under the circumstances or deemed to be an unreasonable form of corporal punishment as a matter of state law ((~~may be used~~)). See RCW 9A.16.100 which ((~~cites~~)) prohibits the following uses of force or restraint ((~~as uses which are presumed to be unreasonable and therefore unlawful~~)):

(i) Throwing, kicking, burning, or cutting a student.

(ii) Striking a student with a closed fist.

(iii) Shaking a student under age three.

(iv) Interfering with a student's breathing.

(v) Threatening a student with a deadly weapon.

(vi) Doing any other act that is likely to cause bodily harm to a student greater than transient pain or minor temporary marks.

(b) The statutory listing of worst case uses of force or restraint described in this subsection may not be read as implying that all unlisted uses (e.g., shaking a four year old) are permissible. Whether or not an unlisted use of force or restraint is permissible depends upon such considerations as the balance of these rules, and whether the use is reasonable under the circumstances.

(4) Hygiene care. ((~~No~~)) A student ((~~may~~)) must not be denied or subjected to an unreasonable delay in the provision of common hygiene care.

(5) Isolation. ((~~No~~)) A student ((~~may~~)) must not be excluded from his or her regular instructional or service area

and isolated within a room or any other form of enclosure, except under the conditions set forth in WAC 392-172A-03130.

(6) Medication. ((~~No~~)) A student ((~~may~~)) must not be denied or subjected to an unreasonable delay in the provision of medication.

(7) Noise. ((~~No~~)) A student ((~~may~~)) must not be forced to listen to noise or sound that the student finds painful.

(8) Noxious sprays. ((~~No~~)) A student ((~~may~~)) must not be forced to smell or be sprayed in the face with a noxious or potentially harmful substance.

(9) Physical restraints. ((~~No~~)) A student ((~~may~~)) must not be physically restrained or immobilized by binding or otherwise attaching the student's limbs together or by binding or otherwise attaching any part of the student's body to an object, except under the conditions set forth in WAC 392-172A-03130.

(10) Taste treatment. ((~~No~~)) A student ((~~may~~)) must not be forced to taste or ingest a substance which is not commonly consumed or which is not commonly consumed in its existing form or concentration.

(11) Water treatment. ((~~No~~)) A student's head ((~~may~~)) must not be partially or wholly submerged in water or any other liquid.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-03130 Aversive interventions—Conditions. Use of various forms of aversive interventions which are not prohibited by WAC 392-172A-03125 warrant close scrutiny. Accordingly, the use of aversive interventions involving bodily contact, isolation, or physical restraint not prohibited is conditioned upon compliance with the following procedural and substantive safeguards:

(1) Bodily contact. The use of any form of aversive interventions which involves contacting the body of a student shall be ((~~provided for by the terms of~~)) addressed in the student's ((~~individualized education program established in accordance with~~)) aversive intervention plan that meets the requirements of WAC 392-172A-03135.

(2) Isolation. The use of aversive interventions which involves excluding a student from his or her regular instructional area and isolation of the student within a room or any other form of enclosure is subject to each of the following conditions:

(a) The isolation, including the duration of its use, shall be ((~~provided for by the terms of~~)) addressed in the student's ((~~individualized education program established in accordance with~~)) aversive intervention plan that meets the requirements of WAC 392-172A-03135.

(b) The enclosure shall be ventilated, lighted, and temperature controlled from inside or outside for purposes of human occupancy.

(c) The enclosure shall permit continuous visual monitoring of the student from outside the enclosure.

(d) An adult responsible for supervising the student shall remain in visual or auditory range of the student.

(e) Either the student shall be capable of releasing himself or herself from the enclosure or the student shall continuously remain within view of an adult responsible for supervising the student.

(3) Physical restraint. The use of aversive interventions which involves physically restraining or immobilizing a student by binding or otherwise attaching the student's limbs together or by binding or otherwise attaching any part of the student's body to an object is subject to each of the following conditions:

(a) The restraint shall only be used when and to the extent it is reasonably necessary to protect the student, other persons, or property from serious harm.

(b) The restraint, including the duration of its use, shall be ((~~provided for by the terms of~~)) addressed in the student's ((~~individualized education program established in accordance with~~)) aversive intervention plan that meets the requirements of WAC 392-172A-03135.

(c) The restraint shall not interfere with the student's breathing.

(d) An adult responsible for supervising the student shall remain in visual or auditory range of the student.

(e) Either the student shall be capable of releasing himself or herself from the restraint or the student shall continuously remain within view of an adult responsible for supervising the student.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-03135 Aversive interventions—Individualized education program requirements. (1) If the need for use of aversive interventions is determined appropriate by the IEP team, the ((~~individualized education program shall~~)) aversive intervention plan must:

(a) Be consistent with the recommendations of the IEP team which must include((~~s~~)) a school psychologist and/or other certificated employee who understands the appropriate use of the aversive interventions and who concurs with the recommended use of the aversive interventions, and a person who works directly with the student.

(b) Specify the aversive interventions that may be used.

(c) State the reason the aversive interventions are judged to be appropriate and the behavioral objective sought to be achieved by its use, and shall describe the positive interventions attempted and the reasons they failed, if known.

(d) Describe the circumstances under which the aversive interventions may be used.

(e) Describe or specify the maximum duration of each isolation or restraint.

(f) Specify any special precautions that must be taken in connection with the use of the aversive interventions technique.

(g) Specify the person or persons permitted to use the aversive interventions and the current qualifications and required training of the personnel permitted to use the aversive interventions.

(h) Establish a means of evaluating the effects of the use of the aversive interventions and a schedule for periodically conducting the evaluation at least every three months when school is in session.

(i) Include procedures for notifying the parent regarding the use of restraint or isolation.

(2) School districts shall document each use of an aversive intervention, circumstances under which it was used, ((~~and~~)) the length of time of use, and follow the documentation and notification procedures in chapter 28A.600 RCW.

(3) School districts must provide parents a copy of the district policy on its use of isolation and restraint at the time that the aversive intervention plan is created.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04080 Applicability and authorization. (1) The provisions of WAC 392-172A-04080 through 392-172A-04095 apply ((~~only~~)) to students eligible for special education who have been placed in or referred to a ((~~nonpublic agency or another public agency or school district~~)) private elementary or secondary school or facility meeting nonpublic agency approval by ((~~a resident~~)) the student's school district as a means of providing special education and related services if the school district cannot provide an appropriate education for the student within the district.

(2)(a) School districts are also authorized to((~~:~~

~~(a)~~)) enter into interdistrict agreements with other school districts pursuant to chapter 392-135 WAC((~~;~~)) or ((~~(b)~~)) contract with ((~~nonpublic~~)) other public and private agencies ((~~pursuant to this chapter and~~)) under WAC 392-121-188 ((~~and public agencies~~)) to provide special education ((~~and~~)) or related services, or both to eligible students ((~~if the school district cannot provide an appropriate education for the student within the district~~)) when the private or public agency does not meet the criteria for nonpublic agencies under WAC 392-172A-04090 and 392-172A-04095, but the school district determines that the private or public agency can provide the student with a free appropriate public education (FAPE).

(b) When a district contracts with other public or private agencies to provide special education or related services or both, under subsection (2)(a) of this section, the school district shall ensure that it follows the requirements under WAC 392-172A-04085.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04085 Responsibility of the school district. (1) A school district who places a student eligible for special education with ((~~another public agency or approved~~)) a nonpublic agency or with another private or public agency under WAC 392-172A-04080(2) for special education and related services shall develop a written contract((~~,~~)) or interdistrict ((~~or interagency~~)) agreement which ((~~shall~~)) will include, but not be limited to, the following elements:

(a) The names of the parties involved;

(b) The name(s) of the special education student(s) ((~~for whom the contract is drawn~~));

(c) The location(s) and setting(s) of the services to be provided;

(d) A description of services provided, program administration and supervision;

(e) The charges and reimbursement including billing and payment procedures;

(f) The total contract cost;

(g) Any other contractual elements including those identified in WAC 392-121-188 that may be necessary to assure compliance with state and federal rules.

(2) Each school district must ensure that a student eligible for special education services placed in or referred to a nonpublic agency((~~, other public agency, or other school district~~)) under WAC 392-172A-04080(1) or with another private or public agency under WAC 392-172A-04080(2) is provided special education and related services:

(a) In conformance with an IEP developed by the school district that meets the requirements of this chapter;

(b) At no cost to the parents.

(3) The student shall be provided with a FAPE ((~~that meet all general and special education regulations that apply to the student~~)), except that the certificated ((~~special education endorsed~~)) teachers ((~~providing~~)), including those with a special education ((~~services~~)) endorsement, do not have to meet the highly qualified standards for core academic content areas ((~~as described in section 9101 of the ESEA~~)) under WAC 392-172A-01085.

(4) The school district remains responsible for evaluations and IEP meetings for the student. If the school district requests that the nonpublic agency((~~, or other public agency~~)) conduct evaluations or IEP meetings, the district will ensure that all applicable requirements of Part B of the act are met.

(5) The student has all of the rights of a student eligible for special education who is served within the school district.

AMENDATORY SECTION (Amending WSR 11-06-052, filed 3/1/11, effective 4/1/11)

WAC 392-172A-04090 Approval of nonpublic agencies. (1) ((~~A school district shall not award a contract to a nonpublic agency to provide special education to a student until the OSPI approves the nonpublic agency.~~

~~(2)~~)) The school district shall notify the special education section of the OSPI, in writing, of their intent to serve a student through contract with a nonpublic agency.

((~~(3) The OSPI shall provide~~)) (2) The school district and the nonpublic agency ((~~with~~)) will review the ((~~procedures~~)) requirements for approval and complete the application for nonpublic agency approval. In addition, the school district shall conduct an on-site visit of the nonpublic agency.

((~~(4)~~)) (3) Upon review of the completed application which includes the results of the on-site visit, the OSPI may conduct an independent on-site visit, if appropriate, and ((~~shall~~)) will determine whether the application ((~~should~~)) will be approved or disapproved.

((~~(5)~~)) (4) The OSPI ((~~shall~~)) makes information regarding currently approved nonpublic agencies available ((~~to all school districts and to the public~~)) on its web site.

((~~(6)~~)) (5) School districts shall ensure that an approved nonpublic agency is able to provide the services required to meet the unique needs of any student being placed according to the provisions of WAC 392-172A-04080 through 392-172A-04095.

(((7) Nonpublic agencies)) (6) Private schools or facilities located in other states must first be approved by the state education agency of the state in which the educational institution is located to provide FAPE to students referred by school districts. Documentation of the approval shall be provided to OSPI. In the event the other state does not have a formal approval process, the ((nonpublic agency)) private school or facility shall meet the requirements for approval in this state under the provisions of this chapter.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-04095 Application requirements for nonpublic agency approval. ((The application for initial approval and three-year renewal will include the following:))

(1) A nonpublic agency must meet the following requirements to be approved:

(a) The nonpublic agency is approved by the state board as a private school, and has at least one certificated teacher with a special education endorsement, ((and)) other certificated ((staff)) teachers who meet state standards ((for providing special education)), and related services staff meeting state licensure requirements for their profession. If the education program is ((located in)) associated with a facility, such as a hospital ((or the educational program is within a)) mental health, or treatment facility, and the program is not an approved private school, the program must comply with the licensing requirements for the facility, such as the department of health, and the ((nonpublic agency)) facility will assure that ((the educational component of the facility)) it has ((education and related services staff)) teachers who meet certification requirements developed by the professional educators standards board, ((and has)) related services staff meeting state licensure requirements for their profession, at least one certificated teacher with a special education endorsement.

(((2))) (b) The private school or facility meets applicable fire codes of the local or state fire marshal, including inspections and documentation of corrections of violation.

(((3))) (c) The private school or facility meets applicable health and safety standards.

(((4))) (d) The private school or facility can demonstrate through audits that it is financially stable, and has accounting systems that allow for separation of school district funds.

(((5))) (e) The private school or facility has procedures in place that address staff hiring and evaluation including:

(((a))) (i) Checking ((of)) personal and professional references for employees;

(((b))) (ii) Criminal background checks in accordance with state rules for public school employees;

(((c))) (iii) Regular ((schedule)) scheduling of staff evaluations of the competencies that enable the staff to work with students.

(((6))) (f) The private school or facility has a policy of nondiscrimination.

(((7))) (g) The private school or facility meets state education rules for hours and days of instruction.

(((8))) (h) The private school or facility understands and has procedures in place to protect the procedural safeguards of the students eligible for special education and their families.

(2) After approval as a nonpublic agency, the private school or facility must provide annual review information to the OSPI and school districts with whom they contract the following two years. The nonpublic agency must complete a renewal application, including scheduling a site visit by a contracting school district every third year following approval.

AMENDATORY SECTION (Amending WSR 11-06-052, filed 3/1/11, effective 4/1/11)

WAC 392-172A-05030 Investigation of the complaint and decision. (1) Upon receipt of a properly filed complaint, the OSPI shall send a copy of the complaint to the school district or other agency for their investigation of the alleged violations. A complaint against OSPI shall be investigated pursuant to WAC 392-172A-05040.

(2) The OSPI will provide the complainant the opportunity to submit additional information, either orally or in writing, about the allegations contained in the complaint. If the additional information contains new information, the OSPI may, in its discretion, either notify the district of the additional issues or inform the parent of the option to open a new complaint.

(3) The school district or other agency shall respond in writing to the OSPI((, and include)) with documentation of the investigation, no later than twenty calendar days after the date of receipt of the complaint.

(((3))) (4) The response to the OSPI shall clearly state whether:

(a) The allegations contained in the complaint are denied and the basis for such denial; or

(b) The allegations are admitted and with proposed reasonable corrective action(s) deemed necessary to correct the violation.

(((4))) (5) The OSPI ((shall)) will provide the complainant a copy of the school district's or other agency's response to the complaint and provide the complainant an opportunity to reply ((to the response)). If the complainant is not authorized to review personally identifiable information, that information will not be provided to the complainant.

(((5) The OSPI will also provide the complainant the opportunity to submit additional information, either orally or in writing, about the allegations contained in the complaint. If the additional information contains new information, the OSPI may, in its discretion, open a new complaint.))

(6) Upon review of all relevant information including, if necessary, information obtained through an independent on-site investigation by the OSPI, the OSPI will make an independent determination as to whether the school district or other public agency has or is violating a requirement of Part B of the act, the federal regulations implementing the act, this chapter, or whether the public agency is not implementing a mediation or resolution agreement.

(7) The OSPI shall issue a written decision to the complainant that addresses each allegation in the complaint including findings of fact, conclusions, and the reasons for

the decision. The decision will be issued within sixty days after receipt of the complaint unless:

(a) Exceptional circumstances related to the complaint require an extension; or

(b) The complainant and school district or other agency agrees in writing to extend the time to use mediation or an alternative dispute resolution method.

(8) If the OSPI finds a violation, the decision will include any necessary corrective action to be undertaken and any documentation to be provided to ensure that the corrective action is completed. If the decision is that a school district or other public agency has failed to provide appropriate services, the decision will address:

(a) How to remediate the failure to provide those services, including, as appropriate, compensatory education, monetary reimbursement, or other corrective action appropriate to the needs of the student; and

(b) Appropriate future provision of services for all students eligible for special education.

(9) Corrective action ordered by OSPI must be completed within the timelines established in the written decision, unless another time period is established through an extension of the timeline. If compliance by a ((~~local~~)) school district or other public agency is not achieved pursuant to subsection (8) of this section, the ((~~superintendent of public instruction shall~~)) OSPI will initiate fund withholding, fund recovery, or any other sanction deemed appropriate.

AMENDATORY SECTION (Amending WSR 10-10-044, filed 4/28/10, effective 5/29/10)

WAC 392-172A-05080 Right to a due process hearing. (1) A parent or a school district may file a due process hearing request on any of the matters relating to the identification, evaluation or educational placement, or the provision of FAPE to a student.

(2) The due process hearing request must be made within two years of, and allege a violation that occurred not more than two years before, the date the parent or school district knew or should have known about the alleged action that forms the basis of the due process complaint except the timeline does not apply to a parent if the parent was prevented from filing a due process hearing request due to:

(a) Specific misrepresentations by the school district that it had resolved the problem forming the basis of the due process hearing request; or

(b) The school district withheld information from the parent that was required under this chapter to be provided to the parent.

(3)(a) Information about any free or low-cost legal and other relevant services available in the area is maintained on OSPI's web site and is provided by the office of administrative hearings to parents whenever a due process hearing request is filed by either the parent or the school district; and

(b) School districts must provide this information to parents whenever a parent requests the information.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05090 Resolution process. (1)(a) Within fifteen days of receiving notice ((~~of the parent's~~)) that a parent has filed a due process hearing request((~~,~~)) with the district and provided a copy to the OSPI administrative resources section, and prior to the initiation of a due process hearing under WAC 392-172A-05100, the school district must convene a meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process hearing request and that:

(i) Includes a representative of the school district who has decision-making authority on behalf of that district; and

(ii) May not include an attorney of the school district unless the parent is accompanied by an attorney.

(b) The purpose of the meeting is for the parent of the child to discuss the due process hearing request, and the facts that form the basis of the request, so that the school district has the opportunity to resolve the dispute that is the basis for the due process hearing request.

(c) The meeting described in (a) of this subsection need not be held if:

(i) The parent and the school district agree in writing to waive the meeting; or

(ii) The parent and the school district agree to use the mediation process described in WAC 392-172A-05060.

(d) The parent and the school district determine the relevant members of the IEP team to attend the meeting.

(2)(a) If the school district has not resolved the due process hearing request to the satisfaction of the parent within thirty days of the ((~~receipt of~~)) parent's filing of the due process hearing request under WAC 392-172A-05085, the due process hearing may occur.

(b) Except as provided in subsection (3) of this section, the timeline for issuing a final decision under WAC 392-172A-05105 begins at the expiration of this thirty-day period.

(c) Unless the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding (a) and (b) of this subsection, the failure of the parent filing a due process hearing request to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(d) If the school district is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented using the procedures in WAC 392-172A-05090, the school district may, at the conclusion of the thirty-day period, request that an administrative law judge dismiss the parent's due process hearing request.

(e) If the school district fails to hold the resolution meeting within fifteen days as specified in subsection (1) of this section ((~~within fifteen days of receiving notice of a parent's due process hearing request~~)) or fails to participate in the resolution meeting, the parent may seek the intervention of an administrative law judge to begin the due process hearing timeline.

(3) The forty-five day timeline for the due process hearing starts the day after one of the following events:

(a) Both parties agree in writing to waive the resolution meeting;

(b) After either the mediation or resolution meeting starts but before the end of the thirty-day period, the parties agree in writing that no agreement is possible;

(c) If both parties agree in writing to continue the mediation at the end of the thirty-day resolution period, but later, the parent or school district withdraws from the mediation process.

(4)(a) If a resolution to the dispute is reached at the meeting described in subsection (1)(a) and (b) of this section, the parties must execute a legally binding agreement that is:

(i) Signed by both the parent and a representative of the school district who has the authority to bind the district; and

(ii) Enforceable in any state court of competent jurisdiction or in a district court of the United States.

(b) If the parties execute an agreement pursuant this section, a party may void the agreement within three business days of the agreement's execution.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-05100 Hearing rights. These hearing rights govern both due process hearings conducted pursuant to WAC 392-172A-05080 through 392-172A-05125 and hearings for disciplinary matters conducted pursuant to WAC 392-172A-05160 and 392-172A-05165.

(1) Any party to a due process hearing has the right to:

(a) Be ((~~accompanied and advised~~)) represented by counsel and accompanied and advised by individuals with special knowledge or training with respect to the problems of students eligible for special education;

(b) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(c) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing, or two business days if the hearing is expedited pursuant to WAC 392-172A-05160;

(d) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

(e) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(2)(a) At least five business days prior to a due process hearing conducted pursuant to this section, or two business days prior to a hearing conducted pursuant to WAC 392-172A-05165, each party must disclose to all other parties all evaluations completed by that date and the recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(b) An administrative law judge may bar any party that fails to comply with (a) of this subsection from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(3) The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process hearing request unless the other party agrees otherwise.

(4) Either party may file a separate due process hearing request on an issue separate from a due process hearing request already filed.

(5) Parents involved in hearings must be given the right to:

(a) Have the student who is the subject of the hearing present;

(b) Open the hearing to the public; and

(c) Have the record of the hearing and the findings of fact and decisions described in subsection (1)(d) and (e) of this section provided to the parent at no cost.

(6) To the extent not modified by the hearing procedures addressed in this section and the timelines and procedures for civil actions addressed in WAC 392-172A-05115 the general rules applicable for administrative hearings contained in chapter 10-08 WAC govern the conduct of the due process hearing.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05110 Timelines and convenience of hearings. (1) Not later than forty-five days after the expiration of the thirty day resolution period, or the adjusted time periods described in WAC 392-172A-05090(3):

(a) A final decision shall be reached in the hearing; and

(b) A copy of the decision shall be mailed to each of the parties.

(2) Reconsideration of the decision under RCW 34.05.070 is not allowed under Part B of the act due to the timelines for issuing a final decision.

(3) An administrative law judge may grant specific extensions of time beyond the period in subsection (1) of this section at the request of either party.

((~~(3)~~)) (4) Each due process hearing must be conducted at a time and place that is reasonably convenient to the parents and student involved.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-05130 Surrogate parents. (1) School districts must ensure that the rights of a student are protected when:

(a) No parent as defined in WAC 392-172A-01125 can be identified;

(b) The school district, after reasonable efforts, cannot locate a parent;

(c) The student is a ward of the state; or

(d) The student is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act((~~; or~~

~~(e) An educational representative is appointed for a student pursuant to WAC 392-172A-05135(5)~~)).

(2) School districts must develop procedures for assignment of an individual to act as a surrogate for the parents. This must include a method:

(a) For determining whether a student needs a surrogate parent;

(b) For assigning a surrogate parent to the student; and

(c) Ensuring that an assignment of a surrogate parent is provided within thirty days of the district's determination that a surrogate parent is required.

(3) If a student is a ward of the state, the judge overseeing the student's case, may appoint a surrogate parent, provided that the surrogate meets the requirements in subsections (4)(a) and (5) of this section.

(4) School districts must ensure that a person selected as a surrogate parent:

(a) Is not an employee of the OSPI, the school district, or any other agency that is involved in the education or care of the student;

(b) Has no personal or professional interest that conflicts with the interest of the student the surrogate parent represents; and

(c) Has knowledge and skills that ensure adequate representation of the student.

(5) A person otherwise qualified to be a surrogate parent under subsection (4) of this section is not an employee of the OSPI, school district or other agency solely because he or she is paid by the agency to serve as a surrogate parent.

(6) In the case of a student who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to subsection (4)(a) of this section until a surrogate parent can be appointed that meets all of the requirements of subsection (4) of this section.

(7) The surrogate parent may represent the student in all matters relating to the identification, evaluation, educational placement and the provision of FAPE to the student.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05140 Purpose. The purpose of WAC 392-172A-05140 through ((~~392-172A-05155~~)) 392-172A-05175 is to ensure that students eligible for special education services are not improperly excluded from school for disciplinary reasons and are provided services in accordance with WAC 392-172A-05145. Each school district ((~~serving special education students~~)) shall take steps to ensure that each employee, contractor, and other agent is knowledgeable of the disciplinary procedures to be followed for students eligible for special education and students who may be deemed to be eligible for special education, and knowledgeable of the rules and procedures contained in chapter 392-400 WAC governing discipline for all students.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-05150 Determination of setting. The student's IEP team determines the interim alternative educational setting for services under WAC 392-172A-05145 (3), (4)((~~(e)~~))(f) and (7).

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05155 Change of placement because of disciplinary removals. (1) For purposes of removals of a student eligible for special education from the student's current educational placement, because of disciplinary removals, a change of placement occurs if:

((~~(1)~~)) (a) The removal is for more than ten consecutive school days; or

((~~(2)~~)) (b) The student has been subjected to a series of removals that constitute a pattern:

((~~(a)~~)) (i) Because the series of removals total more than ten school days in a school year;

((~~(b)~~)) (ii) Because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and

((~~(c)~~)) (iii) Because of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

((~~(3)~~)) (2) The school district determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

((~~(4)~~)) (3) The determination regarding a disciplinary change of placement is subject to review through due process and judicial proceedings.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-05185 Notice to parents. (1) Parents of students eligible for special education have rights regarding the protection of the confidentiality of any personally identifiable information collected, used, or maintained under WAC 392-172A-05180 through 392-172A-05240, the Family Educational Rights and Privacy Act of 1974, as amended, state laws contained in Title 28A RCW that address personally identifiable information, regulations implementing state law, and Part B of IDEA.

(2) State forms, procedural safeguards and parent handbooks regarding special education are available in Spanish, Vietnamese, Russian, ((~~Cambodian~~)) Khmer, Ukrainian, Somali, and Korean, and alternate formats on request.

(3) Personally identifiable information about students for use by the OSPI, special education section, may be contained in state complaints, due process hearing requests, monitoring hearing requests and decisions, safety net applications, and mediation agreements. The state may also receive personally identifiable information as a result of grant evaluation performance. This information is removed before forwarding information to other agencies or individuals requesting the information, unless the parent or adult student consents to release the information or the information is allowed to be released without parent consent under the regulations implementing the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99.

(4) School districts are responsible for child find activities for students who may be eligible for special education. If the state were to conduct any major identification, location, or evaluation activity, the state would publish notices in

newspapers with circulation adequate to notify parents throughout the state of the activity, notify school districts and post information on its web site.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-06000 Condition of assistance. As a condition of receipt and expenditure of federal special education funds, a school district or other public agency shall annually submit a request for federal funds to the ((~~superintendent of public instruction~~)) OSPI, and conduct its special education and related services program in compliance with the requirements of this chapter. The request shall be made through an application that includes, but is not limited to the following assurances and types of information:

(1) Assurances that: The school district or other public agency meets each of the conditions contained in 34 C.F.R. 300.201 through 300.213 relating to:

(a) Development of policies and procedures consistent with this chapter and Part B of the act;

(b) The provision of FAPE to students;

(c) Child find requirements for students((~~;~~)), including evaluation;

(d) Development of an IEP;

(e) The provision of services in the least restrictive environment, and the availability of a continuum of services, including access to extracurricular and nonacademic activities;

(f) The provision of procedural safeguard protections and implementation of the procedural safeguards notices;

(g) Confidentiality of records and information;

(h) Transition of children from Part C to Part B services;

(i) Participation of students enrolled in private school programs, using a proportional share of Part B funds;

(j) Placement of students in private school programs to provide FAPE or placement of students in private school programs by their parents when FAPE is at issue;

(k) Use of funds;

((~~(k)~~)) (l) Personnel preparation;

((~~(l)~~)) (m) Availability of documents relating to the eligibility of the school district;

((~~(m)~~)) (n) Provision to OSPI of all necessary information and data for the state's performance goals;

((~~(n)~~)) (o) Provision of instructional materials to blind persons or persons with print disabilities;

((~~(o)~~)) (p) Timely correction of noncompliance; and

((~~(p)~~)) (q) A goal and detailed timetable for providing full educational opportunity to all special education students.

(2) Identification of the ((~~local~~)) school district designee responsible for child identification activities and confidentiality of information.

(3) ((~~Information related to participation of students enrolled in private school programs using a proportional share of Part B funds.~~

~~(4)~~)) Information that addresses the school district's progress or slippage in meeting the state's performance goals and in addressing the state's annual performance plan.

((~~(5)~~)) (4) A description of the use of funds received under Part B of the act.

((~~(6)~~)) (5) Any other information requested by the OSPI which is necessary for the management of the special education program, including compliance with enforcement activities related to monitoring, due process, citizen complaints, or determinations status.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-06020 Exception to maintenance of effort. A school district or other public agency may reduce the level of expenditures made by it under Part B of the IDEA below the level of those expenditures for the preceding fiscal year if the reduction is attributable to:

(1) The voluntary departure, by retirement or otherwise, or departure for just cause, of special education or related services personnel;

(2) A decrease in the enrollment of students eligible for special education;

(3) The termination of the obligation of the district or agency, consistent with this chapter, to provide a program of special education to a particular student that is an exceptionally costly program as determined by the state, because the student:

(a) Has left the jurisdiction of the district or agency;

(b) Has reached the age at which the obligation of the district or agency to provide a free appropriate public education to the student has terminated; or

(c) No longer needs the program of special education.

(4) The termination of costly expenditures for long-term purchases such as the acquisition of equipment or the construction of school facilities.

