

**WSR 16-07-017**  
**PROPOSED RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed March 7, 2016, 9:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-02-029.

Title of Rule and Other Identifying Information: Creates new WAC 181-77-081, requirements for endorsement in career and technical education (CTE) guidance specialist.

Hearing Location(s): Hampton Inn, 486 Bradley Boulevard, Richland, WA, on May 19, 2016, at 8:30.

Date of Intended Adoption: May 19, 2016.

Submit Written Comments to: David Brenna, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by May 12, 2016.

Assistance for Persons with Disabilities: Contact David Brenna by May 12, 2016, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New endorsement in CTE added to chapter 181-77 WAC as WAC 181-77-081. By request of the office of the superintendent of public instruction, CTE office.

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

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

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. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

March 7, 2016  
 David Brenna  
 Senior Policy Analyst

NEW SECTION

**WAC 181-77-081 Requirements for certification of career guidance specialist.** Career guidance specialists must meet the following requirements in addition to those set forth in WAC 181-79A-150 (1) and (2) and 181-79A-155:

(1) Probationary certificate.

(a) Beginning July 1, 2018, a candidate is eligible for the probationary career guidance specialist certification if meeting one of the following:

(i) Completion of three years of experience as a certified career and technical education administrator, career and technical education instructor, or career and technical

education counselor, at the initial or continuing certificate level; or

(ii) Hold a valid educational staff associate—counselor certificate as provided in WAC 181-79A-221; or

(iii) Provide documentation of three years (six thousand hours) of full-time paid occupational experience of which two years shall have been in the last six years, dealing with employment, personnel or with placement and evaluation of workers, or experience providing career guidance, employment or career counseling services.

(b) Such a certificate may be issued upon recommendation by the employing school district according to the following:

(i) The candidate shall have developed a professional growth plan in cooperation with the career and technical education administrator. The plan must be approved by a district career and technical education advisory committee.

(ii) The plan shall develop procedures and timelines for the candidate to meet the requirements for the initial certificate.

(c) The probationary certificate is valid for two years and is renewable one time for two additional years upon recommendation of the employing district if the individual has completed the procedures outlined for the first year in the professional growth plan and has made additional progress in meeting the requirements for the initial certificate.

(2) Initial certificate.

(a) The initial career guidance specialist certificate is valid for four years and may be renewed two times.

(b) Candidates must meet the eligibility requirements for the probationary certificate outlined in this section.

(c) Candidates for the initial certificate shall demonstrate competence through a course of study from a state approved program provider or state approved continuing education provider in the general standards for career guidance specialist which include, but are not limited to, knowledge and skills in the following areas as approved by the professional educator standards board:

(i) Individual and group career guidance skills;

(ii) Individual and group career development assessment;

(iii) Information and resources in providing career guidance;

(iv) Career guidance program planning, implementation, and management;

(v) Diverse populations;

(vi) Student leadership development;

(vii) Ethical/legal issues;

(viii) Technology;

(ix) History and philosophy of career and technical education.

(d) In order to teach worksite learning and career choices courses, candidates must successfully complete requirements per WAC 181-77A-180.

(3) Initial certificate renewal.

(a) Candidates for renewal of the initial career guidance specialist certificate must complete at least six quarter hours of college credit or sixty clock hours since the initial certificate was issued or renewed. Provided, at least two quarter

credits or fifteen clock hours must be related to the knowledge and skills areas listed in subsection (2)(c) of this section.

(b) The initial renewal certificate is valid for three years and may be renewed one time.

(4) Continuing certificate.

(a) Candidates for the continuing career guidance specialist certificate shall have in addition to the requirements for the initial certificate at least fifteen quarter hours of college credit or one hundred fifty clock hours completed subsequent to the issuance of the initial certificate.

(b) Candidates for the continuing certificate shall provide as a condition for the issuance of a continuing certificate documentation of two years as a career guidance specialist with an authorized employer (i.e., school district(s) or skills center(s)).

(c) The continuing career guidance specialist certificate is valid for five years.

(5) Continuing certificate renewal. The continuing career guidance specialist certificate shall be renewed with the completion of fifteen quarter hours of college credit or the equivalent of one hundred fifty clock hours, prior to the lapse date of the first issuance of the continuing certificate and during each five-year period between subsequent lapse dates. Provided, at least four quarter credits or thirty clock hours must be related to the knowledge and skills areas listed in subsection (2)(c) of this section.

(6) Certificates issued under previous standards.

(a) Any person with a valid one-year occupational information specialist, or career and technical education counselor, certificate issued prior to July 1, 2018, under previous standards of the professional educator standards board shall be eligible for the probationary certificate and must meet the requirements for earning the initial certificate.

(b) Any person with a valid three-year or five-year occupational information specialist, or career and technical education counselor, certificate issued prior to July 1, 2018, under previous standards of the professional educator standards board may apply for the continuing occupational information specialist certificate by the expiration date of the original certificate held.

(c) Upon issuance of the probationary initial or continuing career guidance specialist certificate, individuals addressed in this subsection will be subject to certificate renewal requirements of this section.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 181-77-075 Levels, validity and standards for certification of local career and technical education counselors.

WAC 181-77-080 Levels, validity and standards for certification of occupational information specialist.

#### **WSR 16-07-023**

#### **PROPOSED RULES**

#### **DEPARTMENT OF AGRICULTURE**

[Filed March 8, 2016, 9:37 a.m.]

Continuance of WSR 15-18-071.

Preproposal statement of inquiry was filed as WSR 15-06-051.

Title of Rule and Other Identifying Information: Chapter 16-470 WAC, Quarantine—Agricultural pests, the agency continues to consider amending the apple maggot quarantine as stated in the CR-102 filed August 28, 2015. However, the agency is revising the proposed "Date of intended adoption" for the reasons stated below.

Date of Intended Adoption: June 1, 2016.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is continuing the proposed date of intended adoption to address issues raised by its consultants and by persons from the apple industry and the composting industry during the public comment period and the hearings on October 8 and 9, 2015. The agency has retained the service of consultants to conduct a pest risk analysis of risks associated with composting operations in the pest-free area. Preliminary consultant reports suggest that there are additional potential risks that require further review and analysis. The agency has determined that this information will be necessary to consider for purposes of amending the apple maggot quarantine rules to add a new section allowing for the issuing of special permits for composting municipal green waste in the pest-free area. The pest risk analysis is expected to provide more definitive guidance on risk and mitigation conditions, which will assist the agency in identifying conditions in the proposed special permit rule and potentially preparing an amended small business economic impact statement if such conditions are to be identified in the amended special permit rule section. The agency may propose an additional hearing and comment period depending on the decisions it makes about the special permit rule section following receipt of the pest risk analysis.

Statutory Authority for Adoption: RCW 17.24.011, 17.24.041, and chapter 34.05 RCW.

Statute Being Implemented: Chapter 17.24 RCW.

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

Name of Proponent: Department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: James Marra, 1111 Washington Street S.E., Olympia, WA 98504-2560, (360) 902-2071.

March 8, 2016

Brad White

Assistant Director

AMENDATORY SECTION (Amending WSR 06-14-004, filed 6/22/06, effective 8/1/06)

**WAC 16-470-101 Establishing quarantine for apple maggot and plum curculio.** Apple maggot (*Rhagoletis pomonella*) and plum curculio (*Conotrachelus nenuphar*) are

insects with a larval (worm) stage that develops within fruit. These insects are capable of attacking many fruit crops grown in Washington. Apple maggot is not established in significant portions of the major fruit production areas east of the Cascade Mountains, and plum curculio is not established anywhere in the state. An increased range for either insect would cause decreased environmental quality and economic loss to the agricultural industries of the state by increasing production inputs and jeopardizing foreign and domestic markets.

(1) The director of agriculture, pursuant to chapter 17.24 RCW, has determined that the regulation and/or exclusion of fresh fruits grown or originating from areas infested with apple maggot or plum curculio is necessary to protect the environmental quality and agricultural crops of the state.

(2) The director of agriculture, pursuant to chapter 17.24 RCW, has determined that municipal solid waste originating from areas infested with apple maggot is a host medium for apple maggot and is a "regulated commodity" as provided in WAC 16-470-111. The exclusion of such municipal solid waste from the pest free area is necessary to protect the environmental quality and agricultural crops of the state. The transport into and disposition of such municipal solid waste in the pest free area may be allowed by a special permit as provided in WAC 16-470-124(1).

(3) The director of agriculture, pursuant to chapter 17.24 RCW, has determined that yard debris, organic feedstocks, organic materials, and agricultural wastes as defined in WAC 173-350-100 originating from areas infested with apple maggot is a host medium for apple maggot and is a "regulated commodity" as provided in WAC 16-470-111. The exclusion of such waste from the pest free area is necessary to protect the environmental quality and agricultural crops of the state. The transport into and disposition of yard debris, organic feedstocks, organic materials, and agricultural wastes in the pest free area may be allowed by a special permit as provided in WAC 16-470-124(2).

AMENDATORY SECTION (Amending WSR 01-14-075, filed 7/3/01, effective 8/3/01)

**WAC 16-470-108 Distribution of infested or damaged fruit is prohibited.** Regulated commodities (~~((described))~~) specified in WAC 16-470-111(1) and 16-470-125(2) that are known or found to be infested or damaged by apple maggot or plum curculio may not be distributed, sold, held for sale, or offered for sale, unless the fruit has undergone cold storage treatment, in compliance with WAC 16-470-113 (1)(a) and (b) or 16-470-127 (1)(a) and (b), and the necessary certificate has been issued by the appropriate plant protection organization.

AMENDATORY SECTION (Amending WSR 06-14-004, filed 6/22/06, effective 8/1/06)

**WAC 16-470-111 (~~(What)~~) Commodities (~~((are))~~) regulated for apple maggot(~~(?)~~).** (1) All fresh fruit of apple (including crab apple), cherry (except cherries that are commercial fruit), hawthorn (haw), pear (except pears that are commercial fruit from California, Idaho, Oregon, Utah, and Washington), plum, prune, and quince are regulated under quarantine for apple maggot.

(2) Municipal solid waste as defined in WAC 173-350-100 is regulated under quarantine for apple maggot. Municipal solid waste from the quarantine areas is a host medium for apple maggot containing or likely to contain those fruits listed under subsection (1) of this section.

(3) Yard debris, organic feedstocks, organic materials, and agricultural wastes as defined in WAC 173-350-100 are regulated under quarantine for apple maggot. Yard debris, organic feedstocks, organic materials, and agricultural wastes from quarantine areas are host mediums for apple maggot containing or likely to contain those fruits listed under subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 01-14-075, filed 7/3/01, effective 8/3/01)

**WAC 16-470-113 (~~(What do you need)~~) Requirements to ship commodities regulated for apple maggot from a state under quarantine into the pest free area for apple maggot(~~(?)~~).** Shipment of (~~((regulated commodities))~~) fruit, as (~~((described))~~) specified in WAC 16-470-111(1), from an area under quarantine, as (~~((described))~~) specified in WAC 16-470-105(3), into the pest free area for apple maggot, as (~~((described))~~) specified in WAC 16-470-105(1), is prohibited, unless at least one of the following conditions is met:

(1) The shipment is accompanied by an official certificate issued by the plant protection organization of the state of origin evidencing at least one of the following:

(a) The shipment is composed of apples, which (~~((have))~~) has undergone cold treatment for a continuous period of at least ninety days. During this ninety days, the temperature within the storage room must be maintained at thirty-seven and nine-tenths (37.9) degrees Fahrenheit or less.

(b) The shipment is composed of (~~((regulated commodities))~~) fresh fruit specified in WAC 16-470-111(1) other than apples, which (~~((have))~~) has undergone cold treatment for a continuous period of forty days or more. During this forty days, the temperature within the storage room must be maintained at thirty-two (32) degrees Fahrenheit or less.

(c) The shipment is composed of (~~((regulated commodities))~~) fresh fruit specified in WAC 16-470-111(1) from Oregon, Idaho, or Utah, certified by the state of origin in compliance with WAC 16-470-122.

(d) Each lot or shipment consists of repacked fruit, which was grown outside the area under quarantine and has been (~~((identity))~~) identified and maintained (~~((while))~~) separately from any fruit specified in WAC 16-470-111(1) grown within the area under quarantine. For repacked fruit, the certificate must show the following information:

- (i) State in which the fruit was grown;
- (ii) Point of repacking and reshipment;
- (iii) Amount and kind of commodities comprising the lot or shipment; and
- (iv) Names and addresses of the shipper and consignee.

(2) The fruit originated outside the area under quarantine for apple maggot and is a reshipment in original, unopened containers. The containers must each bear labels or other identifying marks evidencing origin outside the area under quarantine.

- (3) The fruit is frozen solid.

AMENDATORY SECTION (Amending WSR 06-14-004, filed 6/22/06, effective 8/1/06)

**WAC 16-470-115** (~~Within Washington state, what is required to ship fruit~~) **Requirements for shipment of regulated commodities from the quarantine area for apple maggot into the pest free area** (~~for apple maggot from quarantined areas?~~) within Washington state. Shipment of regulated commodities, as ~~(described)~~ specified in WAC 16-470-111, from an area under quarantine, as ~~(described)~~ specified in WAC 16-470-105(2), into the pest free area for apple maggot, as ~~(described)~~ specified in WAC 16-470-105(1), is prohibited, unless one of the following conditions is met:

(1) The shipment of fresh fruit is accompanied by a permit for movement of fruit issued by the department verifying one of the following:

(a) The fruit came from orchards and production sites that are not threatened with infestation; or

(b) The fruit has completed treatment as specified in WAC 16-470-118(3). If records of treatment verifying compliance with conditions specified in WAC 16-470-118(3) are made available to the department, no reinspection is required by the department.

(2) The shipment of fresh fruit is accompanied by a permit issued by the department in fulfillment of WAC 16-470-118 (2) and (3), which specifies conditions for shipment from orchards and production sites that are infested or threatened with infestation.

(3) The shipment of municipal solid waste from the quarantine area to the pest free area for purposes of disposal in a municipal solid waste landfill or appropriate disposal or treatment facility is accompanied by a special permit issued by the department as provided in WAC 16-470-124(1).

(4) The shipment of yard debris, organic feedstocks, organic materials, or agricultural wastes from the quarantine area to the pest free area for purposes of disposal in a municipal solid waste landfill or appropriate treatment or composting facility is accompanied by a special permit issued by the department as provided in WAC 16-470-124(2).

AMENDATORY SECTION (Amending WSR 06-14-004, filed 6/22/06, effective 8/1/06)

**WAC 16-470-118** **Requirement within Washington state** (~~(, what is required)~~) **to ship fruit into, within, or through the pest free area for apple maggot from an orchard or production site that is infested or threatened with infestation** (~~(?)~~). All ~~((regulated commodities))~~ fresh fruit, as ~~(described)~~ specified in WAC 16-470-111(1), from an orchard or production site that is infested or threatened with infestation by apple maggot must be inspected ~~((except graded culls—See subsection (4) of this section))~~ by the department following accepted agency standards.

(1) If ~~((regulated commodities are))~~ the fruit is inspected and found free of apple maggot, the shipment must be accompanied by a permit for movement of fruit issued by the department.

(2) If ~~((regulated commodities are))~~ the fruit is found to be infested with apple maggot, a permit from the department, which specifies conditions for handling and shipment, is

required to transport the fruit within or through the pest free area. No permit may be issued under this subsection for transportation of ~~((regulated commodities))~~ fresh fruit found to be infested with apple maggot into the pest free area for apple maggot.

(3) If ~~((regulated commodities are))~~ the fruit is found to be infested with apple maggot, one or more of the following treatments must be performed and verified by the department as specified in WAC 16-470-115 (1)(b) before the ~~((commodity))~~ fruit is moved from area(s) designated or quarantined by the department:

(a) Apples (including crab apples) cold treated as specified in WAC 16-470-113 (1)(a).

(b) ~~((Regulated commodities))~~ Fruit other than apples cold treated as specified in WAC 16-470-113 (1)(b).

(c) Other methods as prescribed in writing by the department.

(4) If the shipment contains graded culls, it must comply with the conditions specified in WAC 16-470-113 (1)(a) ~~((and))~~ or (b), dependent on the category of fruit.

AMENDATORY SECTION (Amending WSR 01-14-075, filed 7/3/01, effective 8/3/01)

**WAC 16-470-122** (~~What are the~~) **Requirements to ship regulated articles from Oregon, Idaho, or Utah into the pest free area for apple maggot** (~~(?)~~). Commercially grown fresh fruit from Oregon, Idaho, or Utah may be shipped into the pest free area for apple maggot if both of the subsections of this section are complied with:

(1) A permit has been agreed to by the plant protection organization of the state of origin and the department. The permits must specify that the plant protection organization of the state of origin has conducted an adequate apple maggot detection program, which includes immediate written notification to the department of detections in counties where apple maggot has not previously been detected.

(2) The plant protection organization of the state of origin certifies that the fruit originated in areas in which apple maggot is not established, was grown in a commercial orchard, and has not been placed under quarantine.

NEW SECTION

**WAC 16-470-124** **Special permits for solid waste transport and disposition.** (1) The director may issue special permits admitting or allowing transportation and distribution of municipal solid waste for disposal at a solid waste landfill or appropriate disposal facility in the pest free area from the area under quarantine established in WAC 16-470-101, subject to conditions and provisions which the director may prescribe to prevent introduction, escape, or spread of the quarantined pests. For purposes of this section "solid waste" and "solid waste landfill" or "disposal facility" refer to solid waste and solid waste facilities regulated under chapters 70.95 RCW and 173-351 WAC by the Washington state department of ecology.

(2) The director may issue special permits admitting or allowing transportation and distribution of yard debris, organic feedstocks, organic materials, or agricultural wastes for treatment at a composting facility in the pest free area

from the area under quarantine established in WAC 16-470-101, subject to conditions and provisions which the director may prescribe to prevent introduction, escape, or spread of the quarantined pests. For purposes of this section "yard debris," "organic feedstocks," "organic materials," and "agricultural wastes" or "composting facility" refer to waste and composting facilities regulated under chapters 70.95 RCW and 173-350 WAC by the Washington state department of ecology.

(3) When the owner of the waste identified in subsections (1) and (2) of this section transfers ownership of the waste to a different person receiving the waste for disposal or treatment in the pest free area, both owners must apply for and receive special permits under this section. A special permit to transport will not be issued to the transporting owner unless a special permit is concurrently issued to the receiving facility owner under conditions specified by the director.

AMENDATORY SECTION (Amending WSR 01-14-075, filed 7/3/01, effective 8/3/01)

**WAC 16-470-127 (~~What do you need~~) Requirements to ship commodities regulated for plum curculio into Washington(~~?~~)**. Shipment into the state of Washington of regulated commodities described in WAC 16-470-125 from states under quarantine for plum curculio is prohibited, unless one of the following conditions is met:

(1) The shipment is accompanied by an official certificate issued by the plant protection organization of the state of origin evidencing at least one of the following:

(a) The shipment consists of apples, which have undergone cold treatment for a continuous period of at least ninety days. During this ninety days, the temperature within the storage room must be maintained at thirty-seven and ninetieths (~~((37.9))~~) degrees Fahrenheit or less.

(b) The shipment consists of regulated commodities, which have undergone cold treatment for a continuous period of forty days or more. During this forty days, the temperature within the storage room must be maintained at thirty-two (~~((32))~~) degrees Fahrenheit or less.

(c) Each lot or shipment consists of repacked fruit, which was grown outside the area under quarantine and has been identity maintained while within the area under quarantine. For repacked fruit, the certificate must show the following information:

- (i) State in which the fruit was grown;
- (ii) Point of repacking and reshipment;
- (iii) Amount and kind of commodities comprising the lot or shipment; and
- (iv) Names and addresses of the shipper and consignee.

(2) The fruit originated outside the area under quarantine for plum curculio and is a reshipment in original, unopened containers. The containers must each bear labels or other identifying marks evidencing origin outside the area under quarantine.

(3) The shipment consists of fresh fruit from Utah counties where plum curculio is established and is made in compliance with terms of a permit agreed upon by both the Utah and Washington plant protection organizations.

(4) The shipment consists of fresh fruit from Utah counties where plum curculio is not established, and all of the following conditions are complied with:

(a) The Utah plant protection organization has conducted an adequate plum curculio detection program, which includes immediate written notification to the department of detection in counties where plum curculio has not previously been detected; and

(b) The Utah plant protection organization certifies that the fruit originated in areas in which plum curculio is not established, was grown in a commercial orchard, and has not been placed under quarantine.

AMENDATORY SECTION (Amending WSR 01-14-075, filed 7/3/01, effective 8/3/01)

**WAC 16-470-130 Special permits for fresh fruit transport and distribution.** The director may issue special permits admitting, or allowing transportation and distribution of, regulated commodities described in WAC 16-470-111 and 16-470-125(2), which would not otherwise be eligible for entry from the area under quarantine, or for transportation or distribution, subject to conditions and provisions which the director may prescribe to prevent introduction, escape or spread of the quarantined pests.

## WSR 16-07-035

### PROPOSED RULES

#### DEPARTMENT OF ECOLOGY

[Order 15-04—Filed March 10, 2016, 12:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-15-176.

Title of Rule and Other Identifying Information: Chapter 173-910 WAC, Mercury-containing lights product stewardship program, the purpose of this rule making, consistent with the authorizing statute in chapter 270.275 [70.275] RCW, is to achieve a statewide goal of recycling all end-of-life mercury-containing lights by 2020 through expanded public education, a uniform statewide requirement to recycle all mercury-containing lights, and the development of a comprehensive, safe, and convenient collection system that includes use of residential curbside collection programs, mail-back containers, increased support for household hazardous waste facilities, and a network of additional collection locations.

Hearing Location(s): Department of Ecology, Headquarters, 300 Desmond Drive S.E., Lacey, WA 98503, on April 27, 2016, at 2:00 p.m.

Date of Intended Adoption: May 25, 2016.

Submit Written Comments to: Joanne Neugebauer-Rex, Department of Ecology, Waste 2 Resources Program, 300 Desmond Drive S.E., Lacey, WA 98503, e-mail w2rrulemaking@ecy.wa.gov, fax (360) 407-6102, by May 4, 2016.

Assistance for Persons with Disabilities: Contact waste 2 resources program reception at (360) 407-6900, by April 25, 2016, TTY (877) 833-6341 or 711 relay service.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: We are proposing to revise the rule to reflect and incorporate changes made to the underlying statute by the 2014 state legislature. Revisions do not affect the way mercury-containing lights are managed. Proposed changes include the requirement to fund the program through an environmental handling charge, revised requirements for stewardship plans and annual reports including independent financial audits, changes in the number of lights that can be recycled per day, changes in definitions, sunset provisions, and other changes as directed by the legislature.

Reasons Supporting Proposal: Chapter 173-910 WAC establishes the framework for a stewardship program to collect and properly dispose of mercury-containing lights. The current rule reflects an approach to stewardship that was significantly altered by the 2014 legislature. We need to update our rules to reflect changes made to the law, and to properly describe how the current program is operating per the statute.

Statutory Authority for Adoption: RCW 70.275.040, 70.275.110, 70.275.140.

Statute Being Implemented: Chapter 70.275 RCW.

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

Name of Proponent: Washington state department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Joanne Neugebauer-Rex, Ecology Headquarters, Lacey, (360) 407-7602; and Enforcement: Laurie G. Davies, Ecology Headquarters, Lacey, (360) 407-6103.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Per RCW 19.85.025 of the Regulatory Fairness Act, a small business economic impact statement (SBEIS) is not required for rules being proposed in compliance with RCW 34.05.310(4). The provisions of RCW 34.05.310(4) that exempt ecology from preparing an SBEIS for this rule making include (c) the amendments adopting without material change state laws and/or (d) the amendments correct typographical errors or make changes that only clarify language of the rule without changing its effect.

A cost-benefit analysis is not required under RCW 34.05.328. Per chapter 34.05 RCW, the Administrative Procedure Act, a cost-benefit analysis is not required for this rule making. The provisions of RCW 34.05.328(5) that exempt ecology from the requirement to prepare a cost-benefit analysis include (iii) amendments adopting without material change state laws and/or (iv) amendments correcting typographical errors or making changes that only clarify language of the rule without changing its effect.

March 10, 2016  
Polly Zehm  
Deputy Director

AMENDATORY SECTION (Amending WSR 12-23-049, filed 11/16/12, effective 12/17/12)

**WAC 173-910-010 Purpose.** (1) Washington state law requires establishment of a convenient and environmentally

sound product stewardship program for mercury-containing lights throughout Washington state by January 1, 2013. Every producer of mercury-containing lights sold in or into Washington state for ~~((residential use))~~ sale at retail must fully finance and participate in the product stewardship program. Such a system is essential to collect spent mercury lighting from covered entities which, when improperly disposed, releases mercury that threatens human health and the environment.

(2) This chapter implements Mercury-containing lights—Proper disposal, chapter 70.275 RCW.

(3) Washington state law established a statewide goal of recycling all end-of-life mercury-containing lights by 2020 through expanded public education, a uniform statewide requirement to recycle all mercury-containing lights, and the development of a comprehensive, safe, and convenient collection system that includes use of residential curbside collection programs, mail-back containers, increased support for household hazardous waste facilities, and a network of additional collection locations.

AMENDATORY SECTION (Amending WSR 12-23-049, filed 11/16/12, effective 12/17/12)

**WAC 173-910-020 Applicability.** This chapter applies to:

(1) Any producer of mercury-containing lights sold in or into Washington state, as defined in this chapter.

~~((A stewardship organization operating an approved product stewardship program under contract with the department.~~

~~((3))~~ (3) Any stewardship organization operating an approved product stewardship program for any producer or group of producers.

~~((4))~~ (3) Any covered entities as defined in this chapter.

~~((5))~~ (4) Collectors of mercury-containing lights including those participating in a product stewardship plan approved under this chapter.

~~((6))~~ (5) Transporters of mercury-containing lights participating in a product stewardship plan approved under this chapter.

~~((7))~~ (6) Processors of mercury-containing lights under a product stewardship plan approved under this chapter.

~~((8))~~ (7) Any retailer, electric utility, or other person that gives away, offers for sale at retail, or sells mercury-containing lights in or into Washington state ~~((for residential use))~~.

AMENDATORY SECTION (Amending WSR 12-23-049, filed 11/16/12, effective 12/17/12)

**WAC 173-910-100 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

**"Accumulation point"** means where mercury-containing lights from curbside or mail-back programs are accumulated for a product stewardship plan approved by the department.