(5) The ((~~reimbursement of the cost by the safety net fund operated by the state oversight committee~~)) assumption of cost by the high needs safety net fund operated by the OSPI.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-06030 School-wide programs under Title 1 of the ESEA. (1) A school district ((~~or other agency~~)) may use funds received under Part B of the IDEA for any fiscal year to carry out a school-wide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount used in any school-wide program may not exceed:

(a) The amount received by the district ((~~or agency~~)) under Part B for that fiscal year; divided by the number of students eligible for special education in the jurisdiction; multiplied by

(b) The number of students eligible for special education participating in the school-wide program.

(2) The funds described in subsection (1) of this section may be used without regard to WAC ((~~392-172A-05010 (1)(a)~~)) 392-172A-06010 (1)(a).

(3) The funds described in subsection (1) of this section must be considered as federal Part B funds for purposes of calculating excess cost and supplanting WAC ((~~392-172A-05010~~)) 392-172A-06010 (1)(b) and (c).

(4) Except as provided in subsections (2) and (3) of this section, all other requirements of Part B must be met, including ensuring that students eligible for special education in school-wide program schools:

(a) Receive services in accordance with a properly developed IEP; and

(b) Are afforded all of the rights and services guaranteed to students eligible for special education under the IDEA.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-06040 Purchase of and access to instructional materials. The OSPI has elected to coordinate with the National Instructional Materials Access Center (NIMAC). School districts have the option of coordinating with NIMAC.

(1) Not later than December 3, 2006, a school district that chooses to coordinate with NIMAC, when purchasing print instructional materials, must acquire those instructional materials in accordance with subsection (2) of this section.

(2) If a school district chooses to coordinate with the NIMAC, as of December 3, 2006, it must:

(a) As part of any print instructional materials adoption process, procurement contract, or other practice or instrument used for purchase of print instructional materials, must enter into a written contract with the publisher of the print instructional materials to:

(i) Require the publisher to prepare and, on or before delivery of the print instructional materials, provide to NIMAC electronic files containing the contents of the print instructional materials using the NIMAS; or

(ii) Purchase instructional materials from the publisher that are produced in, or may be rendered in, specialized formats.

(b) Make all reasonable attempts to provide instructional materials to blind persons or other persons with print disabilities in a timely manner.

(c) In carrying out this section, the school district, to the maximum extent possible, must work with the state instructional resources center.

(3) For the purposes of this section:

(a) Blind persons or other persons with print disabilities means students served under this part who may qualify to receive books and other publications produced in specialized formats in accordance with the act entitled "An Act to provide books for adult blind," approved March 3, 1931, 2 U.S.C. 135a;

(b) National Instructional Materials Access Center or NIMAC means the center established pursuant to section 674(e) of the act;

(c) National Instructional Materials Accessibility Standard or NIMAS has the meaning given the term in section 674 (e)(3)(B) of the act;

(d) Specialized formats has the meaning given the term in section 674 (e)(3)(D) of the act.

(4) The definitions in subsection (3) of this section apply to each school district, whether or not the school district chooses to coordinate with the NIMAC.

(5) ((~~Rights of a school district.~~)) Nothing in this section shall be construed to require a school district to coordinate with the NIMAC.

(6) If a school district chooses not to coordinate with the NIMAC, the school district must provide an assurance to the OSPI that the school district will provide instructional materials to blind persons or other persons with print disabilities by other means in a timely manner.

(7) Nothing in this section relieves a school district of its responsibility to ensure that students eligible for special education who need instructional materials in accessible formats but are not included under the definition of blind or other persons with print disabilities or who need materials that cannot be produced from NIMAS files, receive those instructional materials in a timely manner.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-06045 School district information for OSPI. (1) The school district must provide the OSPI with information that is necessary to enable the OSPI to carry out its duties under Part B of the act and state law, including, but not limited to child count, least restrictive environment, suspension and expulsion rates, disproportionality, and other information relating to the performance of students eligible for special education participating in programs carried out under Part B of the act.

(2) The information will be provided to the OSPI in the form and by the timelines specified for a particular report.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-06050 Public information. The school district must make available to parents of students eligible for special education and to the general public all documents relating to the eligibility of the ((~~agency~~)) school district under Part B of the act.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-06055 Records regarding migratory students eligible for special education. The ((~~LEA~~)) school district must cooperate in the secretary's efforts under section 1308 of the ESEA to ensure the linkage of records pertaining to migratory students eligible for special education for the purpose of electronically exchanging, among the states, health and educational information regarding those students.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-06060 Exception for prior policies and procedures. (1) If a school district has ((~~on file with the OSPI~~)) policies and procedures on file with the OSPI that demonstrate that the school district meets the requirements ((~~under~~)) of WAC ((~~392-172A-05000~~)) 392-172A-06000, including any policies and procedures filed under Part B of the act as in effect before December 3, 2004, the OSPI must

consider the school district to have met that requirement for purposes of receiving assistance under Part B of the act.

(2) Subject to subsection (3) of this section, policies and procedures submitted by a school district in accordance with this subpart remain in effect until the school district submits to the OSPI the modifications that the school district determines are necessary.

(3) The OSPI may require a school district to modify its policies and procedures, but only to the extent necessary to ensure the school district's compliance with Part B of the act or state law, if:

(a) After December 3, 2004, ((~~the effective date of the Individuals with Disabilities Education Improvement Act of 2004,~~)) the applicable provisions of the act or federal or state regulations developed to carry out the act, are amended;

(b) There is a new interpretation of an applicable provision of the act by federal or state courts; or

(c) There is an official finding of noncompliance with federal or state law or regulations.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-06065 Notification of a school district in case of ineligibility. (1) In the event the ((~~superintendent of public instruction or designee~~)) OSPI determines that a school district is not eligible under Part B of the act, or is not complying with corrective actions as a result of monitoring, state complaints, or due process decisions and the ((~~superintendent~~)) OSPI intends to withhold or recover funds in whole or in part, the school district ((~~or other public agency~~)) shall be provided:

(a) Written notice of intent to withhold or recover funds and the reasons supporting its notice;

(b) The school district's opportunity for a hearing before the superintendent of public instruction or designee prior to a denial of the request.

(2) The ((~~superintendent of public instruction~~)) OSPI shall provide an opportunity for a hearing before the ((~~OSPI~~)) it disapproves the request in accordance with the following procedures:

(a) The applicant shall request the hearing within thirty days of receiving notice of the action of the ((~~superintendent of public instruction~~)) OSPI.

(b) Within thirty days after it receives a request, the ((~~superintendent of public instruction~~)) OSPI shall hold a hearing to review its action. At the hearing, the district shall have the opportunity to provide the superintendent's designee with documentary evidence demonstrating that the ((~~superintendent~~)) OSPI erred in reaching its determination.

(c) The ((~~superintendent~~)) superintendent's designee shall consider any new evidence provided and respond in writing to the school district within thirty days, by affirming the initial determination, rescinding its initial determination, or issuing a revised determination.

(d) If the district remains unsatisfied with the ((~~superintendent's~~)) OSPI's determination, it ((~~may appeal the agency's decision by filing~~)) may file an appeal of OSPI's determination with the office of administrative hearings within thirty days of receiving OSPI's final determination. Procedures for filing an appeal of a ((~~decision~~)) determination under this section shall be in accordance with the Administrative Procedure Act, chapter 34.05 RCW and chapter ((~~10.08~~)) 10-08 WAC ((~~[10-08 WAC]~~)).

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-06070 School district compliance. (1) If the OSPI, after reasonable notice and an opportunity for a hearing, finds that a school district determined to be eligible under this subpart is failing to comply with any requirement described in WAC 392-172A-06000 through 392-172A-06060, the OSPI must reduce or must not provide any further payments to the school district until the OSPI is satisfied that the school district is complying with that requirement.

(2) Any school district ((~~or other public agency~~)) in receipt of a notice of intent to withhold or recover funds ((~~of the school district shall~~)) must, by means of a public notice, take the measures necessary to bring the pendency of an action ((~~pursuant to~~)) under this section to the attention of the public, within its jurisdiction.

(3) In carrying out its responsibilities under this section, OSPI must consider ((~~any~~)) the results of a due process hearing decision ((~~resulting in a decision~~)) that is adverse to ((~~the~~)) a school district ((~~involved in the decision~~)).

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-06075 Collaborative requests. (1) The ((~~superintendent of public instruction~~)) OSPI may require districts to submit a collaborative request for payments under Part B of the ((~~Individuals with Disabilities Education~~)) act if it is determined that a single district ((~~or other public agency~~)) would be disapproved because the district ((~~or other public agency~~)) is unable to establish and maintain programs of sufficient size and scope to effectively meet the educational needs of special education students. Districts that apply for Part B funds in a collaborative request must meet the same minimum requirements as a single school district ((~~or other public agency~~)) applicant. The request must be signed by the superintendent of each participating school district ((~~or other public agency~~)). The districts are jointly responsible for implementing programs receiving payments under Part B of the ((~~Individuals with Disabilities Education~~)) act. The total amount of funds made available to the affected school districts ((~~or other public agencies shall~~)) will be equal to the sum each would have received separately.

(2) The OSPI may not require a charter school to jointly establish its eligibility under subsection (1) of this section unless the charter school is explicitly permitted to do so under chapter 28A.710 RCW.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-06080 Requirements for establishing eligibility. (1) School districts that establish joint eligibility under this section must:

((~~(1)~~)) (a) Adopt policies and procedures that are consistent with the state's policies and procedures consistent with WAC 392-172A-06005; and

((~~(2)~~)) (b) Be jointly responsible for implementing programs that receive assistance under Part B of the act.

(2) If an educational service agency has authority to carry out programs under part B of the act, the joint responsibilities given to school districts:

(a) Do not apply to the administration and disbursement of any payments received by the educational service agency; and

(b) Must be carried out only by that educational service agency.

(3) Regardless of any other provisions in WAC 392-172A-06075 and 392-172A-06080, an educational service agency must provide for the education of eligible students in the least restrictive environment.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-07000 Methods of ensuring services. (1) OSPI must ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each noneducational public agency described in this section and the OSPI, in order to ensure that all services that are needed to ensure FAPE are provided, including the provision of these services during the pendency of any dispute under (c) of this subsection. The agreement or mechanism shall contain:

(a) An identification of, or a method of defining, the financial responsibility of each agency for providing services to ensure FAPE to students eligible for special education. The financial responsibility of each noneducational public agency, including the state medicaid agency and other public insurers of students eligible for special education, must precede the financial responsibility of the school district.

(b) The conditions, terms, and procedures under which a school district must be reimbursed by other agencies.

(c) Procedures for resolving interagency disputes (including procedures under which ((~~LEAs~~)) school districts may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

(d) Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in subsection (2)(a) of this section.

(2)(a) If any public agency other than an educational agency is otherwise obligated under federal or state law, or assigned responsibility under state policy or pursuant to subsection (1) of this section, to provide or pay for any services that are also considered special education or related services such as, but not limited to, assistive technology devices and services, related services, whether provided as specially designed instruction or related services; supplementary aids and services, and transition services that are necessary for ensuring FAPE to students eligible for special education, the noneducational public agency must fulfill that obligation or responsibility, either directly or through contract or other arrangement pursuant to subsection (1) of this section.

(b) A noneducational public agency described in subsections (1)(a) and (2) of this section may not disqualify an eligible service for medicaid reimbursement because that service is provided in a school context.

(c) If a noneducational public agency other than ((~~an educational agency~~)) a school district fails to provide or pay for the special education and related services described in (a) of this subsection, the school district developing the student's IEP must provide or pay for these services to the student in a timely manner. The school district is authorized to claim reimbursement for the services from the noneducational public agency that failed to provide or pay for these services and that agency must reimburse the school district or state agency in accordance with the terms of the interagency agreement or other mechanism described in subsection (1) of this section.

(3) The requirements of subsection (1) of this section may be met through:

(a) State statute or regulation;

(b) Signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

(c) Other appropriate written methods determined by the superintendent of the office of public instruction.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-07005 Students eligible for special education who are covered by public benefits or insurance or private insurance. (1) A school district may use the medicaid or other public benefits or insurance programs in which a student participates to provide or pay for services required under ((~~this~~)) Part B of the act, as permitted under the public benefits or insurance program, except as provided under subsection (2) of this section.

(2) With regard to services required to provide FAPE to an eligible student, the school district:

(a) May not require parents to sign up for or enroll in public benefits or insurance programs in order for their student to receive FAPE under Part B of the act;

(b) May not require parents to incur an out-of-pocket expense such as the payment of a deductible or ((~~co-pay~~)) copay amount incurred in filing a claim for services provided pursuant to this part, but may pay the cost that the parents otherwise would be required to pay;

(c) May not use a child's benefits under a public benefits or insurance program if that use would:

(i) Decrease available lifetime coverage or any other insured benefit;

(ii) Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the student is in school;

(iii) Increase premiums or lead to the discontinuation of benefits or insurance; or

(iv) Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures; and

(d) ((~~Must obtain parental consent, each time that access to public benefits or insurance is sought for a new procedure; and must notify parents that the parents' refusal to allow access to their public benefits or insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.~~)) Prior to accessing a child's or parent's public benefits or insurance for the first time, and after providing notification to the child's parents consistent with subsection (3) of this section, must obtain written, parental consent that:

(i) Meets the requirements of 34 C.F.R. Sec. 99.30 and WAC 392-172A-05225, which consent must specify:

(A) The personally identifiable information that may be disclosed, such as records or information about the services that may be provided to a particular child;

(B) The purpose of the disclosure, such as billing for services under the act; and

(C) The agency to which the disclosure may be made such as the health care authority; and

(ii) Specifies that the parent understands and agrees that the public agency may access the parent's or child's public benefits or insurance to pay for services under the act.

(3) Prior to accessing a child's or parent's public benefits or insurance for the first time, and annually thereafter, the school district must provide written notification, consistent with WAC 392-172-05010(3) to the child's parents, that includes:

(a) A statement of the parental consent provisions in subsection (2)(d)(i) of this section;

(b) A statement of the "no cost" provisions in subsection (2)(b) and (c) of this section;

(c) A statement that the parents have the right under 34 C.F.R. Part 99 and WAC 392-172A-05225 to withdraw their consent to disclosure of their child's personally identifiable information to the agency responsible for the administration of the state's public benefits or insurance program at any time; and

(d) A statement that the withdrawal of consent or refusal to provide consent under 34 C.F.R. Part 99 and WAC 392-172A-05225 to disclose personally identifiable information to the agency responsible for the administration of the state's public benefits or insurance program does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

((~~(3)~~)) (4) With regard to services required to provide FAPE to an eligible student under this part, a ((~~public agency~~)) school district may access the parents' private insurance proceeds only if the parents provide consent. Each time the public agency proposes to access the parents' private insurance proceeds, the ((~~agency~~)) school district must:

(a) Obtain parental consent; and

(b) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

((~~(4)~~)) (5)(a) If a school district is unable to obtain parental consent to use the parents' private insurance, or public benefits or insurance when the parents would incur a cost for a specified service required under this part, to ensure FAPE the public agency may use its Part B funds to pay for the service.

(b) To avoid financial cost to parents who otherwise would consent to use private insurance, or public benefits or insurance if the parents would incur a cost, the ((~~public agency~~)) school district may use its Part B funds to pay the cost that the parents otherwise would have to pay to use the parents' benefits or insurance such as deductible or co-pay amounts.

((~~(5)~~)) (6) Proceeds from public benefits or insurance or private insurance will not be treated as program income for purposes of 34 C.F.R. 80.25.

((~~(6)~~)) (7) If a ((~~public agency~~)) school district spends reimbursements from federal funds such as medicaid, for services under this part, those funds will not be considered state or local funds for purposes of the maintenance of effort provisions.

((~~(7)~~)) (8) Nothing in this part should be construed to alter the requirements imposed on a state medicaid agency, or any other agency administering a public benefits or insurance program by federal statute, regulations or policy under Title XIX, or Title XXI of the Social Security Act, 42 U.S.C. Secs. 1396 through 1396v and 42 U.S.C. Secs. 1397aa through 1397jj, or any other public benefits or insurance program.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-07010 Monitoring. (1) ((~~OSPI's monitoring of~~)) The OSPI monitors school districts' special education programs ((~~is~~)) to:

(a) Improve educational results and functional outcomes for all students eligible for special education;

(b) Ensure that school districts meet the program requirements under Part B of the act with a particular emphasis on those requirements that are most closely related to improving educational results for students eligible for special education;

(c) Determine the school district's compliance with this chapter, chapter 28A.155 RCW, and federal regulations implementing 20 U.S.C. Sec. 1400, et seq.;

(d) Validate information included in school district or other public agency requests for federal funds; and

(e) Measure and report district performance on relative targets and priorities from federally approved state performance plans.

(2) Procedures for monitoring school districts and other public agencies may include any or all of the following:

(a) Collection, review, and analysis of quantitative and qualitative data and other information;

(b) Conduct of on-site visits;

(c) Review and analysis of such quantifiable and qualitative data and indicators as are needed to measure performance in the following areas:

(i) Provision of a FAPE in the least restrictive environment;

(ii) State exercise of general supervision, including child find, effective monitoring, and the use of resolution meetings, mediation, and a system of transition services; and

(iii) Disproportionate representation of racial and ethnic groups in special education and related services to the extent the representation is the result of inappropriate identification.

(3) As part of the monitoring process, a notification of identified noncompliance shall be issued to the school district. This notification will initiate a process of corrections, verification, and validation to ensure that the noncompliance is corrected as soon as possible, but no later than one year from the identification of noncompliance. If noncompliance is systemic in nature, a systemic corrective action plan is required.

(4) If the school district does not timely address compliance with corrective actions, the OSPI shall institute procedures to ensure compliance with applicable state and federal rules and priorities and targets from the state performance plan. Such procedures may include one or more of the following:

(a) Verification visits by the OSPI staff, or its designee, to:

(i) Determine whether the school district is taking the required corrective action(s); and/or

(ii) Provide any necessary technical assistance to the school district or other public agency in its efforts to comply.

(b) Withhold, in whole or part, a specified amount of state and/or federal special education funds, to address noncompliance.

(c) Request assistance from the state ((~~auditors~~)) auditor's office.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-07012 Determinations. (1) The OSPI annually reviews the data it obtains from school districts through monitoring, submission of other data required by the district, and other public information provided by the district. Based on the data and information provided, OSPI determines if the school district:

(a) Meets the requirements and purposes of Part B of the act;

(b) Needs assistance in implementing the requirements of Part B of the act;

(c) Needs intervention in implementing the requirements of Part B of the act; or

(d) Needs substantial intervention in implementing the requirements of Part B of the act.

(2) If the OSPI determines, for two consecutive years, that a district needs assistance in implementing the OSPI's annual performance requirements, OSPI will advise the district of available sources of technical assistance that may help the district address the areas in which the district needs assistance, which may include assistance from the OSPI, office of special education programs, other offices of the department of education, other federal agencies, technical assistance providers approved by the department of education, and other federally or state funded nonprofit agencies, and require the district to work with appropriate entities. Such technical assistance may include:

(a) The provision of advice by experts to address the areas in which the district needs assistance, including explicit plans for addressing the areas of concern within a specified period of time;

(b) Assistance in identifying and implementing professional development, instructional strategies, and methods of instruction that are based on scientifically based research;

(c) Designating and using distinguished superintendents, principals, special education administrators, special education teachers, and other teachers to provide advice, technical assistance, and support; and

(d) Devising additional approaches to providing technical assistance, such as collaborating with institutions of higher education, educational service districts, national centers of technical assistance, and private providers of scientifically based technical assistance.

(3) If the OSPI determines, for three or more consecutive years, that a district needs intervention in implementing the OSPI's annual performance requirements, OSPI may take actions described under subsection (2) of this section and will take one or more of the following actions:

(a) Require the district to prepare a corrective action plan or improvement plan if the OSPI determines that the district should be able to correct the problem within one year;

(b) Withhold, in whole or in part, any further payments to the district under Part B of the act;

((~~(4) Notwithstanding subsections (2) or (3) of this section, at any time that the OSPI determines that a district needs substantial intervention in implementing the requirements of Part B of the act or that there is a substantial failure to comply with any condition of a school district's eligibility under Part B of the act, OSPI will withhold, in whole or in part, any further payments to the district under Part B of the act, in addition to any other actions taken under subsections (2) or (3) of this section.~~))

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-07015 Performance goals and indicators. (1) The OSPI has established goals for the performance of ((~~special education~~)) students eligible for special education that promote the purposes of the ((~~Individuals with Disabilities Education~~)) act, and are consistent, to the maximum extent appropriate, with the state's ((~~four~~)) learning goals ((~~and essential academic learning requirements~~)) for all students((~~, and are the same as the state's objectives for progress by students in its definition of adequate yearly progress, including the state's objectives for progress by students eligible for special education,~~)) under section 1111 (b)(2)(C) of the ESEA, 20 U.S.C. Sec. 6311. The performance goals are identified in the state's performance plan, which is based upon district data provided to the OSPI.

(2) In addition, the OSPI has established performance indicators that are used to assess the state's and school ((~~district's~~)) districts' progress toward achieving those goals that at a minimum address the performance of eligible students on assessments, dropout rates, transition, and graduation rates.

(3) The state reports annually to the department of education and to the public through its annual performance report on the progress of the state, and of students eligible for

special education in the state, toward meeting the goals established under subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-07050 State use of funds. The OSPI reserves funds for state-level activities, including state administration and other state-level activities, in accordance with the provisions of 34 C.F.R. Sec. 300.704. OSPI makes distributions of unreserved or unused grant funds, that it receives pursuant to section 611 of the act, to eligible school districts ((~~allocated~~)) and charter schools through subgrants in accordance with the provisions of 34 C.F.R. Sec. 300.705.

AMENDATORY SECTION (Amending WSR 09-20-053, filed 10/1/09, effective 11/1/09)

WAC 392-172A-07055 State safety net fund for high need students. (1) The state has established a special education safety net fund for students eligible for special education. The rules for applying for reimbursement for the fund are contained in WAC ((~~392-14-600 through 392-14-685~~)) 392-140-600 through 392-140-685 or as may be amended.

(2) Part B funding is available through the safety net fund to reimburse ((~~high need, low incidence, catastrophic, or extraordinary aid~~)) costs associated with the provision of services identified in a properly formulated IEP consistent with WAC 392-140-609 for applicants with eligible high need special education students whose cost is at least three times the average per pupil expenditure; and whose placement is consistent with least restrictive environment provisions and other applicable rules regarding placement, including placement in nonpublic agencies.

(3) Disbursements provided under subsection (2) of this section must not be used to pay costs that otherwise would be reimbursed as medical assistance for a student eligible for special education under the state medicaid program under Title XIX of the Social Security Act.

(4) The costs associated with educating a high need student eligible for special education, in subsections (2) and (3) of this section, are only those costs associated with providing direct special education and related services to the student that are identified in that student's IEP, including the cost of room and board for a residential placement determined necessary, consistent to implement a student's IEP.

(5) The disbursements to an applicant must not be used to support legal fees, court costs, or other costs associated with a cause of action brought on behalf of a student to ensure FAPE for such student.

(6) Federal funds reserved for the safety net fund from the appropriation for any fiscal year, but not expended to eligible applicants for safety net funding must be allocated to school districts in the same manner as other funds from the appropriation for that fiscal year are allocated to school districts during their final year of availability.

(7) The funds in the high cost fund remain under the control of the state until disbursed to a school district to support a specific child who qualifies under this section and the state regulations for safety net funding described in subsection (1) of this section.

(8) Nothing in this section:

(a) Limits or conditions the right of a student eligible for special education who is assisted under Part B of the act to receive a FAPE in the least restrictive environment; or

(b) Authorizes the state or a school district to establish a limit on what may be spent on the education of a student eligible for special education.

AMENDATORY SECTION (Amending WSR 07-14-078, filed 6/29/07, effective 7/30/07)

WAC 392-172A-07060 State advisory council. (1) The special education state advisory council is established in order to help facilitate the provision of special education and related services to meet the unique needs of special education students.

(2) The membership of the council is appointed by the superintendent of the office of public instruction and shall include at least one representative of each of the following groups or entities:

(a) Parents of children, aged birth to twenty-six, with disabilities;

(b) Individuals with disabilities;

(c) Teachers;

(d) Institutions of higher education that prepare special education and related services personnel;

(e) ((~~Superintendents and principals, including~~)) State and local district officials who carry out activities under subtitle B of Title VII of the McKinney-Vento Homeless Assistance Act;

(f) Local administrators of special education programs;

(g) State agencies involved in the financing or delivery of related services to special education students;

(h) Representatives of private schools and public charter schools;

(i) Not less than one vocational, community, or business organization concerned with the provision of transition services to students eligible for special education;

(j) A state child welfare agency employee responsible for services to children in foster care;

(k) State juvenile and adult corrections agencies;

(l) Other individuals or groups as may hereafter be designated and approved by the superintendent of public instruction.

A majority of the members of the advisory council shall be individuals with disabilities or parents of special education students.

(3) The council's purposes are to:

(a) Advise the superintendent of public instruction and make recommendations on all matters related to special education and specifically advise the superintendent of unmet needs within the state in the education of special education students;

(b) Comment publicly on any rules or regulations proposed by the state regarding the education of special education students;

(c) Advise the state in developing evaluations and reporting such information as may assist the state in its data requirements under section 618 of the act;

(d) Advise the state in developing corrective action plans to address findings identified in federal monitoring reports under Part B of the Individuals with Disabilities Education Act; and

(e) Advise the state in developing and implementing policies relating to the coordination of services for special education students.

(4) The council shall follow the procedures in this subsection.

(a) The advisory council shall meet as often as necessary to conduct its business.

(b) By July 1 of each year, the advisory council shall submit an annual report of council activities and suggestions to the superintendent of public instruction. This report must be made available to the public in a manner consistent with other public reporting requirements of this chapter.

(c) Official minutes will be kept on all council meetings and shall be made available to the public on request to the OSPI.

WSR 13-14-053
PROPOSED RULES
HEALTH CARE AUTHORITY
(Medicaid Program)
[Filed June 27, 2013, 4:21 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-07-007.

Title of Rule and Other Identifying Information: WAC 182-502-0012 When the department does not enroll, 182-502-0050 Provider dispute of a department action, 182-502-0060 Reapplying for participation, and 182-502-0270 Review of department's provider dispute decision.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://maa.dshs.wa.gov/pdf/CherryStreetDirectionsNMap.pdf or directions can be obtained by calling (360) 725-1000), on August 6, 2013, at 10:00 a.m.

Date of Intended Adoption: Not sooner than August 7, 2013.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on August 6, 2013.

Assistance for Persons with Disabilities: Contact Kelly Richters by July 29, 2013, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is revising these rules to afford more discretion in determining provider eligibility for participation as a medicaid provider, as set forth in these WAC provisions. These rules also include minor housekeeping updates.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: RCW 41.05.021.

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

Name of Proponent: HCA, medicaid program, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy L. Boedigheimer, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1306; Implementation and Enforcement: Linda Casten, P.O. Box 45530, Olympia, WA 98504-5530, (360) 725-1622.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and concludes they do not impose more than a minor cost for affected small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

June 27, 2013
Kevin M. Sullivan
Rules Coordinator

<u>AMENDATORY SECTION</u> (Amending WSR 13-03-068, filed 1/14/13, effective 2/14/13)

WAC 182-502-0012 When the medicaid agency does not enroll. (1) The medicaid agency does not enroll a health care professional, health care entity, supplier or contractor of service for reasons which include, but are not limited to, the following:

(a) The agency determines that:

(i) There is a quality of care issue with significant risk factors that may endanger client health and/or safety (see WAC 182-502-0030 (1)(a)); or

(ii) There are risk factors that affect the credibility, honesty, or veracity of the health care practitioner (see WAC 182-502-0030 (1)(b)).

(b) The health care professional, health care entity, supplier or contractor of service:

(i) Is excluded from participation in medicare, medicaid or any other federally funded health care program;

(ii) Has a current formal or informal pending disciplinary action, statement of charges, or the equivalent from any state or federal professional disciplinary body at the time of initial application;

(iii) ((~~Has been disciplined based on allegation of sexual misconduct or admitted to sexual misconduct;~~

~~(iv)~~)) Has a suspended, terminated, revoked, or surrendered professional license as defined under chapter 18.130 RCW;

((~~(v)~~)) <u>(iv)</u> Has a restricted, suspended, terminated, revoked, or surrendered professional license in any state;

((~~(vi)~~)) <u>(v)</u> Is noncompliant with the department of health's or other state health care agency's stipulation of informal disposition, agreed order, final order, or similar licensure restriction;

((~~(vii)~~)) <u>(vi)</u> Is suspended or terminated by any agency within the state of Washington that arranges for the provision of health care;

((~~(viii)~~)) (vii) Fails a background check, including a fingerprint-based criminal background check, performed by the agency. See WAC 182-502-0014 and 182-502-0016;

((~~(ix)~~)) (viii) Does not have sufficient liability insurance according to WAC 182-502-0016 for the scope of practice; or

((~~(x)~~)) (ix) Fails to meet the requirements of a site visit, as required by 42 C.F.R. 455.432.