**"Brand"** means a name, symbol, word, or mark that identifies a product, rather than its components, and attributes the product to the owner of the brand as the producer.

**"Collector"** means an entity that is licensed to do business in Washington state and that gathers mercury-containing lights from covered entities for the purpose of recycling under a product stewardship plan approved by the department and meets the collector requirements in WAC 173-910-520. Examples of collectors include, but are not limited to, drop off locations, household hazardous waste facilities, collection sites, curbside services, mail-back services, accumulation points, and collection events.

**"Compliance audit report"** means the report of a comprehensive third-party audit for each processing facility in the product stewardship program.

**"Covered entities"** means:

(a) A ~~((single family or a multifamily))~~ household generator ~~((and persons that deliver no more than fifteen))~~ or other person who purchases mercury-containing lights at retail and delivers no more than ten mercury-containing lights to registered collectors for a product stewardship program ((during a ninety-day period)) on any given day; and

(b) A ~~((single family or a multifamily))~~ household generator ~~((and persons that utilize))~~ or other person who purchases mercury-containing lights at retail and uses a registered residential curbside collection program or a mail-back program for collection of mercury-containing lights and ((that)) discards no more than fifteen mercury-containing lights into those programs ((during a ninety-day period)) on any given day.

**"Department"** means the department of ecology.

**"Department's annual fee"** means the sum total of five thousand dollars paid to the department for each producer participating in a mercury-containing lights product stewardship program to fund department administration, oversight, and enforcement costs.

**"Distributor"** is an agent who supplies goods to stores and other businesses that sell to consumers.

**"Environmental handling charge" or "charge"** means the charge approved by the department to be applied to each mercury-containing light to be sold at retail in or into Washington state. The environmental handling charge must cover all administrative and operational costs associated with the product stewardship program, including the fee for the department's administration and enforcement.

**"Final disposition"** means the point beyond which no further processing takes place and materials from mercury-containing lights have been transformed for direct use as a feedstock in producing new products, or disposed of or managed in facilities that meet all applicable federal, state, and local requirements.

~~((**"Fiscal growth factor"** means the average growth in state personal income for the prior ten fiscal years (chapter 43.135 RCW).))~~

**"Fully finance and participate"** means the obligation of each producer of mercury-containing lights sold in or into Washington to fund its share of program costs and join in an approved product stewardship program.

**"Hazardous substances" or "hazardous materials"** means those substances or materials identified by rules adopted under chapter 70.105 RCW.

**"Independent plan"** means a plan for collecting, transporting, processing and recycling of mercury-containing

lights that is approved by the department and developed and implemented by a producer, group of producers, or a stewardship organization designated by a producer or group of producers.

**"Mail-back program"** means the use of a prepaid postage container transported by the United States Postal Service or a common carrier, using sealable packaging and shipping materials that are designed to prevent the release of mercury into the environment by volatilization or any other means, to return mercury-containing lights for a product stewardship plan approved by the department.

~~((**"Market share"** means the portion of mercury-containing lights sold in Washington state representing a producer's share of all mercury-containing lights products sold in Washington state.))~~

**"Mercury-containing lights"** means lamps, bulbs, tubes, or other devices that contain mercury and provide functional illumination in homes, businesses, and outdoor stationary fixtures.

**"Person"** means a sole proprietorship, partnership, corporation, nonprofit corporation or organization, limited liability company, firm, association, cooperative, or other legal entity located within or outside Washington state.

**"Premium services"** means collection of mercury-containing lights through systems that may include additional fees to cover the collection costs not paid by the product stewardship program, examples include curbside collection or mail-back services.

**"Processing"** means storage and handling of mercury-containing lights for materials recovery, recycling, or preparing for final disposition. Processing must occur at facilities that meet all applicable federal, state, and local requirements.

**"Processor"** means an entity engaged in disassembling or dismantling mercury-containing lights to recover materials for recycling or disposal.

**"Producer"** means a person that meets any one of the following conditions:

(a) Has or had legal ownership of the brand, brand name, or cobrand of a mercury-containing light sold in or into Washington state, ~~((except for persons whose primary business is retail sales))~~ unless the brand owner is a retailer whose mercury-containing light was supplied by another producer participating in a stewardship program under chapter 70.275 RCW;

(b) Imports or has imported mercury-containing lights branded by a producer that meets the requirements of (a) of this definition and where that producer has no physical presence in the United States;

(c) If (a) and (b) of this definition do not apply, makes or made ~~((an unbranded))~~ a mercury-containing light that is offered for sale or sold in or into Washington state; or

(d) Offers for sale, sells or has sold at wholesale or retail a mercury-containing light and does not have legal ownership of the brand but chooses to fulfill the responsibilities of the producer for that product.

**"Producer's ~~((share))~~ cost"** means each participating producer's ~~((share))~~ portion of the product stewardship program cost as determined by the stewardship organization. The program cost includes all administrative and operational costs, including the department's annual fee.

**"Product stewardship"** means a requirement for a producer of mercury-containing lights to manage and reduce adverse safety, health, and environmental impacts of the product throughout its life cycle, including financing and collecting, transporting, processing, recycling, and final disposition of mercury-containing lights.

**"Product stewardship plan"** or **"plan"** means a detailed plan describing the manner in which a product stewardship program will be implemented. A product stewardship plan can either be the standard plan or an independent plan.

**"Product stewardship program"** or **"program"** means the methods, systems, and services financed in the manner provided for under RCW 70.275.050 and provided by producers of mercury-containing lights ((that addresses collecting, transporting)) generated by covered entities that addresses product stewardship and includes arranging for the collection, transportation, processing, recycling, and final disposition of unwanted mercury-containing lights generated by covered entities, including orphan products.

**"Recovery"** means the collection and transportation of unwanted mercury-containing lights under this chapter.

**"Recycling"** means transforming or remanufacturing mercury-containing lights into usable or marketable materials for use other than landfill disposal or incineration. Recycling does not include energy recovery or energy generation by means of combusting (~~(mercury-containing lights)~~) unwanted products with or without other waste.

**"Reporting period"** means the period commencing January 1st and ending December 31st in the same calendar year.

**"Residuals"** means nonrecycleable materials left over from processing an unwanted product.

**"Retailer"** means a person that offers mercury-containing lights for sale at retail through any means including, but not limited to, remote offerings such as sales outlets, catalogs, or the internet, but does not include a sale that is a wholesale transaction with a distributor or a retailer.

**"Reuse"** means a change in ownership of a mercury-containing light or its components, parts, packaging, or shipping materials for use in the same manner and purpose for which it was originally purchased, or for use again, as in shipping materials, by the generator of the shipping materials. Reuse does not include dismantling of products for the purpose of recycling.

**"Rural"** means areas without commercial centers or areas with widely dispersed population.

**"Service providers"** means collectors, transporters, and processors participating in a stewardship program.

**"Stakeholder"** means a person that may have an interest in or be affected by a product stewardship program.

**"Standard plan"** means the plan for the collection, transportation, processing and recycling of mercury-containing lights developed by a (~~(department contracted)~~) stewardship organization in response to the department's request for proposals, approved by the department, and implemented by a stewardship organization (~~(under contract with the department)~~).

**"Stewardship organization"** or **"organization"** means a producer or group of producers that operate a product stewardship program, an organization designated by a producer or

group of producers to act as the agent on behalf of each producer to operate a product stewardship program (~~(or an organization contracted by the department to operate a product stewardship program)~~).

**"Transboundary"** means crossing a provincial, territorial, or national boundary or border.

**"Transporter"** means an entity that transports mercury-containing lights from collection sites, accumulation points, or collection services to processors or other locations for the purpose of recycling, but does not include any entity or person that hauls their own mercury-containing lights.

**"Unwanted product"** means a mercury-containing light no longer wanted by its owner or that has been abandoned, discarded, or is intended to be discarded by its owner.

**"Wholesale"** means buying and selling goods, generally in original packages, on a large scale in parcels, usually from a manufacturer to a retail, commercial, or industrial client.

AMENDATORY SECTION (Amending WSR 12-23-049, filed 11/16/12, effective 12/17/12)

**WAC 173-910-210 Producers of mercury-containing lights.** (1) (~~(Beginning January 1, 2013, any)~~) Every producer of mercury-containing lights ((whose mercury-containing lights are offered for sale or)) sold in or into Washington state ((must fully finance and participate in a department-approved product stewardship program for mercury-containing lights)) for retail sale in Washington state must participate in a product stewardship program for those products, operated by a stewardship organization and financed in the manner provided by WAC 173-910-310 (3) through (7). Every such producer must inform the department of the producer's participation in a product stewardship program by including the producer's name in a plan submitted to the department by a stewardship organization as required by WAC 173-910-410, 173-910-420, 173-910-430, and 173-910-440. Producers must satisfy these participation obligations individually or may do so jointly with other producers.

(2) Each producer must participate in a product stewardship program by:

(a) Funding its producer (~~(share)~~) cost of the department-approved standard plan and program operated by the (~~(department contracted)~~) stewardship organization; or

(b) Funding its producer (~~(share)~~) cost of and operating, either individually or jointly, an independent plan and program approved by the department.

(3) No sooner than January 1, 2015:

(a) The mercury-containing light environmental handling charge must be added to the purchase price of all mercury-containing lights sold to Washington state retailers for sale at retail, and each Washington state retailer must add the charge to the purchase price of all mercury-containing lights sold at retail in Washington state, and the producer must remit the environmental handling charge to the stewardship organization in the manner provided for in the stewardship plan; or

(b) Each Washington state retailer must add the mercury-containing light environmental handling charge to the purchase price of all mercury-containing lights sold at retail in Washington state, where the retailer, by voluntary binding



agreement with the producer, arranges to remit the environmental handling charge to the stewardship organization on behalf of the producer in the manner provided for in the stewardship plan. Producers may not require retailers to opt for this provision via contract, marketing practice, or any other means. The stewardship organization must allow retailers to retain a portion of the environmental handling charge as reimbursement for any costs associated with the collection and remittance of the charge.

(4) Producers must pay all administrative and operational costs associated with the standard program or the independent program in which they participate, except for the collection costs associated with curbside and mail-back collection programs. For curbside and mail-back programs, a stewardship organization must finance the costs of transporting and processing mercury-containing lights from the point of accumulation. For collection locations, including household hazardous waste facilities, charities, retailers, government recycling sites, or other suitable locations, a steward-

ship organization must finance the costs of collection, transportation, and processing of mercury-containing lights collected at the collection locations.

~~((4))~~ (5) The producer must satisfy the following requirements:

(a) ~~((Submit data to the department or stewardship organization to enable a reasonable estimate to be determined of each producer's share cost of the mercury-containing lights product stewardship program;~~

~~(b) Submit market share data to the department to determine market share in the event more than one approved product stewardship plan is operating;~~

~~(e))~~ Meet its financial obligations to the plan, which includes the department's annual fee;

~~((d))~~ (b) Comply with producers' requirements as described in the plan;

~~((e))~~ (c) Participate in a fully implemented plan; and

~~((f))~~ (d) Take actions required to correct violations.

AMENDATORY SECTION (Amending WSR 12-23-049, filed 11/16/12, effective 12/17/12)

**WAC 173-910-230 Producer violation notices and penalties.**

**Table 200  
Producer Violation Notices and Penalties**

<b>Notice</b>	<b>Participation Violation</b> <i>Failure to participate in an approved plan</i>	<b>Implementation Violation</b> <i>Failure to implement an approved plan</i>	<b>Plan/Report Violation</b> <i>Failure to submit plan, update plan, change plan or submit annual report</i>
First Violation Notice	Warning letter to participate within 60 days	Automatic penalty of up to \$5,000, plus warning letter regarding subsequent penalties	Warning letter to comply within 60 days
Second Violation Notice	Penalty of up to \$1,000 per day starting 60 days after receipt of warning letter	Penalty of up to \$10,000 for each 30 days of noncompliance starting 30 days after receipt of warning letter	Penalty of up to \$10,000 per day starting 60 days after receipt of warning letter
If Compliance is Achieved Within 30 Days of Second Violation Notice	Penalty reduced by 50% if compliance is achieved by day 90	Penalty reduced by 50% if compliance is achieved by day 30	Penalty reduced by 50% if compliance is achieved by day 90
Third Violation and Subsequent Notices	Penalty of up to \$1,000 per day for every day of noncompliance to be issued every 60 days	Penalty of up to \$10,000 for every 30 days of noncompliance to be issued every 30 days	Penalty of up to \$10,000 per day for every 30 days of noncompliance to be issued every 30 days

(1) **Participation penalties** apply to producers not participating in an approved product stewardship plan.

(a) Producers selling mercury-containing lights in or into the state for ~~((residential use))~~ sale at retail that are not participating in an approved product stewardship plan will receive a warning letter, or first violation notice, to participate in an approved plan within sixty days or incur penalties. The warning letter will include compliance requirements and notification that the requirements must be met within sixty days.

(b) Producers not participating in an approved product stewardship plan that continue to sell mercury-containing lights in or into the state for ~~((residential use))~~ sale at retail sixty days after receiving the warning letter will receive a

penalty, or second violation notice, of up to one thousand dollars for each violation; a violation is one day of noncompliance.

(c) Penalties will be reduced by fifty percent if the producer meets the compliance requirements within thirty days of the second violation notice.

(d) Producers that continue to not participate in an approved product stewardship plan will receive penalties of up to one thousand dollars per day of noncompliance starting from the date of the second violation notice. This penalty will be issued after each subsequent period of sixty days of noncompliance.

(2) **Implementation penalties** apply to producers that fail to implement their approved product stewardship plan.

(a) Producers not implementing an approved product stewardship plan will receive a penalty for the first violation of up to five thousand dollars, plus a warning letter to implement its approved plan within thirty days or incur additional penalties. The warning letter will include compliance requirements and notification that the requirements must be met within thirty days.

(b) Producers that fail to implement their product stewardship plan will receive a penalty, or second violation notice, of up to ten thousand dollars for the thirty days of non-compliance.

(c) Penalties will be reduced by fifty percent if the producer meets the compliance requirements within thirty days of the second violation notice.

(d) Producers that continue to fail to implement their product stewardship plan will receive penalties of up to ten thousand dollars for each subsequent thirty days of non-compliance.

(3) **Plan/report penalties** apply to producers that fail to submit a product stewardship plan, plan update, or change the plan when required, or fail to submit an annual report.

(a) Producers not submitting the plan, plan update, or annual report will receive a warning letter, or first violation notice, to submit the plan or report within sixty days or incur penalties. The warning letter will include compliance requirements and notification that the requirements must be met within sixty days.

(b) Producers that fail to submit the plan, plan update, or annual report will receive a penalty, or second violation notice, of up to ten thousand dollars for each violation; a violation is one day of noncompliance starting with the first day of notice of noncompliance.

(c) Penalties will be reduced by fifty percent if the producer meets the compliance requirements within thirty days of the second violation notice.

(d) Producers that continue to fail to submit the plan, plan update, or annual report will receive penalties of up to ten thousand dollars per day issued after each subsequent period of thirty days of noncompliance.

(4) The department will deposit all penalties collected under this section into the mercury-containing lights recycling account created under chapter 70.275 RCW.

(5) To correct a violation the producer must:

(a) Meet the compliance requirements in the warning or penalty letter from the department; and

(b) Pay any penalties due to the department.

(6) Penalties applied to the stewardship organization in WAC 173-910-340 for the same violation will not be applied to producers.

(7) Penalties may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.

**AMENDATORY SECTION** (Amending WSR 12-23-049, filed 11/16/12, effective 12/17/12)

**WAC 173-910-310 Stewardship organization requirements.** (1) The ~~((department-contracted))~~ stewardship organization will implement the department-approved

standard plan and independent stewardship organizations will implement department-approved independent plans.

(2) Stewardship organizations will: ~~((a))~~ Estimate the total program cost for the coming year, including the department's annual fee for all participating producers;

~~((i)) The department's annual fee for each stewardship organization is the sum total of five thousand dollars paid to the department for each producer participating in the stewardship program.~~

~~((ii)) The department's annual fee for the department-contracted standard plan will be adjusted by the annual fiscal growth factor calculated under chapter 43.135 RCW.~~

~~((iii)) For implementation of the fiscal growth factor, the base year for all mercury-containing lights department annual fees will be fiscal year 2011 ending June 30, 2011. In the base year, the fiscal growth factor will be zero.~~

~~(b) Determine the producer share cost based on market share or other equitable formula for program costs for each participating producer, including their share of the department's annual fee;~~

~~(c) Submit the program cost and producer share cost to the department for review, adjustment, and approval;~~

~~(d) Invoice each producer for their department-approved producer share cost for the product stewardship program; each producer must pay their invoiced amount within sixty days of receipt of the invoice; and~~

~~(e) Remit to the department the sum total of the department's annual fee from all participating producers; this fee is due on the first of January for each year of implementation.~~

~~(3) Producers may request department review of their producer share cost assessment:~~

~~(a) The producer must pay the total invoiced amount to the stewardship organization within sixty days of receipt of the invoice.~~

~~(b) The producer may submit a written request to the director of the department to review the producer share cost assessment:~~

~~((i)) The request for review must be delivered to the department within fourteen calendar days of the date on the invoice.~~

~~((ii)) The written request must explain why the estimate is unreasonable based on the evidence available to the product stewardship program and the department.~~

~~((iii)) Within thirty calendar days of receipt of the written request in (b)(i) of this subsection, the director or the director's designee will review the request.~~

~~((iv)) The director may request a revision of producer share cost assessments if the producer request is determined to be correct:~~

~~(A) Stewardship organizations must recalculate the producer share cost assessment for each producer to be approved by the department; and~~

~~(B) Once the recalculated producer share costs are approved by the department, the stewardship organization must send refunds or assess additional charges to plan participants per the revision.~~

~~(4)) (3) Each stewardship organization must recommend to the department an environmental handling charge to be added to the price of each mercury-containing light sold in or into the state of Washington for sale at retail. The environ-~~

mental handling charge must be designed to provide revenue necessary and sufficient to cover all administrative and operational costs associated with the stewardship program described in the department-approved product stewardship plan for that organization, including the department's annual fee required by subsection (7) of this section, and a prudent reserve. The stewardship organization must consult with collectors, retailers, recyclers, and each of its participating producers in developing its recommended environmental handling charge. The environmental handling charge may, but is not required to, vary by the type of mercury-containing light. In developing its recommended environmental handling charge, the stewardship organization must take into consideration and report to the department:

(a) The anticipated number of mercury-containing lights that will be sold to covered entities in the state at retail during the relevant period;

(b) The number of unwanted mercury-containing lights delivered from covered entities expected to be recycled during the relevant period;

(c) The operational costs of the stewardship organization as described in WAC 173-910-310(11);

(d) The administrative costs of the stewardship organization including the department's annual fee, described in subsection (7) of this section; and

(e) The cost of other stewardship program elements including public outreach.

(4) The department will review, adjust if necessary, and approve the stewardship organization's recommended environmental handling charge within sixty days of submittal. In making its determination, the department shall review the product stewardship plan and may consult with the producers, the stewardship organization, retailers, collectors, recyclers, and other entities.

(5) No sooner than January 1, 2015:

(a) The mercury-containing light environmental handling charge must be added to the purchase price of all mercury-containing lights sold to Washington state retailers for sale at retail, and each Washington state retailer must add the charge to the purchase price of all mercury-containing lights sold at retail in Washington state, and the producer must remit the environmental handling charge to the stewardship organization in the manner provided for in the stewardship plan; or

(b) Each Washington state retailer must add the mercury-containing light environmental handling charge to the purchase price of all mercury-containing lights sold at retail in Washington state, where the retailer, by voluntary binding agreement with the producer, arranges to remit the environmental handling charge to the stewardship organization on behalf of the producer in the manner provided for in the stewardship plan. Producers may not require retailers to opt for this provision via contract, marketing practice, or any other means. The stewardship organization must allow retailers to retain a portion of the environmental handling charge as reimbursement for any costs associated with the collection and remittance of the charge.

(6) At any time, a stewardship organization may submit to the department a recommendation for an adjusted environmental handling charge for the department's review, adjust-

ment, if necessary, and approval under subsection (3) of this section to ensure that there is sufficient revenue to fund the cost of the program, current deficits, or projected needed reserves for the next year. The department must review the stewardship organization's recommended environmental handling charge and must adjust or approve the recommended charge within thirty days of submittal if the department determines that the charge is reasonably designed to meet the criteria described in subsection (1) of this section.

(7) Beginning March 1, 2015, and each year thereafter, each stewardship organization must pay to the department an annual fee equivalent to five thousand dollars for each participating producer to cover the department's administrative and enforcement costs. The amount paid under this section will be deposited into the product stewardship programs account created in RCW 70.275.130.

(8) Stewardship organizations for a plan must begin implementation of the plan no later than January 1st of the calendar year following approval of the plan by the department.

~~((5))~~ (9) Stewardship organizations must implement the approved plan. Updates to the plan will follow the process outlined in WAC 173-910-460.

~~((6))~~ (10) Stewardship organizations, as agents of their participating producers, are required to:

(a) Annually register producers, collectors, transporters, and processing facilities participating in the stewardship plan and report this information to the department.

(i) Registration includes documentation that each producer, collector, transporter, and processing facility is meeting the requirements of this chapter.

(ii) Provide regular updates to the department for producers, collectors, transporters, and processing facilities participating in the plan.

(b) Submit a product stewardship plan and required plan updates to the department as required in WAC 173-910-440.

(c) Annually report to the department as required in WAC 173-910-430.

(d) Monitor the compliance of all parties participating in the stewardship plan and report compliance issues to the department.

(e) Finance all administrative and operational costs associated with their program, including collection, transport, and processing of mercury-containing lights and the department's annual fee for all participating producers.

(f) Finance the costs of transporting and processing mercury-containing lights from accumulation points for curbside and mail-back collection programs.

~~((7) In the event that there is more than one approved product stewardship plan, each stewardship organization operating a department-approved product stewardship plan must recover their share of mercury-containing lights based on the combined market share of all producers participating in the stewardship organization's approved plan.~~

~~(8) The department will determine market share for stewardship organizations in the event that there is more than one approved product stewardship plan.~~

~~((9))~~ (11) A stewardship organization operating a product stewardship program must pay all administrative and operational costs associated with its program with revenues

received from the environmental handling charge described in WAC 173-910-310(3). The stewardship organization's administrative and operational costs are not required to include a collection location's cost of receiving, accumulating and storing, and packaging mercury-containing lights. However, a stewardship organization may offer incentives or payments to collectors. The stewardship organization's administrative and operational costs do not include the collection costs associated with curbside and mail-back collection programs.

(12) Stewardship organizations must collaborate with state government, local governments, electric utilities, retailers, collectors, transporters, processing facilities, and citizens in the development and implementation of public education, outreach, and marketing efforts. Education and outreach efforts include, but are not limited to:

(a) Development of a program web site and social media services;

~~(b) ((Providing point of sale educational materials, like posters and brochures; and))~~ Product stewardship programs must promote the safe handling and recycling of mercury-containing lights to the public, including producing and offering point of sale educational materials, like posters and brochures, to retailers of mercury-containing lights and point of return educational materials to collection locations.

(c) Publishing media releases in print, radio, and television.

~~((10))~~ (13) All mercury-containing lights collected by a product stewardship program or other collection programs must be recycled.

~~((11))~~ (14) If the department determines a stewardship organization is out of compliance with the requirements of the plan, the department will document each violation and follow the procedures in WAC 173-910-330 and 173-910-340.

~~((12))~~ (15) Stewardship organizations submitting information to the department may request confidential treatment under RCW 43.21A.160.

**AMENDATORY SECTION** (Amending WSR 12-23-049, filed 11/16/12, effective 12/17/12)

**WAC 173-910-320 Stewardship collection system.** (1) Stewardship organizations must work with the department, local government officials, retailers, electric utilities, and citizens to establish a convenient collection system for covered entities to deliver their mercury-containing lights into the program.

(a) Product stewardship programs must collect unwanted mercury-containing lights delivered from covered entities for recycling, processing, or final disposition, and not charge a fee when lights are dropped off or delivered into the program.

(b) The stewardship organization must arrange for collection service at locations described in subsection (2) of this section, which may include household hazardous waste facilities, charities, retailers, government recycling sites, or other suitable private locations. No such entity is required to provide collection services at their location. For curbside and mail-back programs, a stewardship organization must pay the costs of transporting mercury-containing lights from accu-

mulation points and for processing mercury-containing lights collected by curbside and mail-back programs.

(c) For collection locations, including household hazardous waste facilities, charities, retailers, government recycling sites, or other suitable private locations, a stewardship organization must pay the costs of packaging and shipping materials as required under WAC 173-910-520(7), or must compensate collectors for the costs of those materials, and must pay the costs of transportation and processing of mercury-containing lights collected from the collection locations.

(2) Convenient collection service will:

(a) County: Provide collection services for mercury-containing lights for each county of the state;

(b) City: Provide additional collection services in each city or town with a population greater than ten thousand; and

(c) Rural: Consult with rural counties that do not have logical in-county collection sites to provide convenient alternative arrangements.

(3) This system may provide collection through:

(a) The nearest commercial centers, solid waste sites, retail businesses, household hazardous waste, or other facilities;

(b) Collection events;

(c) Curbside collection, a premium service;

(d) Mail-back service, a premium service; or

(e) A combination of these options.

(4) Stewardship organizations must register collectors and provide updated collector information to the department, including:

(a) Contact information, including site name, operator name, physical address, telephone number, and hours of operation;

(b) Identify prospective collection sites not approved to participate in the program. Provide copies to the department of all written correspondence related to prospective collection sites that were not approved. Notify the department, within five days of denial of a prospective collection site, including the reason for denial.

(5) Each collection site or service must accept up to ~~((fifteen))~~ ten mercury-containing lights on any given day from covered entities at no charge, except for premium services, when lights are dropped off or delivered. Only premium services, such as curbside collection, can accept up to fifteen mercury-containing lights on any given day from covered entities.

(6) Each collection site or service must:

(a) Comply with WAC 173-303-573 as small quantity handlers of universal waste for lamps;

(b) Collect and store mercury-containing lights in a structurally sound container that, when sealed, is designed to prevent the escape of mercury into the environment by volatilization or any other means;

(c) Have a spill and release response plan that describes the materials, equipment, and procedures that will be used to respond to any mercury release from a mercury-containing light; and

(d) Have a worker safety plan that describes the handling of the mercury-containing lights at the collection location and the measures that will be taken to protect worker health and safety.

(7) All mercury-containing lights collected by a product stewardship program must be recycled.