(2) The agency may not pay for any health care service, drug, supply or equipment prescribed or ordered by a health care professional, health care entity, supplier or contractor of service whose application for a core provider agreement (CPA) has been denied or terminated.

(3) The agency may not pay for any health care service, drug, supply, or equipment prescribed or ordered by a health care professional, health care entity, supplier or contractor of service who does not have a current CPA with the agency when the agency determines there is a potential danger to a client's health and/or safety.

(4) Nothing in this chapter precludes the agency from entering into other forms of written agreements with a health care professional, health care entity, supplier or contractor of service.

(5) If the agency denies an enrollment application, the applicant does not have any dispute rights within the agency.

(6) Under 42 C.F.R. 455.470, the agency:

(a) Will impose a temporary moratorium on enrollment when directed by CMS; or

(b) May initiate and impose a temporary moratorium on enrollment when approved by CMS.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-502-0050 Provider dispute of ((~~a department~~)) an agency action. The process described in this section applies only when ((~~department~~)) agency rules allow a provider to dispute ((~~a department~~)) an agency decision under this section.

(1) In order for the ((~~department~~)) agency to review a decision previously made by the ((~~department~~)) agency, a provider must submit the request to review the decision:

(a) Within twenty-eight calendar days of the date on the ((~~department's~~)) agency's decision notice;

(b) To the address listed in the decision notice; and

(c) In a manner that provides proof of receipt.

(2) A provider's dispute request must:

(a) Be in writing;

(b) Specify the ((~~department~~)) agency decision that the provider is disputing;

(c) State the basis for disputing the ((~~department's~~)) agency's decision; and

(d) Include documentation to support the provider's position.

(3) The ((~~department~~)) agency may request additional information or documentation. The provider must submit the additional information or documentation to the ((~~department~~)) agency within twenty-eight calendar days of the date on the ((~~department's~~)) agency's request.

(4) The ((~~department~~)) agency closes the dispute without issuing a decision and with no right to further review under subsection (6) of this section when the provider:

(a) Fails to comply with any requirement of subsections (2), (3), and (4) of this section;

(b) Fails to cooperate with, or unduly delays, the dispute process; or

(c) Withdraws the dispute request in writing.

(5) The ((~~department~~)) agency will send the provider a written notice of dispute closure or written dispute decision.

(6) The provider may request the ((~~deputy assistant secretary of the medicaid purchasing administration (MPA)~~)) director of the health care authority or designee to review the written dispute decision according to the process in WAC ((~~388-502-0270~~)) 182-502-0270.

(7) This section does not apply to disputes regarding overpayment. For disputes regarding overpayment, see WAC ((~~388-502-0230~~)) 182-502-0230.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-502-0060 Reapplying for participation. (1) Providers who are denied enrollment or removed from participation are not eligible to reapply for participation with the ((~~department~~)) agency for five years from the date of denial or termination.

(2) ((~~Providers who are denied enrollment or removed from participation due to sexual misconduct as defined in chapter 246-16 WAC or in profession-specific rules of the department of health (DOH) are not eligible to be enrolled for participation with the department.~~

~~(3)~~)) Providers who are denied enrollment or removed from participation more than once are not eligible to reapply for participation with the ((~~department~~)) agency.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-502-0270 Review of ((~~department's~~)) agency's provider dispute decision. (1) This section applies only when ((~~department~~)) agency rules allow review of ((~~a department~~)) an agency dispute decision under this section. The ((~~deputy assistant secretary of the health and recovery services administration (HRSA)~~)) director of the health care authority or designee conducts the review.

(2) Providers and former providers may request a review of ((~~a department~~)) an agency dispute decision. The request must be in writing and sent to: ((~~HRSA~~)) Health Care Authority, Attn: ((~~Deputy Assistant Secretary~~)) Appeals Administrator, P.O. Box 45504, Olympia, WA 98504-5504. The ((~~department~~)) agency must receive the written dispute review request within twenty-eight calendar days of the date on the ((~~department's~~)) agency's written dispute decision.

(3) When the ((~~department~~)) agency receives a timely dispute review request, the ((~~deputy~~)) director or designee may schedule a dispute review conference. "Dispute review conference" means an informal conference for the purpose of resolving disagreements between the ((~~department~~)) agency and a provider or former provider who is dissatisfied with ((~~a department~~)) an agency decision. The dispute review confer-

ence is not governed by the Administrative Procedure Act, chapter 34.05 RCW. If the ((~~deputy~~)) director or designee chooses to schedule a dispute review conference, the ((~~deputy~~)) director or designee will conduct the conference within ninety calendar days of the dispute review request unless the ((~~deputy~~)) director or designee and the party requesting review agree to an extension.

(4) The ((~~deputy~~)) director or designee will issue a dispute review decision to the provider or former provider requesting review within thirty calendar days of receiving the dispute review request or within thirty calendar days of the dispute review conference, whichever is later, unless both parties agree to an extension.

(5) The ((~~deputy~~)) director review is the final level of ((~~department~~)) agency review for disputes to which this section applies.

WSR 13-14-083
PROPOSED RULES
PROFESSIONAL EDUCATOR STANDARDS BOARD
[Filed July 1, 2013, 11:04 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-11-107.

Title of Rule and Other Identifying Information: Repeals WAC 181-78A-310 requiring collaboration between preparation programs and districts with preservice teacher placements. New requirements make this section of WAC unnecessary.

Hearing Location(s): Red Lion at the Park, 303 West North River Drive, Spokane, WA 99201, on September 19, 2013, at 8:30.

Date of Intended Adoption: September 19, 2013.

Submit Written Comments to: David Brenna, Old Capitol Building, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by September 12, 2013.

Assistance for Persons with Disabilities: Contact David Brenna by September 12, 2013, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: With the creation of requirements for district placement agreements, and new reporting on field experience, the WAC governing collaboration between programs and districts in [is] not required. The rule is repealed.

Reasons Supporting Proposal: Strengthens requirements; stakeholder.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No fiscal impact.

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

July 1, 2013
David Brenna
Senior Policy Analyst

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 181-78A-310 Program approval—Teachers, collaboration with K-12 schools.

WSR 13-14-084
PROPOSED RULES
PROFESSIONAL EDUCATOR STANDARDS BOARD
[Filed July 1, 2013, 11:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 07-23-120.

Title of Rule and Other Identifying Information: Amends WAC 181-86-145 and 181-86-150 to have the mailing postmark date consistently required as the beginning of a thirty day written notice to license holders for appeal procedures.

Hearing Location(s): Red Lion at the Park, 303 West North River Drive, Spokane, WA 99201, on September 19, 2013, at 8:30.

Date of Intended Adoption: September 19, 2013.

Submit Written Comments to: David Brenna, Old Capitol Building, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by September 12, 2013.

Assistance for Persons with Disabilities: Contact David Brenna by September 12, 2013, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Appeal procedures in WAC 181-86-145 and 181-86-150 are inconsistent. These changes make the mailing postmark the date that starts the thirty day opportunity to respond.

Reasons Supporting Proposal: Strengthens requirements; stakeholder.

Statutory Authority for Adoption: Chapter 28A.410 RCW.

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

Name of Proponent: Professional educator standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 42736 [47236], Olympia, WA 98504, (360) 725-6238.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No fiscal impact.

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

July 1, 2013
David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 06-14-010, filed 6/22/06, effective 7/23/06)

WAC 181-86-145 Appeal procedure—Informal SPI review. Any person who appeals the decision or order to deny his or her application, the issuance of a reprimand, or the order to suspend or revoke his or her certificate must file a written notice with the superintendent of public instruction within thirty calendar days following the date of ((~~receipt~~)) post-marked mailing from the section of the superintendent of public instruction's office responsible for certification of the decision or order.

The written notice must set forth the reasons why the appellant believes his or her application should have been granted or why his or her certificate should not be suspended or revoked, or why the reprimand should not be issued whichever is applicable.

Following timely notice of appeal, the superintendent of public instruction shall appoint a review officer who shall proceed as follows:

(1) If the appeal does not involve good moral character, personal fitness, or unprofessional conduct, the review officer shall review the application and appeal notice and may request further written information including, but not limited to, an explanation from the person or persons who initially reviewed the application of the reason(s) why the application was denied. If the review officer deems it advisable, he or she shall schedule an informal meeting with the appellant, the person or persons who denied the application, and any other interested party designated by the review officer to receive oral information concerning the application. Any such meeting must be held within thirty calendar days of the date of receipt by the superintendent of public instruction of the timely filed appeal notice.

(2) If the appeal involves good moral character, personal fitness, or acts of unprofessional conduct, the review officer shall schedule an informal meeting of the applicant or certificate holder and/or counsel for the applicant or certificate holder with the admissions and professional conduct advisory committee. Such meeting shall be scheduled in accordance with the calendar of meetings of the advisory committee: Provided, That notice of appeal must be received at least fifteen calendar days in advance of a scheduled meeting.

(3) Send by certified mail a written decision((—)) (i.e., findings of fact and conclusions of law((—))) on the appeal within thirty calendar days from the date of ((~~receipt of~~)) post-marked mailing the timely filed appeal notice or informal meeting, whichever is later. The review officer may uphold, reverse, or modify the decision to deny the application, the order to reprimand, or the order to suspend or revoke the certificate.

(4) The timelines stated herein may be extended by the review officer for cause.

(5) Provided, That in the case of an action for suspension or revocation of a certificate, the review officer, if so requested by an appellant, shall delay any review under this section until all quasi-judicial administrative or judicial proceedings (i.e., criminal and civil actions), which the review officer and the appellant agree are factually related to the suspension or revocation proceeding, are completed, including appeals, if the appellant signs the agreement stated in WAC 181-86-160. In requesting such delay, the appellant shall disclose fully all pending quasi-judicial administrative proceedings in which the appellant is involved.

AMENDATORY SECTION (Amending WSR 11-14-112, filed 7/6/11, effective 8/6/11)

WAC 181-86-150 Appeal procedure—Formal SPI review process. Formal appeals to the superintendent of public instruction shall be provided as follows:

(1) Any person who has filed an appeal in accordance with WAC 181-86-140 and desires to have the decision of the review officer formally reviewed by the superintendent of public instruction may do so. To instigate review under this section, a person must file a written notice with the superintendent of public instruction within thirty calendar days following the date of ((~~receipt~~)) post-marked mailing of the review officer's written decision.

(2) For purposes of hearing an appeal under this section, the superintendent of public instruction shall conduct a formal administrative hearing in conformance with the Administrative Procedure Act, chapter 34.05 RCW. The superintendent of public instruction, in carrying out this duty, may contract with the office of administrative hearings pursuant to RCW 28A.300.120 to hear a particular appeal. Decisions in cases formally appealed pursuant to this section may be made by the administrative law judge selected by the chief administrative law judge if the superintendent of public instruction delegates this authority pursuant to RCW 28A.300.120.

(3) The decision of the superintendent of public instruction or the administrative law judge, whichever is applicable, shall be sent by certified mail to the appellant's last known address and if the decision is to reprimand, suspend, or revoke, the appellant shall be notified that such order takes effect upon signing of the final order.

WSR 13-14-089
PROPOSED RULES
HEALTH CARE AUTHORITY
(Medicaid Program)
[Filed July 1, 2013, 2:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-19-092.

Title of Rule and Other Identifying Information: WAC 182-526-0100 Expedited hearings, 182-526-0102 Coordinated appeals process with the Washington health benefits exchange, and 182-526-0218 The authority of a review judge when conducting a hearing as a presiding officer.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://maa.dshs.wa.gov/pdf/CherryStreetDirectionsNMap.pdf or directions can be obtained by calling (360) 725-1000), on August 6, 2013, at 10:00 a.m.

Date of Intended Adoption: Not sooner than August 7, 2013.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on August 6, 2013.

Assistance for Persons with Disabilities: Contact Kelly Richters by July 29, 2013, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These rule amendments are necessary for implementation of the Affordable Care Act on January 1, 2014. HCA is amending WAC 182-526-0218 to support the new modified adjusted gross income (MAGI) methodology and adding new sections about expedited appeals and coordinating appeals with the Washington health benefits exchange (HBE).

Statutory Authority for Adoption: RCW 41.05.021; 42 C.F.R. § 431, 435, and 457; 45 C.F.R. § 155.

Statute Being Implemented: Patient Protection and Affordable Care Act (Public Law 111-148).

Rule is necessary because of federal law, Patient Protection and Affordable Care Act (Public Law 111-148).

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Kevin Sullivan, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1344; Implementation and Enforcement: Annette Schuffenhauer, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1254.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and concludes they do not impose more than minor costs for affected small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules [review] committee or applied voluntarily.

July 1, 2013
Kevin M. Sullivan
Rules Coordinator

NEW SECTION

WAC 182-526-0100 Expedited hearings. (1) The expedited hearing process in this section applies to cases where an applicant or recipient requests an expedited hearing. For expedited hearings related to an enrollee appeal of a managed care organization, see WAC 182-526-0200.

(2) If an applicant or recipient has questions about how, when, and where to request an expedited hearing, the applicant or recipient should:

(a) Contact the HCA hearing representative or the office of administrative hearings (OAH); or

(b) Review the applicable statutes and rules.

(3) An applicant or recipient may request an expedited hearing by any method described in WAC 182-526-0095 or 182-526-0102.

(4) The administrative law judge (ALJ) or review judge will grant a request for an expedited hearing if the ALJ or review judge determines, based on credible medical evidence submitted by or on behalf of the applicant or recipient, that the time otherwise permitted for a hearing could jeopardize the person's life or health or ability to attain, maintain, or regain maximum function. The ALJ or the review judge must allow the HCA hearing representative, or designee if the HCA hearing representative is not available, an opportunity to respond to the request for an expedited hearing before granting or denying the request.

(5) When an expedited hearing is granted, the ALJ or review judge schedules the hearing and issues a decision as expeditiously as the person's health condition requires.

(6) When an expedited hearing is denied, the ALJ or review judge should notify the parties orally but must serve a written notice denying the expedited hearing.

(7) The notice requirements in WAC 182-526-0250 do not apply to the expedited hearing process.

NEW SECTION

WAC 182-526-0102 Coordinated appeals process with the Washington health benefits exchange. (1) The health care authority (HCA) coordinates with the Washington state health benefits exchange (HBE) to ensure a seamless appeal process for determinations related to eligibility for Washington apple health (WAH) when the modified adjusted gross income (MAGI) methodology is used as described in WAC 182-509-0305. The process in WAC 182-526-0218 (2)(b) applies to these appeals.

(2) An applicant, recipient, or an authorized representative of an applicant or recipient may request a hearing:

(a) By telephone;

(b) By mail (which should be sent to Health Care Authority, P.O. Box 15504, Olympia, WA 98504-5504);

(c) In person;

(d) By facsimile transmission;

(e) By e-mail; or

(f) By any other commonly available electronic means.

(3) If the applicant or recipient appeals a determination of eligibility for health insurance premium tax credits (HIPTC) or cost-sharing reductions, HCA also treats this appeal as a request for a hearing related to WAH eligibility. The hearings are conducted as follows:

(a) HBE conducts a hearing related to the eligibility decision of HIPTC or cost-sharing reductions using its published hearings and appeals procedures.

(b) The hearing related to WAH eligibility is conducted either by:

(i) A review judge according to WAC 182-526-0218 (2)(b) after HBE issues a written decision from the hearing described under (a) of this subsection; or

(ii) An ALJ when the conditions described in WAC 182-526-0025(l) and 182-526-0218(5) are met. When an ALJ conducts the hearing related to WAH eligibility, the hearing

may occur before or after HBE conducts the hearing described under (a) of this subsection related to HIPTC or cost-sharing reductions.

(c) If the applicant or recipient who requested a hearing related to HIPTC or cost-sharing reductions does not wish to have a hearing related to WAH eligibility, the applicant or recipient may withdraw the request for a hearing in accordance with WAC 182-526-0115.

(d) When conducting the hearing related to WAH eligibility, neither the ALJ nor the review judge will require the applicant or recipient to submit information to the ALJ or review judge that the applicant or recipient previously submitted to HBE.

(4) If the applicant or recipient appeals only the determination related to WAH eligibility, the process in subsection (3) of this section does not apply.

AMENDATORY SECTION (Amending WSR 13-02-007, filed 12/19/12, effective 2/1/13)

WAC 182-526-0218 The authority of a review judge when conducting a hearing as a presiding officer. (1) A review judge has the same authority and responsibilities as an administrative law judge (ALJ), as described in WAC 182-526-0215, when conducting a hearing.

(2) A review judge conducts the hearing and enters the final order in cases where:

(a) A contractor for the delivery of nursing facility services requests an administrative hearing under WAC 388-96-904(5);

(b) An applicant or recipient appeals an eligibility decision related to Washington apple health (WAH) described in WAC 182-526-0102, unless:

(i) The applicant or recipient requests an in-person hearing in accordance with WAC 182-526-0360;

(ii) The applicant or recipient files a single request for hearing contesting the actions made by both the department of social and health services (DSHS) and the health care authority (HCA) in accordance with WAC 182-526-0387; or

(iii) The chief review judge of the board of appeals determines that HCA does not have the resources to conduct the hearing.

(3) The review judge enters final HCA decisions on all cases in the form of a final order.

(4) Following a review judge's final order:

(a) Any party may request reconsideration of the final order as provided in this chapter and WAC 388-96-904(12), if applicable; and

(b) The party who requested the hearing, but not ((~~the health care authority~~)) HCA or any of its authorized agents, may file a petition for judicial review as provided in this chapter.

(5) If subsection (2)(b) of this section applies, the ALJ from the office of administrative hearings (OAH) conducts the hearing and issues an initial order appealable to the review judge according to the rules in this chapter. The ALJ conducts the hearing related to subsection (2)(b) of this section only when OAH receives a specific referral from HCA or its authorized agent that cites an exemption listed in subsection (2)(b) of this section.

WSR 13-14-090

PROPOSED RULES

TACOMA COMMUNITY COLLEGE

[Filed July 1, 2013, 2:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-24-059.

Title of Rule and Other Identifying Information: Use of college facilities for expressive activity (procedures and reasonable controls for the use of college premises by college and noncollege groups on the Tacoma Community College campus).

Hearing Location(s): Tacoma Community College, Building 12, Room 120, 6501 South 19th Street, Tacoma, WA 98465, on October 9, 2013, at 4:00 p.m.

Date of Intended Adoption: October 9, 2013.

Submit Written Comments to: Valerie Robertson, Tacoma Community College, 6501 South 9th Street, Tacoma, WA 98466, e-mail vrobertson@tacomacc.edu, fax (253) 566-5159, by September 25, 2013.

Assistance for Persons with Disabilities: Contact Cathie Bitz by October 2, 2013, cbitz@tacomacc.edu or (253) 566-5101.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To establish procedures and reasonable controls for the use of college premises for both college and noncollege groups.

Reasons Supporting Proposal: The procedures and reasonable controls will help balance the college's responsibility to fulfill its mission as a state educational institution of Washington with the interests of college groups and noncollege groups who are interested in using the campus for purposes of speech, assembly, or expression.

Statutory Authority for Adoption: RCW 28B.50.140 (13).

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

Name of Proponent: Tacoma Community College, public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Valerie Robertson, Tacoma Community College, (253) 566-5159.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Policy is relevant to Tacoma Community College students and guests only.

A cost-benefit analysis is not required under RCW 34.05.328. Policy is relevant to Tacoma Community College students and guests only.

July 1, 2013
Mary A. Chikwinya
Vice-President
for Student Services

Chapter 132V-135 WAC

TACOMA COMMUNITY COLLEGE

USE OF COLLEGE FACILITIES FOR EXPRESSIVE ACTIVITY

NEW SECTION

WAC 132V-135-010 Campus policy. Tacoma Community College is an educational institution provided and maintained by the people of the state of Washington. College premises are reserved primarily for educational use including, but not limited to, instruction, research, public assembly of college groups, student activities, and other activities related to the educational mission of the college. The public character of the college does not grant to individuals an unlimited license to engage in activity which limits, interferes with, or otherwise disrupts the normal activities for and to which the college's premises are dedicated. Accordingly, the college is a designated limited public forum opened for the express purposes recited herein and further subject to the time, place, and manner limitations and restrictions set forth in this chapter.

The purpose of the time, place, and manner regulations set forth in this policy is to establish procedures and reasonable controls for the use of college premises for both college and noncollege groups. It is intended to balance the college's responsibility to fulfill its mission as a state educational institution of Washington with the interests of college groups and noncollege groups who are interested in using the campus for purposes of speech, assembly, or expression. The college recognizes that college groups should be accorded the opportunity to utilize college premises to the fullest reasonable extent possible. The college intends to open its facilities to noncollege groups to a lesser extent as set forth herein.

It is the policy of Tacoma Community College to support the educational goals of all students regardless of race, creed, color, religion, national origin, sex, age, marital status, sexual orientation, disability, or status as a disabled veteran. The college is committed to protecting the rights and dignity of each individual in the campus community and so will not tolerate discrimination of any kind, at any level.

NEW SECTION

WAC 132V-135-020 Definitions. The definitions and phrases in this section apply throughout this chapter.

College employee includes any person employed by the college performing assigned administrative or professional responsibilities.

College groups means individuals who are currently enrolled students, current employees of Tacoma Community College or guests of the college who are sponsored by a recognized student organization, employee organization, or the administration of the college.

College premises includes all land, buildings, facilities, and other property in the possession of, owned, controlled, or leased/rented by the college, and agencies or institutions that have educational agreements with the college, including associated web sites and distance learning classroom environments.

Educational use includes, but is not limited to, instruction, research, public assembly of college groups, student activities, and other activities related to the educational mission of the college.

Expressive activities includes informational picketing, petition circulation, the distribution of informational leaflets or pamphlets, speech-making, demonstrations, rallies, appearances of speakers in outdoor areas, protests, meetings to display group feelings or sentiments, and/or other types of assemblies to share information, perspective, or viewpoints.

Limited public forum areas means those areas of the campus that the college has designated as places for expressive activities including those protected by the first amendment, subject to reasonable time, place, or manner restrictions.

Noncollege groups means individuals or combinations of individuals, who are not currently enrolled students or current employees of the college and who are not officially affiliated or associated with, or invited guests of a recognized student organization, recognized employee group, or the administration of the college.

Student means any person who is admitted to or enrolled for classes through the college, including any person in affiliated distance learning courses.

Student activity means any event or activity sanctioned by the college.

NEW SECTION

WAC 132V-135-030 Use of college premises. Subject to the regulations and requirements of this policy, noncollege groups may use college premises for expressive activities between the hours of 7:00 a.m. and 10:00 p.m. and no longer than eight hours from beginning to end. College groups may use college premises as approved by the vice-president for student services or designee. Provisions of this section apply to both college and noncollege groups.

(1) College groups are required to request accommodation for an activity a minimum of twenty-four hours in advance of an event.

(2) Noncollege groups are required to apply for activity approval a minimum of three business days in advance of an event.

(3) College groups and noncollege groups are required to submit, but not limited to, the following information when applying for activity approval:

(a) The name, address, and telephone number of the individual, group, entity, or organization sponsoring the activity; and

(b) The name, address, and telephone number of a contact person for the sponsoring organization; and

(c) The date, time, and requested location of the activity; and

(d) The nature and purpose of the activity; and

(e) The type of sound amplification devices to be used in connection with the activity, if any; and

(f) The estimated number of people expected to participate in the activity.

(4) All expressive activities will be held in a location the college has designated as a limited public forum area.

(5) All areas impacted by expressive activities will be cleaned up and left in their original condition and may be subject to inspection by a representative of the college after the event. Reasonable charges may be assessed against the sponsoring organization or individual for the costs of extraordinary cleanup or for the repair of damaged property.

(6) There will be no overnight camping on college premises. Camping is defined to include sleeping, cooking, storing personal belongings, personal habitation, or the erection of tents or other shelters or structures used for the purposes of personal habitation.

(7) Posting and displaying signage, banners, posters, etc., will adhere to established college policy.

(8) Sound amplification shall not disrupt or disturb the normal use of classrooms, offices or laboratories or any previously scheduled college event or activity. The college will determine the time, place, and manner of sound amplification devices.

(9) All fire, safety, sanitation, or special regulations specified for the event will be obeyed in accordance with applicable regulations such as the Tacoma Community College security and fire safety report. The college will not allow utility connections, water hookups, or sanitation systems for purposes of expressive activities conducted pursuant to this policy.

(10) The activity will not be conducted in such a manner as to obstruct vehicular, bicycle, pedestrian, or other traffic to include interference with ingress or egress to college premises or to college activities or events. The activity will not create safety hazards or pose unreasonable safety risks to college students, employees, or invitees of the college.

(11) The activity will not interfere with educational activities inside or outside any college premises or otherwise prevent the college from fulfilling its mission and achieving its primary purpose of providing an education to its students. The event will not materially infringe on the rights and privileges of college students, employees, or invitees to the college.

(12) College premises will not be used for commercial sales, solicitations, advertising, or promotional activities, unless:

(a) Such activities serve educational purposes of the college; and

(b) Such activities are under the sponsorship of a college department or office, college administration, or ASTCC constitutionally recognized student club.

(13) The activity will also be conducted in accordance with any other applicable college policies and regulations, college or local ordinances, and state or federal laws.

NEW SECTION

WAC 132V-135-040 Posting and distribution of materials. College groups may post information on bulletin boards, kiosks, and other display areas designated for that purpose, and may distribute materials throughout the open areas of campus. Noncollege groups may distribute materials only at the site(s) designated for noncollege groups. The sponsoring organization is encouraged, but not required, to include its name and address on the distributed information.

NEW SECTION

WAC 132V-135-050 Posting of a bond and hold harmless statement. When using college premises, an individual or organization may be required to post a bond and/or obtain insurance to protect the college against cost or other liability in accordance with established college policy. When the college grants permission to a college group or noncollege group to use its premises it is with the express understanding and condition that the individual or organization assumes full responsibility for any loss or damage.

NEW SECTION

WAC 132V-135-060 Consequences for violation of provisions of this chapter. (1) Noncollege groups who violate provisions of this chapter will be advised of the specific nature of the violation and, if they persist in the violation, will be requested by the college president or designee to leave the college premises. Such a request will be deemed to withdraw the license or privilege to enter onto or remain upon any portion of the college premises of the person or group of persons requested to leave, and subject such individuals to arrest under the provisions of chapter 9A.52 RCW or municipal ordinance. Remaining on or reentering campus premises after one's license or privilege to be on college premises has been revoked will constitute trespass, and such individuals will be subject to arrest for criminal trespass.

(2) Members of the college community (students, faculty, staff) who do not comply with these regulations will be reported to the appropriate college office or department for action in accordance with established college policies.

WSR 13-14-094
PROPOSED RULES
HEALTH CARE AUTHORITY
(Medicaid Program)
[Filed July 1, 2013, 4:43 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-09-070.

Title of Rule and Other Identifying Information: WAC 182-550-5450 Supplemental distributions to approved trauma service centers.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://maa.dshs.wa.gov/pdf/CherryStreetDirectionsNMap.pdf or directions can be obtained by calling (360) 725-1000), on August 6, 2013, at 10:00 a.m.

Date of Intended Adoption: Not sooner than August 7, 2013.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th

Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on August 6, 2013.

Assistance for Persons with Disabilities: Contact Kelly Richters by July 29, 2013, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The HCA is amending WAC 182-550-5450 to ensure the agency's trauma supplemental payment method in SFY 2013 is consistent with the approved medicaid state plan amendment.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: RCW 41.05.021.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason R.P. Crabbe, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1346; Implementation and Enforcement: Ayuni Hautea-Wimpee, JD, MBA, P.O. Box 45510, Olympia, WA 98504-5510, (360) 725-1835.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule amendment is exempt from a small economic impact statement per RCW 34.05.328 (5)(b).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to HCA rules unless requested by the joint administrative rules review committee or applied voluntarily.