AMENDATORY SECTION (Amending WSR 12-23-049, filed 11/16/12, effective 12/17/12)

**WAC 173-910-410 Product stewardship plans.** (1) ~~((Stewardship organizations must submit the proposed product stewardship plan to the department by January 1st of the year prior to the planned calendar year when the plan will be implemented.))~~ On June 1st of the year prior to initial implementation, each producer must ensure that a stewardship organization submits a proposed product stewardship plan on the producer's behalf to the department for approval. Plans approved by the department must be implemented by January 1st of the following calendar year. See WAC 173-910-420 for plan content.

(2) Product stewardship plans must provide a program for the collection, transportation, and processing of mercury-containing lights from covered entities in Washington state.

(3) The product stewardship plan must meet the content requirements of WAC 173-910-420.

(4) Prior to implementation, the plan must be approved by the department.

(5) Stewardship organizations must be authorized to submit and implement the plan for each participating producer.

AMENDATORY SECTION (Amending WSR 12-23-049, filed 11/16/12, effective 12/17/12)

**WAC 173-910-420 Plan content.** Product stewardship plans must contain the following information:

(1) **Overall plan requirements:** The plan must include:

(a) Names and contact information for all participating producers, including names of brands or brand labels used by specific producers;

(b) The number of mercury-containing lights sold annually in or into the state by producers participating in the plan;

(c) The types of mercury-containing lights that the program will accept; and

(d) Details on the management and organization of the stewardship organization.

(2) **Description of the financing system:** The plan must include a description of how the program will be funded by the producers and how compensation is paid to collectors, transporters, and processing facilities for all services provided to a plan and that payments to service providers will be made within an appropriate period of time from date of shipment or other time frame defined in contractual arrangements. Stewardship organizations will:

(a) Provide confirmation that revenues and expenditures applicable to this program will be allocated in accordance with generally accepted accounting principles (GAAP).

(b) Commit to providing an annual financial audit of the stewardship organization conducted by an independent certified public accountant.

(3) **Use of Washington state businesses:** The plan must explain how it seeks to use businesses within the state, including utilities, retailers, charities, household hazardous waste facilities, processing facilities, recycling facilities, and collection and transportation services for implementation of

the plan including existing curbside collection services and existing mail-back services for implementation of the plan.

(4) **Plan goals:** The plan will provide goals for the collection of mercury-containing lights for five years of operation, including:

(a) Total number of mercury-containing lights sold in or into the state;

(b) An estimate of the amount of mercury-containing lights available for collection from covered entities; and

(c) Annual program goals for collection of mercury-containing lights from covered entities for the next five years.

(5) **Collectors:** The plan must include the following information about collectors participating in the plan:

(a) The type of collection services in the plan, including curbside collection activities, household hazardous waste facilities, drop-off locations, collection events, and accumulation points for curbside or mail-back collection;

(b) Registration information for collectors participating in the plan as required in WAC 173-910-520(1), including accumulation points used for curbside or mail-back collection;

(c) A written statement from each collector ensuring that the collector will comply with the requirements in WAC 173-910-520;

(d) A statement that collection sites will be:

(i) Staffed during operating hours; and

(ii) Open during regularly scheduled hours and on an ongoing basis.

(e) A description of the consideration given to existing residential curbside collection infrastructure and mail-back systems as appropriate collection mechanisms;

(f) A statement identifying how quickly collection containers will be provided once containers reach capacity;

(g) A description of the communication and outreach process to answer questions, provide supplies, or provide technical assistance to collectors;

(h) A description of the technical assistance to be provided to collection sites, including written instructions on how to participate in the program and how to appropriately handle and store mercury-containing lights;

(i) A description of the packaging and shipping materials that will be used when collecting, accumulating, storing, and transporting mercury-containing lights to minimize the release of mercury into the environment and to minimize breakage; and

(j) Drafts of spill and release response plan and worker safety plan required in WAC 173-910-520.

(6) **Transporters:** The plan must include information about transporters participating in the plan, including:

(a) Registration information for transporters participating in the plan, including names, addresses, and contact information.

(b) A written statement from each transporter ensuring that the transporter will comply with the requirements in WAC 173-910-530.

(7) **Processing facilities:** The plan must include information about processing facilities participating in the plan, including:

(a) Registration information for processors participating in the plan, including names, addresses, contact information and hours of operation;

(b) A description of the methods used to process mercury-containing lights at each processing facility in the program; and

(c) Compliance audit reports for each processing facility participating in the plan completed by a qualified third party. The compliance audit will research, review, and report on the following:

(i) Compliance with all federal, state, and local requirements and, if it exports, those of all transit and recipient countries that are applicable to the operations and transactions in which it engages related to the processing of mercury-containing lights, components, parts, and materials and disposal of residuals. These include, but are not limited to, applicable legal requirements relating to:

(A) Waste and recyclables processing, storage, handling, and shipping;

(B) Air emissions and waste water discharge, including storm water discharges;

(C) Worker health and safety; and

(D) Transboundary movement of mercury-containing lights, components, materials, waste, or scrap for reuse, recycling, or disposal.

(ii) Information on financial penalties, regulatory orders, or violations the processing facility received in the previous three years; and

(iii) Any other information requested by the department.

(8) **Recordkeeping:** The plan must include procedures for how the stewardship organization will collect and maintain records to meet and demonstrate compliance with the recordkeeping requirements of this chapter. At a minimum, the stewardship organization will track the following information:

(a) Total number of mercury-containing lights sold in or into Washington state for all producers participating in the plan.

(b) The types of mercury-containing lights collected by the program.

(c) List of all collection sites and collection services, including curbside and mail back.

(d) Identification of transporters and processing facilities participating in the plan.

(e) Mercury-containing lights collected, transported, and processed for the plan, including:

(i) Total mercury-containing lights, by weight in pounds, collected from individual collection sites, collection services, curbside and mail back.

(ii) Final destination and quantities of lights processed and disposed.

(f) Education efforts for consumers, retailers, utilities, collectors, transporters, and processors, including assessments of the effectiveness of these efforts.

(g) Efforts to promote the mercury-containing lights collection program.

(9) **Implementation timeline:** The plan must include a timeline showing when each of the following will occur and a detailed description of each activity including, but not limited to:

(a) Start-up of the collection and processing efforts;

(b) Education efforts for consumers, retailers, collectors, transporters, and processors;

(c) Outreach efforts for the mercury-containing lights collection program; and

(d) Continual progress toward collection of spent mercury-containing lights.

(10) **Education, public outreach, and marketing:** A description of how the plan will meet the public education, outreach and marketing requirements, including:

(a) A description of how the public will be informed about the product stewardship program, including how consumers will be provided with information describing collection opportunities for unwanted mercury-containing lights from covered entities and safe handling of mercury-containing lights, waste prevention, and recycling. The description must also include information to make consumers aware that an environmental handling charge has been added to the purchase price of mercury-containing lights sold at retail to fund the mercury-containing light stewardship programs in the state. The environmental handling charge may not be described as a department recycling fee or charge at the point of retail sale;

(b) How it will provide information about where and how to deliver their mercury-containing lights to a product stewardship program collector at the end of the product's life;

~~((b))~~ (c) Providing a web site and toll-free number that gives information about the product stewardship program in sufficient detail regarding how and where to drop off mercury-containing lights into the product stewardship program, and collaborating with the department to provide information necessary to keep the 1-800-RECYCLE online data base up to date;

~~((c))~~ (d) Describing the outreach method or methods used;

~~((d))~~ (e) How it will ensure outreach to the public throughout the state;

~~((e))~~ (f) How it will provide outreach materials for educating the public to all collectors used by the plan;

~~((f))~~ (g) Explaining how the plan will coordinate education, public outreach, and marketing with other approved product stewardship plans;

~~((g))~~ (h) Explaining how the plan will coordinate on education, public outreach, and marketing with retailers, distributors, wholesalers, and electric utilities; and

~~((h))~~ (i) Explain the public review process implemented by the stewardship organization, the public comments received by the stewardship organization, and how the stewardship organization addressed those comments.

(11) **Other information** deemed necessary by the department to determine compliance with this chapter.

(12) Producers submitting information to the department may request confidential treatment under RCW 43.21A.160.

AMENDATORY SECTION (Amending WSR 12-23-049, filed 11/16/12, effective 12/17/12)

**WAC 173-910-430 Annual reports.** ~~((On June 1st of each program year each stewardship organization must file an annual report with the department for the preceding calen-~~

dar year's program. The department will review the report and notify the stewardship organization of any deficiencies that need to be addressed. The annual report must include the following information:)) (1) By June 1, 2016, and each June 1st thereafter, each stewardship organization must submit an annual report to the department describing the results of implementing the stewardship organization's plan for the prior calendar year, including an independent financial audit. The department may adopt rules for reporting requirements. Financial information included in the annual report must include, but is not limited to:

(a) The amount of the environmental handling charge assessed on mercury-containing lights and the revenue generated;

(b) Identification of confidential information pursuant to RCW 43.21A.160 submitted in the annual report; and

(c) The cost of the mercury-containing lights product stewardship program, including line item costs for:

(i) Program operations;

(ii) Communications, including media, printing and fulfillment, public relations, and other education and outreach projects;

(iii) Administration, including administrative personnel costs, travel, compliance and auditing, legal services, banking services, insurance, and other administrative services and supplies, and stewardship organization corporate expenses; and

(iv) Amount of unallocated reserve funds.

(2) Beginning in 2023 every stewardship organization must include in its annual report an analysis of the percent of total sales of lights sold at retail to covered entities in Washington that mercury-containing lights constitute, the estimated number of mercury-containing lights in use by covered entities in the state, and the projected number of unwanted mercury-containing lights to be recycled in future years.

(3) All plans and reports submitted to the department must be made available for public review, excluding sections determined to be confidential pursuant to RCW 43.21A.160, on the department's web site and at the department's headquarters.

**(4) Contact information:** Identify the stewardship organization and the producers participating in the program, including any updated contact information. The list of producer brands sold in or into the state. The total number of mercury-containing lights sold in or into the state by participating producers in the previous year.

~~((2))~~ **(5) Executive summary:** Provide a description of the mercury-containing lights collection and recycling efforts during the reporting period. Include anticipated steps, if needed, to improve performance and a description of challenges encountered during the reporting period and how they will be addressed.

~~((3))~~ **(6) Program description:** Summarize the mercury-containing lights product stewardship program, providing details on the collection, transport, and recycling of mercury-containing lights.

~~((4))~~ **(7) Program goals:** State the goals from the plan, the baseline from which goals were measured, and report on achievement during the reporting period, including:

(a) Describe any adjustments to goals stated in the approved stewardship plan for the upcoming reporting period and accompanying rationale for those changes.

(b) Describe how the program met its goal for the collection of unwanted mercury-containing lights and, if not, what changes have been made or will be made in the next year to meet its goal.

(c) Identify the total mercury-containing lights, by weight in pounds, collected for the preceding program year including documentation verifying collection and processing of that material, including mercury-containing lights collected, reported by county.

~~((5))~~ **(8) Collection system:** Names, locations, contact information for collection sites and services operating in the state in the prior program year and the parties who operated them:

(a) In each county;

(b) For each city with a population greater than ten thousand;

(c) For collection events, curbside collection, or mail-back services; and

(d) Total mercury-containing lights, by weight in pounds, received from each collector.

~~((6))~~ **(9) Processing facility information:** Identify all processing facilities used, including the name, address, and contact information by providing the following:

(a) Total program mercury-containing lights, by weight in pounds, received by each processing facility;

(b) A description of the methods used by each processing facility to process the mercury-containing lights;

(c) Compliance audit reports for each processing facility participating in the plan completed by a qualified third party. The compliance audit will research, review, and report on the following:

(i) Compliance with all federal, state, and local requirements and, if it exports, those of all transit and recipient countries that are applicable to the operations and transactions in which it engages related to the processing of mercury-containing lights, components, parts, and materials and disposal of residuals. These include, but are not limited to, applicable legal requirements relating to:

(A) Waste and recyclables processing, storage, handling, and shipping;

(B) Air emissions and waste water discharge, including storm water discharges;

(C) Worker health and safety; and

(D) Transboundary movement of mercury-containing lights, components, materials, waste, or scrap for reuse, recycling, or disposal.

(ii) Information on financial penalties, regulatory orders, or violations the processing facility received in the previous three years; and

(iii) Any other information requested by the department.

~~((7))~~ **(10) Education and outreach:** Efforts that were undertaken by the stewardship organization regarding how and where to drop off mercury-containing lights into the product stewardship program. Include an assessment of the effectiveness of these efforts and changes to be implemented in the next year.

~~((8))~~ **(11) Financial report:** Financial audit reports for the stewardship organization completed by a qualified third party.

~~((9))~~ **(12) Other information** deemed necessary by the department to determine compliance with this chapter.

~~((10))~~ **(13) Stewardship organizations** submitting information to the department may request confidential treatment under RCW 43.21A.160.

**AMENDATORY SECTION** (Amending WSR 12-23-049, filed 11/16/12, effective 12/17/12)

**WAC 173-910-440 Plan and annual report submittal.**

(1) Plans must include the plan content requirements in WAC 173-910-420.

(a) New product stewardship plans must be submitted by ~~(January)~~ **June** 1st for implementation in the following calendar year.

(b) The first update of an approved product stewardship plan is required two years after approval and implementation, by July 1st of the second year of implementation.

(c) Second and subsequent updates of an approved product stewardship plan are required every four years, by July 1st of each subsequent third year of implementation.

(d) The department will post product stewardship plans and updates on the department's web site for public review. The department will provide public review comments to the stewardship organization.

(2) Annual reports must include the content requirements in WAC 173-910-430.

(a) Annual reports must be submitted by June 1st for the prior calendar year.

(b) The department may request additional information or clarification during the review of annual reports. If the department determines that additional information is needed, the stewardship organization must submit the additional information to the department within sixty days of receipt of the notice.

(c) The department will post annual reports on the department's web site for public review.

(3) Stewardship organizations must submit one electronic copy of their plan, update, or report to the department. The plan, update, or annual report must be submitted to the Waste 2 Resources Program at the department's headquarters office.

(4) Stewardship organizations submitting information to the department may request confidential treatment under RCW 43.21A.160.

(5) The department may request a hard copy version of the plan or report.

**Table 400**

**Plan and Report Submittal Timeline**

Entity	Plan	Plan Update	Annual Report
<i>Timing</i>	<i>For the following calendar year</i>		<i>For the prior calendar year</i>
Stewardship organization submits document	<del>((January))</del> June 1st	July 1st	June 1st

Entity	Plan	Plan Update	Annual Report
<i>Timing</i>	<i>For the following calendar year</i>		<i>For the prior calendar year</i>
Department initial review	90 days	90 days	60 days
Stewardship organization document revision	60 days	60 days	60 days
Department second review	60 days	60 days	60 days
Stewardship organization resubmits document	60 days	60 days	60 days
Until approved, document review timing follows the second review schedule			

**AMENDATORY SECTION** (Amending WSR 12-23-049, filed 11/16/12, effective 12/17/12)

**WAC 173-910-520 Collector requirements.** (1) Collectors participating in a product stewardship program including, but not limited to, collection sites, curbside services, mail-back services, accumulation points, and collection events, must register with the stewardship organization. Collector registration information must include:

- (a) The legal name of the person owning and operating the collection location;
- (b) The address of the collection location;
- (c) The phone number of the collection location;
- (d) The name, address, and phone number of the individual responsible for operating the collection location; and
- (e) Updates of any changes in this information within thirty days of the change.

(2) Mercury-containing lights collected for a plan must be collected free of charge except for premium services.

(3) Mercury-containing lights premium services provide collection and transport of mercury-containing lights from point of collection to product stewardship program accumulation points. For premium services participating in the product stewardship program, the stewardship organization must pay the cost of transporting mercury-containing lights from accumulation points to the processing facility and the cost of processing the mercury-containing lights. Premium services include, but are not limited to:

(a) Curbside collection of mercury-containing lights, which may include additional fees to cover the costs not paid by the product stewardship program.

(b) Mail-back collection of mercury-containing lights, which may include additional fees to cover the costs not paid by the product stewardship program.

(4) Collectors participating in a product stewardship program may include collection events that:

- (a) Service rural communities that do not have a continually staffed collection site;
- (b) Are registered with the stewardship organization; and
- (c) Meet the requirements of this section.

(5) Collectors of mercury-containing lights will not process the collected lights unless they also meet the processing facility requirements in WAC 173-910-540.



(6) Collectors must comply with WAC 173-303-573 as small quantity handlers of universal waste as well as all other applicable laws, rules, and local ordinances.

(7) When providing collection services for a plan, each collector, including collection sites, curbside collection, mail-back service, accumulation points, and collection events must:

- (a) Staff the site during operating hours;
  - (b) Notify the stewardship organization of changes in hours and days of operation;
  - (c) Handle mercury-containing lights in a way that prevents releases of mercury to the environment;
  - (d) Have a spill and release response plan that describes the materials, equipment, and procedures that will be used to respond to any mercury release from a mercury-containing light;
  - (e) Have a worker safety plan that describes the handling of the mercury-containing lights at the collection location and the measures that will be taken to protect worker health and safety;
  - (f) Use packaging and shipping material that will minimize the release of mercury into the environment by volatilization or any other means and minimize breakage(;) and use mercury vapor barrier packaging if mercury lights are transported by the United States Postal Service or a common carrier; and
  - (g) Submit all mercury-containing lights collected from covered entities to a department-approved product stewardship program.
- (8) A collector must allow the department access for inspections to determine compliance with the requirements in this chapter.
- (9) No entity may claim to be collecting mercury-containing lights for a plan unless the entity is registered with the stewardship organization as a collector and submits all collected mercury-containing lights to the transporters and processors identified in the plan.
- (10) Any collector found to be out of compliance with this section or the requirements of the plan will not be allowed to participate in the program.

AMENDATORY SECTION (Amending WSR 12-23-049, filed 11/16/12, effective 12/17/12)

**WAC 173-910-610 Participation requirements.** (1) Retailers, wholesalers, distributors, electric utilities, or other persons that give away, offer for sale, or sell, including internet sales, mercury-containing lights in or into the state for ~~((residential use))~~ sale at retail must comply with the requirements of this section.

(2) Beginning January 1, 2013, mercury-containing lights offered for sale or distributed in or into the state for ~~((residential use))~~ sale at retail must be obtained from producers participating in a product stewardship plan approved by the department.

(a) The department will maintain a list of compliant producers on its web site.

(b) Retailers, wholesalers, distributors, or electric utilities are required to regularly check this list of compliant producers to ensure sales and distribution of compliant product.

(3) Retailers, wholesalers, distributors, or electric utilities must only sell or offer for sale or distribute mercury-containing lights from compliant producers. Existing stock of mercury-containing lights in possession on January 1, 2013, may be sold or distributed even if the producer of the mercury-containing light is not in compliance.

(4) No sooner than January 1, 2015:

(a) The mercury-containing light environmental handling charge must be added to the purchase price of all mercury-containing lights sold to Washington state retailers for sale at retail, and each Washington state retailer must add the charge to the purchase price of all mercury-containing lights sold at retail in this state, and the producer must remit the environmental handling charge to the stewardship organization in the manner provided for in the stewardship plan; or

(b) Each Washington state retailer must add the mercury-containing light environmental handling charge to the purchase price of all mercury-containing lights sold at retail in this state, where the retailer, by voluntary binding agreement with the producer, arranges to remit the environmental handling charge to the stewardship organization on behalf of the producer in the manner provided for in the stewardship plan. Producers may not require retailers to opt for this provision via contract, marketing practice, or any other means. The stewardship organization must allow retailers to retain a portion of the environmental handling charge as reimbursement for any costs associated with the collection and remittance of this charge.

(5) After January 1, 2013, the department may inspect mercury-containing lights inventory offered for sale or distributed in or into Washington state to determine if the requirements in this chapter are met.

~~((5))~~ (6) Education and outreach: Retailers, wholesalers, distributors, or electric utilities that sell, offer for sale at retail or distribute mercury-containing lights must work with stewardship organizations to:

(a) Ensure distribution of mercury-containing lights in or into Washington state is from producers participating in the product stewardship program; and

(b) Provide information to consumers and customers describing where and how to return mercury-containing lights to the product stewardship program and opportunities and locations for the convenient collection or return of the products at the point of sale. This outreach may include:

(i) Use of artwork in advertisements such as on flyers, shelf-tags, or brochures for this program.

(ii) The stewardship organization's toll-free telephone number and web site.

(iii) Information about how to return mercury-containing lights to the product stewardship program in Washington state either in, on, or with the packaging.

(c) Provide information in a visible location on their web site.

**WSR 16-07-043**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**NATURAL RESOURCES**  
 [Filed March 14, 2016, 8:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-22-030.

Title of Rule and Other Identifying Information: Committee on geographic names and geographic names policies and procedures.

Hearing Location(s): Natural Resources Building, 1111 Washington Street S.E., Room #172, Olympia, WA 98501, on Thursday, May 19, 2016, at 10:00 a.m. - 2:00 p.m.

Date of Intended Adoption: May 30, 2016.

Submit Written Comments to: Caleb Maki, Executive Secretary, P.O. Box 47030, Olympia, WA 98501, e-mail bogn@dnr.wa.gov, fax (360) 902-1778, by May 26, 2016.

Assistance for Persons with Disabilities: Contact Caleb Maki by May 12, 2016, (360) 902-1280.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed policies and procedures clarify how the committee on geographic names determines what proposed names from the public are sent to the board on geographic names with the committee's approval.

Reasons Supporting Proposal: Existing statutes do not fully describe the process for proposing, processing, and deciding upon geographic name proposals. The legislature directed the committee on geographic names to "establish rules for the conduct of its affairs and to carry out the duties of this section," RCW 43.30.293. Rules would clarify the process for proposing and processing geographic names and the standards considered for determining the eligibility of proposed names and for guiding the committee's decision on proposals.

Statutory Authority for Adoption: RCW 43.30.293.

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

Name of Proponent: Department of natural resources, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Caleb Maki, 1111 Washington Street, Olympia, WA 98501, (360) 902-1280; and Enforcement: David Bergvall, 1111 Washington Street, Olympia, WA 98501, (360) 902-2123.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule change will have no fiscal impact.

A cost-benefit analysis is not required under RCW 34.05.328. This rule does not meet the definition of a significant rule (RCW 34.05.328 (5)(b)(ii)).

March 9, 2016  
 Kyle Blum  
 Deputy Supervisor

**Chapter 332-160 WAC**

**COMMITTEE ON GEOGRAPHIC NAMES AND GEOGRAPHIC NAMES POLICIES AND PROCEDURES**

NEW SECTION

**WAC 332-160-010 Purpose and importance of geographic names.** Geographic names help identify and distinguish geographic features, places, or areas. The board of geographic names with assistance from the committee on geographic names is the Washington state agency that officially approves names for geographic features in Washington state.

The designation of a name is often an important issue for a community or a proponent. Due to the official and lasting nature of geographic names, designation should only occur after careful consideration of available information relating to the policies in these rules. Continuity in the use of geographic names is important for clarity in verbal and written communications and emergency situations; consequently, changes in existing names should not be made without a compelling reason.

NEW SECTION

**WAC 332-160-020 Definitions.** "Board on geographic names" refers to the board that is created by the Washington legislature to, in part, establish the procedure to retain existing geographic names and to either name or rename geographic features within the state of Washington consistent with RCW 43.30.291 through 43.30.295. The board of natural resources serves as the board of geographic names.

"Commemorative name" refers to a name or proposed name of a geographic feature, which incorporates a person's name in his or her honor.

"Committee on geographic names" refers to the committee created by the board on geographic names to help the board carry out its duties and to provide broader public and tribal participation in naming features. The committee's duties are more fully described in RCW 43.30.292 through 43.30.293.

"Diacritical marks" are symbols added to letters or names to indicate a special phonetic value or to distinguish words that are otherwise spelled the same way.

"Geographic features" include lakes, mountains, streams, places, towns and other similar features located within the state. For purposes of RCW 43.30.291, geographic features do not include human-made features or administrative areas such as parks, game reserves, and dams, but do include human-made lakes.

"Name change" means formally changing the proper name of a place, feature, or area in Washington state.

"Wilderness areas" refers to federally owned areas that are designated as wilderness areas under the Wilderness Act of 1964 (Public Law 88-577, 78 Stat. 890).

NEW SECTION

**WAC 332-160-030 Proposal requirements and consideration process. How are complete proposals submitted and generally reviewed?** The board on geographic

names is responsible for establishing official Washington state geographic names. A geographic name becomes official after the board approves a recommendation made by the committee on geographic names. The committee on geographic names considers name proposals that are submitted to it rather than acting on its own motion.

(1) Timing and form of geographic name proposals:

(a) Proponents may submit geographic name proposals to the committee on geographic names at any time throughout the year. The committee has two regularly scheduled committee meetings each year. To be considered at an upcoming regular committee meeting, the proposal must be received at least thirty days prior to that meeting.

(b) Proposals should be submitted on the Committee on Geographic Names' Proposal Form and be electronically submitted to [bogn@dnr.wa.gov](mailto:bogn@dnr.wa.gov) or mailed to:

Washington State Committee on Geographic Names  
P.O. Box 47030  
Olympia, WA 98504

(c) Proposals should be consistent with the form and substance expressed in this chapter and may be returned or ultimately denied for being inconsistent. The committee may accept for consideration proposals on a United States Board of Geographic Names Form when the proposal is forwarded by the U.S. board.

(2) Adequacy of proposal information: The burden to gather and submit information regarding a proposal is on the proponent. Proponents are encouraged to contact the landowner or agency that the geographic feature is located on.

(a) The committee may, in its discretion, request proponents to submit more information and defer further committee action pending receipt.

(b) The committee and staff may, at their discretion, independently pursue information related to any proposal.

(3) Committee denial or recommendation to approve: The committee may deny a proposal at any meeting, or recommend its approval after the proposal has been considered at two or more meetings and the committee has conducted careful deliberation of all available information. The factors to be considered by the committee are described elsewhere in this chapter, especially WAC 332-160-040 and 332-160-050. If the committee decides to recommend approval to the board, all proposal materials and the committee's recommendation to approve will be forwarded onto the Washington state board on geographic names.