July 1, 2013
Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-14-041, filed 6/27/12, effective 7/28/12)

WAC 182-550-5450 Supplemental distributions to approved trauma service centers. (1) The trauma care fund (TCF) is an amount appropriated to the medicaid agency each state fiscal year (SFY), at the legislature's sole discretion, for the purpose of supplementing the agency's payments to eligible trauma service centers for providing qualified trauma services to medicaid clients. ((~~Claims for trauma care provided to medicaid clients enrolled in the agency's managed care programs are eligible for supplemental distributions from the TCF effective with dates of service on and after July 1, 2012.~~))

(2) The agency makes supplemental distributions from the TCF to qualified hospitals, subject to the provisions in this section and subject to legislative action.

(3) To qualify for supplemental distributions from the TCF, a hospital must:

(a) Be designated or recognized by the department of health (DOH) as an approved Level I, Level II, or Level III adult or pediatric trauma service center;

(b) Meet the provider requirements in this section and other applicable rules;

(c) Meet the billing requirements in this section and other applicable rules;

(d) Submit all information the agency requires to monitor the program; and

(e) Comply with DOH's Trauma Registry reporting requirements.

(4) Supplemental distributions from the TCF are:

(a) Allocated into five payment pools. Timing of payments is described in subsection (5) of this section. Distributions from the payment pools to the individual hospitals are determined by first summing the agency's qualifying payments to each eligible hospital since the beginning of the service year and expressing this amount as a percentage of the agency's total payments to all eligible hospitals for qualifying services provided during the service year-to-date. For TCF purposes, service year is defined as the SFY. Each hospital's qualifying payment percentage for the service year-to-date is multiplied by the available amount for the service year-to-date, and then the agency subtracts what has been allocated to each hospital for the service year-to-date to determine the portion of the current payment pool to be paid to each qualifying hospital. Eligible hospitals and qualifying payments are described in (a)(i) through (iii) of this subsection. Qualifying payments are the agency's payments to:

(i) Level I, Level II, and Level III trauma service centers for qualified medicaid trauma cases since the beginning of the service year. The agency determines the countable payment for trauma care provided to medicaid clients based on date of service, not date of payment;

(ii) The Level I, Level II, and Level III hospitals for trauma cases transferred to these facilities since the beginning of the service year. A Level I, Level II, or Level III hospital that receives a transferred trauma case from any lower level hospital is eligible for the enhanced payment, regardless of the client's injury severity score (ISS); and

(iii) Level II and Level III hospitals for qualified trauma cases (those that meet or exceed the ISS criteria in (b) of this subsection) transferred by these hospitals since the beginning of the service year to a trauma service center with a higher designation level.

(b) Paid only for a medicaid trauma case that meets:

(i) The ISS of thirteen or greater for an adult trauma patient (a client age fifteen or older);

(ii) The ISS of nine or greater for a pediatric trauma patient (a client younger than age fifteen); or

(iii) The conditions of (c) of this subsection.

(c) Made to hospitals, as follows, for a trauma case that is transferred:

(i) A hospital that receives the transferred trauma case qualifies for payment regardless of the ISS if the hospital is designated or recognized by DOH as an approved Level I, Level II, or Level III adult or pediatric trauma service center;

(ii) A hospital that transfers the trauma case qualifies for payment only if:

(A) It is designated or recognized by DOH as an approved Level II or Level III adult or pediatric trauma service center; and

(B) The ISS requirements in (b)(i) or (ii) of this subsection are met.

(iii) A hospital that DOH designates or recognizes as an approved Level IV or Level V trauma service center does not qualify for supplemental distributions for trauma cases that are transferred in or transferred out, even when the transferred cases meet the ISS criteria in (b) of this subsection.

(d) Not funded by disproportionate share hospital (DSH) funds; and

(e) Not distributed by the agency to:

(i) Trauma service centers designated or recognized as Level IV or Level V;

(ii) Critical access hospitals (CAHs), except when the CAH is also a Level III trauma service center; or

(iii) Any facility for follow-up services related to the qualifying trauma incident but provided to the client after the client has been discharged from the initial hospitalization for the qualifying injury.

(5) Distributions for an SFY are paid as follows:

(a) The first supplemental distribution from the TCF is made three to six months after the SFY begins;

(b) Subsequent distributions are made approximately every two to four months after the first distribution is made, except as described in (c) of this subsection;

(c) The final distribution from the TCF for an SFY is:

(i) Made one year after the end of the SFY;

(ii) Limited to the remaining balance of the agency's TCF appropriation for that SFY; and

(iii) Distributed based on each eligible hospital's percentage share of the total payments made by the agency to all designated trauma service centers for qualified trauma services provided during the relevant SFY.

(6) For purposes of the supplemental distributions from the TCF, all of the following apply:

(a) The agency considers a provider's request for a trauma claim adjustment only if the adjustment request is received by the agency within three hundred sixty-five calendar days from the date of the initial trauma service. At its discretion, and with sufficient public notice, the agency may adjust the deadline for submission and/or adjustment of trauma claims in response to budgetary program needs;

(b) Except as provided in (a) of this subsection, the deadline for making adjustments to a trauma claim is the same as the deadline for submitting the initial claim to the agency as specified in WAC 182-502-0150(3). See WAC 182-502-0150 (11) and (12) for other time limits applicable to TCF claims;

(c) All claims and claim adjustments are subject to federal and state audit and review requirements; and

(d) The total amount of supplemental distributions from the TCF disbursed to eligible hospitals by the agency in any SFY cannot exceed the amount appropriated by the legislature for that SFY. The agency has the authority to take whatever actions necessary to ensure the department stays within the TCF appropriation.

WSR 13-14-102
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed July 2, 2013, 11:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-08-076.

Title of Rule and Other Identifying Information: The community services division (CSD) is proposing to amend WAC 388-444-0030 Do I have to work to be eligible for Basic Food benefits if I am an able-bodied adult without dependents (ABAWD)?

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html), on August 6, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than August 7, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98503, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on August 6, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by July 23, 2013, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend WAC 388-444-0030 to extend the suspension of eligibility time limits and work requirements for ABAWD applying for or receiving food assistance under Basic Food or the state-funded food assistance program (FAP) to September 30, 2014. The current ABAWD waiver is due to expire September 30, 2013.

Reasons Supporting Proposal: Washington state has applied for a statewide waiver of the supplemental nutrition assistance program (SNAP) ABAWD time-limits and work requirements through at least September 30, 2014, through the USDA Food and Nutrition Service (FNS). The FNS Western Regional Office (WRO) in San Francisco agrees that Washington state meets the criteria for extended unemployment benefits as determined by the United States Department of Labor's Unemployment Insurance Service and as a result is recommending to the FNS National Office that this waiver be approved. Final approval for this waiver extension is expected by July 1, 2013. This rule filing is needed now to allow enough time for comment and to reflect the new expiration date in state code by October 1, 2013.

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

Statute Being Implemented: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Rule is necessary because of federal law, 7 C.F.R. § 273.24.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Robert Thibodeau, 712 Pear Street S.E., Olympia, WA 98504, (360) 725-4634.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendment only affects certain DSHS clients who

receive food assistance under Basic Food and FAP by extending the suspension of eligibility time limits and work requirements.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are 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."

June 26, 2013
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-16-025, filed 7/25/12, effective 8/25/12)

WAC 388-444-0030 Do I have to work to be eligible for Basic Food benefits if I am an able-bodied adult without dependents (ABAWD)? (1) An able-bodied adult without dependents (ABAWD) is a person who:

(a) Is physically and mentally able to work;

(b) Is age eighteen through forty-nine; and

(c) Has no child in the household.

(2) If you are an ABAWD, you must participate in employment and training activities under subsection (4) unless you are exempt from ABAWD requirements under WAC 388-444-0035.

(3) Nonexempt ABAWDs who fail to participate may continue to receive food assistance until September 30, ((~~2013~~)) 2014.

(4) Beginning October 1, ((~~2013~~)) 2014, an ABAWD is not eligible to receive food assistance for more than three full months in a thirty-six month period, except as provided in WAC 388-444-0035, unless that person:

(a) Is exempt from ABAWD requirements under WAC 388-444-0035;

(b) Works at least twenty hours a week averaged monthly;

(c) Participates in on the job training (OJT), which may include paid work and classroom training time, for at least twenty hours a week;

(d) Participates in an unpaid work program as provided in WAC 388-444-0040; or

(e) Participates in and meets the requirements of one of the following work programs:

(i) The Job Training Partnership Act (JTPA);

(ii) Section 236 of the Trade Act of 1974; or

(iii) A state-approved employment and training program.

WSR 13-14-103
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed July 2, 2013, 11:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-07-069.

Title of Rule and Other Identifying Information: WAC 388-106-0300 and 388-106-0305, community options program entry system (COPES).

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html), on August 6, 2013, at 10:00 a.m.

Date of Intended Adoption: Not earlier than August 7, 2013.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98503, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on August 6, 2013.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by July 23, 2013, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending chapter 388-106 WAC, specifically the COPES waiver, in order to make program revisions by continuing dental services.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.520.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Debbie Johnson, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2531; and Enforcement: Marilee Fosbre, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2536.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business economic impact statement is not required, as no new costs will be imposed on small businesses or nonprofits as a result of this rule amendment.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

June 26, 2013
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-15-087, filed 7/18/12, effective 8/18/12)

WAC 388-106-0300 What services may I receive under community options program entry system (COPES) when I live in my own home? When you live in your own home, you may be eligible to receive only the following services under COPES:

(1) Personal care services as defined in WAC 388-106-0010 in your own home and, as applicable, while you are out of the home accessing community resources or working.

(2) Adult day care if you meet the eligibility requirements under WAC 388-106-0805.

(3) Environmental modifications, if the minor physical adaptations to your home:

(a) Are necessary to ensure your health, welfare and safety;

(b) Enable you to function with greater independence in the home;

(c) Directly benefit you medically or remedially;

(d) Meet applicable state or local codes; and

(e) Are not adaptations or improvements, which are of general utility or add to the total square footage.

(4) Home delivered meals, providing nutritional balanced meals, limited to one meal per day, if:

(a) You are homebound and live in your own home;

(b) You are unable to prepare the meal;

(c) You don't have a caregiver (paid or unpaid) available to prepare this meal; and

(d) Receiving this meal is more cost-effective than having a paid caregiver.

(5) Home health aide service tasks in your own home, if the service tasks:

(a) Include assistance with ambulation, exercise, self-administered medications and hands-on personal care;

(b) Are beyond the amount, duration or scope of medicaid reimbursed home health services as described in WAC 182-551-2120 and are in addition to those available services;

(c) Are health-related. Note: Incidental services such as meal preparation may be performed in conjunction with a health-related task as long as it is not the sole purpose of the aide's visit; and

(d) Do not replace medicare home health services.

(6)(a) Personal emergency response system (PERS), if the service is necessary to enable you to secure help in the event of an emergency and if:

(i) You live alone in your own home;

(ii) You are alone, in your own home, for significant parts of the day and have no regular provider for extended periods of time; or

(iii) No one in your home, including you, can secure help in an emergency.

(b) A medication reminder if you:

(i) Are eligible for a PERS unit;

(ii) Do not have a caregiver available to provide the service; and

(iii) Are able to use the reminder to take your medications.

(7) Skilled nursing, if the service is:

(a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse; and

(b) Beyond the amount, duration or scope of medicaid-reimbursed home health services as provided under WAC 182-551-2100.

(8) Specialized durable and nondurable medical equipment and supplies under WAC 388-543-1000, if the items are:

(a) Medically necessary under WAC 182-500-0700;

(b) Necessary for: Life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live;

(c) Directly medically or remedially beneficial to you; and

(d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under medicaid and/or medicare.

(9) Training needs identified in CARE or in a professional evaluation, which meet a therapeutic goal such as:

(a) Adjusting to a serious impairment;

(b) Managing personal care needs; or

(c) Developing necessary skills to deal with care providers.

(10) Transportation services, when the service:

(a) Provides access to community services and resources to meet your therapeutic goal;

(b) Is not diverting in nature; and

(c) Is in addition to and does not replace the medicaid-brokered transportation or transportation services available in the community.

(11) Nurse delegation services, when:

(a) You are receiving personal care from a registered or certified nursing assistant who has completed nurse delegation core training;

(b) Your medical condition is considered stable and predictable by the delegating nurse; and

(c) Services are provided in compliance with WAC 246-840-930.

(12) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities. The frequency and scope of the nursing services is based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager.

(a) Nursing assessment/reassessment;

(b) Instruction to you and your providers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In nonemergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.

(e) File review; and/or

(f) Evaluation of health-related care needs affecting service plan and delivery.

(13) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to set up your own home. Services:

(a) May include: Safety deposits, utility set-up fees or deposits, health and safety assurances such as pest eradication, allergen control or one-time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution; and

(b) Do not include rent, recreational or diverting items such as TV, cable or VCRs.

(14) Adult day health services as described in WAC 388-71-0706 when you are:

(a) Assessed as having an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under WAC 388-71-0714 and:

(i) There is a reasonable expectation that these services will improve, restore or maintain your health status, or in the case of a progressive disabling condition, will either restore or slow the decline of your health and functional status or ease related pain or suffering;

(ii) You are at risk for deteriorating health, deteriorating functional ability, or institutionalization; and

(iii) You have a chronic or acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment.

(b) Assessed as having needs for personal care or other core services, whether or not those needs are otherwise met.

(c) You are not eligible for adult day health if you:

(i) Can independently perform or obtain the services provided at an adult day health center;

(ii) Have referred care needs that:

(A) Exceed the scope of authorized services that the adult day health center is able to provide;

(B) Do not need to be provided or supervised by a licensed nurse or therapist;

(C) Can be met in a less structured care setting;

(D) In the case of skilled care needs, are being met by paid or unpaid caregivers;

(E) Live in a nursing home or other institutional facility; or

(F) Are not capable of participating safely in a group care setting.

(15) Adult comprehensive dental services as defined in WAC 388-182-1050 through 182-535-1550, when you are age twenty-one or older and the service is not covered by medicaid state plan services.

(a) The services do not include:

(i) Orthodontics; and

(ii) Oral surgeries not related to preventive or restorative oral health.

(b) All payments to providers will be made by the health care authority under chapter 182-535 WAC.

AMENDATORY SECTION (Amending WSR 12-15-087, filed 7/18/12, effective 8/18/12)

WAC 388-106-0305 What services may I receive under COPES if I live in a residential facility? If you live in one of the following residential facilities: A licensed boarding home contracted with the department to provide assisted living, enhanced adult residential care, enhanced adult residential care-specialized dementia care or an adult family home, you may be eligible to receive only the following services under COPES:

(1) Personal care services as defined under WAC 388-106-0010.

(2) Specialized durable and nondurable medical equipment and supplies under WAC 388-543-1000, when the items are:

(a) Medically necessary under WAC 388-500-0005; and

(b) Necessary: For life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live; and

(c) Directly medically or remedially beneficial to you; and

(d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under medicaid and/or medicare; and

(e) In addition to and do not replace the services required by the department's contract with a residential facility.

(3) Training needs identified in CARE or in a professional evaluation, that are in addition to and do not replace the services required by the department's contract with the residential facility and that meet a therapeutic goal such as:

(a) Adjusting to a serious impairment;

(b) Managing personal care needs; or

(c) Developing necessary skills to deal with care providers.

(4) Transportation services, when the service:

(a) Provides access to community services and resources to meet a therapeutic goal;

(b) Is not diverting in nature;

(c) Is in addition to and does not replace the medicaid-brokered transportation or transportation services available in the community; and

(d) Does not replace the services required by DSHS contract in residential facilities.

(5) Skilled nursing, when the service is:

(a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse;

(b) Beyond the amount, duration or scope of medicaid-reimbursed home health services as provided under WAC 388-551-2100; and

(c) In addition to and does not replace the services required by the department's contract with the residential facility (e.g. intermittent nursing services as described in WAC 388-78A-2310).

(6) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities. The frequency and scope of the nursing services is based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager.

(a) Nursing assessment/reassessment;

(b) Instruction to you and your providers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In nonemergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.

(e) File review; and/or

(f) Evaluation of health-related care needs affecting service plan and delivery.

(7) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to live in a residential facility. Services:

(a) May include: Safety deposits, utility set up fees or deposits, health and safety assurances such as pest eradication, allergen control or one time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution.

(b) Do not include rent, recreational or diverting items such as TV, cable or VCRs.

(8) Adult day health services as described in WAC 388-71-0706 when you are:

(a) Assessed as having an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under WAC 388-71-0714, and:

(i) There is a reasonable expectation that these services will improve, restore or maintain your health status, or in the case of a progressive disabling condition, will either restore or slow the decline of your health and functional status or ease related pain or suffering;

(ii) You are at risk for deteriorating health deteriorating functional ability, or institutionalization; and

(iii) You have a chronic or acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment.

(b) Assessed as having needs for personal care or other core services, whether or not those needs are otherwise met.

(c) You are not eligible for adult day health if you:

(i) Can independently perform or obtain the services provided at an adult day health center;

(ii) Have referred care needs that:

(A) Exceed the scope of authorized services that the adult day health center is able to provide;

(B) Do not need to be provided or supervised by a licensed nurse or therapist;

(C) Can be met in a less structured care setting;

(D) In the case of skilled care needs, are being met by paid or unpaid caregivers;

(E) Live in a nursing home or other institutional facility; or

(F) Are not capable of participating safely in a group care setting.

(9) Adult comprehensive dental services as defined in WAC 182-535-1050 through 182-535-1550, when you are age twenty-one or older, and the service is not covered by medicaid state plan services.

(a) The services do not include:

(i) Orthodontics; and

(ii) Oral surgeries not related to preventive or restorative oral health.

(b) All payments to providers will be made by the health care authority under chapter 182-535 WAC.

WSR 13-14-107

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed July 2, 2013, 2:05 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-07-088.

Title of Rule and Other Identifying Information: WAC 458-20-154 Cemeteries, crematories and columbaria, these businesses must collect and remit sales tax on all sales of tangible personal property, including markers, urns, boxes, vases, flowers, plants and shrubs. Sales of interment rights such as burial plots, crypts and niches are similar to licenses for the use of real property, and therefore are not subject to retail sales tax irrespective of whether the sale documents are called deeds or certificates of ownership.

WAC 458-20-153 Funeral directors, Washington funeral directors pay tax under the service and other activities classification on their gross receipts from rendering professional services. They pay tax under the retailing classification on their gross receipts from the sale of tangible personal property such as caskets and flowers.

Hearing Location(s): Capital Plaza Building, 4th Floor L&P Conference Room, 1025 Union Avenue S.E., Olympia, WA, on August 8, 2013, at 1:30 p.m. Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Date of Intended Adoption: August 15, 2013.

Submit Written Comments to: Armikka Bryant, P.O. Box 47453, Olympia, WA 98504-7453, e-mail armikkab@dor.wa.gov, by August 8, 2013.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499, or Renee Cosare, (360) 725-7514, no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 458-20-154 Cemeteries, crematories and columbaria, the revisions to the rule explain:

(a) The application of business and occupation (B&O), retail sales, and use taxes to the business activities of cemeteries,

(b) The application of B&O and retail sales taxes to amounts derived by cemeteries from prearrangement contracts (commonly referred to as "preneed" or "prepaid" arrangements) for the sale of interment rights, merchandise, and services, and

(c) The tax treatment of amounts placed into and subsequently received from endowment care funds for cemetery care and maintenance.

The department is proposing changes to WAC 458-20-153 because the rule currently describes funeral directors as commonly quoting a lump sum price for a standard funeral service, which includes the furnishing of a casket, professional services, care of remains, funeral coach, floral car and the securing of permits. This is no longer the industry practice so the rule requires revising. The revisions of the rule also explain:

A. The application of B&O, retail sales, and use taxes to the business activities of funeral establishments, and

B. The application of tax to income derived from prearrangement funeral service contracts.

Reasons Supporting Proposal: Changes in industry practice.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Armikka Bryant, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1575; Implementation and Enforcement: Alan Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules do not impose any new performance requirements or administrative burden on any small business not required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are not significant legislative rules as defined by RCW 34.05.328.

July 2, 2013
Alan R. Lynn
Assistant Director

AMENDATORY SECTION (Amending WSR 83-07-033, filed 3/15/83)

WAC 458-20-153 Funeral ((~~directors~~)) establishments. ((~~Funeral directors commonly quote a lump sum price for a standard funeral service, which includes the furnishing of a casket, professional services, care of remains, funeral coach, floral car and the securing of permits.~~

~~Business and Occupation Tax~~

~~**Retailing.** The gross amount subject to the retail sales tax as outlined below, is taxable under the retailing classification of the business and occupation tax except that there may be deducted, for purposes of the business tax only, amounts received as reimbursement for expenditures for goods or services supplied by others who are not persons employed by, affiliated, or associated with the funeral home, when such amounts were advanced by the funeral home as an accommodation to the person paying for a funeral; but this deduction is allowed only if such expenditures advanced are billed to the person paying for the funeral at the exact amount of the expenditure advanced and such amounts are separately itemized in the billing statement to such person.~~

~~**Service and other business activities.** That portion of the gross income derived from engaging in business as a funeral director which is not taxable under the retailing classification is taxable as service and other business activities.~~

~~Retail Sales Tax~~

~~Where the funeral director quotes a lump sum price for a standard funeral service, which includes both the sale of tangible personal property and a charge for the rendering of service, the retail sales tax is collected upon one-half of such lump sum price. Clothing, outside case (a concrete or metal box into which the casket is placed) and other tangible personal property furnished in addition to the casket must be billed separately and the retail sales tax collected thereon.~~

~~The retail sales tax is not applicable to sales made to funeral directors of tangible personal property which is resold separate and apart from the rendition of professional services, provided the vendor receives from the funeral director a resale certificate in the usual form. The property so purchased includes the casket, clothing, outside case and acknowledgment cards.~~

~~The retail sales tax is applicable to sales to funeral directors of tangible personal property which is consumed in the rendition of professional services. The property so purchased includes all preparation room supplies (embalming fluid and other chemicals, solvents, waxes, cosmetics, eye caps, gauze, cotton, etc.). The sales tax is also applicable to sales to such persons of tools and equipment.~~

~~Use Tax~~

~~The use tax applies upon the use within this state of all articles of tangible personal property used in the performance of professional services when such articles have been purchased or acquired under conditions whereby the Washington retail sales tax has not been paid.~~)) (1) **Introduction.** This section explains:

(a) The application of business and occupation (B&O), retail sales, and use taxes to the business activities of funeral establishments; and

(b) The application of tax to income derived from prearrangement funeral service contracts.

For the purposes of this section, the term "funeral establishment" means a person licensed under RCW 18.39.145. Persons operating cemeteries should refer to WAC 458-20-154 (cemeteries, burial parks, crematories, columbaria, and mausoleums) for tax-reporting information.

The board of funeral directors and embalmers (board), the funeral directors, embalmers and the funeral establishments licensing program of the department of licensing regulate funeral establishments. This licensing program serves as staff for the board, administers licensing examinations for funeral directors and embalmers, investigates complaints, and examines funeral prearrangement trust funds. For funeral establishments, refer to chapter 18.39 RCW and chapters 308-47, 308-48, and 308-49 WAC for information on the laws and administrative rules governing their business activities.

(2) **General tax reporting responsibilities.** The gross proceeds attributable to funeral services are subject to the service and other activities B&O tax. Retailing B&O tax applies to the gross proceeds of retail sales of tangible personal property such as urns, caskets, clothing, outside casket cases, floral arrangements, plants, and acknowledgment cards. Funeral establishments are also responsible for collecting and remitting to the department of revenue sales tax on retail sales of tangible personal property unless specifically exempt by law.

(a) **Reimbursement for accommodation expenditures.** Amounts received by a funeral establishment as reimbursement for goods or services provided by persons not employed by, affiliated, or associated with the funeral establishment

may be deducted from the measure of the B&O tax if these amounts have been reported as gross income on the funeral establishment's excise tax return. These amounts are deductible if advanced to accommodate the customer and separately itemized on the billing statement or invoice in the exact amount of the expenditure. See RCW 82.04.4296.

(b) **Instate services with out-of-state interment.** A funeral establishment may perform funeral services within Washington, or other services such as preparing the remains of a deceased person and placing the remains in a casket, with the remains subsequently removed to another state for interment. In these cases, the B&O and retail sales taxes generally apply to the income received from the sale of funeral merchandise and services as explained in this subsection. The merchandise (e.g., casket or urn) is delivered to the buyer within Washington when the merchandise is used in performing these services, even if interment subsequently occurs outside the state. Neither B&O nor retail sales taxes apply to the sale of tangible personal property used in performing services in Washington and delivered by the seller to the buyer at an out-of-state location. Refer to WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property) for more information regarding the delivery requirements for out-of-state sales of tangible personal property.

(c) **Sales to the federal government.** Direct sales to the federal government are exempt from the retail sales tax, though the seller remains subject to B&O tax unless a specific exemption applies. Sales to other persons, whether paid with federal funds or through a reimbursement arrangement, are fully subject to the retail sales tax. For additional information about the taxability of sales to the federal government, refer to WAC 458-20-190 (sales to and by the United States, its departments, institutions and instrumentalities—Sales to foreign governments).

(3) **Funeral establishments purchasing tangible personal property.** Generally, retail sales tax is due when purchasing items used or consumed by funeral establishments when providing professional services. These items generally include but are not limited to equipment, tools, furniture, and all preparation room supplies such as embalming fluid and other chemicals, solvents, waxes, cosmetics, eye caps, gauze, and cotton.

(a) **Items purchased for resale.** Tangible personal property purchased for resale without intervening use is not subject to retail sales tax. Property commonly purchased for resale by funeral establishments includes but is not limited to urns, caskets, clothing, outside casket cases, flowers, plants, and acknowledgment cards. A funeral establishment purchasing tangible personal property for resale must provide a properly completed resale certificate to the seller. Resale certificates are available on the department's web site at http://dor.wa.gov, or by calling the department's Taxpayer Information Center at 1-800-647-7706. For additional information regarding the use of resale certificates, refer to WAC 458-20-102 (Resale certificates).

(b) **Deferred sales and use tax.** If the seller does not collect retail sales tax on a retail sale, the buyer must remit the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department unless specifically exempt by law. For detailed information regarding use tax, refer to WAC 458-20-178 (Use tax).

(4) **Prearrangement contracts and trusts.** Funeral establishments often enter into prearrangement contracts requiring them to provide funeral services and merchandise at some future date. Unless otherwise exempt, the law requires funeral establishments to place a portion of the cash purchase price of the contract (at least ninety percent as of the effective date of this section), excluding sales tax, into one or more prearrangement funeral service trusts. Withdrawal of trust funds may only occur upon fulfillment or cancellation of the contract. See chapter 18.39 RCW.

(a) **When does tax liability arise?**

(i) **Accrual method accounting.** Amounts subject to B&O and retail sales taxes must be reported to the department at the time that the funeral establishment becomes legally entitled to receive the consideration or enters as a charge against the purchaser the amount of the consideration agreed upon, whether payable immediately or at a definitely determined future time. See WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods).

(ii) **Cash method accounting.** Amounts not placed in a prearrangement trust are subject to B&O and retail sales taxes at the time that the funeral establishment receives payment. Amounts placed in a prearrangement trust are subject to B&O and retail sales taxes upon withdrawal from the trust and acceptance by the funeral establishment. See WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods).

(b) **Prearrangement funeral service trust accounts.** If sales tax paid by the buyer is not placed into a prearrangement funeral service trust account, the tax must be reported on the excise tax return for the current reporting period and remitted to the department. A refund of sales tax remitted by a funeral establishment to the department, instead of having been placed in a prearrangement funeral service trust, is subject to the time limitations on refunds in RCW 82.32.060. For example, the law prohibits the department from refunding sales tax to a funeral establishment for a prearrangement contract that is canceled five years after the sales tax associated with the contract is remitted to the department. See also WAC 458-20-229 (Refunds).

(c) **Contract cancellation and trust administration fees.** Amounts retained by the funeral establishment when a prearrangement funeral service contract is canceled are subject to the service and other activities B&O tax, except that any amounts allocable to a retail sale of merchandise are subject to retailing B&O and retail sales taxes. Administration fees deducted from a prearrangement funeral service trust by the administrator are also subject to the service and other activities B&O tax.

(5) **Sourcing.** In general, the place of sale occurs where the body is placed in the casket. For other sourcing information, refer to WAC 458-20-145.

(6) **Examples.** The following examples identify a number of facts and state a conclusion regarding the taxability of funeral establishments. The tax results of other situations must be determined after a review of all of the facts and circumstances. Use these examples only as a general guide.

(a) John and Jane Doe contracted with ABC Funeral Home (ABC) for the funeral of a deceased relative. John and Jane also purchased a casket from ABC. Funeral services purchased from ABC included preparing the body of the deceased for viewing, arranging for the final disposition, providing facilities for the visitation and funeral service, and transporting the deceased and the mourners to the place of final disposition.

(i) ABC owes service and other activities B&O tax for the funeral services charge.

(ii) The charge for the casket is subject to retailing B&O and retail sales taxes.

(b) John and Jane Doe entered into a prearrangement funeral service contract with ABC for the purchase of funeral merchandise and services to be provided upon their deaths. John and Jane made a down payment when signing the contract and agreed to pay the balance in sixty monthly installments. The merchandise and services John and Jane purchased include a casket, preparing the body of the deceased for viewing, arranging for the final disposition, providing facilities for the visitation and funeral service, and transporting the deceased and the mourners to the place of final disposition. The contract itemizes sales tax and provides for a finance charge on the unpaid balance of the contract. ABC places all receipts under the contract, including finance charges, into a prearrangement funeral service trust account.

ABC uses the cash method of accounting and does not enter as a charge against the purchaser the amount of the consideration agreed upon until they deliver the merchandise and perform the services.

ABC must report:

(i) The charges for funeral services and the finance charges under the service and other activities B&O tax classification at the time they perform the services; and

(ii) The charge for the casket is subject to retailing B&O and retail sales tax at the time it is used.

(c) The facts are the same as in the previous example except that ABC maintains its books of account on the accrual basis. Except for the finance charges, ABC charged John and Jane for the merchandise and services when the parties signed the contract.

ABC must report:

(i) The charges for funeral services under the service and other activities B&O tax classification in the reporting period that the contract was signed;

(ii) Retailing B&O and retail sales taxes on the sale of the casket in the reporting period that the contract was signed; and

(iii) The finance charge under the service and other activities B&O tax classification at the time that it becomes legally entitled to receive the finance charge or enters the charge against John and Jane Doe in its books of account.

AMENDATORY SECTION (Amending WSR 78-06-083, filed 6/1/78)

WAC 458-20-154 Cemeteries, crematories, columbaria.

Business and Occupation Tax

((~~**Retailing.** The gross proceeds derived from the sale of tangible personal property taxable under the retail sales tax are also taxable under the retailing classification.~~

~~**Service and other business activities.** Income derived from rendition of interment services is taxable under the service and other business activities classification. Sales or transfers of plots, crypts, and niches for interment of human remains, irrespective of whether the document of transfer is called a deed or certificate of ownership, are charges for the right of interment, an interest similar to a license to use real estate, and the entire gross income therefrom is taxable under the service and other activities classification without any deduction for amounts set aside to funds for perpetual care.~~

~~**Retail Sales Tax**~~

~~Cemeteries, crematories and columbaria are subject to the provisions of the retail sales tax with respect to retail sales of boxes, urns, markers, vases, plants, shrubs, flowers, and other tangible personal property.~~

~~Revised June 1, 1978.~~

~~Effective July 1, 1978.~~)) (1) **Introduction.** This section explains:

(a) The application of business and occupation (B&O), retail sales, and use taxes to the business activities of cemeteries;

(b) The application of B&O and retail sales taxes to amounts derived by cemeteries from prearrangement contracts (commonly referred to as "preneed" or "prepaid" arrangements) for the sale of interment rights, merchandise, and services; and

(c) The tax treatment of amounts placed into and subsequently received from endowment care funds for cemetery care and maintenance.

For purposes of this section, the term "cemeteries" includes cemeteries, burial parks, crematories, columbariums, and mausoleums. Refer to WAC 458-20-153 (Funeral establishments) for funeral establishment tax-reporting information.

The cemetery board and the cemetery licensing program of the department of licensing regulates private cemeteries. The cemetery licensing program serves as staff to the cemetery board, licenses private cemeteries, investigates complaints, and examines cemetery endowment care and prearrangement trust funds. Refer to Title 68 RCW and Title 98 WAC for information on the laws and administrative rules governing cemeteries.

(2) **General tax reporting responsibilities.**

(a) **Sales of interment services and interment rights.** Amounts derived from interment services such as document recording, opening and closing the interment space, and installing grave liners or vaults are subject to the service and other activities B&O tax. Sales or transfers of plots, crypts, and niches for the interment of human remains, irrespective of how the document of transfer is described (e.g., deed, cer-

tificate of ownership, or certificate of interment rights), are charges for the right of interment, an interest similar to a license to use real estate. Thus, the gross income from sales of interment rights is subject to B&O tax under the service and other activities classification without any deduction for amounts set aside in endowment care trust funds.

(b) **Sales of merchandise, including installing, repairing, cleaning, altering, or improving property.** The gross proceeds of retail sales of tangible personal property such as monuments, markers, memorials, nameplates, outer burial containers (e.g., vaults), boxes, urns, vases, benches, plants, shrubs, and flowers are subject to B&O tax under the retailing classification. Retailing B&O tax also applies to charges by cemeteries for installing, repairing, cleaning, altering, or improving tangible personal property of or for consumers. Cemeteries are also responsible for collecting and remitting to the department of revenue (the department) sales tax on retail sales of tangible personal property and charges for installing, repairing, cleaning, altering, or improving tangible personal property of or for consumers unless specifically exempt by law. Thus, charges for installing markers and monuments are subject to retailing B&O and retail sales taxes.

(c) **Sales to the federal government.** Direct sales to the federal government are exempt from the retail sales tax, though the seller remains subject to B&O tax unless a specific exemption applies. Sales to other persons, whether paid with federal funds or through a reimbursement arrangement, are fully subject to the retail sales tax. For additional information about the taxability of sales to the federal government, refer to WAC 458-20-190 (sales to and by the United States, its departments, institutions and instrumentalities—Sales to foreign governments).

(3) **Cemeteries purchasing tangible personal property.** Generally, retail sales tax is due when purchasing tangible personal property such as tools and supplies used or consumed by cemeteries when providing interment services.

(a) **Items purchased for resale.** Tangible personal property purchased for resale without intervening use is not subject to retail sales tax. Property commonly purchased for resale by cemeteries includes but is not limited to monuments, markers, memorials, nameplates, liners, vaults, boxes, urns, vases, benches, plants, shrubs, and flowers. Cemeteries purchasing tangible personal property for resale must provide a properly completed resale certificate to the seller. Resale certificates are available on the department's web site at http://dor.wa.gov, or by calling the department's Taxpayer Information Center at 1-800-647-7706. For additional information about the use of resale certificates, refer to WAC 458-20-102 (Resale certificates).

(b) **Deferred sales and use tax.** If the seller does not collect sales tax on a retail sale, the buyer must remit the sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department, unless specifically exempt by law. For detailed information about use tax, refer to WAC 458-20-178 (Use tax).

(4) **Prearrangement contracts.** Cemeteries often enter prearrangement contracts with customers for the purchase of merchandise and services, unconstructed crypts or niches, or undeveloped graves furnished at a future date. Executed contracts are paid in either a lump sum or in installments. Unless otherwise exempt, the law requires cemeteries to place a percentage of all funds collected in payment of each prearrangement contract in a prearrangement trust account. As of the effective date of this section, the amount required in a prearrangement trust account is equal to the greater of (for merchandise) fifty percent of the contract price, or the wholesale cost of the item, (for services) fifty percent of the contract price or the direct cost of providing the service. Withdrawal of trust funds may only occur upon fulfillment or cancellation of the contract. See chapter 68.46 RCW.

(a) **When does tax liability arise?**

(i) **Accrual method accounting.** Amounts subject to B&O and retail sales taxes must be reported to the department at the time the cemetery becomes legally entitled to receive the consideration or enters as a charge against the purchaser the amount of the consideration agreed upon, whether payable immediately or at a definitely determined future time. See WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods).

(ii) **Cash method accounting.** Amounts not placed in a prearrangement trust are subject to B&O and retail sales taxes at the time that the cemetery receives payment. Amounts placed in a prearrangement trust are subject to B&O and retail sales taxes upon withdrawal from the trust and acceptance by the cemetery. See WAC 458-20-197 (When tax liability arises) and WAC 458-20-199 (Accounting methods).

(b) **Prearrangement trust accounts.** If sales tax paid by the buyer is not placed into a prearrangement trust account, the tax must be reported on the excise tax return for the current reporting period and remitted to the department. A refund of sales tax remitted by a cemetery to the department instead of having been placed in a prearrangement trust is subject to the time limitations on refunds provided by RCW 82.32.060. For example, the law prohibits the department from refunding sales tax to a cemetery for a prearrangement contract that is canceled five years after the sales tax associated with the contract is remitted to the department. See also WAC 458-20-229 (Refunds).

(c) **Contract cancellation and trust administration fees.** Amounts retained by a cemetery from a canceled prearrangement contract are subject to service and other activities B&O tax, except that any amount allocable to a retail sale of merchandise is subject to retailing B&O and retail sales taxes. Administration fees deducted from a prearrangement trust fund by the administrator are also subject to the B&O tax under the service and other activities classification.

(5) **Endowment care funds.** State law requires nonexempt cemeteries to place a portion of the gross sales price of plots sold (ten percent as of the effective date of this section) into an endowment care fund. Cemeteries may only use endowment care funds to generate income used for the care, maintenance, and embellishment of the cemetery. Amounts subsequently placed in an endowment care fund are part of the cemetery's gross income and subject to the service and other activities B&O tax. Amounts received by a cemetery from an endowment care fund to cover costs incurred by the cemetery for endowment care services are not subject to B&O tax to the extent that the amounts qualify as an advance

or reimbursement under WAC 458-20-111 (Advances and reimbursements).

(6) **Examples.** The following examples identify a number of facts and then state a conclusion regarding the taxability of cemeteries. The tax results of other situations must be determined after a review of all of the facts and circumstances. Use these examples only as a general guide.

(a) John and Jane Doe contracted with ABC Cemetery Association (ABC) for the interment of a deceased relative. The interment rights, merchandise, and services provided by ABC include an interment plot, an outer burial container, burial of the decedent, a marker, and installation of the marker. In addition, ABC charges a document-recording fee. ABC places ten percent of the gross sales price of the interment plot into an endowment care trust fund.

(i) ABC is subject to service and other activities B&O tax on charges for the interment plot (including the required amount in the endowment care trust fund), burial of the decedent, and the document-recording fee.

(ii) The charges for the outer burial container, marker, and marker installation are subject to retailing B&O and retail sales taxes.

(b) John and Jane Doe entered into a prearrangement contract with ABC for the purchase of interment rights, merchandise, and services provided upon their deaths. John and Jane made a down payment when signing the contract and agreed to pay the balance in sixty monthly installments. The interment rights, merchandise, and services purchased by John and Jane include interment plots, outer burial containers, burial of their remains, markers, and installation of the markers. The contract identifies ten percent of the gross sales price of the interment plots as endowment care funds, itemizes sales tax and provides for a finance charge on the unpaid balance.

ABC places all receipts under prearrangement contracts, including the finance charges, into a prearrangement trust account. ABC uses the cash method of accounting and does not enter the charge of the amount of the consideration agreed upon until they deliver the merchandise and perform the services. In addition, ABC charges John and Jane a document-recording fee but does not charge the amount agreed upon for the interment rights until they collect a certain percentage of the sales price and until the property is constructed or developed.

ABC must report:

(i) The amounts received for the interment plots (including the endowment care trust fund's required amounts) under the service and other activities B&O tax classification at the time it charges John and Jane Doe for the cost of the plots;

(ii) The amounts received for the burial of remains, the document-recording fee, and the finance charges under the service and other activities B&O tax classification at the time they perform the services; and

(iii) Retailing B&O and retail sales taxes on the sale of the outer burial containers, markers, and marker installation in the reporting period during which they deliver the merchandise and perform the installation.

(c) The facts are the same as in the previous example except that ABC maintains its books of account on the accrual basis. Except for the finance charge, ABC charged John and Jane for the price of the interment plots, merchandise, and services at the time the parties signed the contract.

ABC must report:

(i) The amounts received for interment plots (including the endowment care trust fund's required amounts), burial of remains, and the document-recording fee under the service and other activities B&O tax classification in the reporting period that the contract was signed;

(ii) Retailing B&O and retail sales taxes on the sale of the outer burial containers, markers, and marker installation in the reporting period that the contract was signed; and

(iii) The finance charge under the service and other activities B&O tax classification at the time that it becomes legally entitled to receive it or charges John and Jane Doe in its books of account.

WSR 13-14-118
PROPOSED RULES
DEPARTMENT OF FISH AND WILDLIFE
[Filed July 3, 2013, 9:35 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-20-073.

Title of Rule and Other Identifying Information: The title of this project is "technical WAC amendments and repeal, Round 6 (changes to WAC titles and some structural changes)" as found on the department's rule-making activity web page. The following WAC sections and chapters are involved in this project: WAC 220-47-001 Puget Sound salmon—Quick reporting; WAC 220-47-121 Treaty Indian gear identification; WAC 220-56-112 Sampling data and tag recovery; WAC 220-56-315 Personal use crab, shrimp, crawfish—Unlawful acts; WAC 232-12-082 Collection of sampling data—Unlawful acts; WAC 232-12-099 Treaty Indian fishing gear identification; chapter 220-28 WAC, Emergency regulations; and chapter 220-85 WAC, Commercial license moratorium advisory review board regulations.

Hearing Location(s): Natural Resources Building, First Floor, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on October 4-5, 2013, at 8:30 a.m.

Date of Intended Adoption: On or after November 8, 2013.

Submit Written Comments to: Joanna Eide, Enforcement Program, 600 Capitol Way North, Olympia, WA 98501, e-mail Joanna.Eide@dfw.wa.gov, fax (360) 902-2155, by September 27, 2013.

Assistance for Persons with Disabilities: Contact Tami Lininger by September 25, 2013, TTY (800) 833-6388 or (360) 902-2267.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposed rule making is to streamline, reorganize, and update rules in accordance with the WAC overhaul project currently underway. The Washington department of fish and wildlife's (WDFW) administrative code is in need of updating and consolidation. The agency's RCWs were combined and updated

after the department of fisheries and the department of wildlife consolidated, but a consolidation, clean-up, and streamlining of the administrative codes was never done. These proposed changes are part of a larger effort to reorganize and update the agency's administrative code. Anticipated effects are minimal; this project involves correcting, rewording, clarifying, and reorganizing rules already in existence, as well as repealing outdated and unnecessary rules.

Reasons Supporting Proposal: WDFW needs these changes to increase efficiency, functionality, and clarity of the rules within WDFW's administrative code. The changes promote increases in conservation and the availability of resources, and they reduce redundancy. The proposal is part of WDFW's WAC overhaul project to streamline, update, and reorganize WDFW's administrative code.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, and 77.12.047.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Joanna Eide, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2403; Implementation: Deputy Chief Mike Cenci, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2938; and Enforcement: Chief Bruce Bjork, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule making will not affect small businesses.

Small Business Economic Impact Statement

1. Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule: This proposed rule change contains requirements for small business commercial fishers, fish processors, and small businesses engaged in commercial activity involving fish or wildlife to comply with the directions of authorized department personnel related to the collection of sampling data. Additionally, the proposal contains provisions that require any person or entity, terms that include small businesses, to relinquish upon request to the department any fish tag or any part of a salmon, steelhead, or other fish containing coded wire tags, including snouts of hatchery-raised salmon and steelhead.

Though the proposal includes the requirements listed above, the requirements are not new. The proposal amends WAC 220-56-112 Sampling data and tag recovery, to incorporate the provisions of WAC 232-12-082 Collection of sampling data—Unlawful acts, to make one general rule relating to the collection of sampling data for both fish and wildlife.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: There are no professional service requirements for a small business to comply with the requirements.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: The costs of compliance with the provisions within the proposal may be in employee/owner working time, but any costs will be negligible. Complying with department requests for the collection of sampling data, material, or coded wire tags from fish and wildlife will take only a small amount of time and do not require additional equipment, supplies and labor.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? No. Compliance with department requests for the collection of sampling data, material, or coded wire tags from fish and wildlife will not cause businesses to lose sales or revenue because it will not result in loss of product. Compliance with department requests only requires that the business turn over coded wire tags and other sampling data and material upon department request, which are generally small amounts of material and should not result in losses to sales or revenue. However, noncompliance results in a rule violation and is punishable as a gross misdemeanor under RCW 77.15.360 with a penalty of up to three hundred sixty-four days of jail time, up to a $5,000 penalty, or both.

5. Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules, Using One or More of the Following as a Basis for Comparing Costs:

1. Cost per employee;

2. Cost per hour of labor; or

3. Cost per one hundred dollars of sales.

The costs of complying with department requests for the collection of sampling data, material, or coded wire tags may be in employee/owner time, but any costs will be negligible as it will take only a small amount of time to satisfy a request. Additionally, complying with such department requests will not result in loss of product. Small businesses engaged in commercial fish and wildlife activities may incur penalty-related costs if they fail to comply with department requests and are cited with a violation. A violation of the requirements is punishable as a gross misdemeanor under RCW 77.15.360, which carries the penalty of up to three hundred sixty-four days of jail time, up to a $5,000 penalty, or both.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So: As costs are negligible, the requirements already apply to small businesses, and changes to the rule are technical in nature, there is no need for the agency to take steps to reduce costs to small businesses.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: The department determined that involving small businesses in developing the rule amendments was unnecessary because the proposed changes to WAC 220-56-112 simply combine existing requirements into one rule, are technical in nature, and do not add to preexisting requirements.

WDFW sends out a notice of proposed rule-making projects after the proposed rule changes are filed to people who notified the department that they are interested in the department's rule-making activities. This notice directs those people to information on how they can participate in the rule-making process and comment on proposed changes.

8. A List of Industries that Will Be Required to Comply with the Rule: Commercial fishers, commercial fish pro-

cessors, and people engaged in commercial activity involving fish or wildlife must comply with requirements relating to department collection of sampling data and tags from fish and wildlife. The rule specifically exempts private sector cultured aquatic farms from the collection of sampling data and tag recovery requirements.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not involve hydraulics.

July 3, 2013
Joanna M. Eide
Administrative Regulations Analyst

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 220-28-010 Emergency regulations.

AMENDATORY SECTION (Amending WSR 07-20-006, filed 9/20/07, effective 10/21/07)

WAC 220-47-001 Puget Sound salmon—Quick reporting. All Puget Sound salmon fisheries are designated as "quick reporting required" fisheries, and commercial purchasers and receivers must comply with the provisions of WAC 220-69-240((~~(12)~~)) (14).

AMENDATORY SECTION (Amending WSR 84-13-078, filed 6/21/84)

WAC 220-47-121 Treaty Indian gear identification. It ((~~shall be~~)) is unlawful for any person exercising his or her treaty Indian fishing rights at usual and accustomed grounds and stations within the Point No Point, Makah, Quinault, Medicine Creek, and Point Elliott treaty areas to leave any gear unattended unless there is affixed to it an identification tag of tribal affiliation and ((~~specific fisherman~~)) a valid treaty Indian identification number.

AMENDATORY SECTION (Amending WSR 82-07-047, filed 3/18/82)

WAC 220-56-112 Sampling data and tag recovery. (1) It is unlawful for any person or entity to fail to comply with the directions of authorized department ((~~of fisheries~~)) personnel related to the collection of sampling data ((~~or material~~)) from ((~~salmon or other food~~)) fish and wildlife.

(2) It is ((~~also~~)) unlawful for any person or entity to fail to relinquish upon request to the department any fish tag or any part of a salmon, steelhead, or other ((~~food~~)) fish containing coded wire tags, including but not limited to((~~,~~)):

(a) The snouts of ((~~those~~)) salmon ((~~that are~~)) marked by having clipped adipose fins; and

(b) The snouts of steelhead marked by having clipped ventral fins.

(3) This section does not apply to private sector cultured aquatic farms.

(4) A violation of this section is a gross misdemeanor punishable under RCW 77.15.360, Unlawful interfering in department operations—Penalty.

AMENDATORY SECTION (Amending WSR 12-23-016, filed 11/9/12, effective 12/10/12)

WAC 220-56-315 Personal use crab, shrimp, crawfish—Unlawful acts. (1) It is unlawful to take and possess crab, shrimp, and crawfish taken for personal use except by hand or with hand dip nets, ring nets, shellfish pots, or any hand-operated instrument that will not penetrate the shell. A violation of this subsection is a misdemeanor, punishable under RCW 77.15.380 or 77.15.382 depending on the circumstances of the violation.

(2) It is unlawful to set, fish, or pull more than 2 units of gear at any one time ((~~except:~~)), unless otherwise provided in this subsection. A violation of this subsection is punishable under RCW 77.15.160, Infractions, or RCW 77.15.380, Unlawful recreational fishing in the second degree—Penalty, depending on the circumstances of the violation.

(a) In Puget Sound waters, it is unlawful to set, fish, or pull at any one time more than 2 units of crab gear and 2 additional units of shrimp gear.

(b) In Catch Record Card Areas 4 through 13, it is unlawful for the operator of any boat from which shrimp pots are set, fished, or pulled ((~~in Catch Record Card Areas 4 through 13~~)) to have on board or to fish more than 4 shrimp pots.

(c) In the Columbia River, it is unlawful to set, fish, or pull more than 3 units of crab gear ((~~in the Columbia River~~)).

(d) In fresh water, it is permissible to use up to 5 units of gear to fish for crawfish ((~~in fresh water~~)).

(3) It is unlawful for any person to operate a shellfish pot not attached to a buoy bearing that person's name, except that a second person may assist the pot owner in operation of the gear. A violation of this subsection is a misdemeanor, punishable under RCW 77.15.382, Unlawful use of shellfish gear for personal use purposes—Penalty.

(4) It is unlawful to salvage or attempt to salvage shellfish pot gear from Hood Canal that has been lost ((~~without~~)), unless the person first ((~~obtaining~~)) obtains a permit((~~,~~)) issued by the director, authorizing that activity. A violation is punishable under RCW 77.15.180, Unlawful interference with fishing or hunting gear—Penalty. It is unlawful to fail to comply with all provisions of ((~~the~~)) a permit authorizing the salvage of gear from Hood Canal. A violation of this subsection is ((~~a misdemeanor, punishable under RCW 77.15.382 Unlawful use of shellfish gear for personal use purposes—Penalty~~)) RCW 77.15.750, Unlawful use of a department permit—Penalty.

(5) It is unlawful to dig for or possess ghost or mud shrimp taken for personal use by any method except hand operated suction devices or dug by hand. A violation of this subsection is ((~~a misdemeanor, punishable under RCW 77.15.382 Unlawful use of shellfish gear for personal use purposes—Penalty~~)) punishable under RCW 77.15.160, Infractions, or RCW 77.15.380, Unlawful recreational fishing in the second degree—Penalty, depending on the circumstances of the violation.

(6) It is unlawful to have more than one unit of unattended gear attached to a buoy line or to fail to have a separate buoy for each unit of gear. "One unit of gear" means one ring net or one shellfish pot. A violation of this subsection is a misdemeanor, punishable under RCW 77.15.382, Unlawful use of shellfish gear for personal use purposes—Penalty.

(7) In waters open only on certain days or certain hours during the day, except for those waters affected by the night closure set out in subsection ((~~(9)~~)) (8) of this section, it is unlawful to fail to remove gear from the water ((~~when~~)) if fishing for shellfish is not allowed. It is also unlawful to fail to remove gear from the water ((~~by~~)) within one hour after sunset if fishing is not allowed on the next calendar day. In waters that are open continuously, except for those waters affected by the night closure set out in subsection ((~~(9)~~)) (8) of this section, gear may be left in the water during ((~~the~~)) a night closure. A violation of this subsection is ((~~a misdemeanor,~~)) punishable under RCW 77.15.160, Infractions, or RCW 77.15.380, Unlawful recreational fishing in the second degree—Penalty, depending on the circumstances of the violation.

(8) It is unlawful to set or pull shellfish pots, ring nets or star traps from a vessel in Catch Record Card Areas 1-13 from one hour after official sunset to one hour before official sunrise. A violation of this subsection is ((~~a misdemeanor,~~)) punishable under RCW 77.15.160, Infractions, or RCW 77.15.380, Unlawful recreational fishing in the second degree—Penalty, depending on the circumstances of the violation.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 220-85-015	License moratorium review boards.
WAC 220-85-030	Moratorium advisory review boards—Secretarial and investigative assistance, place of hearings.
WAC 220-85-040	Moratorium advisory review boards—Director's action on license applications—Reasons stated in writing.
WAC 220-85-050	Moratorium advisory review boards—Who may appeal.
WAC 220-85-060	Moratorium advisory review boards—Proceedings to be informal—Rules of evidence inapplicable—Record to be kept.
WAC 220-85-070	Moratorium advisory review boards—Appeals—Requirements—Form for appeal.
WAC 220-85-080	Moratorium advisory review boards—Appeals—Time for scheduling hearings—Conduct of hearings.
WAC 220-85-090	Moratorium advisory review boards—Decisions by advisory review board—Form and content.
WAC 220-85-100	Moratorium advisory review boards—Decision on appeal by director.
WAC 220-85-110	Moratorium advisory review boards—Appeals—Information procedures optional.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 232-12-082	Collection of sampling data—Unlawful acts.
WAC 232-12-099	Treaty Indian fishing gear identification.

WSR 13-14-120
PROPOSED RULES
DEPARTMENT OF REVENUE
[Filed July 3, 2013, 9:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-04-083.

Title of Rule and Other Identifying Information: WAC 458-20-10101 Business licensing service—Total fee payable—Handling of fees, establishes a fee schedule to support the business licensing service (BLS) (formerly master license service (MLS) program).

Hearing Location(s): Capital Plaza Building, 4th Floor L&P, Conference Room, 1025 Union Avenue S.E., Olympia, WA 98504, on August 6, 2013, at 10:00 a.m. Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Date of Intended Adoption: August 13, 2013.

Submit Written Comments to: Marilou Rickert, P.O. Box 47453, Olympia, WA 98504-7453, e-mail marilour@dor.wa.gov, by August 6, 2013.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499, or Renee Cosare, (360) 725-7514, no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend WAC 458-20-10101 Business licensing service—Total fee payable—Handling of fees, to raise the business license application handling fee from $15.00 to $19.00 and the license renewal handling fee from $9.00 to $11.00.

Reasons Supporting Proposal:

- SHB 2017, chapter 298, Laws of 2011, an act relating to the master license service, requires the department of

revenue to set by rule handling fees for business license application filings and caps those fees at a maximum of $19.00 for the business license application handling fee and $11.00 for the license renewal application handling fee.

- Although the department initially elected to retain the fees at the same level as previously set by statute: $15.00 for the business license application handling fee and $9.00 for the license renewal handling fee, the need to replace outdated technology, upgrade the level of service provided by the BLS, and integrate the BLS system with department operations in order to make the program faster and easier to use requires that the fees be adjusted to the maximum allowed by statute.
- Section 136(1) of 3ESSB 5034, an act relating to fiscal matters, authorizes the department of revenue to increase the master application fee to $19.00 and the renewal fee to $11.00 consistent with RCW 19.02.075.

Statutory Authority for Adoption: 2013 3ESSB 4034 [5034], SHB 2017, chapter 298, Laws of 2011, RCW 19.02.-030 and 19.02.075.

Statute Being Implemented: RCW 19.02.075.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Marilou Rickert, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1582; Implementation: Dylan Waits, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1583; and Enforcement: Alan Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No impact. This rule does not impose any new performance requirement or administrative burden on any small business not already required by statute. Fee increases are *de minimus*: $4 for the first license, and $2 in subsequent years.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Marilou Rickert, P.O. Box 47453, Olympia, WA 98504-7453, phone (360) 534-1582, e-mail marilour@dor.wa.gov.

July 3, 2013
Alan R. Lynn
Assistant Director

AMENDATORY SECTION (Amending WSR 12-04-060, filed 1/30/12, effective 3/1/12)

WAC 458-20-10101 Business licensing service—Total fee payable—Handling of fees. (1) **Introduction.** Chapter 298, Laws of 2011, transferred responsibility for the master license service program (MLS) from the department of licensing to the department of revenue, effective July 1, 2011. This program is now referred to as the business licensing service (BLS).

Information about BLS is available online at http://business.wa.gov/BLS. If you are seeking in-person assistance, you may want to visit:

6500 Linderson Way S.W., Suite 102
Tumwater, WA 98501
8 a.m. to 5 p.m., Monday - Friday
(except state holidays or temporary layoff days)

The department of licensing continues to issue, renew, and regulate professional licenses, see http://dol.wa.gov/business/.