(4) Board on geographic names review and decision: The board of natural resources will indicate (agenda/other notice) when it will consider geographic name proposals in its capacity as the board on geographic names. The board will consider the information forwarded by the committee on geographic names and may entertain additional statements on specific proposals consistent with the board of natural resources business rules. After deliberation on a proposal, the board on geographic names may approve a proposal or refer a proposal back to the committee on geographic names for further consideration. Upon referring a proposal back to the committee, the board may include instructions for the committee to seek additional information or to reconsider its recommendation to approve in light of other information/

issues/proposals. The board on geographic names' approval of a proposal is final and is not subject to administrative review. Proposals to name a geographic feature that has been named by the board on geographic names will only be considered by either the committee or the board under the circumstances described in WAC \*\*\*.

#### NEW SECTION

**WAC 332-160-040 Factors to consider for all name proposals. What factors will the committee and board on geographic names consider when reviewing geographic name proposals?** There can be no set formula applied to determine whether a specific proposal should be approved or denied; however, there are certain factors that should be considered. This section describes considerations of the board and committee on geographic names as well as how these factors influence the naming decision.

(1) Proposals containing the following characteristics are generally favored:

(a) Dominant local usage - Names that are in dominant local usage and are strongly supported by local residents will be favored. Proponents should submit appropriate evidence of local usage and resident support for their proposal.

(b) Historical significance - Names that are significant to the early history of Washington state, such as names of prominent Native Americans or pioneers, or pertinent foreign origin will be favored. Proponents should provide appropriate evidence of the historical significance of the proposed name as well as its relationship to the geographic feature.

(c) Use of the Roman alphabet - Proposed geographic names must be written in the Roman alphabet as normally used for writing the English language. Diacritical marks, however, may be added to names as specified below. Proposed names should be as short as possible and easily pronounced. The pronunciation should be apparent from the spelling.

(2) Proposals containing the following factors will be disfavored:

(a) Derogatory names - The committee on geographic names will deny any proposal that it deems to be derogatory toward any racial, ethnic, gender, or religious group.

(b) Diacritical marks - The use of diacritical marks in proposed names is disfavored because they are almost never used in English and because they are not easily reproducible on maps, signs, or other documents. On the other hand, diacritical marks may be especially important if their omission would result in a significant change in the meaning of the name in the parent language. A spelling that includes diacritical marks might be approved if, in the judgment of the committee, there is substantial evidence of active local use, such as official records, maps, and signs, in the area where the feature is located, or overriding significance.

(c) Duplicate names - The use of duplicate names for similar types of geographic features within a county or in close proximity to each other should be minimized or avoided unless overridden by other considerations such as dominant local usage.

(d) Commercial names - Proposals containing clear commercial overtones are strongly disfavored, including names

proposed to improve advertising of a site for an individual, group, or organization.

(e) Hyphens and apostrophes - Hyphens and apostrophes are not easily reproducible on signs, maps, and other documents and thus are disfavored. These symbols should only be retained when necessary for the meaning of a name. Apostrophes suggesting possession or association are not to be used within the body of a proper geographic name (Long's Pond: Not Long's Pond). One example of an exception might be where an apostrophe is necessary to preserve correct spelling of family names (e.g., O'Brian Creek), but the committee will consider each proposal on a case-by-case basis.

(f) Long names - If the length of a name makes it difficult or cumbersome to use in written or spoken form, the proposed name will be disfavored and will not be approved unless there are overriding considerations. Full commemorative names may be approved by the committee and board where more than just the surname is necessary to make it unambiguous who the referent is. And, when naming a branch of a stream (or segment of any other geographic feature), reference to the name of the main geographic feature along with the branch name might be necessary for clarity.

(g) Wilderness names - A goal of federal wilderness area administration is to minimize the impacts and traces of people, including the naming of features. Within wilderness areas, proposals will not be approved unless an overriding need exists, such as for purposes of safety or area administration. Proponents of an unnamed feature in a wilderness area must attempt to coordinate their proposal with the federal agency responsible for the administration of the area. The application for a name change should include the result of this effort, including any documentation supporting a federal agency finding of overriding need.

(3) Commemorative names: Proposals assigning the name or nickname of a deceased person to geographic features will be considered by the committee on geographic names and will be neither favored nor disfavored as a general class. These proposals will be assessed in consideration of all other naming factors. Additionally, commemorative name proposals must be consistent with the following standards:

(a) The person being commemorated must be deceased for at least five years before a proposal will be considered;

(b) The person being honored should have had either some direct or long-term association with the feature or have made a significant contribution to the area in which it is located unless the commemorated person had an outstanding and significant national or international reputation;

(i) Examples of "direct or long-term association" or "significant contribution" include early or long-term settlers of more than twenty years, donor of land to the state or federal government, or a person who played a large part in protecting the land for the public benefit;

(ii) A person's ownership of or death on land where a feature is located will normally not be sufficient on its own to satisfy the "direct or long-term association" criterion.

(c) Proposed commemorative names that may be construed to commemorate a living person are disfavored;

(d) Proposals to commemorate living or deceased pets are disfavored; and

(e) As part of a commemorative name proposal, proponents should submit evidence of local support for the name, provide evidence of historical significance when applicable, and design their proposal to address the other decision factors in this rule.

(4) Names located on tribal reservations: The committee will not review name proposals where a geographic feature is located entirely on a tribal reservation, instead deferring to the tribal government.

(5) Generic terms: When a proposed geographic name includes both a specific and generic element, the generic term (creek, ridge, lake, etc.) should be appropriate to the feature and should normally be consistent with generic terms already used and understood in the area in which the feature is located.

#### NEW SECTION

**WAC 332-160-050 Name changes. When is the change of an existing geographic name appropriate?** Stability in the use of geographic names is important to reduce confusion and to minimize costs associated with changing names; thus, changes in existing geographic names should only occur where a proponent provides substantial evidence of a compelling reason for the change. Proposals to change names that have recently (less than five years) been adopted by the board on geographic names will very rarely be considered by the committee on geographic names. Generally, the following three classes of proposals may justify the change of an existing official name:

(1) Proposals made to bring existing official names into agreement with dominant local usage;

(2) Proposals made to eliminate existing name problems, as in the case of derogatory names, name duplication creating confusion within a county, and officially recognized names that were based on incorrect information; or

(3) Proposals made at the request of persons or organizations for commemorative purposes.

Committee decisions to change a name or to adopt any specific name will consider all relevant factors regarding name proposals as well as other committee policies, documented usage, population density, and state, tribal and local government needs.

#### NEW SECTION

**WAC 332-160-060 Multiple proposals for the same geographic feature. How will the committee process multiple proposals for the same geographic feature?** When the committee has received multiple proposals relating to the same geographic feature, the committee may, in its discretion, delay deliberation on a proposal so as to make simultaneous deliberations and one recommendation. Once the committee recommends approval of a proposal, the committee will not consider other proposals for the same geographic feature unless the board refers the proposal back to the committee for further consideration. The board may, in its discretion, either approve a proposal or refer the proposal to the committee for one recommendation in consideration of all proposals for a geographic feature.

NEW SECTION

**WAC 332-160-070 Reconsideration of proposals. When may a denied proposal be resubmitted to the committee on geographic names?** The Washington state committee on geographic names will not reconsider a denied proposal unless one of the following applies:

- (1) Significant new information supporting the proposal under these policies is presented to the committee.
- (2) The proposal is referred back to the committee by the board with a recommendation to review.

NEW SECTION

**WAC 332-160-080 Committee membership. Who serves on the committee on geographic names?** The Washington state committee on geographic names is comprised of a seven member committee.

- (1) Membership: In compliance with RCW 43.30.292, the Washington state committee on geographic names shall consist of:
  - (a) The Washington state commissioner of public lands or representative. The commissioner or the commissioner's representative shall serve as chair of the committee.
  - (b) The Washington state librarian or the librarian's designee.
  - (c) The director of the Washington state department of archaeology and historic preservation or the director's designee.
  - (d) A representative of the Washington state tribes, to be appointed by the commissioner from nominations made by Washington's recognized tribal governments.
  - (e) Three members from the public to be appointed by the commissioner.
- (2) Delegation: No member may delegate their position to another, except as authorized by RCW 43.30.292 to provide a representative or designee, or as otherwise authorized by law.

NEW SECTION

**WAC 332-160-090 Committee member terms. How long do committee on geographic names members serve?** Committee members shall serve on the committee until a successor is appointed.

- (1) The tribal representative serves a three-year term.
- (2) Initial appointments of the public members appointed shall be as follows:
  - (a) One member for a one-year term.
  - (b) One member for a two-year term.
  - (c) One member for a three-year term. Thereafter, each public member shall be appointed for a three-year term.

NEW SECTION

**WAC 332-160-100 Meeting format. How are committee meetings conducted?** Active participation by the public and committee members is important for a successful meeting.

(1) General: In compliance with RCW 43.30.293, all Washington state committee on geographic names meetings are to be open to the public.

(2) Meeting schedule: The Washington state committee on geographic names shall meet at least twice a year. Special meetings can be called by the chair of the committee, or by a majority of the committee members.

(3) Quorum: A quorum exists so long as at least four committee members are present. The existence of a quorum is not affected by the recusal or abstention of a member so long as they remain present at the meeting.

(4) Majority vote: Committee decisions will be decided by a majority vote of those members who vote. Proxies are not permissible.

(5) Meeting format:

(a) Call to order - The meeting is called to order by the chair of the committee.

(b) Adoption of past minutes - The minutes from the last committee meetings are put to a vote to adopt them, with any corrections from the committee members.

(c) Names for final consideration - The committee will hear proposals that are up for final consideration (or have been deferred for final consideration at a past meeting). These proposals have been accepted for final consideration at a past committee meeting, and have gone through the comment solicitation phase. The committee can send the proposal to the board on geographic names with the committee's recommendation to approve, it can deny the proposal, or defer the proposal if the committee members feel they need more information from the proponent or from individuals or organizations that have commented on the proposal.

(d) Names for initial consideration - The committee will hear proposals that are up for initial consideration (or have been deferred for initial consideration at a past meeting). These proposals have not appeared before the committee. The committee may accept the proposal for final consideration, deny the proposal, or defer the proposal if the committee members feel they need more information from the proponent.

(e) Order - The chair of the committee may, in his or her discretion, use *Robert's Rules of Order* to help maintain orderly conduct at meetings.

(f) Committee business - If there are any business items pending, the committee will hear them at this time.

(g) Adjourn meeting - If all business and items on the agenda have been heard, the chair of the committee will adjourn the meeting.

NEW SECTION

**WAC 332-160-110 Public comment for geographic name proposals. How does one comment on proposals?** If a proposal is accepted for final consideration at a meeting, the committee will solicit opinions from local and tribal governments and other organizations or individuals who may have an interest in the proposed name. Because of the difficulty in contacting everyone who may be familiar with a particular geographic feature, the committee relies upon comments submitted by the public.

There are two preferred ways to comment on a geographic name proposal, and comments can be submitted at any time in the proposal process, up to ten days prior to a meeting:

(1) People who want to comment on a proposal prior to a meeting can do so by sending electronic comments to the committee at [bogn@dnr.wa.gov](mailto:bogn@dnr.wa.gov) or send written comments to:

Washington State Committee on Geographic Names  
P.O. Box 47030  
Olympia, WA 98504

(2) Individuals may comment on their proposal(s) of interest during a committee meeting. Committee staff will individually announce a geographic name proposal and identified speakers. Each speaker will have two minutes to testify plus additional time allowed by the committee chair to answer committee member questions. The committee chair may announce more or less time for speakers at the beginning of the meeting to accommodate the agenda.

#### WSR 16-07-045

##### WITHDRAWAL OF PROPOSED RULES HORSE RACING COMMISSION

[Filed March 14, 2016, 8:59 a.m.]

The Washington horse racing commission would like to withdraw from publication our proposed rule making (CR-102), WSR 16-06-022, filed on November 20, 2015.

Douglas L. Moore  
Executive Secretary

#### WSR 16-07-055

##### WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF CORRECTIONS

(By the Code Reviser's Office)

[Filed March 15, 2016, 9:00 a.m.]

WAC 137-104-010, 137-104-020, 137-104-025, 137-104-030, 137-104-040, 137-104-050, 137-104-060, 137-104-070 and 137-104-080, proposed by the department of corrections in WSR 15-18-003, appearing in issue 15-18 of the Washington State Register, which was distributed on September 16[,] 2015, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

#### WSR 16-07-056

##### WITHDRAWAL OF PROPOSED RULES SECRETARY OF STATE

(By the Code Reviser's Office)

[Filed March 15, 2016, 9:00 a.m.]

WAC 434-750-010, 434-750-020, 434-750-040, 434-750-050, 434-750-060, 434-750-070, 434-750-090, 434-750-100, 434-750-110, 434-750-120, 434-750-130, 434-750-140, 434-750-150, 434-750-160, 434-750-170, 434-750-180, 434-750-190, 434-750-200, 434-750-210, 434-750-220, 434-750-230, 434-750-240, 434-750-250, 434-750-270, 434-750-290, 434-750-300 and 434-750-310, proposed by the secretary of state in WSR 15-18-059, appearing in issue 15-18 of the Washington State Register, which was distributed on September 16[,] 2015, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
Washington State Register

#### WSR 16-07-089

##### PROPOSED RULES HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed March 18, 2016, 9:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-21-096.

Title of Rule and Other Identifying Information: WAC 182-530-2000 Covered—Outpatient drugs, devices, and drug-related supplies, 182-530-2100 Noncovered—Outpatient drugs, devices, and drug-related supplies, and 182-530-3200 The department's authorization process.

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://www.hca.wa.gov/documents/directions\\_to\\_csp.pdf](http://www.hca.wa.gov/documents/directions_to_csp.pdf) or directions can be obtained by calling (360) 725-1000), on April 26, 2016, at 10:00 a.m.

Date of Intended Adoption: Not sooner than April 27, 2016.

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](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. on April 26, 2016.

Assistance for Persons with Disabilities: Contact Amber Lougheed by April 22, 2016, e-mail [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov), (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed revisions clarify the agency's coverage of smoking cessation products for pregnant women; change the minimum days' supply required when dispensing contraceptives; update the coverage of vitamins, minerals, and enzymes; and change the

minimum number of days to request authorization of an emergency fill.

Reasons Supporting Proposal: Complies with federal and state law regarding coverage of smoking cessation products for pregnant women.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Katie Pounds, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1346; Implementation and Enforcement: Jodie Arneson, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1410.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

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.

March 18, 2016  
Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-530-2000 Covered—Outpatient drugs, devices, and drug-related supplies.** (1) The ~~((department))~~ medicaid agency covers:

(a) Outpatient drugs, including over-the-counter (OTC) drugs, as defined in WAC ~~((388-530-1050))~~ 182-530-1050, subject to the limitations and requirements in this chapter, when:

(i) The drug is approved by the Food and Drug Administration (FDA);

(ii) The drug is for a medically accepted indication as defined in WAC ~~((388-530-1050))~~ 182-530-1050;

(iii) The drug is not excluded from coverage under WAC ~~((388-530-2100))~~ 182-530-2100;

(iv) The manufacturer has a signed drug rebate agreement with the federal Department of Health and Human Services (DHHS). Exceptions to the drug rebate requirement are described in WAC ~~((388-530-7500 which describes the drug rebate program))~~ 182-530-7500; and

(v) ~~The drug is~~ prescribed by a provider with prescriptive authority ((see)). Exceptions to the prescription requirement exist for family planning and emergency contraception ((for women eighteen years of age and older in WAC 388-530-2000 (1)(b), and over-the-counter (OTC) drugs to promote smoking cessation in WAC 388-530-2000 (1)(g)) in (b) of this subsection, and for OTC drugs that promote smoking cessation in (g) of this subsection.

(b) Family planning drugs, devices, and drug-related supplies per chapter ~~((388-532))~~ 182-532 WAC and as follows:

(i) ~~((Over-the-counter (OTC)))~~ OTC family planning drugs, devices, and drug-related supplies without a prescription when the ~~((department))~~ agency determines it necessary for client access and safety;

(ii) Family planning drugs that do not meet the federal drug rebate requirement in WAC ~~((388-530-7500))~~ 182-530-7500 on a case-by-case basis; and

(iii) Contraceptive patches, contraceptive rings, and oral contraceptives, ~~((only))~~ excluding emergency contraception, when dispensed in ~~((at least a three-month supply, unless otherwise directed by the prescriber. There is no required minimum for how many cycles of emergency contraception may be dispensed.~~

~~(e) Prescription vitamins and mineral products, only as follows:~~

~~(i) When prescribed for clinically documented deficiencies;~~

~~(ii) Prenatal vitamins, when prescribed and dispensed to pregnant women; or~~ a one-year supply only, unless:

(A) A smaller supply is directed by the prescriber;

(B) A smaller supply is requested by the client; or

(C) The pharmacy does not have adequate stock.

(c) Vitamins, minerals, and enzymes when prescribed for:

(i) A medical condition caused by a clinically documented deficiency;

(ii) A United States Preventive Services Task Force recommendation with an A or B rating;

~~(iii) Fluoride ((prescribed)) for clients under ((the)) age ((of)) twenty-one; or~~

(iv) A clinically documented medical condition that causes vitamin, mineral, or enzyme deficiencies, and the deficiency cannot be treated through other dietary interventions.

(d) OTC drugs, vitamins, and minerals when determined by the ~~((department))~~ agency to be the least costly therapeutic alternative for a medically accepted indication. The ~~((department))~~ agency will maintain and publish a list of the covered OTC drugs available to clients which have been determined to be the least costly therapeutic alternatives for medically accepted indications. This subsection (1)(d) of this section does not apply to products prescribed for the treatment of cough or cold symptoms. See ((WAC 388-530-2000 (1)(i) and 388-530-2100)) (1)(i) under this subsection and WAC 182-530-2100 (1)(b)(v) for coverage of products prescribed for the treatment of cough and cold symptoms.

(e) Drug-related devices and drug-related supplies as an outpatient pharmacy benefit when:

(i) Prescribed by a provider with prescribing authority;

(ii) Essential for the administration of a covered drug;

(iii) Not excluded from coverage under WAC ~~((388-530-2100))~~ 182-530-2100; and

(iv) Determined by the ~~((department,))~~ agency that a product covered under chapter ~~((388-543))~~ 182-543 WAC related to durable medical equipment and supplies should be available at retail pharmacies.

(f) Preservatives, flavoring ~~((and/or))~~ or coloring agents, only when used as a suspending agent in a compound.

(g) ~~((Over-the-counter (OTC)))~~ OTC drugs, without a prescription, to promote smoking cessation only for clients ~~((who are))~~ age eighteen ~~((years of age))~~ or older and partici-

pating in ~~((a department-approved))~~ an agency-approved smoking cessation program. Limitation extensions as described in WAC ~~((388-501-0169))~~ 182-501-0169 are prohibited for the age and counseling requirements in this section.

(h) ~~((Prescription))~~ Drugs prescribed to promote smoking cessation only for clients ~~((who are eighteen years of age or older and))~~ participating in ((a department-approved)) an agency-approved smoking cessation program, or for clients who are pregnant with a verifiable estimated due date and receiving smoking cessation counseling from the prescribing provider. Limitation extensions as described in WAC ~~((388-501-0169))~~ 182-501-0169 are prohibited for the age and counseling requirements in this section.

(i) For the treatment of cough and cold symptoms:

(i) Only the following generic, single ingredient formulations:

- (A) Guaifenesin 100 mg/5 ml liquid or syrup;
- (B) Dextromethorphan 15 mg/5 ml liquid or syrup;
- (C) Pseudoephedrine 30 mg or 60 mg tablets;
- (D) Saline nasal spray 0.65%; and

(ii) Generic combination product dextromethorphan-guaifenesin 10-100 mg/5 ml syrup, including sugar-free formulations.

(2) The ~~((department))~~ agency does not reimburse for any drug, device, or drug-related supply not meeting the coverage requirements under this section.

**AMENDATORY SECTION** (Amending WSR 13-18-035, filed 8/28/13, effective 9/28/13)

**WAC 182-530-2100 Noncovered—Outpatient drugs and pharmaceutical supplies.** (1) The medicaid agency does not cover:

(a) A drug that is:

(i) Not approved by the Food and Drug Administration (FDA); or

(ii) Prescribed for a nonmedically accepted indication, including diagnosis, dose, or dosage schedule that is not evidenced-based.

(b) A drug prescribed:

- (i) For weight loss or gain;
- (ii) For infertility, frigidity, impotency;
- (iii) For sexual or erectile dysfunction;
- (iv) For cosmetic purposes or hair growth; or

(v) For treatment of cough or cold symptoms, except as listed in WAC 182-530-2000 (1)(i).

(c) Drugs used to treat sexual or erectile dysfunction, in accordance with section 1927 (d)(2)(K) of the Social Security Act, unless such drugs are used to treat a condition other than sexual or erectile dysfunction, and these uses have been approved by the Food and Drug Administration.

(d) Drugs listed in the federal register as "less-than-effective" ("DESI" drugs) or which are identical, similar, or related to such drugs.

(e) Outpatient drugs for which the manufacturer requires as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or manufacturer's designee.

(f) A product:

(i) With an obsolete National Drug Code (NDC) for more than two years;

(ii) With a terminated NDC;

(iii) Whose shelf life has expired; or

(iv) Which does not have an eleven-digit NDC.

(g) Over-the-counter (OTC) drugs, vitamins, and minerals, except as allowed under WAC 182-530-2000 (1)(i).

(h) Any drug regularly supplied by other public agencies as an integral part of program activity (e.g., immunization vaccines for children).

(i) Free pharmaceutical samples.

(j) ~~((Over-the-counter))~~ OTC or prescription drugs to promote smoking cessation unless the client is age eighteen ~~((years old))~~ or older and participating in ~~((a medicaid))~~ an agency-approved cessation program, or is pregnant with a verifiable estimated due date and receiving smoking cessation counseling from the prescribing provider.

(2) A noncovered drug can be requested through the exception to rule process as described in WAC 182-501-0160.

(3) If a noncovered drug is prescribed through the early and periodic screening, diagnosis, and treatment (EPSDT) process, an authorization request may be submitted indicating that the request is EPSDT related, and the request will be evaluated according to the process in WAC 182-501-0165. (See WAC 182-534-0100 for EPSDT rules.)(-)

**AMENDATORY SECTION** (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

**WAC 182-530-3200 The ~~((department's))~~ medicaid agency's authorization process.** (1) The ~~((department))~~ agency may establish automated ways for pharmacies to meet authorization requirements for specified drugs, devices, and drug-related supplies, or circumstances as listed in WAC ~~((388-530-3000))~~ 182-530-3000 (3) and (4) including, but ~~((are))~~ not limited to:

(a) Use of expedited authorization codes as published in the ~~((department's))~~ agency's prescription drug program billing instructions and numbered memoranda;

(b) Use of specified values in national council of prescription drug programs (NCPDP) claim fields;

(c) Use of diagnosis codes; and

(d) Evidence of previous therapy within the ~~((department's))~~ agency's claim history.

(2) When the automated requirements in subsection (1) of this section do not apply or cannot be satisfied, the pharmacy provider must request authorization from the ~~((department))~~ agency before dispensing. The pharmacy provider must:

(a) Ensure the request states the medical diagnosis and includes medical justification for the drug, device, drug-related supply, or circumstance as listed in WAC ~~((388-530-3000))~~ 182-530-3000 (3) and (4); and

(b) Keep documentation on file of the prescriber's medical justification that is communicated to the pharmacy by the prescriber at the time the prescription is filled. The records must be retained for the period specified in WAC ~~((388-502-0020))~~ 182-502-0020(5).



(3) When the ((department)) agency receives the request for authorization:

(a) The ((department)) agency acknowledges receipt:

(i) Within twenty-four hours if the request is received during normal state business hours; or

(ii) Within twenty-four hours of opening for business on the next business day if received outside of normal state business hours.

(b) The ((department)) agency reviews all evidence submitted and takes one of the following actions within fifteen business days:

(i) Approves the request;

(ii) Denies the request if the requested service is not medically necessary; or

(iii) Requests the prescriber submit additional justifying information.

(A) The prescriber must submit the additional information within ten days of the ((department's)) agency's request.

(B) The ((department)) agency approves or denies the request within five business days of the receipt of the additional information.

(C) If the prescriber fails to provide the additional information within ten days, the ((department)) agency will deny the requested service. The ((department)) agency sends a copy of the request to the client at the time of denial.

(4) The ((department's)) agency's authorization may be based on, but not limited to:

(a) Requirements under this chapter and WAC ((~~388-501-0165~~)) 182-501-0165;

(b) Client safety;

(c) Appropriateness of drug therapy;

(d) Quantity and duration of therapy;

(e) Client age, gender, pregnancy status, or other demographics; and

(f) The least costly therapeutically equivalent alternative.

(5) The ((department)) agency evaluates request for authorization of covered drugs, devices, and drug-related supplies that exceed limitations in this chapter on a case-by-case basis in conjunction with subsection (4) of this section and WAC ((~~388-501-0169~~)) 182-501-0169.

(6) If a provider needs authorization to dispense a covered drug outside of normal state business hours, the provider may dispense the drug without authorization only in an emergency. The ((department)) agency must receive justification from the provider within ((~~seventy-two hours~~)) seven days of the fill date ((~~excluding weekends and Washington state holidays~~)) to be ((~~paid~~)) reimbursed for the emergency fill.

(7) The ((department)) agency may remove authorization requirements under WAC ((~~388-530-3000~~)) 182-530-3000 for, but not limited to, the following:

(a) Prescriptions written by specific practitioners based on consistent high quality of care; or

(b) Prescriptions filled at specific pharmacies and billed to the ((department)) agency at the pharmacies' lower acquisition cost.

(8) Authorization requirements in WAC ((~~388-530-3000~~)) 182-530-3000 are not a denial of service.

(9) Rejection of a claim due to the authorization requirements listed in WAC ((~~388-530-3000~~)) 182-530-3000 is not a denial of service.

(10) When a claim requires authorization, the pharmacy provider must request authorization from the ((department)) agency. If the pharmacist fails to request authorization as required, the ((department)) agency does not consider this a denial of service.

(11) Denials that result as part of the authorization process will be issued by the ((department)) agency in writing.

(12) The ((department's)) agency's authorization:

(a) Is a decision of medical appropriateness; and

(b) Does not guarantee payment.

### WSR 16-07-090

#### PROPOSED RULES

#### HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed March 18, 2016, 9:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-03-080.

Title of Rule and Other Identifying Information: WAC 182-535A-0030 Orthodontic treatment and orthodontic-related services—Provider eligibility, 182-535A-0040 Orthodontic treatment and orthodontic-related services—Covered, noncovered, and limitations to coverage, and 182-535A-0060 Orthodontic treatment and orthodontic-related services—Payment.