(2) **What fee do I need to pay when applying for or renewing a license?** The fee payable will be the total amount of all individual license fees, late filing fees, other penalty fees, and handling fees, and may include additional fees charged to cover credit or debit card processing. Licensing fees vary depending on the license for which you are applying. Refer to http://bls.dor.wa.gov/specialtylicenses.aspx for information about licenses and license fee amounts.

(3) **What does the department do with these fees?** The department will distribute the fees received for individual licenses issued or renewed to the appropriate agencies on an established schedule.

(4) **When do I get my business license?** The business license will not be issued until the full amount of the total fee payable is collected. When the fee payment received is less than the total fee payable, the department will bill the applicant for the balance.

(5) **Can I get a refund?** The business license application and renewal handling fees collected under RCW 19.02.-075 are not refundable. When a license is denied or when an applicant withdraws an application, a refund of any other refundable portion of the total payment will be made in accordance with the applicable licensing laws.

(6) **What are the handling fees?** The business license application handling fee amounts are:

Type of handling fee:	Fee amount:
Business license application filing	$((~~15.00~~)) 19.00
License renewal application filing	$((~~9.00~~)) 11.00

WSR 13-14-123
PROPOSED RULES
DEPARTMENT OF FISH AND WILDLIFE
[Filed July 3, 2013, 11:20 a.m.]

Supplemental Notice to WSR 13-06-073 filed on March 6, 2013.

Preproposal statement of inquiry was filed as WSR 13-01-064 on December 17, 2012.

Title of Rule and Other Identifying Information: WAC 220-36-023 Salmon—Grays Harbor fall fishery.

Hearing Location(s): Region 6 Fish and Wildlife Office, Conference Room, 48 Devonshire Road, Montesano, WA 98563, on Tuesday, August 6, 2013, at 10:00 - 11:30 a.m.

Date of Intended Adoption: On or after August 6, 2013.

Submit Written Comments to: Lori Preuss, Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Lori.preuss@dfw.wa.gov, fax (360) 902-2155, by July 31, 2013.

Assistance for Persons with Disabilities: Contact Tami Lininger by July 31, 2013, (360) 902-2207 or TTY 1-800-833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal reflects changes from the rules as proposed in WSR 13-06-073, filed on March 6, 2013. This supplemental filing does not include rules for Willapa Bay or river-mouth definitions that were included in WSR 13-06-073 on March 6, 2013, and in WSR 13-13-075 on June 19, 2013. Interested persons can check the status of these rules by using this link, http://wdfw.wa.gov/about/regulations/development.html, and selecting "2013 North of Falcon commercial salmon rules for Willapa Bay and Grays Harbor."

These changes incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable numbers of fish in commercial salmon fisheries in Grays Harbor while protecting species of fish listed as endangered.

Reasons Supporting Proposal: These rules will protect species of fish listed as endangered while supporting commercial salmon fishing in Grays Harbor.

Statutory Authority for Adoption: RCW 77.04.020, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.020, 77.12.045, and 77.12.047.

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

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting: Mike Scharpf, 48 Devonshire Road, Montesano, WA 98563, (360) 249-1213; Implementation: James Scott, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2651; and Enforcement: Bruce Bjork, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

1. Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule: These rules incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon while protecting species of fish listed as endangered. The rules include legal gear requirements, area restrictions, and open periods for commercial salmon fisheries occurring in Grays Harbor.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements: None – these rule changes clarify dates for anticipated open periods, show areas in Grays Harbor that are closed to commercial harvest methods, and explain legal gear requirements.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: None anticipated – these rules are similar to previous years' rules for Grays Harbor and do not require extra costs to comply.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? No.

5. Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules, Using One or More of the Following as a Basis for Comparing Costs:

1. Cost per employee;
2. Cost per hour of labor; or
3. Cost per one hundred dollars of sales.

There are no anticipated costs of compliance.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So: The department issues an annual pamphlet and mailer to all license holders to alert them to anticipated open periods, closed areas, and gear requirements.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: The department cosponsors the annual North of Falcon process, which is a series of public meetings held over a period of several months from February through April each year. These meetings allow constituents to provide input on the rules contained in this filing.

8. A List of Industries That Will Be Required to Comply with the Rule: The industry that is required to comply with these rules is composed of all licensed fishers using legal commercial gear types and seeking to harvest salmon in the all-citizen commercial salmon fisheries occurring in Grays Harbor.

9. An Estimate of the Number of Jobs That Will Be Created or Lost as the Result of Compliance with the Proposed Rule: The department does not anticipate more than a few jobs, if any, being created or lost as a result of compliance with the proposed rule. The workforce tends to be static for licensed fishers who participate in the all-citizen commercial salmon fisheries occurring in Grays Harbor.

A copy of the statement may be obtained by contacting Lori Preuss, WDFW Enforcement, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail Lori.preuss@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

July 3, 2013
Lori Preuss
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-11-093, filed 5/18/12, effective 6/18/12)

WAC 220-36-023 Salmon—Grays Harbor fall fishery. From August 16 through December 31 of each year, it is unlawful to fish for salmon in Grays Harbor for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

Fishing periods:

(1) Gillnet gear may be used to fish for Chinook, coho, chum salmon, and white sturgeon as provided for in ((~~subsections (6) and (7) of~~)) this section and in the times and area identified in the chart below.

Time:	Areas:
((~~6:00 p.m. August 19 through 6:00 p.m. August 20, 2012;~~)	~~**Area 2C**~~
~~6:00 p.m. August 23 through 6:00 p.m. August 24, 2012;~~	
~~6:00 p.m. August 27 through 6:00 p.m. August 28, 2012;~~	
~~6:00 p.m. August 29 through 6:00 p.m. August 30, 2012;~~	
~~6:00 p.m. September 5 through 6:00 p.m. September 6, 2012;~~	
~~AND~~	
~~6:00 p.m. September 28 through 6:00 p.m. September 29, 2012.~~))	
6:00 a.m. October ((~~1~~)) 7 through 6:00 p.m. October ((~~1, 2012~~)) 7, 2013;	**((~~Area~~)) 2A** and that portion of 2D lying easterly of a north-south line from the confluence of the Hoquiam River and Chehalis River estuary to Renney Island, then easterly to "Range Marker G" located on the south shore of Grays Harbor, then to the eastern boundary of 2D at the Highway 101 Bridge.
6:00 a.m. O6:00 a.m. October ((~~2~~)) 8 through 6:00 p.m. October ((~~2, 2012~~)) 8, 2013;	
6:00 a.m. October ((~~12~~)) 14 through 6:00 p.m. October ((~~12, 2012~~)) 14, 2013;	
6:00 a.m. October 22 through 6:00 p.m. October 22, 2013;	((~~AND~~))
6:00 a.m. October 24 through 6:00 p.m. October 24, 2013;	
AND	((~~That portion of **Area 2D** lying easterly of a north-south line from the confluence of the Hoquiam and Chehalis rivers to Renney Island, then easterly to "Range Marker G," located on the south shore of Grays Harbor, then to the eastern boundary of **Area 2D** at the Highway 101 Bridge.~~))
6:00 a.m. October ((~~14~~)) 29 through 6:00 p.m. October ((~~14, 2012~~)) 29, 2013.	
6:00 a.m. October ((~~19~~)) 30 through 6:00 p.m. October ((~~19, 2012;~~)) 30, 2013.	**((~~Area~~)) 2A and ((~~Area~~)) 2D.**
((~~6:00 a.m. October 20 through 6:00 p.m. October 20, 2012;~~	
~~AND~~	
~~6:00 p.m. October 21 through 6:00 p.m. October 22, 2012.~~))	

Gear:

(2) ((~~Gillnet~~)) Gear restrictions: ((~~All areas:~~))

(a) ((~~Drift gillnet gear only. It is unlawful to use set net gear. It is permissible to have on board a commercial vessel more than one net, provided the nets are of a mesh size legal for the fishery, and the length of any one net does not exceed one thousand five hundred feet in length.~~

~~Nets with a mesh size different from that being actively fished must be properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.~~

~~It is unlawful to use a gillnet to fish for salmon or white sturgeon if the lead line weighs more than two pounds per fathom of net as measured on the cork line. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or transiting through Grays Harbor.~~

~~(b) From August 16 through September 30, 2012: In Area 2C, mesh size must not exceed eight and one-half inch maximum.~~

~~(c) From October 1 through October 31, 2012: In Areas 2A and 2D, mesh size must not exceed six and one-half inch maximum. Nets may be no more than fifty-five meshes deep.~~)) It is permissible to have on board a commercial vessel more than one net, provided that the length of any one net does not exceed one thousand five hundred feet in length. Nets not specifically authorized for use in this fishery may be onboard the vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.

(b) Areas 2A and 2D from October 1 through October 30, 2013, tangle net gear only. Single-wall nets are required. Maximum mesh size must not exceed four and one-quarter inches. Mesh size is determined by placing three consecutive meshes under hand tension and taking the measurement from the inside of one vertical knot to the outside of the opposite vertical knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact. Strings/slackers are required, and nets may hang no more than 28 feet from cork line to lead line. It is unlawful to use set net gear. Net construction must include sufficient floatation to ensure the cork line remains at the surface when in the act of fishing.

Other:

(3) Recovery boxes and soak times:

(a) For Areas 2A and 2D, soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water.

(b) Any steelhead or salmon that is required to be released and is bleeding or lethargic must be placed in a recovery box prior to being released to the river/bay. The recovery box must meet the requirements in (d) of this subsection.

(c) All fish placed in recovery boxes must be released to the river/bay prior to landing or docking.

(d) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing Areas 2A and 2D. Each box must be operating during any time the net is being retrieved or picked. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box: The inside length measure-

ment must be at or within 39-1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river/bay water into each chamber.

(4) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(12), reports must be made by 10:00 a.m. the day following landing.

(5) Fishers must take department observers if requested by department staff when participating in these openings. Fishers also must provide notice of intent to participate by contacting Quick Reporting by phone, fax or e-mail. ((~~Notice of intent must be given prior to 12:00 p.m. on August 15, 2012, for openings in Area 2C.~~)) Notice of intent must be given prior to 12:00 p.m. on September ((~~26, 2012~~)) 23, 2013, for openings in Areas 2A and 2D.

(6) ((~~Retention of any species other than Chinook, coho, and chum, and white sturgeon with a fork length measure of not less than 43 inches and not more than 54 inches, is prohibited in Area 2C.~~

~~(7) Retention of any species other than coho salmon, white sturgeon with a fork length measure of not less than 43 inches and not more than 54 inches, and hatchery Chinook marked by a healed scar at the site of the adipose fin, is prohibited in Areas 2A and 2D from October 1 through October 20, 2012.~~)) Retention of any species other than coho((~~,~~)) or chum, or white sturgeon with a fork length measure of not less than 43 inches and not more than 54 inches, ((~~and~~)) or hatchery Chinook marked by a healed scar at the site of the adipose fin, is prohibited in Areas 2A and 2D from October ((~~21~~)) 1 through ((~~October 24, 2012~~)) November 30, 2013.

((~~(8)~~)) (7) Report ALL encounters of green sturgeon, steelhead, and wild (unmarked) Chinook (your name, date of encounter, and number of species encountered) to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or e-mail at harborfishtickets@dfw.wa.gov. Fishers may have wholesale dealers use the "buyer only" portion of the fish ticket and include encounters with each day's quick reporting.

((~~(9)~~)) (8) White sturgeon, when lying on their side, are measured from the tip of the nose to the fork of the tail. This measurement is referred to as the fork length. All white sturgeon to be retained must have a fork length measure of no less than 43 inches and no more than 54 inches.

((~~(10)~~)) (9) Do NOT remove tags from white sturgeon that are not allowed to be retained. For white sturgeon that can be retained, please submit tags to the Washington Department of Fish and Wildlife, 48 Devonshire Rd., Montesano, WA 98563. For white sturgeon not of a legal size, and all green sturgeon, obtain available information from tags without removing the tags.

((~~(11)~~)) (10) It is unlawful to fish for salmon with tangle net or gillnet gear in Areas 2A, 2C, and 2D unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and has in his or her possession a department-issued certification card.

WSR 13-14-124
PROPOSED RULES
LIQUOR CONTROL BOARD
[Filed July 3, 2013, 11:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-24-090.

Title of Rule and Other Identifying Information: A new chapter in Title 314 WAC, chapter 314-55 WAC, Marijuana licenses and requirements.

Hearing Location(s): Edmonds Conference Center, Chrysanthemum Hall, 201 Fourth Avenue North, Edmonds, WA 98020, on August 6, 2013, at 10:00 a.m. – 1:00 p.m.; at the Red Lion Hotel, Fir and Spruce Ballroom, 2300 Evergreen Park Drive S.W., Olympia, WA 98502, on August 7, 2013, at 9:30 – 12:30 a.m.; at the Central Washington University, Student Union Ballroom B and C, 400 East University Way, Ellensburg, WA 98926, on August 7, 2013, at 6:00 – 9:00 p.m.; and at the Spokane Convention Center, Ballroom 100A, 334 West Spokane Falls Boulevard, Spokane, WA 99201, on August 8, 2013, at 6:00 – 9:00 p.m.

Date of Intended Adoption: August 14, 2013.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail kjm@liq.wa.gov, fax (360) 664-9689, by July 31, 2013.

Assistance for Persons with Disabilities: Contact Karen McCall by July 31, 2013, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Initiative 502 legalized marijuana for recreational use under certain conditions. I-502 also created three new license types and requirements for each license type. Requirements were also created for the producing, processing, and retail sales of marijuana. This rule making is the first rule making to implement Initiative 502.

Reasons Supporting Proposal: This is a new industry in the state of Washington. Rules are needed to clarify the new laws created by Initiative 502 so the public is aware of the qualifications and requirements for marijuana licenses in the state of Washington.

Statutory Authority for Adoption: RCW 69.50.325, 69.50.331, 69.50.342, 69.50.345.

Statute Being Implemented: RCW 69.50.325, 69.50.331, 69.50.334, 69.50.339, 69.50.342, 69.50.345, 69.50.348, 69.50.354, 69.50.357, 69.50.360, 69.50.369.

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

Name of Proponent: Washington state liquor control board (WSLCB), governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

Description of Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule: License applicants must submit a signed attestation that they are current on taxes owed, an operating plan and insurance coverage. The operating plan must include information on:

Producer License	Processor License	Retailer License
Security	Security	Security
Traceability	Traceability	Traceability
Employee qualifications and training	Employee qualifications and training	Employee qualifications and training
Transportation of product including packaging of product for transportation	Transportation of product	
Destruction of waste product	Destruction of waste product	Destruction of waste product
Description of growing operation include growing media, size of grow space allocated for plant production, space allocated for any other business activity, description of all equipment used in the production process, and a list of soil amendments, fertilizers, other crop production aids, or pesticides, utilized in the production process	Description of the types of products to be processed at this location together with a complete description of all equipment and solvents, gases, chemicals and other compounds used to create extracts and for processing of marijuana-infused products	
Testing procedures and protocols	Testing procedures and protocols	
	Description of the types of products to be processed at this location together with a complete description of processing of marijuana-infused products	
	Description of packaging and labeling of products to be processed	
		What array of products are to be sold and how are the products to be displayed to consumers

Marijuana licensees are responsible to keep records that clearly reflect all financial transactions and the financial condition of the business. The following records must be kept and maintained on the licensed premises for a three-year period and must be made available for inspection if requested by an employee of the WSLCB:

(a) Purchase invoices and supporting documents, including the items and/or services purchased, from whom the items were purchased and the date of purchase.

(b) Bank statements and canceled checks for any accounts relating to the licensed business.

(c) Accounting and tax records related to the licensed business and each true party of interest.

(d) Records of all financial transactions related to the licensed business, including contracts and/or agreements for services performed or received that relate to the licensed business.

(e) All employee records including training.

(f) Records of each daily application of pesticides applied to the marijuana plants or growing medium.

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

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

(i) Records of each batch of extracts or infused marijuana products made.

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

(k) Inventory records.

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

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

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

(o) Sample jars containing usable marijuana provided to retailers.

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

If the marijuana licensee keeps records within an automated data processing and/or point-of-sale system, the system must include a method for producing legible records that will provide the same information required of that type of record within this section.

1. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply With Such Requirements: The type of professional services needed to comply with the recordkeeping obligations discussed in question one would be bookkeeping and accounting. Businesses may also need legal assistance for zoning laws, agricultural assistance and technology assistance for implementing the traceability system.

2. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor and Increased Administrative Costs: Indeterminate – there are currently no legally established marijuana businesses in the state.

3. Will Compliance with the Rules Cause Businesses to Lose Sales or Revenue? Indeterminate – there are currently no legally established marijuana businesses in the state.

4. Costs of Compliance for Small Businesses Compared with the Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:

a. Cost per employee;

b. Cost per hour of labor; or

c. Cost per one hundred dollars of sales.

Indeterminate – there are currently no legally established marijuana businesses in the state.

5. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So: I-502 requires a tightly controlled and regulated marijuana market and includes strict controls to prevent diversion, illegal sales and sales to minors while providing reasonable access to products to mitigate the illicit market. The requirements in the rules are designed to comply with the initiative's mandate.

WSLCB contracted with BOTEC Analysis Corporation to provide technical expertise. BOTEC submitted two white papers on the cost of compliance with the draft rules and recommendations to minimize the burden on businesses. After review the board adopted some of the recommendations and amended the draft rules to attempt to minimize the financial burden on businesses.

6. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: There is currently no legally established marijuana business, large or small, in Washington state. To reach out to those interested in establishing a marijuana business the WSLCB held eight public forums across the state on the implementation of Initiative 502. These forums were intended as a means of obtaining broad stakeholder input regarding the implementation of Initiative 502 and the rule-making process.

Participating stakeholder groups included medical and recreational marijuana users, the prevention community, public safety interests, local government, neighborhood groups and entrepreneurs presently engaged in the medical marijuana industry as well as existing business and investors seeking entry into the new market.

Additionally, the board released initial draft rules for the emerging recreational marijuana market. The purpose of releasing the initial draft rules was to seek public comment before officially initiating the formal draft rule-making process. The initial draft rules were posted on the WSLCB web site and issued to over four thousand seven hundred subscribers on the agency's I-502 listserv. The board received two hundred twenty-one comments on the initial draft rules before the CR-102 was filed.

After reviewing the comments the board adopted some of the recommendations and amended the draft rules to attempt to minimize the financial burden on businesses.

7. A List of Industries That Will Be Required to Comply with the Rule: All licensed marijuana producers, processors and retailers will be required to comply with these rules.

8. An Estimate of the Number of Jobs That Will Be Created or Lost as a Result of Compliance with the Proposed Rule: Indeterminate – there are currently no legally established marijuana businesses in the state. The number of jobs created will depend on the number of applications received and licenses issues [issued].

A copy of the statement may be obtained by contacting Karen McCall, P.O. Box 43080, Olympia, WA 98504, phone (360) 664-1631, fax (360) 664-9689, e-mail kjm@liq.wa.gov.

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

July 3, 2013
Sharon Foster
Chairman

Chapter 314-55 WAC

MARIJUANA LICENSES, APPLICATION PROCESS, REQUIREMENTS, AND REPORTING

NEW SECTION

WAC 314-55-005 What is the purpose of this chapter? The purpose of this chapter is to outline the application process, qualifications and requirements to obtain and maintain a marijuana license and the reporting requirements for a marijuana licensee.

NEW SECTION

WAC 314-55-010 Definitions. Following are definitions for the purpose of this chapter. Other definitions are in RCW 69.50.101.

(1) "Applicant" or "marijuana license applicant" means any person or business entity who is considered by the board as a true party of interest in a marijuana license, as outlined in WAC 314-55-035.

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

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

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

(5) "Financier" means any person or entity that has made or will make an investment in the licensed business. A financier can be a person or entity that provides money as a gift, loans money to the applicant/business and expects to be paid back the amount of the loan with or without interest, or expects any percentage of the profits from the business in exchange for a loan or expertise.

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

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

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

(9) "Lot" means either of the following:

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

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

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

(11) "Member" means a principal or governing person of a given entity, including but not limited to: LLC member/manager, president, vice-president, secretary, treasurer, CEO, director, stockholder, partner, general partner, limited partner. This includes all spouses of all principals or governing persons named in this definition and referenced in WAC 314-55-035.

(12) "Pesticide" means, but is not limited to: (a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest; (b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and (c) any spray adjuvant. Pesticides include substances commonly referred to as herbicides, fungicides, and insecticides.

(13) "Perimeter" means a property line that encloses an area.

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

(15) "Public park" means an area of land for the enjoyment of the public, having facilities for rest and recreation, such as a baseball diamond or basketball court, owned and/or managed by a city, county, state, or federal government.

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

(17) "Recreation center or facility" means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age.

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

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

(20) "Unit" means an individually packaged marijuana infused solid or liquid product, not to exceed ten servings or one hundred milligrams of active tetrahydrocannabinol (THC), or Delta 9.

NEW SECTION

WAC 314-55-015 General information about marijuana licenses. (1) A person or entity must meet certain qualifications to receive a marijuana license, which are continuing qualifications in order to maintain the license.

(2) All applicants and employees working in each licensed establishment must be at least twenty-one years of age.

(3) Minors restricted signs must be posted at all marijuana licensed premises.

(4) A marijuana license applicant may not exercise any of the privileges of a marijuana license until the board approves the license application.

(5) The 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 board will not approve any marijuana license for a location on federal lands.

(7) The board will not approve any marijuana retailer license for a location within another business. More than one license could be located in the same building if each licensee has their own area separated by full walls with their own entrance. Product may not be commingled.

(8) Every marijuana licensee must post and keep posted its license, or licenses, and any additional correspondence containing conditions and restrictions imposed by the board in a conspicuous place on the premises.

(9) In approving a marijuana license, the board 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.

(10) A marijuana processor or retailer licensed by the board shall conduct the processing, storage, and sale of marijuana infused products using sanitary practices and ensure facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapters 16-165 and 16-167 WAC.

(11) Marijuana licensees may not allow the consumption of marijuana or marijuana-infused products on the licensed premises.

(12) The board may determine the maximum quantities of marijuana, usable marijuana, and marijuana infused products a marijuana licensee may have on their licensed premises at any time.

NEW SECTION

WAC 314-55-020 Marijuana license qualifications and application process. Each marijuana license application is unique and investigated individually. The board may inquire and request documents regarding all matters in connection with the marijuana license application. The application requirements for a marijuana license include, but are not necessarily limited to, the following:

(1) Per RCW 69.50.331, the board shall send a notice to cities and counties, and may send a notice to tribal governments or port authorities regarding the marijuana license application. The local authority has twenty days to respond with a recommendation to approve or an objection to the applicant, location, or both.

(2) The board will verify that the proposed business meets the minimum requirements for the type of marijuana license requested.

(3) The board 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 board and submission of fingerprints to a vendor approved by the board. 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. Financiers must meet the three month residency requirement.

(4) The board 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.

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

(6) The board may conduct a final inspection of the proposed licensed business, in order to determine if the applicant has complied with all the requirements of the license requested.

(7) Per RCW 69.50.331 (1)(b), all applicants applying for a marijuana license must have resided in the state of Washington for at least three months prior to application for a marijuana license. All partnerships, employee cooperatives, associations, nonprofit corporations, corporations and limited liability companies applying for a marijuana license must be formed in Washington. All members must also meet the three month residency requirement. Managers or agents who manage a licensee's place of business must also meet the three month residency requirement.

(8) Submission of an operating plan that demonstrates the applicant is qualified to hold the marijuana license applied for to the satisfaction of the board. The operating plan shall include the following elements in accordance with the applicable standards in the Washington Administrative Code (WAC).

(9) As part of the application process, each applicant must submit in a format supplied by the board an operating plan detailing the following as it pertains to the license type being sought. This operating plan must also include a floor plan or site plan drawn to scale which illustrates the entire operation being proposed. The operating plan must include the following information:

Producer	**Processor**	Retailer
Security	Security	Security
Traceability	Traceability	Traceability
Employee qualifications and training	Employee qualifications and training	Employee qualifications and training
Transportation of product including packaging of product for transportation	Transportation of product	
Destruction of waste product	Destruction of waste product	Destruction of waste product

Producer	**Processor**	Retailer
Description of growing operation include growing media, size of grow space allocated for plant production, space allocated for any other business activity, description of all equipment used in the production process, and a list of soil amendments, fertilizers, other crop production aids, or pesticides, utilized in the production process	Description of the types of products to be processed at this location together with a complete description of all equipment and solvents, gases, chemicals and other compounds used to create extracts and for processing of marijuana-infused products	
Testing procedures and protocols	Testing procedures and protocols	
	Description of the types of products to be processed at this location together with a complete description of processing of marijuana-infused products	
	Description of packaging and labeling of products to be processed	
		What array of products are to be sold and how are the products to be displayed to consumers

After obtaining a license, the license holder must notify the board in advance of any substantial change in their operating plan. Depending on the degree of change, prior approval may be required before the change is implemented.

(10) Applicants applying for a marijuana license must be current in any tax obligations to the Washington state department of revenue, 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, that representation is correct.

(11) 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.

(12) Upon failure to respond to the board licensing and regulation division's requests for information within the timeline provided, the application may be administratively closed or denial of the application will be sought.

NEW SECTION

WAC 314-55-035 What persons or entities have to qualify for a marijuana license? A marijuana license must be issued in the name(s) of the true party(ies) of interest.

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

True party of interest	**Persons to be qualified**
Sole proprietorship	Sole proprietor and spouse.
General partnership	All partners and spouses.
Limited partnership, limited liability partnership, or limited liability limited partnership	• All general partners and their spouses. • All limited partners and spouses.
Limited liability company	• All members and their spouses. • All managers and their spouses.
Privately held corporation	• All corporate officers (or persons with equivalent title) and their spouses. • All stockholders and their spouses.
Publicly held corporation	All corporate officers (or persons with equivalent title) and their spouses. All stockholders and their spouses.
Multilevel ownership structures	All persons and entities that make up the ownership structure (and their spouses).

True party of interest	Persons to be qualified
Any entity or person (inclusive of **financiers**) that are expecting a percentage of the profits in exchange for a monetary loan or expertise.	Any entity or person who is in receipt of, or has the right to receive, a percentage of the gross or net profit from the licensed business during any full or partial calendar or fiscal year. Any entity or person who exercises control over the licensed business in exchange for money or expertise. For the purposes of this chapter: • "Gross profit" includes the entire gross receipts from all sales and services made in, upon, or from the licensed business. • "Net profit" means gross sales minus cost of goods sold.
Nonprofit corporations	All individuals and spouses, and entities having membership rights in accordance with the provisions of the articles of incorporation or the bylaws.

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

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

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

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

(3) **Financiers -** The board will conduct a financial investigation as well as a criminal background of financiers.

(4) **Persons who exercise control of business -** The board will conduct an investigation of any person or entity who exercises any control over the applicant's business operations. This may include both a financial investigation and/or a criminal history background.

NEW SECTION

WAC 314-55-040 What criminal history might prevent a marijuana license applicant from receiving or keeping a marijuana license? (1) When the board processes a criminal history check on an applicant, it uses a point system to determine if the person qualifies for a license. The board will not normally issue a marijuana license or renew a license to an applicant who has accumulated eight or more points as indicated below:

Description	Time period during which points will be assigned	Points assigned
Felony conviction	Ten years	12 points
Gross misdemeanor conviction	Three years	5 points
Misdemeanor conviction	Three years	4 points
Currently under federal or state supervision for a felony conviction	n/a	8 points
Nondisclosure of any of the above	n/a	4 points each

(2) If a case is pending for an alleged offense that would earn eight or more points, the board will hold the application for the disposition of the case. If the disposition is not settled within ninety days, the board will administratively close the application.

(3) The board may not issue a marijuana license to anyone who has accumulated eight or more points as referenced above. This is a discretionary threshold and it is further recommended that the following exceptions to this standard be applied:

Exception to criminal history point assignment. This exception to the criminal history point assignment will expire on July 1, 2014:

(a) Prior to initial license application, two federal or state misdemeanor convictions for the possession only of marijuana within the previous three years may not be applicable to the criminal history points accumulated. All criminal history must be reported on the personal/criminal history form.

(i) Regardless of applicability, failure to disclose full criminal history will result in point accumulation;

(ii) State misdemeanor possession convictions accrued after December 6, 2013, exceeding the allowable amounts of marijuana, usable marijuana, and marijuana-infused products described in chapter 69.50 RCW shall count toward criminal history point accumulation.

(b) Prior to initial license application, any single state or federal conviction for the growing, possession, or sale of marijuana will be considered for mitigation on an individual basis. Mitigation will be considered based on the quantity of

product involved and other circumstances surrounding the conviction.