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://www.hca.wa.gov/documents/directions\\_to\\_csp.pdf](http://www.hca.wa.gov/documents/directions_to_csp.pdf) or directions can be obtained by calling (360) 725-1000), on April 26, 2016, at 10:00 a.m.

Date of Intended Adoption: Not sooner than April 27, 2016.

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](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. on April 26, 2016.

Assistance for Persons with Disabilities: Contact Amber Lougheed by April 22, 2016, e-mail [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov), (360) 725-1349, or TTY (800) 848-5429 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revisions to these rules are housekeeping changes to correct cross-reference errors.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Katie Pounds, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1346; Implementation and Enforcement: Dianne Baum, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1590.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

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.

March 18, 2016  
Wendy Barcus  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 14-08-032, filed 3/25/14, effective 4/30/14)

**WAC 182-535A-0030 Orthodontic treatment and orthodontic-related services—Provider eligibility.** The following provider types may furnish and be paid for providing covered orthodontic treatment and orthodontic-related services to eligible medical assistance clients:

- (1) Orthodontists;
- (2) Pediatric dentists;
- (3) General dentists; and
- (4) Agency-recognized craniofacial teams or other orthodontic specialists approved by the agency.

**AMENDATORY SECTION** (Amending WSR 14-08-032, filed 3/25/14, effective 4/30/14)

**WAC 182-535A-0040 Orthodontic treatment and orthodontic-related services—Covered, noncovered, and limitations to coverage.** (1) Subject to the limitations in this section and other applicable WAC, the medicaid agency covers orthodontic treatment and orthodontic-related services for a client who has one of the medical conditions listed in (a) and (b) of this subsection. Treatment and follow-up care must be performed only by an orthodontist or agency-recognized craniofacial team and do not require prior authorization.

- (a) Cleft lip and palate, cleft palate, or cleft lip with alveolar process involvement.
- (b) The following craniofacial anomalies:
  - (i) Hemifacial microsomia;
  - (ii) Craniosynostosis syndromes;
  - (iii) Cleidocranial dental dysplasia;
  - (iv) Arthrogyposis; or
  - (v) Marfan syndrome.
- (2) Subject to prior authorization requirements and the limitations in this section and other applicable WAC, the agency covers orthodontic treatment and orthodontic-related services for severe malocclusions with a Washington Modified Handicapping Labiolingual Deviation (HLD) Index Score of twenty-five or higher.

(3) The agency may cover orthodontic treatment for dental malocclusions other than those listed in subsection (1) and

(2) of this section on a case-by-case basis and when prior authorized.

(4) The agency does not cover the following orthodontic treatment or orthodontic-related services:

- (a) Replacement of lost, or repair of broken, orthodontic appliances;
- (b) Orthodontic treatment for cosmetic purposes;
- (c) Orthodontic treatment that is not medically necessary (as defined in WAC 182-500-0070);
- (d) Out-of-state orthodontic treatment, except as stated in WAC 182-501-0180 (see also WAC 182-501-0175 for medical care provided in bordering cities); or
- (e) Orthodontic treatment and orthodontic-related services that do not meet the requirements of this section or other applicable WAC.

(5) The agency covers the following orthodontic treatment and orthodontic-related services with prior authorization, subject to the limitations listed (providers must bill for these services according to WAC 182-535A-0060):

- (a) Panoramic radiographs (X rays) when medically necessary.
- (b) Interceptive orthodontic treatment, when medically necessary.
- (c) Limited transitional orthodontic treatment, when medically necessary. The treatment must be completed within twelve months of the date of the original appliance placement (see subsection ~~((6))~~ (8)(a) of this section for information on limitation extensions). The agency's payment includes final records, photos, panoramic X rays, cephalometric films, and final trimmed study models.
- (d) Comprehensive full orthodontic treatment, when medically necessary. The treatment must be completed within thirty months of the date of the original appliance placement (see subsection ~~((6))~~ (8)(a) of this section for information on limitation extensions). The agency's payment includes final records, photos, panoramic X rays, cephalometric films, and final trimmed study models.

(e) Orthodontic appliance removal only when:

- (i) The client's appliance was placed by a different provider or dental clinic; and
  - (ii) The provider has not furnished any other orthodontic treatment or orthodontic-related services to the client.
- (f) Other medically necessary orthodontic treatment and orthodontic-related services as determined by the agency.

(6) The treatment plan must indicate that the course of treatment will be completed prior to the client's twenty-first birthday.

(7) The treatment must meet industry standards and correct the medical issue. If treatment is discontinued prior to completion, clear documentation must be kept in the client's file why treatment was discontinued or not completed.

(8) The agency evaluates a request for orthodontic treatment or orthodontic-related services:

- (a) That are in excess of the limitations or restrictions listed in this section, according to WAC 182-501-0169; and
- (b) That are listed as noncovered according to WAC 182-501-0160.

(9) The agency reviews requests for orthodontic treatment or orthodontic-related services for clients who are eligi-

ble for services under the EPSDT program according to the provisions of WAC 182-534-0100.

AMENDATORY SECTION (Amending WSR 14-08-032, filed 3/25/14, effective 4/30/14)

**WAC 182-535A-0060 Orthodontic treatment and orthodontic-related services—Payment.** (1) The medicaid agency pays providers for furnishing covered orthodontic treatment and orthodontic-related services described in WAC 182-535A-0040 according to this section and other applicable WAC.

(2) The agency considers that a provider who furnishes covered orthodontic treatment and orthodontic-related services to an eligible client has accepted the agency's fees as published in the agency's fee schedules.

(3) **Interceptive orthodontic treatment.** The agency pays for interceptive orthodontic treatment as follows:

(a) The first three months of treatment starts the date the initial appliance is placed and includes active treatment for the first three months.

(b) Treatment must be completed within twelve months of the date of appliance placement.

(4) **Limited transitional orthodontic treatment.** The agency pays for limited transitional orthodontic treatment as follows:

(a) The first three months of treatment starts the date the initial appliance is placed and includes active treatment for the first three months. The provider must bill the agency with the date of service that the initial appliance is placed.

(b) Continuing follow-up treatment must be billed after each three-month treatment interval during the treatment.

(c) Treatment must be completed within twelve months of the date of appliance placement. Treatment provided after one year from the date the appliance is placed requires a limitation extension. See WAC 182-535A-0040(~~((6))~~) (8).

(5) **Comprehensive full orthodontic treatment.** The agency pays for comprehensive full orthodontic treatment as follows:

(a) The first six months of treatment starts the date the initial appliance is placed and includes active treatment for the first six months. The provider must bill the agency with the date of service that the initial appliance is placed.

(b) Continuing follow-up treatment must be billed after each three-month treatment interval, with the first three-month interval beginning six months after the initial appliance placement.

(c) Treatment must be completed within thirty months of the date of appliance placement. Treatment provided after thirty months from the date the appliance is placed requires a limitation extension. See WAC 182-535A-0040(~~((6))~~) (8).

(6) Payment for orthodontic treatment and orthodontic-related services is based on the agency's published fee schedule.

(7) Orthodontic providers who are in agency-designated bordering cities must:

(a) Meet the licensure requirements of their state; and

(b) Meet the same criteria for payment as in-state providers, including the requirements to contract with the agency.

(8) If the client's eligibility for orthodontic treatment under WAC 182-535A-0020 ends before the conclusion of the orthodontic treatment, payment for any remaining treatment is the (~~(individual's)~~) client's responsibility. The agency does not pay for these services.

(9) The client is responsible for payment of any orthodontic service or treatment received during any period of ineligibility, even if the treatment was started when the client was eligible. The agency does not pay for these services.

(10) See WAC 182-502-0160 and 182-501-0200 for when a provider or a client is responsible to pay for a covered service.

## WSR 16-07-092

### PROPOSED RULES

### DEPARTMENT OF LICENSING

[Filed March 18, 2016, 9:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-03-070.

Title of Rule and Other Identifying Information: WAC 308-17-150 Private investigator agency, private investigator, and armed private investigator fees.

Hearing Location(s): Department of Licensing, Business and Professions Division, 405 Black Lake Boulevard, Room 2209, Olympia, WA 98507-9649, on April 28, 2016, at 1:00 p.m.

Date of Intended Adoption: May 2, 2016.

Submit Written Comments to: Mary Haglund, Assistant Administrator, Department of Licensing, Bail Bond Program, P.O. Box 9649, Olympia, WA 98507, e-mail security@dol.wa.gov, fax (360) 570-7778, by April 27, 2016.

Assistance for Persons with Disabilities: Contact Mary Haglund by April 27, 2016, TTY (360) 664-0116 or (360) 664-6611.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the rule is to inform new applicants for certain types of licenses under the private investigator laws, chapter 18.165 RCW, that they will have to pay background check fees charged by Washington state patrol and the Federal Bureau of Investigation in addition to the license application fees charged by the department of licensing.

Reasons Supporting Proposal: To provide more information to new applicants about the required fees to obtain a license under the private investigator statute, chapter 18.165 RCW.

Statutory Authority for Adoption: RCW 18.165.170(1).

Statute Being Implemented: Chapter 18.165 RCW.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Bruce Tanaka, 405 Black Lake Boulevard, Building #2, Olympia, WA 98507, (360) 664-6622; Implementation: Mary Haglund, 405 Black Lake Boulevard, Building #2, Olympia, WA 98507, (360) 664-6658; and Enforcement:

Karla Laughlin, 405 Black Lake Boulevard, Building #2, Olympia, WA 98507, (360) 664-6608.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not meet criteria which requires conducting an economic impact statement under RCW 19.85.020.

A cost-benefit analysis is not required under RCW 34.05.328. This rule does not meet the criteria which requires conducting a preliminary cost-benefit analysis under RCW 34.05.328.

March 18, 2016  
 Damon Monroe  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-13-036, filed 6/15/06, effective 7/16/06)

**WAC 308-17-150 Private investigative agency, private investigator, and armed private investigator fees.** Licenses issued to private investigator agencies and private investigators expire one year from the date of issuance and must be renewed each year. The fees are as follows:

Title of Fee	Fee
Private investigative agency/principal fee:	
Application/examination/includes first examination <u>plus current applicable background check fees</u>	\$600.00
Principal armed endorsement	100.00
Reexamination	25.00
License renewal	350.00
Late renewal penalty	See below*
Change of principal/includes first examination <u>plus current applicable background check fees</u>	150.00
Private investigator:	
Original license <u>plus current applicable background check fees</u>	200.00
Armed endorsement <u>plus current applicable background check fees</u>	100.00
Transfer fee	25.00
License renewal	175.00
Late renewal with penalty	200.00
Certified trainer endorsement examination/reexamination	25.00
Certified trainer endorsement renewal	15.00

\*Private investigative agency license renewals filed after the license expiration date will be charged the master license service late renewal fee in compliance with RCW 19.02.085.

**WSR 16-07-093**

**PROPOSED RULES**

**DEPARTMENT OF LICENSING**

[Filed March 18, 2016, 9:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-04-012.

Title of Rule and Other Identifying Information: WAC 308-19-101(2) Applying for a bail bond recovery agent license or endorsement to a bail bond agent license, 308-19-102 Submitting fingerprint cards for a criminal history background check, and 308-19-130 Bail bond recovery agent, bail bond agency, branch office and bail bond agent fees.

Hearing Location(s): Department of Licensing, Business and Professions Division, 405 Black Lake Boulevard, Room 2209, Olympia, WA 98507-9649, on April 28, 2016, at 2:00 p.m.

Date of Intended Adoption: May 2, 2016.

Submit Written Comments to: Mary Haglund, Assistant Administrator, Department of Licensing, Bail Bond Program, P.O. Box 9649, Olympia, WA 98507, e-mail security@dol.wa.gov, fax (360) 570-7778, by April 27, 2016.

Assistance for Persons with Disabilities: Contact Mary Haglund by April 27, 2016, TTY (360) 664-0116 or (360) 664-6611.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Washington state patrol and Federal Bureau of Investigation each charge different fees for the required bail bond recovery agent fingerprint background check. These fees are currently part of the bail bond recovery agent application fee. Frequently, Washington state patrol and Federal Bureau of Investigation change fees causing the bail bond agent program to collect inaccurate fees for the fingerprint background check. The proposed change removes the background check fees from the bail bond recovery agent application fee, and allows the applicant to use electronic fingerprint submissions and to use a contracted fingerprinting vendor instead of law enforcement agencies.

Reasons Supporting Proposal: Insures accurate fee collection for fingerprint-based background checks.

Statutory Authority for Adoption: RCW 18.235.030(1).

Statute Being Implemented: Chapter 18.185 RCW.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Bruce Tanaka, 405 Black Lake Boulevard, Building #2, Olympia, WA 98507, (360) 664-6622; Implementation: Mary Haglund, 405 Black Lake Boulevard, Building #2, Olympia, WA 98507, (360) 664-6658; and Enforcement: Karla Laughlin, 405 Black Lake Boulevard, Building #2, Olympia, WA 98507, (360) 664-6608.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not meet the criteria which requires conducting an economic impact statement under RCW 19.85.020.

A cost-benefit analysis is not required under RCW 34.05.328. This rule does not meet the criteria which requires

conducting a preliminary cost-benefit analysis under RCW 34.05.328.

March 18, 2016  
Damon Monroe  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-20-036, filed 9/23/08, effective 11/1/08)

**WAC 308-19-101 Applying for a bail bond recovery agent license or endorsement to a bail bond agent license.** After the applicant meets the requirements of RCW 18.185.020 (1), (2) and (3), and is in good standing with the department he or she shall:

- (1) Complete an application for a license or an endorsement on a form provided by the department;
- (2) Submit ~~((a completed fingerprint card))~~ to a criminal history background check;
- (3) Attest on the application form to having earned a high school diploma or GED or submit proof of three years experience in the bail industry;
- (4) Submit a copy of a current and valid concealed pistol license~~((-))~~;
- (5) If applicant is retired or separated from a local or state police department, or a branch of the armed forces trained to carry out the duties of a peace officer within the last six years, submit proof to the department describing length of service, duties and date of retirement or separation or; submit a certificate or transcript showing the applicant has completed thirty-two hours of field operations classes as stated in WAC 308-19-305;
- (6) Pay a fee or fees as listed in WAC 308-19-130;
- (7) Pass a written exam administered by the department.

AMENDATORY SECTION (Amending WSR 08-20-036, filed 9/23/08, effective 11/1/08)

**WAC 308-19-102 Submitting fingerprints ~~((cards))~~ for a criminal history background check.** Every applicant for a bail bond recovery agent license or endorsement shall have a fingerprint criminal history background check conducted.

~~((Applicants shall be fingerprinted by a law enforcement agency on a fingerprint card provided by the department and pay any fees required by the law enforcement agency providing the fingerprinting service.))~~

AMENDATORY SECTION (Amending WSR 08-20-036, filed 9/23/08, effective 11/1/08)

**WAC 308-19-130 Bail bond recovery agent, bail bond agency, branch office and bail bond agent fees.** The following fees for a one-year period shall be charged by business and professions division of the department of licensing:

Title of Fee	Fee
Bail bond agency/branch office:	
Application	\$1,200.00
License renewal	1,150.00

Title of Fee	Fee
Late renewal with penalty	1,200.00
Bail bond agent:	
Original license	500.00
License renewal	575.00
Late renewal with penalty	600.00
Change of qualified agent	250.00
Original endorsement to the bail bond agent license	100.00
Endorsement renewal	100.00
Endorsement renewal with penalty	150.00
Bail bond recovery agent license:	
Original license <u>plus current applicable background check fees</u>	450.00 <del>((includes background check fees))</del>
License renewal	475.00
Late renewal with penalty	500.00
Examinations:	
Reexamination fee	25.00

**WSR 16-07-098**  
**PROPOSED RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**  
[Filed March 18, 2016, 11:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-02-029.

Title of Rule and Other Identifying Information: Amends WAC 181-77-071 Draft error correction, adds residency to the list of certifications eligible for career and technical education (CTE) administrator certificate.

Hearing Location(s): Hampton Inn, 486 Bradley Boulevard, Richland, WA, on May 19, 2016, at 8:30.

Date of Intended Adoption: May 19, 2016.

Submit Written Comments to: David Brenna, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by May 12, 2016.

Assistance for Persons with Disabilities: Contact David Brenna by May 12, 2016, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Residency certificate holders in CTE are eligible to apply for administrative certificates in CTE. Drafting error when moving from initial/continuing to residency/professional certificate types.

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

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

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. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

March 18, 2016  
David Brenna  
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 14-11-053, filed 5/16/14, effective 6/16/14)

**WAC 181-77-071 Certification of career and technical education administrative personnel.** (1) Beginning September 1, 2014, a candidate is eligible for the initial career and technical education administrator certification if meeting one of the following:

(a) Currently holds a valid residency, continuing or professional administrator certificate; or

(b) Completion of three years of experience as a certified career and technical education supervisor, career and technical education instructor, career and technical education counselor, or occupational information specialist.

(2) Initial certificate.

(a) The individual may apply for an initial career and technical administrator certificate upon:

(i) Completion of the state authorized career and technical education administrator internship program; or

(ii) Completion of a state approved college program for career and technical education administration.

(b) The initial career and technical education administrator certificate is valid for four years and may be renewed two times.

(3) Initial certificate renewal.

(a) In order to renew the initial career and technical education administrator certificate completion of at least six quarter hours of college credit or sixty continuing education credit hours since the initial certificate was issued or renewed is required.

(b) The initial renewal certificate is valid for three years and may be renewed one time.

(4) Continuing certificate. The continuing career and technical education administrator certificate is valid for five years.

(a) In order to receive the continuing career and technical education administrator certificate, in addition to the requirements for the initial certificate, at least fifteen quarter hours of college credit course work or one hundred fifty continuing education credit hours completed subsequent to the conferral of the initial certificate is required.

(b) Individuals shall provide as a condition for the issuance of a continuing certificate documentation of two years

of career and technical administration with an authorized employer (i.e., school district(s) or skill center(s)).

(c) Individuals who hold the initial career and technical administrator certificate, but have not been employed in the role of career and technical education administrator, or cannot document two years of career and technical education administration, shall be eligible for a continuing certificate by the following:

(i) In addition to the requirements for the initial certificate at least fifteen quarter hours of college credit course work or one hundred fifty continuing education credit hours completed subsequent to the conferral of the initial certificate; and

(ii) The completion of requirements listed in subsection (2)(a)(i) or (ii) of this section since the issuance of the second initial certificate renewal and prior to the application for the continuing career and technical education administrator certificate.

(5) Continuing certificate renewal. The continuing career and technical education administrator certificate shall be renewed with the completion of fifteen quarter credits of college credit course work or the equivalent of one hundred fifty continuing education credit hours in career and technical education, or supervisory or managerial subjects, prior to the lapse date of the first issue of the continuing certificate and during each five-year period between subsequent lapse dates.

(6) Any person with a valid career and technical education administrator certificate issued prior to September 1, 2014, under previous standards of the professional educator standards board shall meet requirements of, and may apply for, the continuing career and technical education administrator certificate by the expiration date of the original certificate held. Upon issuance of the continuing career and technical education administrator certificate such person will be subject to continuing certificate renewal requirements of subsection (5) of this section.

## WSR 16-07-099

### PROPOSED RULES

### CENTER FOR CHILDHOOD DEAFNESS AND HEARING LOSS

[Filed March 18, 2016, 11:32 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.-330(1).

Title of Rule and Other Identifying Information: Chapter 148-120 WAC, Student conduct code.

Hearing Location(s): Washington State Center for Childhood Deafness and Hearing Loss (CDHL), 611 Grand Boulevard, Vancouver, WA 98661, on April 29, 2016, at 10:00.

Date of Intended Adoption: April 29, 2016.

Submit Written Comments to: Rick Hauan, 611 Grand Boulevard, Vancouver, WA 98661, e-mail rick.hauan@cdhl.wa.gov, fax (360) 696-6291, by April 22, 2016.

Assistance for Persons with Disabilities: Contact Judy Smith by April 22, 2016, video phone (360) 334-5795 or (360) 418-0401.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule changes are needed to update, clarify and streamline student conduct code standards and procedures, as well as to incorporate federal and state requirements regarding harassment, intimidation, bullying, discrimination and sexual harassment, as well as Title IX/OCR guidance. Prohibited student conduct will be more clearly defined and expanded to cover additional undesirable behaviors.

Reasons Supporting Proposal: The revised codes will enhance the center and school's compliance with Title IX guidance from the Office for Civil Rights and state laws prohibiting bullying of students based on sexual orientation and gender expression and identity as well as prohibiting harassment, intimidation and bullying of all students.

Statutory Authority for Adoption: RCW 72.40.0191.

Statute Being Implemented: RCW 72.40.0191, 28A.300.285.

Rule is necessary because of federal law, Title IX, 20 U.S.C. § 1681 et seq.

Name of Proponent: CDHL, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Rick Hauan, 611 Grand Boulevard, Vancouver, WA 98661, (360) 418-0401.

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

A cost-benefit analysis is not required under RCW 34.05.328. CDHL is not subject to RCW 34.05.328 (5)(a)(i).

March 18, 2016

Rick Hauan  
Executive Director

#### NEW SECTION

**WAC 148-120-001 Purpose and application.** The purpose of this chapter is to establish standards of conduct for students and prescribe the substantive and procedural due process rights of students at the Washington school for the deaf. The procedures and standards set forth in this chapter shall govern the imposition of discipline. "Discipline" means all forms of corrective action other than emergency removal from a class, subject, or activity, suspension, or expulsion and shall include the exclusion of a student from a class by a teacher or administrator for a period of time not exceeding the balance of the immediate class period: Provided that the student is in the custody of a school employee for the balance of such period. Discipline shall also mean the exclusion of a student from any other type of activity conducted by or on behalf of the school. Discipline is considered part of the school's educational process. In every case of misconduct, the nature and circumstances of the violation will be considered and appropriate discipline will be administered on a less restrictive alternative basis including, but not limited to, time out, detention, behavior contracts, restriction of privileges, reprimand, restitution, suspension or expulsion.

AMENDATORY SECTION (Amending WSR 94-13-058, filed 6/8/94, effective 7/9/94)

**WAC 148-120-010 Student responsibilities and duties.** Washington school for the deaf is dedicated to offering its students an opportunity for the best education for deaf and hard-of-hearing (~~(impaired)~~) students in the state of Washington. Concomitant to the rights and privileges guaranteed by federal and state law to students are duties and responsibilities (~~(which guarantee the rights of all students, including)~~) of each student to pursue his/her course of studies, show respect for the rights of others, ((compliance)) comply with written rules adopted herein and set forth in student handbooks, and ((submission)) submit to reasonable ((disciplinary)) corrective action for violation(s) for such rules. This chapter is intended to assure that ~~((disciplinary))~~ corrective action is imposed for just cause and in a fair and reasonable manner.

#### NEW SECTION

**WAC 148-120-012 Jurisdiction.** The student conduct code shall apply to student conduct that occurs on school premises, during transportation to and from school, to conduct that occurs at or in connection with school-sponsored programs or activities, or to off-campus conduct (or in non-school electronic environments) that in the judgment of the school threatens safety or security or otherwise adversely impacts the school community.

AMENDATORY SECTION (Amending WSR 94-13-058, filed 6/8/94, effective 7/9/94)

**WAC 148-120-015 Student rights.** (1) Each student (~~(is guaranteed)~~) shall possess the following substantive rights(~~(, within the limitations of statutory law and school policy which are deemed necessary to achieve the school's educational goals:~~):

(a) ~~Students possess the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and sexual harassment.~~

(b) ~~Students possess the rights, guaranteed under the Constitution, to freedom of expression, free inquiry, and peaceful assembly upon and within school facilities that are generally open and available to the public):~~

(a) No student shall be unlawfully denied an equal educational opportunity or be unlawfully discriminated against because of sex, race, creed, religion, color, national origin, age, veteran or military status, sexual orientation, gender expression or identity, disability, or the use of a trained dog guide or service animal.

(b) Students possess the constitutional right to freedom of speech and press, and the constitutional right to peaceably assemble and to petition the government and its representatives for a redress of grievances.

(c) Students possess the rights, guaranteed under the Constitution, to the free exercise of religion and to have their school free from sectarian control or influence, subject to reasonable limitations upon the time, place, and manner of exercising such right.

(d) Students possess the constitutional right to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures, subject to limitations set forth in RCW 28A.600.210 through 28A.600.240 as now or hereafter amended.

(e) Students have the right to be free from unlawful interference in their pursuit of an education while enrolled at the Washington school for the deaf.

(f) Students shall not be deprived of the right to an equal educational opportunity in whole or in part by the Washington school for the deaf without due process including:

(i) Notice to the accused student of the nature of the charges and the proposed disciplinary action; and

(ii) The opportunity to request a hearing as set forth in this chapter.

(2) The foregoing enumeration of rights shall not be construed to deny or disparage other rights guaranteed in the Constitution and the laws of the state of Washington.

(3) The school shall publish and make available to all students and parents, on an annual basis, written rules which state with reasonable clarity the types of misconduct for which disciplinary action may be imposed.

#### NEW SECTION

**WAC 148-120-020 References to OSPI's rules.** Where OSPI's rules are incorporated by reference: "School district" means "Washington school for the deaf"; "school district superintendent" means "superintendent of the Washington school for the deaf." These substitutions should be made as appropriate. They should not be made where the "school district" referred to is the student's district of residence.

#### NEW SECTION

**WAC 148-120-110 Prohibited student conduct.** The school may impose disciplinary sanctions against a student who commits, or aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct set forth in this section. As applicable, the term "conduct" includes acts performed by electronic means.

(1) **Personal offenses.** The term "personal offense" is an offense against the safety or security of any person and includes physical assault, reckless endangerment, physical or verbal abuse, threats, intimidation, harassment, bullying, stalking, invasion of privacy, or other similar conduct that harms any person, or that is reasonably perceived as threatening the health or safety of any person, or that has the purpose or effect of unlawfully interfering with any person's rights. The term includes personal offenses committed by electronic means.

(a) Bullying is physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and victim.

(b) Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such an intent.

(2) **Property violations.** The term "property violation" includes the theft, misappropriation, unauthorized use or possession, vandalism, or other nonaccidental damaging or destruction of school property or the property of another person; including possession of such property or money after it has been stolen. Property for purposes of this subsection includes computer passwords, access codes, identification cards, other confidential personal information, and intellectual property.

(3) **Sexual misconduct.** The term "sexual misconduct" includes, but is not limited to, sexual harassment and sexual violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the school's educational programs/activities or that creates an intimidating, hostile, or offensive educational environment.

Sexual harassment may include conduct or communication that involves adult to student, student to adult, student to student, adult to adult, male to female, female to male, male to male, and female to female.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex, including stalking (or cyberstalking), voyeurism, indecent exposure, or the nonconsensual recording of sexual activity or distribution of such recording.

(c) **Sexual violence.** The term "sexual violence" incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated without clear, knowing, and voluntary consent, such as committing a sexual act against a person's will, exceeding the scope of consent, or where the person is incapable of giving consent. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, sexual coercion, sexual exploitation, or gender- or sex-based stalking. A person may be incapable of giving consent because she or he is underage, unable to understand what is happening, or is disoriented, helpless, asleep or unconscious for any reason, including due to drug or alcohol consumption, is disabled, or cannot consent because of threat or intimidation.

(4) **Disruptive or obstructive conduct.** The term "disruptive" or "obstructive conduct" means conduct, not protected by law, that interferes with, impedes, or otherwise unreasonably hinders the normal teaching, learning, administrative, or other functions, procedures, services, programs, or activities of the school. The term includes disorderly conduct, breach of the peace, lewd or obscene conduct, obstruction of pedestrian or vehicular traffic, or interfering with the orderly conduct of school investigations or disciplinary proceedings, including interfering with or retaliating against any complainant, witness, or other participant.

(5) **Failure to comply.** Refusal or failure to comply with instructions or directions of school officials, refusing to comply with any term or condition of a disciplinary sanction.



(6) **Safety violations.** Any nonaccidental conduct that interferes with or otherwise compromises any school policy, equipment, or procedure relating to the safety and security of the center and school community, including tampering with or disabling safety equipment and triggering false alarms or other emergency response systems.

(7) **False or deceptive conduct.** The term "false" or "deceptive conduct" means dishonest conduct (other than academic dishonesty) that includes forgery, altering or falsifying of school records, furnishing false or misleading information, or falsely accusing any person of misconduct.

(8) **Academic dishonesty.** All forms of cheating, plagiarism and fabrication.

(a) **Cheating.** Cheating includes any attempt to give or obtain unauthorized assistance relating to the completion of an academic assignment. This includes assisting another to commit an act of academic dishonesty or allowing someone to do these things for one's benefit.

(b) **Plagiarism.** Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings or work of another person in completing an academic assignment. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) **Fabrication.** Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to a teacher concerning the completion of an assignment.

(9) **Unauthorized access.** The term "unauthorized access" means gaining entry without permission to any restricted area or property of the school or the property of another person, including any computer system, e-mail account, or electronic or paper files. Unauthorized access includes computer hacking and the unauthorized possession or sharing of any restricted means of gaining access, including keys, keycards, passwords, or access codes.

(10) **Alcohol, drug and tobacco violations.**

(a) **Alcohol.** Use, possession, delivery, or being visibly under the influence of any alcoholic beverages.

(b) **Marijuana.** Use, possession, delivery, or being visibly under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form.

(c) **Drug.** Use, possession, distribution, delivery, or being under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner. The abuse, misuse, or unlawful sale or distribution of prescription or over-the-counter medications may also constitute a drug violation.

(d) **Tobacco.** Smoking or use of tobacco, tobacco products, electronic smoking devices, or other smoking devices.

(11) **Retaliation.** Harming, threatening, intimidating, coercing or taking adverse action of any kind against a person because such person reported an alleged violation of this code or other school policies, provided information about an alleged violation, or participated as a witness or in any other capacity in an investigation or disciplinary proceeding.

(12) **Weapons violations.** A "weapons violation" includes possessing, carrying, displaying, exhibiting, or storing any firearm or dangerous weapon. Dangerous weapons include, but are not limited to, firearms, dangerous chemicals, explosives, slungshots, sand clubs, metal knuckles, daggers, dirks, spring blade knives, nunchaku sticks, throwing stars, air guns, stun guns, and devices used or intended to be used as a weapon to injure a person by an electric shock, charge, or impulse.

(13) **Harassment, intimidation, or bullying.** Harassment, intimidation, or bullying means any intentional electronic, written, verbal or physical act including, but not limited to, one shown to be motivated by race, color, religion, ancestry, national origin, gender, sexual orientation including gender identity or expression, mental or physical disability, socio-economic status, physical appearance, or other distinguishing characteristic, when the act:

(a) Physically harms a student or damages the student's property;

(b) Has the effect of substantially interfering with a student's education;

(c) Is so severe, persistent, or pervasive that it creates an intimidating or threatening educational environment; or

(d) Has the effect of substantially disrupting the orderly operation of the school.

Nothing in this section requires the affected student to actually possess a characteristic that is a basis for the harassment, intimidation, or bullying.

"Intentional act" refers to the individual's choice to engage in the act rather than the ultimate impact of the action(s).

Harassment, intimidation, and bullying are often carried out through acts of misconduct, which are addressed and prohibited under other rules in this chapter.

(14) **Gang activity.** Claiming membership in, association with, affiliation with, or participation in a gang, in gang-related activities or similar destructive or illegal group behavior at school, during school-related functions, or on any school property. "Gang" has the meaning given the term under RCW 28A.600.455.

(15) **Theft or misuse of electronic resources.** Theft or misuse of computer time or other electronic information resources of the school. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person;

(g) Use of such time or resources to interfere with normal operation of the school's computing system or other electronic information resources;

(h) Use of such time or resources in violation of applicable copyright or other law;

(i) Failure to comply with the student computing resources policy.

(16) **Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites to harass, abuse, bully, or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's e-mail communications directly or through spyware, sending threatening e-mails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's e-mail identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(17) **Violation of other laws or policies.** Violation of any federal, state, local law, rule, or regulation or other school rules or policies which are published annually in the student/parent handbook.

AMENDATORY SECTION (Amending WSR 11-05-033, filed 2/8/11, effective 3/11/11)

**WAC 148-120-205 Limitations.** (1) No form of disciplinary action shall be enforced in such a manner as to prevent a student from accomplishing specific academic grade, subject, or graduation requirement: Provided, That a student's academic grade or credit in a particular subject or course may be adversely affected as a result of excessive tardiness or absences.

(2) Corporal punishment as defined by the superintendent of public instruction in WAC 392-400-235(~~((4))~~) (2) as now or hereafter amended, is prohibited.

AMENDATORY SECTION (Amending WSR 94-13-058, filed 6/8/94, effective 7/9/94)

**WAC 148-120-210 Emergency removal from class or activity.** (1) Notwithstanding any other provision of this chapter, a student may be removed immediately from a class, subject, or activity by a certificated teacher or an administrator and sent to the principal or his/her designee: Provided, That the teacher or administrator has good and sufficient reason to believe that the student's presence poses an immediate and continuing danger to the student, other students, or school personnel, or an immediate and continuing threat of substantial disruption of the class, subject, activity, or educational process of the school. The removal from classes, subjects, or activities shall continue only until:

(a) The danger or threat ceases; or

(b) The principal or his/her designee acts to impose disciplinary action pursuant to this chapter.

(2) The principal or his/her designee shall meet with the student as soon as reasonably possible following the student's removal and initiate or take appropriate (~~((disciplinary))~~) cor-

rective action. In no case shall the student's opportunity for such meeting be delayed beyond the commencement of the next school day. Prior to or at the time any such student is returned to the class(es), subject(s), or activity(ies), the principal or his/her designee shall notify the teacher or administrator who removed the student therefrom of the action which has been taken.

AMENDATORY SECTION (Amending WSR 11-05-033, filed 2/8/11, effective 3/11/11)

**WAC 148-120-250 Discipline procedures.** Disciplinary procedures for students at (~~((WSD))~~) the school who are eligible for special education shall follow the requirements in WAC 392-172A-05140 through 392-172A-05175, which are adopted by reference. (~~((Students at WSD are))~~) In addition to the rules and procedures in this chapter, students may also be subject to rules and procedures governing discipline for all students in public schools in chapter 392-400 WAC. (~~((WSD))~~) The school shall determine on a case-by-case basis whether and to what extent the rules and procedures in chapter 392-400 WAC may apply.

AMENDATORY SECTION (Amending WSR 01-16-100, filed 7/27/01, effective 8/27/01)

**WAC 148-120-313 Referral to and action by law enforcement and judicial authorities.** (1) Nothing in Part B of the Individuals with Disabilities Education Act, or this chapter prohibits the Washington school for the deaf from reporting a crime committed by a student to appropriate authorities, or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student.

(2) When reporting a crime committed by a student, the school shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom it reports the crime(-

~~(3) When reporting a crime under this section, the school may transmit copies of the student's special education and disciplinary records only), to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.~~

AMENDATORY SECTION (Amending WSR 04-02-002, filed 12/24/03, effective 1/24/04)

**WAC 148-120-400 Emergency expulsion—Limitations.** (~~((Notwithstanding any other provision of this chapter, a student may be expelled immediately by the superintendent or a designee of the superintendent in emergency situations: Provided, That the superintendent or designee has good and sufficient reason to believe that the student's presence poses an immediate and continuing danger to the student, other students, or school personnel or an immediate and continuing threat of substantial disruption of the educational process. An emergency expulsion shall continue until rescinded by the superintendent or his or her designee, or until modified or reversed pursuant to the hearing provisions set forth in WAC~~

148-120-410 or the appeal provisions set forth in WAC 148-120-415-)) WAC 392-400-295 is incorporated by reference.

AMENDATORY SECTION (Amending WSR 04-02-002, filed 12/24/03, effective 1/24/04)

**WAC 148-120-405 Emergency expulsion—Notice of hearing—Waiver of hearing right.** ((1) The student and his or her parent(s) or guardian(s) shall be notified of the emergency expulsion of the student and of their opportunity for a hearing either (a) by hand delivering written notice to the student's parent(s) or guardian(s) within twenty-four hours of the expulsion and documenting delivery by obtaining his or her signature acknowledging receipt or the written certification of the person making the delivery, or (b) by certified letter(s) deposited in the United States mail, within twenty-four hours of the expulsion: Provided, That if the emergency expulsion is based upon a failure to comply with the state immunization law (see chapter 180-38 WAC), the notice must be received by the student's parent(s) or guardian(s) prior to the emergency expulsion of the student regardless of the method of delivery. In addition, if the notice is by certified letter, reasonable attempts shall be made to notify the student and his or her parent(s) or guardian(s) by telephone or in person as soon as reasonably possible. Such written and oral notice shall:

(a) Be provided in the predominant language of a student and/or a parent(s) or guardian(s) who predominantly speak a language other than English, to the extent feasible;

(b) Specify the alleged reason(s) for the emergency expulsion;

(c) Set forth the corrective action or punishment taken and proposed;

(d) Set forth the right of the student and/or his or her parent(s) or guardian(s) to a hearing for the purpose of contesting the allegation(s) as soon as reasonably possible, and

(e) Set forth the facts that:

(i) A written (or "oral" if provided for by school policy) request for a hearing must be received by the school employee designated, or by his or her office, on or before the expiration of the tenth school business day after receipt of the notice of opportunity for a hearing, and

(ii) If such a request is not received within the prescribed period of time, then the right to a hearing may be deemed to have been waived and the emergency expulsion may be continued as deemed necessary by the school without any further opportunity for the student or his or her parent(s) or guardian(s) to contest the matter. A schedule of "school business days" potentially applicable to the exercise of such hearing right should be included with the notice.

(2) The student and/or his or her parent(s) or guardian(s) shall reply to the notice of opportunity for a hearing and request a hearing within ten school business days after the date of receipt of the notice. A request for a hearing shall be provided to the school employee specified in the notice of opportunity for a hearing, or to his or her office. A request for a hearing shall be accepted if in writing and may be accepted orally if expressly provided for and allowed by rule of the school.

(3) If a request for a hearing is not received within the required ten school business day period, the school may deem the student and his or her parent(s) or guardian(s) to have waived the right to a hearing and the emergency expulsion may be continued as deemed necessary by the school district.)) WAC 392-400-300 is incorporated by reference.

AMENDATORY SECTION (Amending WSR 04-02-002, filed 12/24/03, effective 1/24/04)

**WAC 148-120-410 Emergency expulsion—Prehearing and hearing process.** ((1) If a request for a hearing within the required ten school business days is received pursuant to WAC 148-120-405, the school shall immediately schedule and give notice of a hearing to commence as soon as reasonably possible and in no case later than the third school business day after receipt of the request for hearing.

(2) The student and his or her parent(s) or guardian(s) shall have the right to:

(a) Inspect in advance of the hearing any documentary and other physical evidence which the school district intends to introduce at the hearing;

(b) Be represented by legal counsel;

(c) Question and confront witnesses, unless a school witness does not appear and the nonappearance of the witness is excused by the person(s) hearing the case based upon evidence of good reason for doing so submitted by the school. The evidence submitted by the school must at a minimum establish either:

(i) That the school made a reasonable effort to produce the witness and is unable to do so; or,

(ii) That it is not advisable for the student to appear due to an expectation and fear on the part of the responsible school official(s) or the student of retaliation against the student if he or she appears as a witness;

(d) Present his or her explanation of the alleged misconduct, and

(e) Make such relevant showings by way of witnesses and the introduction of documentary and other physical evidence as he or she desires.

(3) The designee(s) of the school assigned to present the school's case and/or the assistant attorney general shall have the right to inspect in advance of the hearing any documentary and other physical evidence that the student and his or her parent(s) or guardian(s) intend to introduce at the hearing.

(4) The person(s) hearing the case shall not be a witness and the guilt or innocence of the student shall be determined solely on the basis of the evidence presented at the hearing.

(5) Either a tape-recorded or verbatim record of the hearing shall be made.

(6) Within one school business day after the date upon which the hearing concludes, a decision as to whether or not the expulsion shall be continued shall be rendered, and the student's legal counsel or, if none, the student and his or her parent(s) or guardian(s) shall be notified thereof by depositing a certified letter in the United States mail. The decision shall set forth the findings of fact, the conclusions (including a conclusion as to whether or not the emergency situation giving rise to the emergency expulsion continues), and whether or not the emergency expulsion shall be continued or

~~a lesser form of corrective action or punishment is to be imposed.~~

~~(7) An emergency expulsion may be continued following the hearing on the basis that the emergency situation continues and/or as corrective action or punishment for the action(s) giving rise to the emergency expulsion in the first instance.) WAC 392-400-305 is incorporated by reference.~~

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 148-120-100 Conduct violations.
- WAC 148-120-120 Misdemeanor and/or felony.
- WAC 148-120-200 Policy.
- WAC 148-120-314 Aversive interventions.

**WSR 16-07-100**  
**PROPOSED RULES**  
**CENTER FOR CHILDHOOD**  
**DEAFNESS AND HEARING LOSS**

[Filed March 18, 2016, 11:33 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Chapter 148-100 WAC, Organization.

Hearing Location(s): Washington State Center for Childhood Deafness and Hearing Loss (CDHL), 611 Grand Boulevard, Vancouver, WA 98661, on April 29, 2016, at 10:00.

Date of Intended Adoption: April 29, 2016.

Submit Written Comments to: Rick Hauan, 611 Grand Boulevard, Vancouver, WA 98661, e-mail rick.hauan@cdhl.wa.gov, fax (360) 696-6291, by April 22, 2016.

Assistance for Persons with Disabilities: Contact Judy Smith by April 22, 2016, video phone (360) 334-5795 or (360) 418-0401.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 381, Laws of 2009 (E2SHB 1879) established the CDHL, established a board of trustees as the governing body for the CDHL and required the board to adopt rules for its governance. The proposed rules implement the agency name change and update the title of the CDHL director to executive director as approved by the board.

Statutory Authority for Adoption: RCW 72.42.041.

Statute Being Implemented: RCW 72.40.015.

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

Name of Proponent: CDHL, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Rick Hauan, 611 Grand Boulevard, Vancouver, WA 98661, (360) 418-0401.

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

A cost-benefit analysis is not required under RCW 34.05.328. CDHL is not subject to RCW 34.05.328 (5)(a)(i).

March 18, 2016  
Rick Hauan  
Executive Director

AMENDATORY SECTION (Amending WSR 02-22-059, filed 11/1/02, effective 12/2/02)

**WAC 148-100-001 Description of organization.** (1) The Washington state ~~((school for the deaf))~~ center for childhood deafness and hearing loss is a state agency established and organized under the authority of chapter 72.40 RCW~~((The school provides special education and related services to deaf and hearing impaired students pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. secs. 1400 et seq.; and as administered and generally supervised by the superintendent of public instruction under chapter 28A.155 RCW.~~

~~(2) The school operates under the direction and control of the superintendent and the board of trustees.)~~ to provide statewide leadership and support for the coordination of regionally delivered educational services in the full range of communication modalities, for children who are deaf, deaf-blind, or hard of hearing. The center manages and directs the supervision of the school for the deaf and collaborates with appropriate public and private partners for the training and professional development of educators serving children who are deaf, deaf-blind, or hard of hearing.

~~(2) The ((school)) center is governed by a ((nine member))~~ ten-member board of trustees, appointed by the governor, which is responsible for performing needed oversight services to the governor and legislature in the development of programs for the deaf, hard of hearing ((impaired)) or deaf-blind and in the operation of the center, including the school for the deaf. The ~~((superintendent is the principal administrative officer of the school and))~~ executive director of the Washington state center for childhood deafness and hearing loss shall be responsible for supervision and management of the center, including the school for the deaf and its programs as well as other duties which are prescribed by ~~((section 3, chapter 209, Laws of 2002))~~ RCW 72.40.0191 and 72.40.024.

(3) The administrative office of the ~~((school))~~ center is located at 611 Grand Blvd., Vancouver, Washington 98661. Any person may obtain additional information and make submissions and requests at the administrative office. Additional information concerning organization and educational programs may also be obtained from the school's webpage at <http://www.wsd.wa.gov>.

**((BYLAWS))**

AMENDATORY SECTION (Amending WSR 05-10-008, filed 4/25/05, effective 5/26/05)

**WAC 148-100-010 ((Time and place of board))** Meetings of the board of trustees. The board of trustees ~~((usually holds a regular meeting each month))~~ holds regular meetings in accordance with the Open Public Meetings Act.

chapter 42.30 RCW, and RCW 72.42.070 pursuant to a schedule established yearly by the board and such special meetings as may be requested by the chair of the board or by a majority of the members of the board and announced in accordance with RCW 42.30.080. The dates, times and locations of these meetings may be found in the *Washington State Register* or by contacting the office of the executive director, Washington state center for childhood deafness and hearing loss, 611 Grand Boulevard, Vancouver, Washington. A regular meeting may be canceled by action of the board or the board chair.

~~((Meetings of the board shall be at the Washington School for the Deaf, 611 Grand Blvd., Vancouver, Washington 98661, or at such other location as the board may determine.))~~

All regular and special meetings are open to the general public; however, the chair may call an executive session when permitted by law at which members of the general public shall not be present unless invited.

No official business may be conducted by the board of trustees except during a regular or special meeting. No individual member of the board may act on behalf of the board unless specifically instructed by action of the board.

AMENDATORY SECTION (Amending WSR 02-22-059, filed 11/1/02, effective 12/2/02)

**WAC 148-100-020 Meetings—Board agenda—Communication.** (1) Anyone, other than a board member or a representative of the ~~((superintendent's))~~ executive director's office wishing an item placed on the agenda of a board meeting, must have a written request to the board secretary, ~~((superintendent's))~~ executive director's office, no later than twelve o'clock noon twelve business days before the next scheduled meeting of the board. The secretary will relate the request to the chair of the board as soon as feasible. The chair will determine whether the item is to be placed on the agenda. The chair or designee will notify the individual initiating the request as to whether or not the item will be placed on the agenda.

(2) All materials to be considered by the board must be submitted in sufficient quantities to provide each member of the board and the secretary with appropriate copies. To allow the board to have the benefit of background information and research, the ~~((superintendent))~~ executive director shall be given an opportunity, whenever possible, to review and evaluate all materials prepared for consideration by the board prior to submission to the board. The ~~((superintendent))~~ executive director shall also have the opportunity to make recommendations prior to a decision by the board on the matter.

(3) Proposed new policies and/or changes in policy will be presented first to the board of trustees as a report. Board action will usually be taken at a subsequent meeting. If expedient action on the matter would clearly be beneficial to the school, the board may consider taking action at the time the policy is first presented to the board.

(4)(a) Each regular meeting of the board shall provide members of the public an opportunity to address the board on any item of business. Groups and individuals are to submit their statements in writing to the board secretary, ~~((superin-~~

~~endent's))~~ executive director's office, whenever possible no less than two weeks prior to the time of the meeting. The board encourages groups to designate a spokesperson to address the board on their behalf.

(b) The chair of the board reserves the right to determine time limits on statements and presentations.

(c) The intent of the board shall be to provide equal time for opposing presentations. The chair also maintains the right to regulate the subject matter of that which may be presented or discussed at the open meeting including, but not limited to, matters which are the subject of current or pending grievances or adjudicative or disciplinary proceedings. Matters for consideration, discussion, and/or debate will be limited to the extent allowed by the Open Public Meetings Act, chapter 42.30 RCW.

AMENDATORY SECTION (Amending WSR 02-22-059, filed 11/1/02, effective 12/2/02)

**WAC 148-100-030 Officers of the board.** (1) At the first regular meeting of the board each fiscal year, the board shall elect from its membership, a chair and vice-chair to serve for the ensuing year. In addition, the ~~((superintendent of the Washington school for the deaf))~~ executive director shall serve as secretary to the board of trustees. The secretary may, at his or her discretion, appoint the executive assistant to the ~~((superintendent))~~ executive director to act as recording secretary for all regular and special meetings of the board.

(2) The chair shall preside at each regular or special meeting of the board, sign all legal and official documents recording action of the board, and review the agenda prepared for each meeting of the board. The chair shall, while presiding at official meetings, have full right of discussion and vote.

(3) The vice-chair shall act as chair of the board in the absence of the chair.

(4) In case of the absence of the chair and vice-chair from any meeting of the board of trustees or in case of the inability of both of the two to act, the board of trustees shall elect for the meeting a chair pro tempore, and may authorize such chair pro tempore to perform the duties and acts authorized or required by said chair or vice-chair to be performed, as long as the inability of these said officers to act may continue.

(5) The secretary of the board shall, in addition to any duties imposed by law or the governor, keep the official seal of the board, maintain all records of meetings and other official action of the board.

(6) The secretary shall also be responsible for board correspondence, compiling the agenda of meetings, and distributing the minutes of the meetings and related reports.

(7) The secretary, or his or her designee, must attend all regular and special meetings of the board, and official minutes must be kept of all such meetings except in executive sessions.

AMENDATORY SECTION (Amending WSR 02-22-059, filed 11/1/02, effective 12/2/02)

**WAC 148-100-050 Revision of bylaws.** (1) The board of trustees may adopt bylaws to govern its operations. ~~((A~~

record of these bylaws shall be maintained in the office of the president.)

(2) Bylaws of the board may be revised by majority vote of the board, provided such changes are proposed at least one meeting prior to the meeting at which the vote is taken. Bylaws may be revised by unanimous vote of the board at the same meeting at which the revision is originally proposed.

**~~((RULES COORDINATOR))~~**

**REPEALER**

The following sections of the Washington Administrative Code are repealed:

WAC 148-100-040 Records of board action.

WAC 148-100-200 Rules coordinator.

**WSR 16-07-101  
PROPOSED RULES  
CENTER FOR CHILDHOOD  
DEAFNESS AND HEARING LOSS**

[Filed March 18, 2016, 11:34 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Chapter 148-280 WAC, Family Educational Rights and Privacy Act.

Hearing Location(s): Washington State Center for Childhood Deafness and Hearing Loss (CDHL), 611 Grand Boulevard, Vancouver, WA 98661, on April 29, 2016, at 10:00.

Date of Intended Adoption: April 29, 2016.

Submit Written Comments to: Rick Hauan, 611 Grand Boulevard, Vancouver, WA 98661, e-mail rick.hauan@cdhl.wa.gov, fax (360) 696-6291, by April 22, 2016.

Assistance for Persons with Disabilities: Contact Judy Smith by April 22, 2016, TTY (360) 334-5795 or (360) 418-0401.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule changes update provisions for consistency with the revision in the federal and state regulations implementing the Family Educational Rights Privacy Act and Individuals with Disabilities Education Act. Chapter 381, Laws of 2009 (E2SHB 1879) established the CDHL. Proposed rule changes update agency name.

Statutory Authority for Adoption: RCW 72.40.0191.

Statute Being Implemented: RCW 72.40.0191.

Rule is necessary because of federal law, 34 C.F.R. Parts 99 and 300.

Name of Proponent: CDHL, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Rick Hauan, 611 Grand Boulevard, Vancouver, WA 98661, (360) 418-0401.

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

A cost-benefit analysis is not required under RCW 34.05.328. CDHL is not subject to RCW 34.05.328 (5)(a)(i).

March 18, 2016

Rick Hauan

Executive Director

**Chapter 148-280 WAC**

**FAMILY EDUCATIONAL RIGHTS AND PRIVACY  
ACT (~~(OF 1974))~~**

**AMENDATORY SECTION** (Amending WSR 03-20-014, filed 9/22/03, effective 10/23/03)

**WAC 148-280-010 Confidentiality of student records.** The Washington (~~school for the deaf~~) state center for childhood deafness and hearing loss implements policy contained in this chapter in compliance with the Family Educational Rights and Privacy Act (~~(of 1974)~~), 20 U.S.C. Sec. 1232(g); 34 C.F.R. Part 99 (FERPA) (~~(, and the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1412 (a)(8). These laws establish)~~). This law establishes that the education records of students attending or having attended the school for the deaf (school) are confidential and can be released only with written permission of the parent (or adult student). The primary rights of parents and adult students under FERPA are:

- (1) To inspect and review education records;
- (2) To request amendment of education records; and
- (3) To have some control over the disclosure of information from education records.

**AMENDATORY SECTION** (Amending WSR 03-20-014, filed 9/22/03, effective 10/23/03)

**WAC 148-280-011 Definitions.** As used in this chapter:

(1) "Directory information" means information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to, the student's name, photograph, (~~address, telephone listing,~~) date (~~and place~~) of birth, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, diplomas, honors, and awards received, and (~~previous~~) most recent school or program attended.

(2) "Disclosure" means to permit access to or the release, transfer, or other communication of education records, or the personally identifiable information contained in those records, to any party, by any means, including oral, written, or electronic means.