(4) Once licensed, marijuana licensees must report any criminal convictions to the board within fourteen days.

NEW SECTION

WAC 314-55-045 What marijuana law or rule violation history might prevent an applicant from receiving a marijuana license? The board will conduct an investigation of all applicants' marijuana law or rule administrative violation history. The board will not normally issue a marijuana license to a person, or to an entity with a true party of interest, who has the following violation history; or to any person who has demonstrated a pattern of disregard for laws or rules.

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

NEW SECTION

WAC 314-55-050 Reasons the board may seek denial, suspension, or cancellation of a marijuana license application or license. Following is a list of reasons the board may deny, suspend, or cancel a marijuana license application or license. Per RCW 66.50.331, the board 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 for the specific marijuana producer, processor, or retail license, as outlined in this chapter and chapter 69.50 RCW.

(2) Failure or refusal to submit information or documentation requested by the board during the evaluation process.

(3) The applicant makes a misrepresentation of fact, or fails to disclose a material fact to the board during the application process or any subsequent investigation after a license has been issued.

(4) Failure to meet the criminal history standards outlined in WAC 314-55-040.

(5) Failure to meet the marijuana law or rule violation history standards outlined in WAC 314-55-045.

(6) The source of funds identified by the applicant to be used for the acquisition, startup and operation of the business is questionable, unverifiable, or determined by the board to be gained in a manner which is in violation by law.

(7) Denies the board or its authorized representative access to any place where a licensed activity takes place or fails to produce any book, record or document required by law or board rule.

(8) Has been denied or had a marijuana license or medical marijuana license suspended or canceled in another state or local jurisdiction.

(9) Where the city, county, tribal government, or port authority has submitted a substantiated objection per the requirements in RCW 69.50.331 (7) and (9).

(10) The board may not issue a new marijuana license if the proposed licensed business is within one thousand feet of the perimeter of the grounds of any of the following entities. The distance shall be measured as the shortest straight line distance between the perimeters of the proposed licensed location and 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 or older).

(11) 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.

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

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

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

(15) Failure to operate in accordance with the board approved operating plan.

(16) 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.

NEW SECTION

WAC 314-55-070 Process if the board denies a marijuana license application. If the board denies a marijuana license application, the applicants may:

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

(2) Reapply for the license no sooner than one year from the date on the final order of denial.

NEW SECTION

WAC 314-55-075 What is a marijuana producer license and what are the fees related to a marijuana producer license? (1) A marijuana producer license allows the licensee to produce marijuana for sale at wholesale to marijuana processor licensees and to other marijuana producer licensees. Marijuana production must take place within a fully enclosed secure indoor facility or greenhouse with rigid

walls, a roof, and doors. Outdoor production may take place in nonrigid greenhouses, other structures, or an expanse of open or cleared ground fully enclosed by a physical barrier. To obscure public view of the premises, outdoor production must be enclosed by a sight obscure wall or fence at least eight feet high. Outdoor producers must meet security requirements described in WAC 314-55-083.

(2) The application fee for a marijuana producer license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(3) The annual fee for issuance and renewal of a marijuana producer license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(4) The board will initially limit the opportunity to apply for a marijuana producer license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana producer application license to be considered it must be received no later than thirty days after the effective date of the rules adopted by the board. The board may reopen the marijuana producer application window after the initial evaluation of the applications received and at subsequent times when the market deems necessary.

NEW SECTION

WAC 314-55-077 What is a marijuana processor license and what are the fees related to a marijuana processor license? (1) A marijuana processor license allows the licensee to process, package, and label usable marijuana and marijuana-infused products for sale at wholesale to marijuana retailers.

(2) The application fee for a marijuana processor license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(3) The annual fee for issuance and renewal of a marijuana processor license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(4) The board will initially limit the opportunity to apply for a marijuana processor license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana processor application license to be considered it must be received no later than thirty days after the effective date of the rules adopted by the board. The board may reopen the marijuana processor application window after the initial evaluation of the applications that are received and processed, and at subsequent times when the board deems necessary.

NEW SECTION

WAC 314-55-079 What is a marijuana retailer license and what are the fees related to a marijuana retailer license? (1) A marijuana retailer license allows the licensee to sell only usable marijuana, marijuana-infused products, and marijuana paraphernalia at retail in retail outlets to persons twenty-one years of age and older.

(2) Marijuana extracts, such as hash, hash oil, shatter, and wax can be infused in products sold in a marijuana retail store, but RCW 69.50.354 does not allow the sale of extracts that are not infused in products. A marijuana extract does not meet the definition of a marijuana-infused product per RCW 69.50.101.

(3) The application fee for a marijuana retailer's license is two hundred fifty dollars. The applicant is also responsible for paying the fees required by the approved vendor for fingerprint evaluation.

(4) The annual fee for issuance and renewal of a marijuana retailer's license is one thousand dollars. The board will conduct random criminal history checks at the time of renewal that will require the licensee to submit fingerprints for evaluation from the approved vendor. The licensee will be responsible for all fees required for the criminal history checks.

(5) Marijuana retailers may not sell marijuana products below their acquisition cost.

NEW SECTION

WAC 314-55-081 Who can apply for a marijuana retailer license? (1) Using estimated consumption data and population data obtained from the office of financial management (OFM) population data, the liquor control board will determine the maximum number of marijuana retail locations per county.

The number of retail locations will be determined using a formula that distributes the number of locations proportionate to the most populous cities within each county. Locations not assigned to a specific city will be at large. Once the number of locations per city and at large have been identified, the specific locations will be selected by lottery in the event the number of applications exceeds the allotted amount for the cities and county. Any lottery conducted by the board will be witnessed by an independent third party.

(2) The board will initially limit the opportunity to apply for a marijuana retailer license to a thirty-day calendar window beginning with the effective date of this section. In order for a marijuana retailer license application to be considered it must be received no later than thirty days after the effective date of the rules adopted by the board. The board may reopen the marijuana retailer application window after the initial evaluation of the applications received and at subsequent times when the market deems necessary

NEW SECTION

WAC 314-55-082 Insurance requirements. Marijuana licensees shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the consumer should there be any claims, suits, actions, costs,

damages or expenses arising from any negligent or intentional act or omission of the marijuana licensees. Marijuana licensees shall furnish evidence in the form of a certificate of insurance satisfactory to the board that insurance, in the following kinds and minimum amounts, has been secured. Failure to provide proof of insurance, as required, may result in license cancellation.

(1) Commercial general liability insurance: The licensee shall at all times carry and maintain commercial general liability insurance and if necessary, commercial umbrella insurance for bodily injury and property damage arising out of licensed activities. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the licensee or its officers, agents, representatives, assigns, or servants. The insurance shall also cover bodily injury, including disease, illness and death, and property damage arising out of the licensee's premises/operations, products, and personal injury.

(2) Insurance carrier rating: The insurance required in subsection (1) of this section shall be issued by an insurance company authorized to do business within the state of Washington. Insurance 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.

NEW SECTION

WAC 314-55-083 What are the security requirements for a marijuana licensee? The security requirements for a marijuana licensee are as follows:

(1) **Display of identification badge.** All employees on the licensed premises shall be required to hold and properly display an identification badge issued by the licensed employer at all times while on the licensed premises.

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

(3) **Surveillance system**. At a minimum, a complete video surveillance with minimum camera resolution of 640x470 pixel and must be internet protocol (IP) compatible and recording system for controlled areas within the licensed premises and entire perimeter fencing and gates enclosing an outdoor grow operation, to ensure control of the area. The requirements include image acquisition, video recording, management and monitoring hardware and support systems. All recorded images must clearly and accurately display the time and date. Time is to be measured in accordance with the U.S. National Institute Standards and Technology standards.

(a) All controlled access areas, security rooms/areas and all points of ingress/egress to limited access areas, all points of ingress/egress to the exterior of the licensed premises, and all point-of-sale (POS) areas must have fixed camera coverage capable of identifying activity occurring within a minimum of twenty feet of all entry and exit points.

(b) Camera placement shall allow for the clear and certain identification of any individual on the licensed premises.

(c) All entrances and exits to the facility shall be recorded from both indoor and outdoor vantage points, and capable of clearly identifying any activities occurring within the facility or within the grow rooms in low light conditions. The surveillance system storage device must be secured onsite in a lock box, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft.

(d) All perimeter fencing and gates enclosing an outdoor grow operation must have full video surveillance capable of clearly identifying any activities occurring within twenty feet of the exterior of the perimeter. Any gate or other entry point that is part of the enclosure for an outdoor growing operation must have fixed camera coverage capable of identifying activity occurring within a minimum of twenty feet of the exterior, twenty-four hours a day. A motion detection lighting system may be employed to illuminate the gate area in low light conditions.

(e) Areas where marijuana is grown, cured or manufactured including destroying waste, shall have a camera placement in the room facing the primary entry door, and in adequate fixed positions, at a height which will provide a clear, unobstructed view of the regular activity without a sight blockage from lighting hoods, fixtures, or other equipment, allowing for the clear and certain identification of persons and activities at all times.

(f) All marijuana or marijuana-infused products that are intended to be removed or transported from marijuana producer to marijuana processor and/or marijuana processor to marijuana retailer shall be staged in an area known as the "quarantine" location for a minimum of seventy-two hours. Transport manifest with product information and weights must be affixed to the product. At no time during the quarantine period can the product be handled or moved under any circumstances and is subject to auditing by the liquor control board or designees.

(g) All camera recordings must be continuously recorded twenty-four hours a day. All surveillance recordings must be kept for a minimum of forty-five days on the licensee's recording device. All videos are subject to inspection by any liquor control board employee or law enforcement officer, and must be copied and provided to the board or law enforcement officer upon request.

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

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

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

(c) When usable marijuana or marijuana infused products are sent to be tested;

(d) When a lot or batch of marijuana infused product is to be destroyed;

(e) When usable marijuana or marijuana infused products are transported;

(f) Any theft of marijuana seedlings, clones, plants, trim or other plant material, extract, infused product, or other item containing marijuana;

(g) There is a seventy-two hour mandatory waiting period after the notification described in this subsection is given before any plant may be harvested, destroyed, or a lot or batch of marijuana or marijuana infused product may be destroyed;

(h) There is a seventy-two hour mandatory waiting period after the notification described in this subsection for testing and/or inspection before usable marijuana or marijuana infused products are transported;

(i) Prior to reaching eight inches in height or width, each marijuana plant must be tagged and tracked individually, which typically should happened when a plant is moved from the seed germination or clone area to the vegetation production area;

(j) Records of each application of pesticides to the marijuana plants or growing medium;

(k) Record of the soil amendments, fertilizers, or other crop production aids being applied to the growing medium or used in the process of growing the marijuana;

(l) A complete inventory of all marijuana seedlings, clones, all plants, lots of usable marijuana or trim, leaves, and other plant matter, batches of extract and marijuana infused products;

(m) All point of sale records;

(n) Marijuana excise tax records;

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

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

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

(r) Samples containing usable marijuana provided to retailers;

(s) Samples provided to the board or their designee for quality assurance compliance checks; and

(t) Other information specified by the board.

(5) **Start-up inventory for marijuana producers.** Within fifteen days of starting production operations a producer must have all nonflowering marijuana plants physically on the licensed premises. The producer must immediately record each marijuana plant that enters the facility in the traceability system during this fifteen day time frame. No flowering marijuana plants may be brought into the facility during this fifteen day time frame. After this fifteen day time frame expires, a producer may only start plants from seed or create clones from a marijuana plant located physically on their licensed premises, or purchase marijuana seeds, clones, or plants from another licensed producer.

(6) **Samples.** Free samples of usable marijuana may be provided by producers or processors as set forth in this section.

(a) Samples are limited to two grams and a producer may not provide any one licensed processor more than four grams of usable marijuana per month free of charge for the purpose of negotiating a sale. The producer must record the amount of each sample and the processor receiving the sample in the traceability system.

(b) Samples are limited to two grams and a processor may not provide any one licensed retailer more than four grams of usable marijuana per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system.

(c) Samples are limited to two units and a processor may not provide any one licensed retailer more than six ounces of marijuana infused in solid form per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system.

(d) Samples are limited to two units and a processor may not provide any one licensed retailer more than twenty-four ounces of marijuana infused liquid per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system.

(e) The limits described in subsection (3) of this section do not apply to the usable marijuana in sample jars that may be provided to retailers described in WAC 314-55-105(7).

(f) Retailers may not provide free samples to customers.

NEW SECTION

WAC 314-55-084 Production of marijuana. Only the following specified soil amendments, fertilizers, other crop production aids, and pesticides may be used in the production of marijuana:

(1) Materials listed or registered by the Washington state department of agriculture (WSDA) or Organic Materials Review Institute (OMRI) as allowable for use in organic production, processing, and handling under the U.S. Department of Agriculture's national organics standards, also called the National Organic Program (NOP), consistent with requirements at 7 C.F.R. Part 205.

(2) Other materials to be listed or registered by WSDA under chapter 15.58 RCW as allowed for use in the production, processing, and handling of cannabis. Pesticides must be used consistent with the label requirements.

NEW SECTION

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

(2) **Receipt of shipment.** Upon receiving the shipment, the licensee receiving the product shall report the amount and/or weight of marijuana and/or marijuana products received in the traceability system.

(3) **Transportation manifest.** A complete transport manifest containing all information required by the board must be kept with the product at all times.

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

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

(a) Only the marijuana licensee or an employee of the licensee may transport product;

(b) Marijuana or marijuana products must be in a sealed package or container approved by the board pursuant to WAC 314-55-105;

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

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

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

NEW SECTION

WAC 314-55-086 What are the mandatory signs a marijuana licensee must post on a licensed premises? (1) **Notices regarding persons under twenty-one years of age** must be conspicuously posted on the premises as follows:

Type of licensee	Sign must contain the following language:	Required location of sign
Marijuana producer, marijuana processor, and marijuana retailer	"Persons under twenty-one years of age not permitted on these premises."	Conspicuous location at each entry to premises.

The board will provide the required notices, or licensees may design their own notices as long as they are legible and contain the required language.

(2) **Signs provided by the board prohibiting opening a package of marijuana or marijuana-infused product in public or consumption of marijuana or marijuana-infused products in public,** must be posted as follows:

Type of premises	Required location of sign
Marijuana retail	Posted in plain view at the main entrance to the establishment.

(3) **The premises' current and valid master license with appropriate endorsements** must be conspicuously posted on the premises and available for inspection by liquor enforcement officers.

NEW SECTION

WAC 314-55-087 What are the recordkeeping requirements for marijuana licensees? (1) Marijuana licensees are responsible to keep records that clearly reflect all financial transactions and the financial condition of the business. The following records must be kept and maintained on the licensed premises for a three-year period and must be made available for inspection if requested by an employee of the liquor control board:

(a) Purchase invoices and supporting documents, to include the items and/or services purchased, from whom the items were purchased, and the date of purchase;

(b) Bank statements and canceled checks for any accounts relating to the licensed business;

(c) Accounting and tax records related to the licensed business and each true party of interest;

(d) Records of all financial transactions related to the licensed business, including contracts and/or agreements for services performed or received that relate to the licensed business;

(e) All employee records, to include training;

(f) Records of each daily application of pesticides applied to the marijuana plants or growing medium. For each application, the producer shall record the following information on the same day the application is made:

(i) Full name of each employee who applied the pesticide;

(ii) The date the pesticide was applied;

(iii) The name of the pesticide or product name listed on the registration label which was applied;

(iv) The concentration and total amount of pesticide per plant; and

(v) For outdoor production, the concentration of pesticide that was applied to the field. Liquor applications may be recorded as, but are not limited to, amount of product per one hundred gallons of liquor spray, gallons per acre of output volume, ppm, percent product in tank mix (e.g., one percent). For chemigation applications, record "inches of water applied" or other appropriate measure.

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

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

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

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

(k) Inventory records;

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

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

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

(o) Sample jars containing usable marijuana provided to retailers; and

(p) Records of any theft of marijuana seedlings, clones, plants, trim or other plant material, extract, marijuana infused product, or other item containing marijuana.

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

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

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

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

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

NEW SECTION

WAC 314-55-089 What are the tax and reporting requirements for marijuana licensees? (1) Marijuana licensees must submit monthly report(s) and payments to the board. The required monthly reports must be:

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

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

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

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

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

(2) **Marijuana producer licensees:** On a monthly basis, marijuana producers must maintain records and report purchases from other licensed marijuana producers, current production and inventory on hand, sales by product type, and lost and destroyed product in a manner prescribed by the board.

A marijuana producer licensee must pay to the board a marijuana excise tax of twenty-five percent of the selling price on each wholesale sale to a license marijuana processor.

(3) **Marijuana processor licensees:** On a monthly basis, marijuana processors must maintain records and report purchases from licensed marijuana producers, production of marijuana-infused products, sales by product type to marijuana retailers, and lost and/or destroyed product in a manner prescribed by the board.

A marijuana processor licensee must pay to the board a marijuana excise tax of twenty-five percent of the selling price on each wholesale sale of usable marijuana and marijuana-infused product to a licensed marijuana retailer.

(4) **Marijuana retailer's licensees:** On a monthly basis, marijuana retailers must maintain records and report purchases from licensed marijuana processors, sales by product type to consumers, and lost and/or destroyed product in a manner prescribed by the board.

A marijuana processor licensee must pay to the board a marijuana excise tax of twenty-five percent of the selling price on each retail sale of usable marijuana or marijuana-infused products.

NEW SECTION

WAC 314-55-092 What if a marijuana licensee fails to report or pay, or reports or pays late? (1) If a marijuana licensee does not submit its monthly reports and payment(s) to the board as required in WAC 314-55-089: The licensee is subject to penalties.

Penalties: A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day.

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

NEW SECTION

WAC 314-55-095 Marijuana servings and transaction limitations. Marijuana dosage and transaction limitations are as follows:

(1) **Single serving.** A single serving of a marijuana-infused product amounts to ten milligrams active tetrahydrocannabinol (THC), or Delta 9.

(2) **Maximum number of servings.** The maximum number of servings in any one single unit of marijuana-infused product is ten servings or one hundred milligrams of active THC, or Delta 9.

(3) **Transaction limitation.** A single transaction is limited to one ounce of usable marijuana, sixteen ounces of marijuana-infused product in solid form, and seventy-two ounces of marijuana-infused product in liquid form for persons twenty-one years of age and older.

NEW SECTION

WAC 314-55-097 Marijuana waste disposal—Liquids and solids. (1) Solid and liquid wastes generated during marijuana production and processing must be stored, managed, and disposed of in accordance with applicable state and local laws and regulations.

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

(3) Wastes from the production and processing of marijuana plants must be evaluated against the state's dangerous waste regulations (chapter 173-303 WAC) to determine if those wastes designate as dangerous waste. It is the responsibility of each waste generator to properly evaluate their waste to determine if it designates as a dangerous waste. If a generator's waste does designate as a dangerous waste, then that waste(s) is subject to the applicable management standards found in chapter 173-303 WAC.

(a) Wastes that must be evaluated against the dangerous waste regulations include, but are not limited to, the following:

(i) Waste from marijuana flowers, trim and solid plant material used to create an extract (per WAC 315-55-104).

(ii) Waste solvents used in the marijuana process (per WAC 315-55-104).

(iii) Discarded plant waste, spent solvents and laboratory wastes from any marijuana processing or quality assurance testing.

(iv) Marijuana extract that fails to meet quality testing.

(b) Marijuana wastes that do not designate as dangerous shall be managed in accordance with subsection (4) of this section.

(c) A marijuana plant, usable marijuana, trim and other plant material in itself is not considered dangerous waste as defined under chapter 173-303 WAC unless it has been treated or contaminated with a solvent.

(4) Marijuana waste that does not designate as dangerous waste (per subsection (3) of this section) must be rendered unusable following the methods in subsection (5) of this section prior to leaving a licensed producer, processor, retail facility, or laboratory. Disposal of the marijuana waste rendered unusable must follow the methods under subsection (6) of this section.

(a) Wastes that must be rendered unusable prior to disposal include, but are not limited to, the following:

(i) Waste evaluated per subsection (3) of this section and determined to not designate as "Dangerous Waste."

(ii) Marijuana plant waste, including roots, stalks, leaves, and stems that have not been processed with solvent.

(iii) Solid marijuana sample plant waste possessed by third-party laboratories accredited by the board to test for quality assurance that must be disposed of.

(iv) Other wastes as determined by the LCB.

(b) A producer or processor must provide the board a minimum of one hundred sixty-eight hours notice in the traceability system described in WAC 314-55-083(4) prior to rendering the product unusable and disposing of it.

(5) The allowable method to render marijuana plant waste unusable is by grinding and incorporating the marijuana plant waste with other ground materials so the resulting mixture is at least fifty percent nonmarijuana waste by volume. Other methods to render marijuana waste unusable must be approved by LCB before implementation.

Material used to grind with the marijuana falls into two categories: Compostable waste and noncompostable waste.

(a) Compostable mixed waste: Marijuana waste to be disposed as compost feedstock or in another organic waste method (for example, anaerobic digester) may be mixed with the following types of waste materials:

(i) Food waste;

(ii) Yard waste;

(iii) Vegetable based grease or oils; or

(iv) Other wastes as approved by the LCB.

(b) Noncompostable mixed waste: Marijuana waste to be disposed in a landfill or another disposal method (for example, incinerator) may be mixed with the following types of waste materials:

(i) Paper waste;

(ii) Cardboard waste;

(iii) Plastic waste;

(iv) Soil; or

(v) Other wastes as approved by the LCB.

(6) Marijuana wastes rendered unusable following the method described in subsection (4) of this section can be disposed.

(a) Disposal of the marijuana waste rendered unusable may be delivered to a permitted solid waste facility for final disposition. Examples of acceptable permitted solid waste facilities include:

(i) Compostable mixed waste: Compost, anaerobic digester, or other facility with approval of the jurisdictional health department.

(ii) Noncompostable mixed waste: Landfill, incinerator, or other facility with approval of the jurisdictional health department.

(b) Disposal of the marijuana waste rendered unusable may be managed on-site by the generator in accordance with the standards of chapter 173-350 WAC.

(c) A record of the final destination of marijuana waste rendered unusable.

NEW SECTION

WAC 314-55-099 Standardized scales. (1) Marijuana producer and processor licensees must have at least one scale on the licensed premises for the traceability and inventory of products.

(2) The scales and other measuring devices are subject to chapter 19.94 RCW, and must meet the requirements of the most current version of chapters 16-662 and 16-664 WAC.

(3) Licensees must register scales on a business license application with business license services through the department of revenue as required under chapter 19.94 RCW.

NEW SECTION

WAC 314-55-102 Quality assurance testing. (1) A person with financial interest in an accredited third-party testing lab may not have direct or indirect financial interest in a licensed marijuana producer or processor for whom they are conducting required quality assurance tests.

(2) As a condition of accreditation, each lab must employ a scientific director responsible to ensure the achievement and maintenance of quality standards of practice. The scientific director shall meet the following minimum qualifications:

(a) Has earned, from a college or university accredited by a national or regional certifying authority a doctorate in the chemical or biological sciences and a minimum of two years' post-degree laboratory experience; or

(b) Has earned a master's degree in the chemical or biological sciences and has a minimum of four years' of post-degree laboratory experience; or

(c) Has earned a bachelor's degree in the chemical or biological sciences and has a minimum of six years of post-education laboratory experience.

(3) As a condition of accreditation, labs must follow the most current version of the Cannabis Inflorescence and Leaf monograph published by the *American Herbal Pharmacopoeia* or notify the board what alternative scientifically valid testing methodology the lab is following for each quality assurance test. The board may require third-party validation of any monograph or analytical method followed by the lab to ensure the methodology produces scientifically accurate results prior to them using those standards when conducting required quality assurance tests.

(4) As a condition of accreditation, the board may require third-party validation and ongoing monitoring of a lab's basic proficiency to correctly execute the analytical methodologies employed by the lab.

(5) Labs must adopt and follow minimum good lab practices (GLPs), and maintain internal standard operating procedures (SOPs), and a quality control/quality assurance (QC/QA) program as specified by the board. The board or authorized third-party organization can conduct audits of a lab's GLPs, SOPs, QC/QA, and inspect all other related records.

(6) The general body of required quality assurance tests for marijuana flowers, infused products, and extracts may include moisture content, potency analysis, foreign matter inspection, microbiological screening, pesticide and other chemical residue and metals screening, and residual solvents levels.

(7) Table of required quality assurance tests.

Product	Test(s) Required	Sample Size Needed to Complete all Tests
Flowers to be sold as usable marijuana (see note below)	1. Moisture content 2. Potency analysis 3. Foreign matter inspection 4. Microbiological screening	Up to 7 grams
Flowers to be used to make an extract (nonsolvent) like kief, hashish, bubble hash, or infused dairy butter, or oils or fats derived from natural sources	None	None
Extract (nonsolvent) like kief, hashish, bubble hash or infused dairy butter, or oils or fats derived from natural sources	1. Potency analysis 2. Foreign matter inspection 3. Microbiological screening	Up to 7 grams
Flowers to be used to make an extract (solvent based), made with a CO_2 extractor, or with a food grade ethanol or glycerin	1. Foreign matter inspection 2. Microbiological screening	Up to 7 grams
Extract (solvent based) made using n-butane, isobutane, propane, or heptane of at least 95% purity	1. Potency analysis 2. Residual solvent test 3. Microbiological screening (only if using flowers and other plant material that failed initial test)	Up to 2 grams
Extract made with a CO_2 extractor like hash oil	1. Potency analysis 2. Microbiological screening (only if using flowers and other plant material that failed initial test)	Up to 2 grams
Extract made with food grade ethanol	1. Potency analysis 2. Microbiological screening (only if using flowers and other plant material that failed initial test)	Up to 2 grams
Extract made with food grade glycerin or propylene glycol	1. Potency analysis	Up to 1 gram
Infused edible	1. Potency analysis 2. Microbiological screening	1 unit
Infused liquid like a soda or tonic	1. Potency analysis 2. Microbiological screening	1 unit
Infused topical	1. Potency analysis	1 unit

(8) Independent testing labs may request additional sample material in excess of amounts listed in the table in subsection (7) of this section for the purposes of completing required quality assurance tests.

(9) At the discretion of the board, a producer or processor must provide an employee of the board or their designee samples in the amount listed in subsection (7) of this section for random compliance checks. Samples may be screened for pesticides and chemical residues, unsafe levels of metals, and used for other quality assurance tests deemed necessary by the board. All costs of this testing will be borne by the producer or processor.

(10) No lot of usable flower or batch of marijuana product may be sold until the completion of all required quality assurance testing.

(11) If a lot of marijuana flowers fail a quality assurance test, any marijuana plant trim, leaf and other usable material from the same plants automatically fails quality assurance testing also.

(12) At the request of the producer or processor, the board may authorize a retest to validate a failed test result on

a case-by-case basis. All costs of the retest will be borne by the producer or the processor.

NEW SECTION

WAC 314-55-104 Marijuana processor license extraction requirements. (1) Processors are limited to certain methods, equipment, solvents, gases and mediums when creating marijuana extracts.

(2) Processors may use the hydrocarbons N-butane, isobutane, propane, or heptane or other solvents or gases exhibiting low to minimal potential human health-related toxicity approved by the board. These solvents must be of at least ninety-nine percent purity and a processor must use them in a professional grade closed loop extraction system designed to recover the solvents, work in a spark free environment with proper ventilation, and follow all applicable local fire, safety and building codes in processing and the storage of the solvents.

(3) Processors may use a professional grade closed loop CO_2 gas extraction system where every vessel is rated to a minimum of nine hundred pounds per square inch and follow all applicable local fire, safety and building codes in processing and the storage of the solvents. The CO_2 must be of at least ninety-nine percent purity.

(4) Processors may use heat, screens, presses, steam distillation, ice water, and other methods without employing solvents or gases to create kief, hashish, bubble hash, or infused dairy butter, or oils or fats derived from natural sources, and other extracts.

(5) Processors may use food grade glycerin, ethanol, and propylene glycol solvents to create extracts.

(6) Processors creating marijuana extracts must develop standard operating procedures, good manufacturing practices, and a training plan prior to producing extracts for the marketplace. Any person using solvents or gases in a closed looped system to create marijuana extracts must be fully trained on how to use the system, have direct access to applicable material safety data sheets and handle and store the solvents and gases safely.

(7) Parts per million for one gram of finished extract cannot exceed 500 parts per million or residual solvent or gas when quality assurance tested per RCW 69.50.348.