(3) "Education records" means (~~those records, files, documents, and other materials that are:~~

~~(a) Maintained by the school; and~~

~~(b) Directly related to a student.~~

The term "education records" does not include:

~~(i) Records of school staff that are kept in the sole possession of the maker of the record, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;~~

(ii) Records created and maintained by school security or the law enforcement unit of the school;

(iii) Records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and which are not available for any other purpose. Provided, That this exception does not apply to records relating to an individual in attendance at the school who is employed as a result of his or her status as a student;

(iv) Records on a student who is eighteen years of age or older that are created and maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity and that are created, maintained, or used only in connection with the treatment of the student; and are not available to anyone other than persons providing such treatment; provided, however, that such records can be personally reviewed by a physician or other appropriate professional of the student's choice; and

(v) Records that contain only information relating to an individual after he or she is no longer a student at the school)) the type of records covered under the definition of "education records" in 34 C.F.R. Part 99 (regulations implementing FERPA).

(4) "Adult student" means a student who has reached eighteen years of age. When a student becomes an "adult student," the rights accorded to, and the consent required of, parents under this chapter transfer from the parents to the student.

(5) "Legitimate educational interest" (~~means the necessity to review educational records~~) exists if the school official needs to have access to the record in order to fulfill the official's professional responsibility, perform appropriate tasks that are specified in his or her position description or contract agreement, perform a function related to a student's education or discipline, perform a service or benefit relating to the student or student's family, such as health education, counseling, advising, or student employment, or maintain safety and security.

(6) "Parent" means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian.

(7) "Personally identifiable information" includes, but is not limited to, the student's name; the name of the student's parent or other family member; the address of the student or student's family; a personal identifier, such as the student's Social Security number or student number or biometric record; a list of personal characteristics or other information that would make ((the student's identity easily traceable; or other information that would make the student's identity easily traceable)) it possible to identify the student with reasonable certainty.

(8) "School official" includes a person employed by the center or the school as a teacher, administrator, supervisor, counselor, support or clerical staff ((member (including health or medical staff and law enforcement unit personnel), a person serving on the school)), human resources staff, information systems specialist, school security personnel, a person appointed to the board of trustees, a person with whom the school has contracted to perform a ((special task))

service to or on behalf of the center or school (such as an attorney, hearing officer, auditor, medical consultant, or therapist), ((or)) a parent or student serving on an official committee or assisting another school official in performing his or her tasks, or other party to whom the school has outsourced institutional services or functions.

(9) "Participating agency" means any school district, agency or institution which collects, maintains, or uses personally identifiable information, or from which information is obtained in implementing chapters 392-172A and 148-172 WAC (rules for the provision of special education), and includes the OSPI, school districts and other public agencies.

AMENDATORY SECTION (Amending WSR 03-20-014, filed 9/22/03, effective 10/23/03)

**WAC 148-280-015 Notice.** The school (~~shall~~) provides parents and adult students currently in attendance with annual notice of their rights (~~(as defined by)~~) under FERPA by publication in the parent/student handbook and through these rules.

AMENDATORY SECTION (Amending WSR 03-20-014, filed 9/22/03, effective 10/23/03)

**WAC 148-280-020 ((Education records—))Access rights.** (1) ~~((A parent, adult student, or representative of the parent has the right to inspect and review the education records of the student.))~~ The school shall permit parents of students eligible for special education to inspect and review, during school business hours, any education records relating to the student which are collected, maintained, or used by the school under chapters 392-172A and 148-172 WAC. A request by a parent (or adult student) to inspect and review education records should be made in writing to the supervising administrator K-12 (i.e., building principal). The supervising administrator K-12 shall comply with a request promptly and before any meeting regarding an individualized education program or hearing or resolution session relating to the identification, evaluation, educational placement of the student or provision of FAPE to the student, including disciplinary proceedings. The school shall respond, in no case, more than forty-five calendar days after the request has been made.

(2) Where the education record (~~(or data)~~) includes information on more than one student, the parent(s) of those students (or the adult students) shall have the right to inspect and review only the information relating to their child (or themselves) or to be informed of that specific information.

(3) ~~((The parent (or adult student) has the right to obtain copies of the student's education records. Charges for the copies shall not exceed the cost normally charged by the school. However, if the fee effectively prevents the parent (or adult student) from exercising the right to inspect and review the student's education records, the school may provide such copies free of charge.))~~ The right to inspect and review education records under this section includes:

(a) The right to a response from the center to reasonable requests for explanations and interpretations of the records;

(b) The right to request that the center provide copies of the records containing the information if failure to provide

those copies would effectively prevent the parent or adult student from exercising the right to inspect and review the records; and

(c) The right to have a representative of the parent or adult student inspect and review records.

(4) The school may presume that a parent has authority to inspect and review records relating to his/her child unless the school has been advised that ~~((there is a court order, parenting plan, or legally binding document relating to such matters as dissolution, separation, guardianship, or custody that specifically revokes these rights))~~ the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

(5) ~~((The parent (or adult student) has the right to a response from the school to reasonable requests for explanations and interpretations of the records.))~~ A list of the types and locations of education records collected, maintained, or used by the school may be obtained by the parent (or adult student) at the superintendent's office.

AMENDATORY SECTION (Amending WSR 03-20-014, filed 9/22/03, effective 10/23/03)

**WAC 148-280-030 ((Education records—))Amendment of records—Hearing on request to amend records.**

(1)(a) A parent (or adult student) who believes that information contained in the education record is inaccurate, misleading, or violates the privacy or other rights of the student, may request the school to amend the information.

(b) A parent (or adult student) shall not be permitted under this chapter to challenge the validity of grades or other evaluations which are accurately recorded.

(2) The school shall decide whether to amend the record as requested within a reasonable time after receipt of the request.

(3) If the school decides to deny the request, it shall inform the parent (or adult student) of the decision and of the right to a hearing. ~~((The hearing shall be a brief adjudicative proceeding.))~~

(4) The school will conduct a hearing within a reasonable time after it has received the request for a hearing.

(a) Notice of the date, time and place shall be provided reasonably in advance of the hearing.

(b) ~~The hearing ((will be conducted by a hearing officer who is a disinterested party. This hearing officer may be a school official))~~ may be conducted by any party, including an official of the school, who does not have a direct interest in the outcome of the hearing. The parent (or adult student) shall be afforded a full and fair opportunity to present evidence relevant to the issues raised in the original request to amend an education record. The parent (or adult student) may, at their own expense, be assisted or represented at the hearing by one or more individuals, including an attorney.

(c) ~~The ((hearing officer will prepare))~~ school will provide a written decision ((based solely on the evidence presented at)) within a reasonable period of time after the conclusion of the hearing. The decision ~~((will))~~ shall be based solely upon the evidence presented at the hearing and include a summary of the evidence presented and the reasons for the decision.

(5) If, as a result of the hearing, the school decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall amend the information accordingly and so inform the parent (or adult student) in writing.

(6) If, as a result of the hearing, the school decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parent (or adult student) of the right to place in the record a statement commenting on the challenged information ~~((and/or a statement of the parent's (or adult student's)))~~ or setting forth any reasons for disagreeing with the decision of the school in the records it maintains on the student.

(7) Any explanation placed in the records of the student under this section must:

(a) Be maintained by the school as part of the records of the student as long as the record or contested portion is maintained by the school; and

(b) Be included with any disclosure of the record or contested portion to which the explanation relates.

AMENDATORY SECTION (Amending WSR 03-20-014, filed 9/22/03, effective 10/23/03)

**WAC 148-280-040 ((Disclosure of personally identifiable information from education)) Consent for release of records.**

~~((1) The school shall not disclose information from education records (other than "directory information") without the written consent of the parent (or adult student) except that records may be disclosed without consent when disclosure is to:~~

~~(a) School officials who have a legitimate educational interest in the records;~~

~~(b) Officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll. Pursuant to RCW 28A.225.330, records disclosed under this subsection will include disciplinary action, violent behavior or behavior listed in RCW 13.04.155, attendance, immunization records, and academic performance. The school shall provide the parent (or adult student), upon request, with a copy of the records disclosed and an opportunity for a hearing to challenge the content of the record;~~

~~(c) Federal and state officials requiring access to education records in connection with the audit and evaluation of a federal or state supported education program, or in connection with the enforcement of or compliance with federal or state legal requirements which relate to such programs;~~

~~(d) Organizations conducting studies for, or on behalf of the school, for purposes of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction. Provided, That the study is conducted in such a manner that does not permit the personal identification of parents and students by persons other than representatives of such organizations, and such information is destroyed when no longer needed for the purposes for which it was provided;~~

~~(e) Accrediting organizations in order to carry out their accrediting functions;~~

~~(f) Any person or entity designated by judicial order or lawfully issued subpoena. Provided, That the school shall~~



make a reasonable effort to notify the parent (or adult student) in advance of compliance, unless such notification and disclosure is specifically prohibited by an order of the court or other issuing agency or the order has been issued *ex parte*.

(i) If the school initiates legal action against a parent or student, the school may disclose to the court, without a court order or subpoena, the education records of the student that are relevant and necessary for the school to proceed with the legal action.

(ii) If a parent or student initiates legal action against the school, the school may disclose to the court, without a court order or subpoena, the student's education records that are relevant and necessary for the school's defense;

(g) State and local officials or authorities if specifically required by state law adopted before November 19, 1974, or if reporting or disclosure concerns the juvenile justice system and the system's ability to effectively serve the student prior to adjudication;

(h) Appropriate persons in connection with a health or safety emergency if knowledge of such information is necessary to protect the health or safety of a student or other individuals;

(i) Teachers and school officials in other schools and school districts, and teachers, security personnel and other personnel at the Washington school for the deaf who have a legitimate educational interest in the behavior of the student when the information concerns disciplinary action taken against the student for behavior that posed a significant risk to safety or well-being of that student, other students, or other members of the school community, or a history of violent behavior or behaviors listed in RCW 13.04.155. "Disciplinary action" means the investigation, adjudication or imposition of sanctions by the school for an infraction or violation of the student conduct code.

(2) Where the consent of a parent (or adult student) is obtained for the release of education records, it shall be in writing, signed and dated by the person giving such consent, and shall include:

- (a) A specification of the records to be released;
- (b) The reasons for such release; and
- (c) The names of the parties to whom such records will be released.

(3) When a disclosure is made under subsection (2) of this section, if a parent (or adult student) so requests, the school shall provide him or her with a copy of the records disclosed.

(4) Personally identifiable education records released to third parties, with or without parent (or adult student) consent, shall be accompanied by a written statement indicating that the information cannot be subsequently released in a personally identifiable form to any other party without the prior consent of the parent (or adult student). (1) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with subsection (2) of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 C.F.R. Part 99.

(2) Except as provided in this section, parental consent is not required before personally identifiable information is

released to officials of participating agencies for purposes of meeting a requirement of this part.

(3) Parental consent, or the consent of an eligible student who has reached the age of majority under state law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

(4) If a parent (or adult student) so requests, the school shall provide him or her with a copy of the records disclosed.

(5) "Directory information" may be disclosed without the parent's (or adult student's) prior written consent, unless the parent (or adult student) notifies the school in writing within ten days of enrollment and thereafter by the tenth day of the academic year that he or she does not want any or all of the student's information to be designated as directory information.

AMENDATORY SECTION (Amending WSR 03-20-014, filed 9/22/03, effective 10/23/03)

**WAC 148-280-055 Record of access.** (((1))) The school shall maintain a record of ((each request for access to and each disclosure of personally identifiable information from the education records of each student.

(2) The school shall maintain the record with the education records of the student as long as the records are maintained.

(3) For each request or disclosure the record must include:

- (a) The name of the party who had requested or received information;
- (b) The date access was given; and
- (c) The legitimate interest or purpose the party has in requesting or obtaining the information.

(4) If the party receiving personally identifiable information makes further disclosures of the information on behalf of the school, the record must include:

- (a) The names of additional parties to which the receiving party may disclose the information; and
- (b) The legitimate interests under WAC 148-280-040 which each of the additional parties has in requesting or obtaining the information.

(5) Subsection (1) of this section does not apply if the request was from, or the disclosure was to:

- (a) The parent or adult student;
- (b) A designated school official with a legitimate educational interest under WAC 148-280-040 (1)(a);
- (c) A party with written consent from the parent or adult student;

(d) A party seeking directory information; or

(e) A party seeking or receiving records as directed by a federal grand jury or other law enforcement subpoena and the issuing court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed)) parties obtaining access to educational records collected, maintained, or used under this chapter including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. The agency is not required to keep a record of access by parents, and authorized

employees with a legitimate educational interest in the records.

AMENDATORY SECTION (Amending WSR 03-20-014, filed 9/22/03, effective 10/23/03)

**WAC 148-280-060 Destruction of information.** (1)

Student education records may be destroyed in accordance with state laws and regulations: Provided, That the school shall not destroy any education records if there is an outstanding request to inspect and review the records under this chapter.

(2)(a) The school shall inform parents (or adult students) when personally identifiable information is no longer needed to provide educational services to the student, or is no longer required to be retained under state or federal law.

(b) At the request of a parent (or adult student), the school shall destroy personally identifiable information. However, the school may maintain a permanent record of the student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year of completion without time limitation.

(3) For the purpose of this section, "destruction" shall mean physical destruction or removal of personal identifiers.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 148-280-025 Education records—Access procedures.

**WSR 16-07-102**

**PROPOSED RULES**

**CENTER FOR CHILDHOOD  
DEAFNESS AND HEARING LOSS**

[Filed March 18, 2016, 11:35 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Chapter 148-276 WAC, Public records.

Hearing Location(s): Washington State Center for Childhood Deafness and Hearing Loss (CDHL), 611 Grand Boulevard, Vancouver, WA 98661, on April 29, 2016, at 10:00.

Date of Intended Adoption: April 29, 2016.

Submit Written Comments to: Rick Hauan, 611 Grand Boulevard, Vancouver, WA 98661, e-mail rick.hauan@cdhl.wa.gov, fax (360) 696-6291, by April 22, 2016.

Assistance for Persons with Disabilities: Contact Judy Smith by April 22, 2016, video phone (360) 334-5795 or (360) 418-0401.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed rules adopt best practices in the attorney general's model rules to clarify and streamline procedures for making and processing public records requests, to publish a list of potential other

statute exemptions, to clarify procedures for reviewing denials of requests and to update statutory cites resulting from recodification of the Public Records Act in chapter 42.56 RCW.

Statutory Authority for Adoption: RCW 72.40.0191.

Statute Being Implemented: RCW 42.56.100.

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

Name of Proponent: CDHL, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Rick Hauan, 611 Grand Boulevard, Vancouver, WA 98661, (360) 418-0401.

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

A cost-benefit analysis is not required under RCW 34.05.328. CDHL is not subject to RCW 34.05.328 (5)(a)(i).

March 18, 2016

Rick Hauan

Executive Director

AMENDATORY SECTION (Amending WSR 90-16-017, filed 7/19/90, effective 8/19/90)

**WAC 148-276-010 Purpose.** The purpose of the rules in this chapter is to ((ensure that the school complies with the public records provisions of RCW 42.17.250 through 42.17.340)) establish the procedures Washington state center for childhood deafness and hearing loss (center) will follow in order to provide full access to nonexempt public records. These rules provide information to persons requesting access to public records of the center and establish processes for both requestors and center staff that are designed to best assist members of the public in obtaining access.

AMENDATORY SECTION (Amending WSR 90-16-017, filed 7/19/90, effective 8/19/90)

**WAC 148-276-030 ((Description of central organization of Washington state school for the deaf.)) Agency description—Public records officer—Public records. (1) The Washington state ((school for the deaf)) center for childhood deafness and hearing loss is a state agency established and organized under the authority of chapter 72.40 RCW ((for the purpose of implementing the educational goals established by the legislature in RCW 72.40.010)) to provide statewide leadership and support for the coordination of regionally delivered educational services and supports for children who are deaf or hard of hearing and promote the development of communication-rich learning environments for these children. The administrative office of the ((school)) center is located ((in)) at 611 Grand Boulevard, Vancouver, Washington((-The Vancouver campus comprises the central headquarters for all operations of the school.**

(2) The school operates under the supervision and control of the superintendent of the state school for the deaf, appointed by the governor. The superintendent takes such actions and promulgates such rules, regulations, and policies in harmony with the rules and regulations established by the office of superintendent of public instruction and the United

States Department of Education, as are necessary to the administration and operation of the school:

(3) A board of trustees serves as an advisory board to the superintendent and to the legislature. The board consists of a member from each of the state's congressional districts and ex-officio members representing specific interests and constituents of the school. The responsibilities and functions of the board are provided in chapter 72.42 RCW.

(4) Elementary and high school education is under the direction of a principal or separate principals as student population increases and educational needs demand. Academic support services, including but not limited to outreach, nursing, and audiology are under the supervision of the director of academic support services. The director of media manages the learning resource center. Residential services are under the direction of the director of student life. Consolidated services, serving both the Washington state school for the blind and the Washington state school for the deaf, are administered by personnel located at the school for the deaf. Consolidated services include: The commissary, business, and personnel offices, the maintenance department, and custodial and food services.) 98661. The center manages and supervises the school for the deaf which is also located at 611 Grand Boulevard, Vancouver, Washington 98661.

(2) Any person wishing to request access to public records of the center, or seeking assistance in making such a request should contact the public records officer of the center:

Washington State Center for Childhood  
Deafness and Hearing Loss  
611 Grand Blvd.  
Vancouver, WA 98661-4918  
360-696-6525 (voice)  
360-334-5448 (video phone)  
360-696-6291 (fax)  
Judy.Smith@wsd.wa.gov

(3) The public records officer will oversee compliance with the act but another center staff member may process the request. Therefore, these rules will refer to the public records officer or "designee." The public records officer or designee and the center will provide the "fullest assistance" to requestors: create and maintain for use by the public and center officials an index to public records of the center; ensure that public records are protected from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the center.

AMENDATORY SECTION (Amending WSR 90-16-017, filed 7/19/90, effective 8/19/90)

**WAC 148-276-050 Public records available.** ((All public records of the school, as defined in this chapter, are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW 42-17-310-)) (1) **Hours for inspection of records.** Public records are available for inspection and copying during normal business hours of the center, Monday through Friday, 8:00 a.m. to noon and 1:00 p.m. to 5:00 p.m., excluding legal holidays and holidays established by the school calendar. Records must be inspected at the offices of the center.

(2) **Records index.** An index of public records is available for use by members of the public consisting of the records retention schedule according to record series title, manuals and policy statements by one or more of the following classifications: Administration, statewide (outreach) services, academic and residential life.

(3) **Organization of records.** The center will maintain its records in a reasonably organized manner. The center will take reasonable actions to protect records from damage and disorganization. A requestor shall not take center or school for the deaf records from center offices without the permission of the public records officer or designee.

**(4) Making a request for public records.**

(a) Any person wishing to inspect or copy public records of the center should make the request in writing on the center's public records request form, or by letter, fax, or e-mail addressed to the public records officer and including the following information:

- Name of requestor;
- Address of requestor;
- Other contact information, including telephone number and any e-mail address;
- Identification of the public records adequate for the public records officer or designee to locate the records;
- The date and time of day of the request; and
- A verification that the records requested shall not be used for commercial purposes.

(b) If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records or a deposit. Pursuant to WAC 148-276-090, standard photocopies will be provided at fifteen cents per page.

(c) A form is available for use by requestors at the office of the public records officer or online at the center's web site.

(d) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing.

NEW SECTION

**WAC 148-276-055 Processing of public records requests.** (1) **Order of processing public records requests.** The public records officer or designee will process requests in the order that allows the most requests to be processed in the most efficient manner.

(2) **Acknowledging receipt of request.** Within five business days of receipt of the request, the public records officer will do one or more of the following:

- (a) Make the records available for inspection or copying;
- (b) If copies are requested and payment of a deposit for the copies, if any, is made or terms of payment are agreed upon, send the copies to the requestor;
- (c) Provide a reasonable estimate of when records will be available;
- (d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone or videophone. The public records officer or

designee may revise the estimate of when records will be available; or

(e) Deny the request.

(3) **If no response is received.** If the center does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer to ensure that the center received the request.

(4) **Protecting rights of others.** In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for the affected persons to seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(5) **Records exempt from disclosure.** Some records are exempt from disclosure, in whole or in part. If the center believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(6) **Inspection of records.**

(a) Consistent with other demands, the center shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the center to copy.

(b) The requestor must claim or review the assembled records within thirty days of the center's notification to him or her that the records are available for inspection or copying. The center will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the center to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the center may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(7) **Providing copies of records.** After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.

(8) **Electronic records.** The process for requesting electronic public records is the same as for requesting paper public records. When a person requests records in an electronic format, the public records officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the center and is generally commercially available, or in a format that is reasonably translatable from the format in which the center keeps the record.

(9) **Providing records in installments.** When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(10) **Completion of inspection.** When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the center has completed a diligent search for the requested records and made any located nonexempt records available for inspection. Then the public records officer will close the request.

(11) **Closing withdrawn or abandoned request.** When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the center has closed the request.

(12) **Later discovered documents.** If, after the center has informed the requestor that it has provided all available records, the center becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

AMENDATORY SECTION (Amending WSR 90-16-017, filed 7/19/90, effective 8/19/90)

**WAC 148-276-090 ((Copying-)) Costs of providing copies of public records.** ~~(No fee shall be charged for the inspection of public records. The school may impose a reasonable charge for providing copies of public records and for the use by any person of agency equipment to copy public records; such charges shall not exceed the amount necessary to reimburse the school for its actual costs incident to such copying. No person shall be released a record so copied until and unless the person requesting the copied public record had tendered payment for such copying to the appropriate school official. All charges must be paid by money order, cashier's check, or cash in advance.)~~ **(1) Costs for paper copies.** There is no fee for inspecting public records. A requestor may obtain standard black and white photocopies for fifteen cents per page and color copies for twenty-five cents per page.

Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The center will not charge sales tax when it makes copies of public records.

**(2) Costs for electronic records.** The cost of electronic copies of records shall be five dollars for information on a CD-ROM. The cost of scanning existing center paper or other

nonelectronic records is ten cents per page. There will be no charge for e-mailing electronic records to a requestor, unless another cost applies such as a scanning fee.

(3) **Costs of mailing.** The center may also charge actual costs of mailing, including the cost of the shipping container.

(4) **Payment.** Payment may be made by cash, check, or money order to the Washington state center for childhood deafness and hearing loss.

**AMENDATORY SECTION** (Amending WSR 90-16-017, filed 7/19/90, effective 8/19/90)

**WAC 148-276-100 (~~Determination regarding exempt records.~~) Exemptions.** ((1) The school reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 148-276-080 is exempt pursuant to the provisions set forth in RCW 42.17.310 and 42.17.315. Such determination may be made in consultation with the public records officer, the school superintendent, or an assistant attorney general assigned to the school.

(2) Pursuant to RCW 42.17.260, the school reserves the right to delete identifying details when it makes available or publishes any public record when there is reason to believe that disclosure of such details would be an unreasonable invasion of personal privacy; provided, however, in each case, the justification for deletion shall be explained fully in writing.

(3) Response to requests for a public record must be made promptly. For the purposes of this section, a prompt response occurs if the person requesting the public record is notified within two business days as to whether his request for a public record will be honored.

(4) All denials of request for public records must be accompanied by a written statement, signed by the public records officer or his/her designee, specifying the reason for the denial, a statement of the specific exemption authorizing the withholding of the record, and a brief explanation of how the exemption applies to the public record withheld.) (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by the center for inspection and copying:

(a) The Family Educational Rights and Privacy Act, 20 U.S.C. Sec. 1232g;

(b) RCW 5.60.060(2), records subject to the attorney-client privilege; and

(c) RCW 42.56.290, attorney work-product involving a controversy.

(2) The center is prohibited by statute from disclosing lists of individuals for commercial purposes.

**AMENDATORY SECTION** (Amending WSR 90-16-017, filed 7/19/90, effective 8/19/90)

**WAC 148-276-110 Review of denials of public records requests.** (1) **Petition for internal administrative review of denial of access.** Any person who objects to the

initial denial or partial denial of a request for a public record may petition in writing (including e-mail) to the public records officer for prompt review of ((such decision by tendering a written request for review. The written request shall specifically refer to the written statement which constituted or accompanied the denial.

(2) The written request by a person demanding prompt review of a decision denying a public record shall be submitted to the superintendent, or his or her designee.

(3) Within two business days after receiving the written request by a person petitioning for a prompt review of a decision denying public record, the superintendent, or his or her designee, shall complete such review.

(4) During the course of the review, the superintendent or his or her designee, shall consider the obligations of the school fully to comply with the intent of chapter 42.17 RCW insofar as it requires providing full public access to official records, but shall also consider both the exemptions provided in RCW 42.17.310 through 42.17.315, and the provisions of the statute which require the school to protect public records from damage or disorganization, prevent excessive interference with essential functions of the agency, and prevent any unreasonable invasion of personal privacy by deleting identifying details.) that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) **Consideration of petition for review.** The public records officer shall promptly provide the petition and any other relevant information to the public records officer's supervisor for review. That person will immediately consider the petition and either affirm or reverse the denial within two business days following the center's receipt of the petition, or within such other time as mutually agreed upon by the center and the requestor.

(3) **Review by the attorney general's office.** Pursuant to RCW 42.56.530, if the center denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) **Judicial review.** Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

#### **REPEALER**

The following sections of the Washington Administrative Code are repealed:

- WAC 148-276-020 Definitions.
- WAC 148-276-040 Operations and procedures.
- WAC 148-276-060 Public records officer.
- WAC 148-276-070 Office hours.
- WAC 148-276-080 Requests for public records.
- WAC 148-276-120 Protection of public records.

WAC 148-276-130 Records index.

WAC 148-276-140 Adoption of form.

**WSR 16-07-107**  
**PROPOSED RULES**  
**SECRETARY OF STATE**

[Filed March 18, 2016, 2:40 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-24-002.

Title of Rule and Other Identifying Information: Elections.

Hearing Location(s): Office of the Secretary of State, Elections Division, 520 East Union Avenue, Olympia, WA 98501, on April 26, 2016, at 2 p.m.

Date of Intended Adoption: May 6, 2016.

Submit Written Comments to: Sheryl Moss, C & T Program Manager, P.O. Box 40220, Olympia, WA 98504, e-mail [Sheryl.moss@sos.wa.gov](mailto:Sheryl.moss@sos.wa.gov), fax (360) 902-4146, by April 25, 2016.

Assistance for Persons with Disabilities: Contact Sheryl Moss by April 25, 2016, (360) 902-4146.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule changes are necessary to reflect recent legislative changes, and to update and clarify procedures.