NEW SECTION

WAC 314-55-105 Packaging and labeling requirements. (1) All usable marijuana and marijuana products must be stored behind a counter or other barrier to ensure a customer does not have direct access to the product.

(2) Any container or packaging containing usable marijuana or marijuana products must protect the product from contamination and must not impart any toxic or deleterious substance to the usable marijuana or marijuana product.

(3) Upon the request of a retail customer, a retailer must disclose the name of the accredited third-party testing lab and results of the required quality assurance test for any usable marijuana or other marijuana product the customer is considering purchasing.

(4) usable marijuana and marijuana products may not be labeled as organic unless permitted by the United States Department of Agriculture in accordance with the Organic Foods Production Act.

(5) The accredited third-party testing lab and required results of the quality assurance test must be included with each lot and disclosed to the customer buying the lot.

(6) A producer must disclose in writing all soil amendments, fertilizers, other crop production aids, or applied to the growing medium or marijuana plant included in the lot.

(7) Marijuana infused products must be packaged in child resistant packaging in accordance with Title 16 C.F.R. 1700 of the Poison Prevention Packaging Act or use standards specified in this subsection. Marijuana infused product in solid form may be packaged in plastic four millimeters or greater in thickness and be heat sealed as to make it difficult for a child to open and as a tamperproof measure. Marijuana infused product in liquid form may be sealed using a metal crown cork style bottle cap.

(8) A processor may provide a retailer free samples of usable marijuana packaged in a sample jar protected by a plastic or metal mesh screen to allow customers to smell the product before purchase. The sample jar may not contain more than three and one-half grams of usable marijuana. The sample jar and the usable marijuana within may not be sold to a customer and must be either returned to the licensed processor who provide the usable marijuana and sample jar or destroyed by the retailer after use in the manner described in WAC 314-55-097 and noted in the traceability system.

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

(10) Labels must comply with the version of NIST Handbook 130, Uniform Packaging and Labeling Regulation adopted in chapter 16-662 WAC.

(11) **All usable marijuana when sold at retail must include accompanying material that contains the following warnings that state:**

(a) "Warning: This product has intoxicating effects and my be habit forming. Smoking is hazardous to your health";

(b) "There may be health risks associated with consumption of this product";

(c) "Should not be used by women that are pregnant or breast feeding";

(d) "For use only by adults twenty-one and older. Keep out of reach of children";

(e) "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug";

(f) Statement that discloses all pesticides applied to the marijuana plants and growing medium during production and processing.

(12) **All marijuana-infused products sold at retail must include accompanying material that contains the following warnings that state:**

(a) "There may be health risks associated with consumption of this product";

(b) "This product is infused with marijuana or active compounds of marijuana";

(c) "Should not be used by women that are pregnant or breast feeding";

(d) "For use only by adults twenty-one and older. Keep out of reach of children";

(e) "Products containing marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug";

(f) "Caution: When eaten, the intoxicating effects of this drug may be delayed by two or more hours."

(g) Statement that discloses all pesticides applied to the marijuana plants and growing medium during production of the base marijuana used to create the extract added to the infused product; and

(h) Statement that discloses the type of extraction method, including any solvents, gases, or other chemicals or compounds used to produce or that are added to the extract.

(13) **Labels affixed to the container or package containing usable marijuana sold at retail must include:**

(a) The business or trade name and Washington state unified business identifier number of the licensees that produced, processed, and sold the usable marijuana;

(b) Lot number;

(c) Concentration of THC, THCA, CBD, CBDA, CBN, CBG, including a total of active cannabinoids (potency profile);

(d) Net weight in ounces and grams or volume as appropriate;

(e) Warnings that state: "This product has intoxicating effects and may be habit forming";

(f) Statement that "This product may be unlawful outside of Washington state";

(g) Date of harvest.

(h) The board may create a logo that must be placed on all usable marijuana and marijuana infused products.

(14) **Sample label mock up for a container or package containing usable marijuana sold at retail with required information:**

UBI: 123 456 789 001 0001 Lot #: 1234

Date of Harvest: 4-14

San Juan Resins

Blueberry haze

16.7 % THC 1.5% CBD 0.3% CBN

Warning- This product has intoxicating effects and may be habit forming

THIS PRODUCT MAY BE UNLAWFUL OUTSIDE WASHINGTON STATE

Net weight: .25 ounces (7 grams)

(15) **Labels affixed to the container or package containing marijuana-infused products sold at retail must include:**

(a) The business or trade name and Washington state unified business identifier number of the licensees that produced, processed, and sold the usable marijuana;

(b) Lot numbers of all base marijuana used to create the extract;

(c) Batch number;

(d) Date manufactured;

(e) Best by date;

(f) Recommended serving size and the number of servings contained within the unit, including total milligrams of active tetrahydrocannabinol (THC), or Delta 9;

(g) Net weight in ounces and grams, or volume as appropriate;

(h) List of all ingredients and any allergens;

(i) "Caution: When eaten, the intoxicating effects of this drug may be delayed by two or more hours."

(j) If a marijuana extract was added to the product, disclosure of the type of extraction process and any solvent, gas, or other chemical used in the extraction process, or any other compound added to the extract;

(k) Warnings that state: "This product has intoxicating effects and may be habit forming";

(l) Statement that "This product may be unlawful outside of Washington state";

(m) The board may create a logo that must be placed on all usable marijuana and marijuana infused products.

(16) **Sample label mock up (front and back) for a container or package containing marijuana infused products sold at retail with required information:**

(Front of label)

UBI: 123 456 789 001 00001 Lot #: 1234 Batch#: 5463

San Juan Resins

Space cake

CAUTION: when eaten the effects of this product can be delayed two or more hours.

Net Weight: 6oz (168 grams)

THIS PRODUCT MAY BE UNLAWFUL OUTSIDE WASHINGTON STATE

(Back of label)

Manufactured at: 123 Main Street, San Juan Island, WA on 5/1/13. Best by 7/15/13

INGREDIENTS: Flour, Butter, Canola oil, Sugar, Chocolate, Marijuana, strawberries,
CONTAINS ALLERGENS: Milk, Wheat

Contains marijuana extract processed with butane.

Serving size: 10 MG of THC
This product contains 10 servings and a total of 100 MG of THC

Warning – This product has intoxicating effects and may be habit forming

NEW SECTION

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 qualifying persons in a: Sole proprietorship, general partnership, limited partnership, or limited liability partnership.	New application	Annual fee for current license privilege.
Change in the qualifying persons 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 qualifying persons in a limited liability company.	Application for change of limited liability company member and/or manager	$75

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

NEW SECTION

WAC 314-55-125 Change of location. (1) Changing your marijuana license to a new location requires an application, per the process outlined in WAC 314-55-020.

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

NEW SECTION

WAC 314-55-130 Change of business name. (1) If you wish to change the name of your business, you must apply for a change of trade name with the department of revenue, business license service.

(2) If you wish to change your corporation or limited liability company name, you must apply for a change of name through the secretary of state.

(3) See chapter 434-12 WAC for guidelines for trade names.

NEW SECTION

WAC 314-55-135 Discontinue marijuana sales. You must notify the board's enforcement and education division in writing if you plan to stop doing business for more than thirty days, or if you plan to permanently discontinue marijuana sales.

NEW SECTION

WAC 314-55-140 Death or incapacity of a marijuana licensee. (1) The appointed guardian, executor, administrator, receiver, trustee, or assignee must notify the board's licensing and regulation division in the event of the death, incapacity, receivership, bankruptcy, or assignment for benefit of creditors of any licensee.

(2) The board may give the appointed guardian, executor, administrator, receiver, trustee, or assignee written approval to continue marijuana sales on the licensed business premises for the duration of the existing license and to renew the license when it expires.

(a) The person must be a resident of the state of Washington.

(b) A criminal background check may be required.

(3) When the matter is resolved by the court, the true party(ies) of interest must apply for a marijuana license for the business.

NEW SECTION

WAC 314-55-145 Are marijuana license fees refundable? When a license is suspended or canceled, or the licensed business is discontinued, the unused portion of the marijuana license fee will not be refunded.

NEW SECTION

WAC 314-55-147 What hours may a marijuana retailer licensee conduct sales? A marijuana retailer licensee may sell usable marijuana, marijuana-infused products, and marijuana paraphernalia between the hours of 8 a.m. and 12 a.m.

NEW SECTION

WAC 314-55-150 What are the forms of acceptable identification? (1) Following are the forms of identification that are acceptable to verify a person's age for the purpose of purchasing marijuana:

(a) Driver's license, instruction permit, or identification card of any state, or province of Canada, from a U.S. territory or the District of Columbia, or "identicard" issued by the Washington state department of licensing per RCW 46.20.-117;

(b) United States armed forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents, which may include an embedded, digital signature in lieu of a visible signature;

(c) Passport;

(d) Merchant Marine identification card issued by the United States Coast Guard; and

(e) Enrollment card issued by the governing authority of a federally recognized Indian tribe located in Washington, if the enrollment card incorporates security features comparable to those implemented by the department of licensing for Washington driver's licenses.

(2) The identification document is not acceptable to verify age if expired.

NEW SECTION

WAC 314-55-155 Advertising. (1) **Advertising by retail licensees.** The board limits each retail licensed premises to one sign identifying the retail outlet by the licensee's business name or trade name that is affixed or hanging in the windows or on the outside of the premises that is visible to the general public from the public right of way. The size of the sign is limited to sixteen hundred square inches.

(2) **General.** All marijuana advertising of products sold in the state of Washington may not contain any statement, or illustration that:

(a) Is false or misleading;

(b) Promotes over consumption;

(c) Represents the use of marijuana has curative or therapeutic effects;

(d) Depicts a child or other person under legal age to consume marijuana, or includes:

(i) Objects, such as toys, characters, or cartoon characters suggesting the presence of a child, or any other depiction designed in any manner to be especially appealing to children or other persons under legal age to consume marijuana; or

(ii) Is designed in any manner that would be especially appealing to children or other persons under twenty-one years of age.

(3) No licensed marijuana producer, processor, or retailer shall place or maintain, or cause to be placed or maintained, an advertisement of marijuana, usable marijuana, or a marijuana-infused product in any form or through any medium whatsoever:

(a) Within one thousand feet of the perimeter of a school grounds, playground, recreation center or facility, child care center, public park, library, or a game arcade admission to which it is not restricted to persons aged twenty-one years or older;

(b) On or in a public transit vehicle or public transit shelter; or

(c) On or in a publicly owned or operated property.

(4) Giveaways, coupons, and distribution of branded merchandise are banned or limited to persons twenty-one years or older.

NEW SECTION

WAC 314-55-160 Objections to marijuana license applications. (1) **How can persons, cities, counties, tribal governments, or port authorities object to the issuance of a marijuana license?** Per RCW 69.50.331, the board will notify cities, counties, tribal governments, and port authorities of the following types of marijuana applications. In addition to these entities, any person or group may comment in writing to the board regarding an application.

Type of application	Entities the board will/may notify
• Applications for an annual marijuana license at a new location.	• Cities and counties in which the premises is located will be notified. Tribal governments and port authorities in which the premises is located may be notified.
• Applications to change the class of an existing annual marijuana license.	
• Changes of ownership at existing licensed premises.	• Cities and counties in which the premises is located will be notified. Tribal governments and port authorities in which the premises is located may be notified.

(2) **What will happen if a person or entity objects to a marijuana license application?** When deciding whether to issue or deny a marijuana license application, the board will give substantial weight to input from governmental jurisdictions in which the premises is located; and other persons or groups. Note: Per RCW 69.50.331, the board shall not issue a

new marijuana license if any of the following are within one thousand feet of the premises to be licensed: Any elementary or secondary schools, playgrounds, recreation centers or facilities, child care centers, public parks, public transit centers, libraries, game arcade where admission is not restricted to persons twenty-one years of age or older.

(a) If the board contemplates issuing a license over the objection of a governmental jurisdiction in which the premises is located, the government subdivision may request an adjudicative hearing under the provisions of the Administrative Procedure Act, chapter 34.05 RCW. If the board, in its discretion, grants the governmental jurisdiction(s) an adjudicative hearing, the applicant will be notified and given the opportunity to present evidence at the hearing.

(b) If the board denies a marijuana license application based on the objection from a governmental jurisdiction, the applicant(s) may either:

(i) Reapply for the license no sooner than one year from the date on the final order of denial; or

(ii) Submit a written request on a form provided by the board for an adjudicative hearing under the provisions of the Administrative Procedure Act, chapter 34.05 RCW. The request must be received within twenty days of the date the intent to deny notification was mailed.

NEW SECTION

WAC 314-55-165 Objections to marijuana license renewals. (1) **How can local cities, counties, tribal governments, or port authorities object to the renewal of a marijuana license?**

(a) The board will give governmental jurisdictions approximately ninety days written notice of premises that hold annual marijuana licenses in that jurisdiction that are up for renewal.

(b) Per RCW 69.50.331, if a county, city, tribal government, or port authority wants to object to the renewal of a marijuana license in its jurisdiction, it must submit a letter to the board detailing the reason(s) for the objection and a statement of all facts on which the objections are based.

(c) The county, city, tribal government, or port authority may submit a written request to the board for an extension for good cause shown.

(d) This letter must be received by the board at least thirty days before the marijuana license expires. The objection must state specific reasons and facts that show issuance of the marijuana license at the proposed location or to the applicant business how it will detrimentally impact the safety, health, or welfare of the community.

(e) If the objection is received within thirty days of the expiration date or the licensee has already renewed the license, the objection will be considered as a complaint and possible license revocation may be pursued by the enforcement division.

(f) Objections from the public will be referred to the appropriate city, county, tribal government, or port authority for action under subsection (2) of this section. Upon receipt of the objection, the board licensing and regulation division will acknowledge receipt of the objection(s) and forward to the appropriate city, county, tribal government, or port authority. Such jurisdiction may or may not, based on the public objection, request nonrenewal.

(2) **What will happen if a city, county, tribal government, or port authority objects to the renewal of a marijuana license?** The board will give due consideration to a city, county, tribal government, or port authority objection to a marijuana license renewal of a premises in its jurisdiction. Based on the jurisdiction's input and any information in the licensing file, the board will decide to either renew the marijuana license, or to pursue nonrenewal.

(a) **Board decides to renew the marijuana license:**	(b) **Board decides to pursue nonrenewal of the marijuana license:**
(i) The board will notify the jurisdiction(s) in writing of its intent to renew the license, stating the reason for this decision.	(i) The board will notify the licensee in writing of its intent to not renew the license, stating the reason for this decision.
(ii) The jurisdiction(s) may contest the renewal and request an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW) by submitting a written request on a form provided by the board. The request must be received within twenty days of the date the intent to renew notification was mailed.	(ii) The licensee may contest the nonrenewal action and request an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW) by submitting a written request on a form provided by the board. The request must be received within twenty days of the date the intent to deny notification was mailed.
	(iii) If the licensee requests a hearing, the governmental jurisdiction will be notified.
	(iv) During the hearing and any subsequent appeal process, the licensee is issued a temporary operating permit for the marijuana license until a final decision is made.

NEW SECTION

WAC 314-55-505 What are the procedures for notifying a licensee of an alleged violation of a liquor control board statute or regulation? (1) When an enforcement officer believes that a licensee has violated a board statute or regulation, the officer may prepare an administrative violation notice (AVN) and mail or deliver the notice to the licensee, licensee's agent, or employee.

(2) The AVN notice will include:

(a) A complete narrative description of the violation(s) the officer is charging;

(b) The date(s) of the violation(s);

(c) A copy of the law(s) and/or regulation(s) allegedly violated;

(d) An outline of the licensee's options as outlined in WAC 314-55-510; and

(e) The recommended penalty.

(i) If the recommended penalty is the standard penalty, see WAC 314-55-520 through 314-55-535 for licensees.

(ii) For cases in which there are aggravating or mitigating circumstances, the penalty may be adjusted from the standard penalty.

NEW SECTION

WAC 314-55-506 What is the process once the board summarily suspends a marijuana license? (1) The board may summarily suspend any license after the board's enforcement division has completed a preliminary staff investigation of the violation and upon a determination that immediate cessation of the licensed activities is necessary for the protection or preservation of the public health, safety, or welfare.

(2) Suspension of any license under this provision shall take effect immediately upon personal service on the licensee or employee thereof of the summary suspension order unless otherwise provided in the order.

(3) When a license has been summarily suspended by the board, an adjudicative proceeding for revocation or other action must be promptly instituted before an administrative law judge assigned by the office of administrative hearings. If a request for an administrative hearing is timely filed by the licensee or permit holder, then a hearing shall be held within ninety days of the effective date of the summary suspension ordered by the board.

NEW SECTION

WAC 314-55-507 How may a licensee challenge the summary suspension of his or her marijuana license? (1) Upon summary suspension of a license by the board pursuant to WAC 314-55-506, an affected licensee may petition the board for a stay of suspension pursuant to RCW 34.05.467 and 34.05.550(1). A petition for a stay of suspension must be received by the board within fifteen days of service of the summary suspension order. The petition for stay shall state the basis on which the stay is sought.

(2) A hearing shall be held before an administrative law judge within fourteen days of receipt of a timely petition for stay. The hearing shall be limited to consideration of whether a stay should be granted, or whether the terms of the suspension may be modified to allow the conduct of limited activities under current licenses or permits.

(3) Any hearing conducted pursuant to subsection (2) of this section shall be a brief adjudicative proceeding under RCW 34.05.485. The agency record for the hearing shall consist of the documentary information upon which the summary suspension was based. The licensee or permit holder shall have the burden of demonstrating by clear and convincing evidence that:

(a) The licensee is likely to prevail upon the merits at hearing;

(b) Without relief, the licensee will suffer irreparable injury. For purposes of this section, elimination of income from licensed activities shall not be deemed irreparable injury;

(c) The grant of relief will not substantially harm other parties to the proceedings; and

(d) The threat to the public health, safety, or welfare is not sufficiently serious to justify continuation of the suspension, or that modification of the terms of the suspension will adequately protect the public interest.

(4) The initial order on stay shall be effective immediately upon service unless another date is specified in the order.

NEW SECTION

WAC 314-55-508 Review of orders on stay. (1) The licensee, or agency, may petition the board for review of an initial order on stay. Any petition for review must be in writing and received by the board within ten days of service of the initial order. If neither party has requested review within ten days of service, the initial order shall be deemed the final order of the board for purposes of RCW 34.05.467.

(2) If the board receives a timely petition for review, the board shall consider the petition within fifteen days of service of the petition for review. Consideration on review shall be limited to the record of the hearing on stay.

(3) The order of the board on the petition for review shall be effective upon personal service unless another date is specified in the order and is final pursuant to RCW 34.05.467. Final disposition of the petition for stay shall not affect subsequent administrative proceedings for suspension or revocation of a license.

NEW SECTION

WAC 314-55-510 What options does a licensee have once he/she receives a notice of an administrative violation? (1) **A licensee has twenty days from receipt of the notice to:**

(a) Accept the recommended penalty; or

(b) Request a settlement conference in writing; or

(c) Request an administrative hearing in writing.

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

(2) **What happens if a licensee does not respond to the administrative violation notice within twenty days?**

(a) If a licensee does not respond to the administrative violation notice within twenty days, the recommended suspension penalty will go into effect.

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

(3) **What are the procedures when a licensee requests a settlement conference?**

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

(b) Both the licensee and the hearing examiner or designee will discuss the circumstances surrounding the charge,

the recommended penalty, and any aggravating or mitigating factors.

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

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

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

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

NEW SECTION

WAC 314-55-515 What are the penalties if a marijuana license holder violates a marijuana law or rule? (1) The purpose of WAC 314-55-515 through 314-55-540 is to outline what penalty a marijuana licensee can expect if a licensee or employee violates a liquor control board law or rule. (WAC rules listed in the categories provide reference areas, and may not be all inclusive.)

(2) Penalties for violations by marijuana licensees or employees are broken down into four categories:

(a) Group One—Public safety violations, WAC 314-55-520.

(b) Group Two—Regulatory violations, WAC 314-55-525.

(c) Group Three—License violations, WAC 314-55-530.

(d) Group Four—Producer violations involving the manufacture, supply, and/or distribution of marijuana by nonretail licensees and prohibited practices between nonretail licensees and retail licensees, WAC 314-55-535.

(3) For the purposes of chapter 314-55 WAC, a three-year window for violations is measured from the date one violation occurred to the date a subsequent violation occurred.

(4) The following schedules are meant to serve as guidelines. Based on mitigating or aggravating circumstances, the liquor control board may impose a different penalty than the standard penalties outlined in these schedules. Based on mitigating circumstances, the board may offer a monetary option in lieu of suspension, or alternate penalty, during a settlement conference as outlined in WAC 314-55-510(3).

(a) **Mitigating circumstances**	(b) **Aggravating circumstances**
Mitigating circumstances that may result in fewer days of suspension and/or a lower monetary option may include demonstrated business policies and/or practices that reduce the risk of future violations.	Aggravating circumstances that may result in increased days of suspension, and/or increased monetary option, and/or cancellation of marijuana license may include business operations or behaviors that create an increased risk for a violation and/or intentional commission of a violation.
Examples include:	Examples include:
• Having a signed acknowledgment of the business' responsible handling and sales policies on file for each employee;	• Failing to call 911 for local law enforcement or medical assistance when requested by a customer, a liquor control board officer, or when people have sustained injuries.
• Having an employee training plan that includes annual training on marijuana laws.	

NEW SECTION

WAC 314-55-520 Group 1 violations against public safety. Group 1 violations are considered the most serious because they present a direct threat to public safety. Based on chapter 69.50 RCW, some violations have only a monetary option. Some violations beyond the first violation do not have a monetary option upon issuance of a violation notice. The liquor control board may offer a monetary option in lieu of suspension days based on mitigating circumstances as outlined in WAC 314-55-515(4).

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Violations involving minors:	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license	
Sale or service to minor: Sale of marijuana and/or paraphernalia to a person under twenty-one years of age WAC 314-55-079	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license	

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Allowing a minor to frequent a restricted area. RCW 69.50.357	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine	
Employee under legal age. RCW 69.50.357	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine
Licensee and/or employee open and/or consuming marijuana on a retail licensed premises. RCW 69.50.357	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine
Conduct violations: Criminal conduct: Permitting or engaging in criminal conduct.	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license	
Using unauthorized pesticides, soil amendments, fertilizers, other crop production aids. WAC 314-55-020(8) WAC 314-55-083(4) WAC 314-55-087(1)(f)	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license	
Adulterate usable marijuana with organic or nonorganic chemical or other compound WAC 314-55-105(8)	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license	
Using unauthorized solvents or gases in processing WAC 314-55-104	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license	
Refusal to allow an inspection and/or obstructing a law enforcement officer from performing their official duties. WAC 314-55-050	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license	
Marijuana purchased from an unauthorized source. **Marijuana sold to an unauthorized source**. **Sales in excess of transaction limitations**. WAC 314-55-095(3)	Cancellation of license Cancellation of license Cancellation of license			

NEW SECTION

WAC 314-55-525 Group 2 regulatory violations. Group 2 violations are violations involving general regulation and administration of retail or nonretail licenses.

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Hours of service: Sales of marijuana between 12:00 a.m. and 8:00 a.m.	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Advertising: Violations (statements/illustrations). WAC 314-55-155(2)	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Advertising violations – Sign exceeding 1600 square inches; within 1000 feet of prohibited areas; on or in public transit vehicles, shelters, or publicly owned or operated property. RCW 69.50.357 RCW 69.50.369	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine
Packaging and/or labeling violations (processor/retailer). WAC 314-55-105	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Licensee/employee failing to display required security badge. WAC 314-55-083(1)	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Failure to maintain required security alarm and surveillance systems. WAC 314-55-083 (2) and (3)	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Records: Improper record-keeping. WAC 314-55-087 WAC 314-55-089 (3), (4), and (5)	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Failure to submit monthly tax reports and/or payments. WAC 314-55-089 WAC 314-55-092	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Signs: Failure to post required signs. WAC 314-55-086	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Failure to utilize and/or maintain traceability (processor or retail licensee). WAC 314-55-083(4)	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Violation of transportation requirements. WAC 314-55-085	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Exceeding maximum serving requirements for marijuana infused products. WAC 314-55-095(2)	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Failure for a processor to meet marijuana waste disposal requirements. WAC 314-55-097	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Failure to maintain standardized scale requirements (processor/retailer). WAC 314-55-099	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Marijuana processor extraction requirements. WAC 314-55-104	5-day suspension or $500 monetary option	10-day suspension or $2,500 monetary option	30-day suspension	Cancellation of license
Retail outlet selling unauthorized products. RCW 69.50.357	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine
Retailer displaying products in a manner visible to the general public from a public right of way. RCW 69.50.357	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine	$1,000 monetary fine

NEW SECTION

WAC 314-55-530 Group 3 license violations. Group 3 violations are violations involving licensing requirements, license classification, and special restrictions.

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
True party of interest violation. WAC 314-55-035	Cancellation of license			
Failure to furnish required documents. WAC 314-55-050	Cancellation of license			
Misrepresentation of fact. WAC 314-55-050	Cancellation of license			
Operating plan: Violations of a board-approved operating plan. WAC 314-55-020	5-day suspension or $500 monetary option	10-day suspension or $1,500 monetary option	30-day suspension	Cancellation of license
Failing to gain board approval for changes in existing ownership. WAC 314-55-120	30-day suspension	Cancellation of license		
Failure to maintain required insurance. WAC 314-55-080	30-day suspension	Cancellation of license		

NEW SECTION

WAC 314-55-535 Group 4 marijuana producer violations. Group 4 violations are violations involving the manufacture, supply, and/or distribution of marijuana by marijuana producer licensees and prohibited practices between a marijuana producer licensee and a marijuana retailer licensee.

Violation Type	1st Violation	2nd Violation in a three-year window	3rd Violation in a three-year window	4th Violation in a three-year window
Unauthorized sale to a retail licensee. WAC 314-55-075	$2,500 monetary fine	Destruction of 25% of harvestable plants	Destruction of 50% of harvestable plants	Cancellation of license
Failure to utilize and/or maintain traceability. WAC 314-55-083(4)	$2,500 monetary fine	Destruction of 25% of harvestable plants	Destruction of 50% of harvestable plants	Cancellation of license
Packaging and/or labeling violations (producer). WAC 314-55-105	$2,500 monetary fine	Destruction of 25% of harvestable plants	Destruction of 50% of harvestable plants	Cancellation of license
Unauthorized product/unapproved storage or delivery.	$2,500 monetary fine	Destruction of 25% of harvestable plants	Destruction of 50% of harvestable plants	Cancellation of license
Failure for a producer to meet marijuana waste disposal requirements. WAC 314-55-097	$2,500 monetary fine	Destruction of 25% of harvestable plants	Destruction of 50% of harvestable plants	Cancellation of license
Records: Improper recordkeeping. WAC 314-55-087 WAC 314-55-089 (2) and (4) WAC 314-55-092	$2,500 monetary fine	Destruction of 25% of harvestable plants	Destruction of 50% of harvestable plants	Cancellation of license
Violation of transportation requirements. WAC 314-55-085	$2,500 monetary fine	Destruction of 25% of harvestable plants	Destruction of 50% of harvestable plants	Cancellation of license
Failure to maintain required security alarm and surveillance systems. WAC 314-55-083 (2) and (3)	$2,500 monetary fine	Destruction of 25% of harvestable plants	Destruction of 50% of harvestable plants	Cancellation of license
Failure to maintain standardized scale requirements (producer). WAC 314-55-099	$2,500 monetary fine	Destruction of 25% of harvestable plants	Destruction of 50% of harvestable plants	Cancellation of license
Violation.				

NEW SECTION

WAC 314-55-540 Information about marijuana license suspensions. (1) On the date a marijuana license suspension goes into effect, a liquor control officer will post a suspension notice in a conspicuous place on or about the licensed premises. This notice will state that the license has been suspended by order of the liquor control board due to a violation of a board law or rule.

(2) During the period of marijuana license suspension, the licensee and employees:

(a) Are required to maintain compliance with all applicable marijuana laws and rules;

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

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

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

(3) During the period of marijuana license suspension:

(a) A marijuana retailer or marijuana processor licensee may not operate his/her business during the dates and times of suspension.

(b) There is no sale, delivery, service, destruction, removal, or receipt of marijuana during a license suspension.

(c) A producer of marijuana may do whatever is necessary as a part of the producing process to keep current stock that is on hand at the time of the suspension from spoiling or becoming unsalable during a suspension, provided it does not include processing the product. The producer may not receive any agricultural products used in the production of marijuana during the period of suspension.