Reasons Supporting Proposal: Updating rules to reflect updated procedures and clarify policies.

Statutory Authority for Adoption: RCW 29A.04.611 and 29A.04.620.

Statute Being Implemented: Title 29A RCW.

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

Name of Proponent: Office of the secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Sheryl Moss, P.O. Box 40220, Olympia, WA 98504, (360) 902-4146; and Enforcement: Lori Augino, P.O. Box 40220, Olympia, WA 98504, (360) 902-4146.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

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

March 18, 2016  
Mark Neary  
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 10-03-072, filed 1/18/10, effective 2/18/10)

**WAC 434-215-012 Declaration of candidacy.** Declarations of candidacy filed either in person or by mail shall be in substantially the following form:

((

## Washington State Declaration of Candidacy

<b>office</b>	jurisdiction and office name		position number
<b>personal information</b> <i>as registered to vote</i>	first name	middle	last
	date of birth (mm / dd / yyyy)		phone number
	residential address		city / zip
<b>ballot information</b>	exact name I would like printed on the ballot		
	political party I prefer, if filing for partisan office:		
	<input type="radio"/> (Prefers <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> Party)		
	<input type="radio"/> (States No Party Preference)		
<b>campaign information</b>	campaign address (if different from residential address)		city / zip
	email address		phone number
	website		
<b>filing fee</b>	<input type="radio"/> The office has no fixed annual salary: no filing fee <input type="radio"/> The office has a fixed annual salary of \$1,000 or less: \$10 <input type="radio"/> The office has a fixed annual salary over \$1,000: 1% of salary <input type="radio"/> I am submitting a filing fee petition instead of a filing fee		
<b>oath</b>	I declare that the above information is true, that I am a registered voter residing at the address listed above, that I am a candidate for the office listed above, and that, at the time of filing this declaration, I am legally qualified to assume office.  I swear, or affirm, that I will support the Constitution and laws of the United States, and the Constitution and laws of the State of Washington.		
	sign here		date here
<b>for office use only</b>	date		voter registration number
	office code		fee

))

# Washington State Declaration of Candidacy

<b>candidate information</b> <i>as registered to vote</i>	first name	middle	last
	residential address		city / zip
	date of birth	email address	phone number

<b>campaign contact information</b> <i>for publication</i>	campaign phone	campaign email
	mailing address (if different from residential address)	city / zip
	campaign website	

<b>ballot information</b>	jurisdiction	office name	position number
	exact name I would like printed on the ballot		
	political party I prefer to be printed on the ballot, if filing for partisan office:		
	<input type="radio"/> (Prefers <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> Party) <input type="radio"/> (States No Party Preference)		

<b>filing fee</b>	<input type="radio"/> The office has no filing fee <input type="radio"/> A filing fee of \$ _____ accompanies the declaration of candidacy <input type="radio"/> I lack sufficient funds and submit a filing fee petition in lieu of the filing fee under RCW 29A.24.091
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<b>oath</b>	<p>I declare that the above information is true, that I am a registered voter residing at the address listed above, that I am a candidate for the office listed above, and that, at the time of filing this declaration, I am legally qualified to assume office.</p> <p>I swear, or affirm, that I will support the Constitution and laws of the United States, and the Constitution and laws of the State of Washington.</p> <p>sign here [ _____ ] date here [ _____ ]</p>
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<b>for office use only</b>	submission date	voter registration number
	office code	fee

12/2015

The filing officer must provide a paper or electronic copy of the filed declaration of candidacy to the candidate and to the public disclosure commission.



NEW SECTION

**WAC 434-215-015 Write-in declaration of candidacy.** Declarations of candidacy filed either in person or by mail shall be in substantially the following form:

## Washington State Declaration of Write-in Candidacy

<b>candidate information</b> <i>as registered to vote</i>	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; border-bottom: 1px solid black;">first name</td> <td style="width: 33%; border-bottom: 1px solid black;">middle</td> <td style="width: 33%; border-bottom: 1px solid black;">last</td> </tr> <tr> <td colspan="2" style="border-bottom: 1px solid black;">residential address</td> <td style="border-bottom: 1px solid black;">city / zip</td> </tr> <tr> <td style="border-bottom: 1px solid black;">date of birth</td> <td style="border-bottom: 1px solid black;">email address</td> <td style="border-bottom: 1px solid black;">phone number</td> </tr> </table>	first name	middle	last	residential address		city / zip	date of birth	email address	phone number									
first name	middle	last																	
residential address		city / zip																	
date of birth	email address	phone number																	
<b>campaign contact information</b> <i>for publication</i>	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; border-bottom: 1px solid black;">campaign phone</td> <td style="width: 50%; border-bottom: 1px solid black;">campaign email</td> </tr> <tr> <td style="border-bottom: 1px solid black;">mailing address (if different from residential address)</td> <td style="border-bottom: 1px solid black;">city / zip</td> </tr> <tr> <td colspan="2" style="border-bottom: 1px solid black;">campaign website</td> </tr> </table>	campaign phone	campaign email	mailing address (if different from residential address)	city / zip	campaign website													
campaign phone	campaign email																		
mailing address (if different from residential address)	city / zip																		
campaign website																			
<b>office information</b>	<p>I am a write-in candidate for:   <input type="radio"/> Primary   <input type="radio"/> General</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; border-bottom: 1px solid black;">jurisdiction</td> <td style="width: 33%; border-bottom: 1px solid black;">office</td> <td style="width: 33%; border-bottom: 1px solid black;">position number</td> </tr> </table>	jurisdiction	office	position number															
jurisdiction	office	position number																	
<b>ballot information</b> <i>if qualifying</i>	<p>exact name I would like printed on the ballot if I qualify</p> <p>political party I prefer to be printed on the ballot, if filing for partisan office:</p> <p><input type="radio"/> (Prefers <table style="display: inline-table; border-collapse: collapse;"> <tr> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> <td style="border: 1px solid black; width: 20px; height: 20px;"></td> </tr> </table> Party)</p> <p><input type="radio"/> (States No Party Preference)</p>																		
<b>filing fee</b>	<p><input type="radio"/> The office has no filing fee</p> <p><input type="radio"/> A filing fee of \$ _____ accompanies the declaration of candidacy</p> <p><input type="radio"/> I lack sufficient funds and submit a filing fee petition in lieu of the filing fee under RCW 29A.24.091</p>																		
<b>oath</b>	<p>I declare that the above information is true, that I am a registered voter residing at the address listed above, that I am a candidate for the office listed above, and that, at the time of filing this declaration, I am legally qualified to assume office.</p> <p>I swear, or affirm, that I will support the Constitution and laws of the United States, and the Constitution and laws of the State of Washington.</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; border-left: 1px solid black; border-right: 1px solid black; height: 50px; vertical-align: bottom;">sign here</td> <td style="width: 50%; border-left: 1px solid black; border-right: 1px solid black; height: 50px; vertical-align: bottom;">date here</td> </tr> </table>	sign here	date here																
sign here	date here																		
<b>for office use only</b>	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; border-bottom: 1px solid black;">submission date</td> <td style="width: 50%; border-bottom: 1px solid black;">voter registration number</td> </tr> <tr> <td style="border-bottom: 1px solid black;">office code</td> <td style="border-bottom: 1px solid black;">fee</td> </tr> </table>	submission date	voter registration number	office code	fee														
submission date	voter registration number																		
office code	fee																		

12/2015

AMENDATORY SECTION (Amending WSR 15-24-001, filed 11/18/15, effective 12/19/15)

**WAC 434-230-015 Ballots and instructions.** (1) Each ballot shall specify the county, the date, and whether the election is a primary, special or general.

(2) Each ballot must include instructions directing the voter how to mark the ballot, including write-in votes if candidate races appear on the ballot.

(3) Instructions that accompany a ballot must:

(a) Instruct the voter how to cancel a vote by drawing a line through the text of the candidate's name or ballot measure response;

(b) Notify the voter that, unless specifically allowed by law, more than one vote for an office or ballot measure will be an overvote and no votes for that office or ballot measure will be counted;

(c) Explain how to complete and sign the ballot declaration. The following declaration must accompany the ballot:

"I do solemnly swear or affirm under penalty of perjury that I am:

A citizen of the United States;

A legal resident of the state of Washington;

At least 18 years old on election day;

Voting only once in this election;

Not under the authority of the Department of Corrections for a Washington felony conviction; and

Not disqualified from voting due to a court order.

It is illegal to forge a signature or cast another person's ballot. Attempting to vote when not qualified, attempting to vote more than once, or falsely signing this declaration is a felony punishable by a maximum imprisonment of five years, a maximum fine of \$10,000, or both."

The declaration must include space for the voter to sign and date the declaration, for the voter to write his or her phone number, and for two witnesses to sign if the voter is unable to sign.

(d) Explain how to make a mark, witnessed by two other people, if unable to sign the declaration;

(e) Explain how to place the ballot in the security envelope and place the security envelope in the return envelope;

(f) Explain how to obtain a replacement ballot if the original ballot is destroyed, spoiled, or lost;

(g) If applicable, explain that postage is required, or exactly how much postage is required. See WAC 434-250-200 on return postage;

(h) Explain that, in order for the ballot to be counted, it must be either postmarked no later than election day or deposited at a ballot drop box no later than 8:00 p.m. election day;

(i) Explain how to learn about the locations, hours, and services of voting centers and ballot drop boxes, including the availability of accessible voting equipment;

(j) Include, for a primary election that includes a partisan office other than a presidential primary race, a notice on an insert explaining:

"In each race, you may vote for any one candidate listed. The two candidates who receive the most votes in the primary will advance to the general election.

Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(k)(i) Include, for a general election that includes a partisan office, the following explanation:

"If a primary election was held for an office, the two candidates who received the most votes in the primary advanced to the general election.

Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(ii) In a year that president and vice-president appear on the general election ballot, the following must be added to the statement required by (k)(i) of this subsection:

"The election for president and vice-president is different. Candidates for president and vice-president are the official nominees of their political party."

(4) Instructions that accompany a special absentee ballot authorized by RCW 29A.40.050 must also explain that the voter may request and subsequently vote a regular ballot, and that if the regular ballot is received by the county auditor, the regular ballot will be tabulated and the special absentee ballot will be voided.

(5) Each ballot must explain, either in the general instructions or in the heading of each race, the number of candidates for whom the voter may vote (e.g., "vote for one").

(6)(a) If the ballot includes a partisan office other than a presidential primary race, the ballot must include the following notice in bold print immediately above the first partisan congressional, state or county office: "READ: Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(b) When the race for president and vice-president appears on a general election ballot, instead of the notice required by (a) of this subsection, the ballot must include the following notice in bold print after president and vice-president but immediately above the first partisan congressional, state or county office: "READ: Each candidate for president and vice-president is the official nominee of a political party. For other partisan offices, each candidate may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(c) The same notice may also be listed in the ballot instructions.

(7) Counties may use varying sizes and colors of ballots, provided such size and color is used consistently throughout a region, area or jurisdiction (e.g., legislative district, commissioner district, school district, etc.). Varying color and size may also be used to designate various types of ballots.

(8) Ballots shall be formatted as provided in RCW 29A.36.170.

(9) Removable stubs are not considered part of the ballot.

(10) If ballots are printed with sequential numbers or other sequential identifiers, the county auditor must take steps to prevent ballots from being issued sequentially, in order to protect secrecy of the ballot.

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

**WAC 434-230-045 Candidate format.** (1) For each office or position, the names of all candidates shall be listed together. If the office is on the primary election ballot, no candidates skip the primary and advance directly to the general election.

(2)(a) On the primary election ballot, candidates shall be listed in the order determined by lot.

(b) On the general election ballot, the candidate who received the highest number of votes in the primary shall be listed first, and the candidate who received the second highest number of votes in the primary shall be listed second. If the two candidates who received the most votes in the primary received exactly the same number of votes, the order in which their names are listed on the general election ballot shall be determined by lot.

(c) The political party that each candidate prefers is irrelevant to the order in which the candidates appear on the ballot.

(3) Candidate names shall be printed in a type style and point size that can be read easily. If a candidate's name exceeds the space provided, the election official shall take whatever steps necessary to place the name on the ballot in a manner which is readable. These steps may include, but are not limited to, printing a smaller point size or different type style.

(4) For partisan office:

(a) If the candidate stated his or her preference for a political party on the declaration of candidacy, that preference shall be printed below the candidate's name, with parentheses and the first letter of each word or abbreviation capitalized (~~(, as shown in the following example)~~). Acronyms shall be printed in all capital letters with or without periods. For example:

John Smith  
(Prefers Example Party)  
John Smith  
(Prefers ABC Party)

(b) If the candidate did not state his or her preference for a political party, that information shall be printed below the candidate's name, with parentheses and the first letter of each word capitalized, as shown in the following example:

John Smith  
(States No Party Preference)

(c) The party preference line for each candidate may be in smaller point size or indented.

(d) The same party preference information shall be printed on both primary and general election ballots.

(5) If the office is nonpartisan, only the candidate's name shall appear. Neither "nonpartisan" nor "NP" shall be printed with each candidate's name.

(6) The law does not allow nominations or endorsements by interest groups, political action committees, political parties, labor unions, editorial boards, or other private organizations to be printed on the ballot.

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

**WAC 434-250-105 Voting centers.** (1) If a location offers replacement ballots, provisional ballots, or voting on a direct recording electronic device, it is considered a voting center. The requirements for staffed ballot deposit sites apply to voting centers. Each voting center must:

(a) Be an accessible location. "Accessible" means the combination of factors which create an environment free of barriers to the mobility or functioning of voters. The environment consists of the routes of travel to and through the buildings or facilities used for voting. The Americans with Disabilities Act Checklist for Polling Places shall be used when determining the accessibility of a voting center. A voting center is fully accessible if all responses in each category are "Yes";

(b) Be marked with signage outside the building indicating the location as a place for voting;

(c) Issue ballots that include a declaration in the ballot materials;

(d) Offer disability access voting in a location or manner that provides for voter privacy. For each voting center, the county auditor must have a contingency plan to accommodate accessible voting in the event that an accessible voting unit malfunctions or must be removed from service;

(e) Offer provisional ballots, which may be sample ballots that meet provisional ballot requirements;

(f) Have electronic or telephonic access to the voter registration system, consistent with WAC 434-250-095, if the voting center offers voting on a direct recording electronic voting device. The county auditor shall require the voter to print and sign the ballot declaration provided in WAC 434-230-015. Ballot declaration signatures may not be maintained in the order in which they were signed. Before the voter may vote on a direct recording electronic voting device, the county auditor must either:

(i) Verify the signature on the ballot declaration against the signature in the voter registration record; or

(ii) Require the voter to provide photo identification, consistent with RCW 29A.40.160;

(g) Provide either a voters' pamphlet or sample ballots;

(h) Provide voter registration forms;

(i) Display a HAVA voter information poster, containing an example of an actual ballot or a sample ballot in substantially the same format as an actual ballot;

(j) Display the date of that election;

(k) During a primary that includes a partisan office, display the notice provided in WAC 434-230-015 (3)(j), and during a general election that includes a partisan office, display the notice provided in WAC 434-230-015 (3)(k). The

party preference notices may also be posted on-screen in direct recording electronic voting devices;

(l) Provide instructions on how to properly mark the ballot; and

(m) Provide election materials in alternative languages if required by the Voting Rights Act.

(2) Where it appears that a particular voter is having difficulty casting his/her vote, and as a result, is impeding other voters from voting, the staff may provide assistance to that voter in the same manner as provided by law for those voters who request assistance. Where it appears that a voter is impeding other voters from voting to simply cause delay, the staff shall ask the voter to expedite the voting process. In the event the voter refuses to cooperate, the staff shall, whenever practical, contact the county auditor, who may request assistance from the appropriate law enforcement agencies if he or she deems such action necessary.

(3) At exactly 8:00 p.m. on election day, all ballot boxes must be emptied or secured to prevent the deposit of additional ballots; however, any voter who is in a voting center or in line at a voting center at 8:00 p.m. must be allowed to vote and deposit his or her ballot. Voted ballots, including provisional, mail-in, and direct recording electronic and paper records, must be placed into secured transport carriers for return to the county auditor's office or another designated location.

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

**WAC 434-250-200 Return postage.** The (~~(Mailing Standards of the)~~) United States Postal Service(~~(:))~~ Domestic Mail Manual(~~(:))~~ requires each county auditor to include on the ballot, ballot instructions, mailing instructions, or return envelope(~~(, and)~~) the specific amount of first-class postage necessary to return the ballot by mail. This is not required:

(1) For ballots issued to service and overseas voters;

(2) For ballots returned using the business reply mail service;

(3) For ballots returned with postage prepaid by stamps, meter, or permit reply mail; or

(4) If the county auditor has an account with the post office guaranteeing payment of return postage due.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

**WAC 434-261-020 Political party observers.** Counting center operations shall be observed by at least one representative from each political party, if representatives have been appointed by the respective political parties and those representatives are present while the counting center is in operation.

Prior to (~~(the)~~) processing ballots for a primary or election, the county auditor shall (~~(determine the number of observers required in order to observe all aspects of the counting center proceedings, and shall request, in writing, that each major political party appoint representatives to fill the requirements))~~) notify the major political parties in writing of the maximum number of official observers allowed to observe ballot processing and the date ballot processing

begins. Where more than one observer is (~~(to be))~~ appointed, the political party shall designate one of (~~(their))~~ the observers as supervisor. The county auditor may require observers to receive training with respect to ballot processing procedures and the vote tallying system.

Before final assignment as observers, major political party representatives so appointed shall be reviewed by the county auditor, who may refuse to approve any person so appointed. In the event the auditor rejects a person designated, he or she shall promptly notify the political party concerned and request that a substitute observer be appointed, and shall ensure that the substitute observer is trained.

Representatives of the major political parties appointed as observers shall be identified by roster, including assigned observer stations if more than one in the counting center, and by identification tags which will indicate the observer's name and the party represented.

AMENDATORY SECTION (Amending WSR 12-14-074, filed 7/2/12, effective 8/2/12)

**WAC 434-261-050 Unsigned ballot declaration or mismatched signatures.** (1) If a voter neglects to sign a ballot declaration, signs with a mark and fails to have two witnesses attest to the signature, or signs but the signature on the ballot declaration does not match the signature on the voter registration record, the county auditor shall notify the voter by first class mail of the correct procedures for curing the signature. If the ballot is received during the last three business days before the final meeting of the canvassing board, or the voter has been notified by first class mail and has not responded by the last three business days before the final meeting of the canvassing board, the county auditor must attempt to notify the voter by telephone using information in the voter registration record.

(2) If the voter neglects to sign, or signs with a mark and fails to have two witnesses attest to the signature, the voter must either:

(a) Appear in person and sign the declaration no later than the day before certification of the primary or election; or

(b) Sign a copy of the declaration, or mark the declaration in front of two witnesses, and return it to the county auditor no later than the day before certification of the primary or election.

(3) If the signature on the declaration does not match the signature on the voter registration record, the voter must either:

(a) Appear in person and sign a new registration form no later than the day before certification of the primary or election. The updated signature provided on the registration form becomes the signature in the voter registration record for the current election and future elections; or

(b) Sign a signature update form that includes both the ballot declaration required by WAC 434-230-015 and the voter registration oath required by RCW 29A.08.230, and return it to the county auditor no later than the day before certification of the primary or election. The signature on the signature update form must match the signature on the returned ballot declaration. The signature provided on the signature

update form becomes the signature in the voter registration record for the current election and future elections.

(4)(a) If the signature on the declaration does not match the signature on the registration record because the last name is different, the ballot may be counted as long as the first name and handwriting are clearly the same. If it appears that the voter has changed his or her name, and the information required under RCW 29A.08.440 to complete a name change is not provided or is illegible, the county auditor shall send the voter a change-of-name form under RCW 29A.08.440 and direct the voter to complete the form.

(b) If the signature on the ballot declaration does not match the signature on the registration record because the voter signed with a middle name, nickname, or initials, the ballot may be counted as long as the last name and handwriting are clearly the same.

(5) If the name on the signature does not match the printed name, and the signature on the ballot declaration does not match the signature on the voter registration record, because the ballot was signed by another registered voter, the ballot may be counted for the registered voter who actually signed the ballot declaration if:

(a) The voter who signed the declaration can be identified;

(b) The signature on the declaration matches the signature on the voter registration record; and

(c) The voter who signed the declaration has not returned another ballot.

(d) A ballot signed by power of attorney, signature stamp, another voter who has already voted, or signed by another voter with an unreadable signature is considered an unsigned ballot. This procedure does not prevent the reference of the ballot to the prosecuting attorney for investigation.

The county auditor may only count the races and measures for which the voter who signed the declaration is eligible to vote.

(6) If it is determined that the signature on a ballot declaration does not match the signature on the registration record and, prior to 8:00 p.m. on election day, the registered voter asserts that the signature on the ballot declaration is not his or her signature, the voter may be provided the opportunity to vote a replacement ballot.

(7) A voter may not cure a missing or mismatched signature for purposes of counting the ballot in a recount.

(8) A record must be kept of all ballots with missing and mismatched signatures. The record must contain the date on which the voter was contacted or the notice was mailed, as well as the date on which the voter subsequently submitted a signature to cure the missing or mismatched signature. That record is a public record under chapter 42.56 RCW and may be disclosed to interested parties on written request.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

**WAC 434-261-075 Votes on something other than a ballot.** If the voter returns voting responses by mail on any form other than a ballot, the votes thereon shall be acceptable and tallied provided that:

(1) Only votes for offices or measures for which the voter is eligible are counted.

(2) The candidate or measure response position for which the voter is voting can be clearly identified.

(3) The ballot issued is not returned, or if returned, contains no marks indicating an attempt to vote it.

(4) A valid signature on a ballot declaration is received with the voting responses.

The votes accepted must then be duplicated to a ballot that can be read by the electronic voting equipment.

Votes on a ballot from a previous primary or election cannot be counted for another primary or election. These ballots must be rejected per WAC 434-262-031.

#### NEW SECTION

**WAC 434-261-112 Direct recording electronic voting devices (DREs).** Votes recorded on DREs must be uploaded into the ballot tabulation program or duplicated onto paper ballots. The upload or duplication may take place after election day. DRE data storage must remain in secure storage until tabulation.

#### NEW SECTION

**WAC 434-262-016 Canvassing board meeting—Emergency procedure.** If a member cannot attend a canvassing board meeting due to an emergency, a designee may be appointed according to RCW 29A.60.140 at any time, including the day of the meeting. If a designee cannot be appointed, the member may participate in the meeting remotely.

(1) When ballots are considered during the meeting, the remote member must have access to an online computer application which allows viewing of ballots. Images of ballots cannot be recorded, copied, scanned, e-mailed, or faxed to the member nor can the member record ballot images. The computer application is not required if ballots are not considered during the meeting.

(2) As per RCW 29A.60.200, all three county canvassing board members or designees must certify an election. If an election is certified during the meeting where a member or designee is attending remotely, a copy of the certification document must be sent electronically to the remote member. The certification document must be signed in the following manner:

(a) The members physically present at the meeting must sign the certification document.

(b) A copy of the signature page is sent electronically to the remote member.

(c) The remote member must print the signature page, sign the document, and return the signed document electronically to the canvassing board meeting location.

(d) The remote member's signed signature page is printed and attached to the certification document signed by the other members of the board, completing the certification document.

(3) If a member or a designee cannot attend in person or remotely due to an emergency, a quorum of the board may accept or reject ballots, determine the validity of challenged

ballots, determine the validity of provisional ballots, and certify the returns of a primary or election.

AMENDATORY SECTION (Amending WSR 12-14-074, filed 7/2/12, effective 8/2/12)

**WAC 434-262-030 County auditor's abstract of votes.** The county canvassing board shall meet and canvass all ballots. Upon completion of this canvass ten days after a special election, fourteen days after a primary (~~or special election~~), and twenty-one days after a general election, the county auditor shall present the auditor's abstract of votes, which must include:

- (1) The number of registered voters eligible to vote in the election;
- (2) The number of ballots cast in the election, by precinct;
- (3) The votes cast for each race or issue, including write-ins, undervotes, and overvotes;
- (4) Legislative and congressional district subtotals, if any; and
- (5) The vote totals by county.

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

**WAC 434-262-070 Official county canvass report.** (1) Upon completion of the verification of the auditor's abstract of votes and the documentation of any corrective action taken, the county canvassing board shall sign a certification that:

(a) States that the abstract is a full, true, and correct representation of the votes cast for the issues and offices listed thereon;

(b) Provides the total number of registered voters and votes cast in the county;

(c) Contains the oath required by RCW 29A.60.200, signed by the county auditor and attested to by the chair or designee who administered the oath; and

(d) Shall have a space where the official seal of the county shall be attached.

(2) The official county canvass report shall include:

(a) The certification;

(b) The auditor's abstract of votes as described in WAC 434-262-030;

(c) The reconciliation report required by RCW 29A.60.-235, which must include documentation that the number of ballots counted plus the number of ballots rejected is equal to the number of ballots received, and any additional information necessary to explain variances; and

(d) If applicable, a written narrative of errors and discrepancies discovered and corrected.

(3) The certification shall be signed by all members of the county canvassing board or their designees. (~~If one member of the canvassing board cannot be present, and a designee for that member is unavailable, the certification shall be signed by a quorum of the board.~~)

(4) The official county canvass report is the cumulative report referenced in RCW 29A.60.230. This report may not be subsequently amended or altered, except in the event a recount conducted pursuant to chapter 29A.64 RCW, or upon

order of the superior court. The vote totals contained therein shall constitute the official returns of that election.

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

**WAC 434-262-031 Rejection of ballots or parts of ballots.** (1) The disposition of provisional ballots is governed by WAC 434-262-032. The county canvassing board must reject any ballot cast by a voter who was not qualified to vote, or for other reasons required by law or administrative rule. A log must be kept of all voted ballots rejected, and must be included in the minutes of each county canvassing board meeting.

(2) Ballots or parts of ballots shall be rejected by the canvassing board in the following instances:

(a) Where a voter has already voted one ballot;

(b) Where two voted ballots are returned together:

(i) If the two ballots are returned with only one valid signature on the ballot declaration, the races and measures voted the same on both ballots may be counted once.

(ii) If the two ballots are returned with two valid signatures on the ballot declaration, both ballots may be counted in their entirety;

(c) Where a ballot or parts of a ballot are marked in such a way that it is not possible to determine the voter's intent consistent with WAC 434-261-086;

(d) Where the voter has voted for candidates or issues for whom he or she is not entitled to vote;

(e) Where the voter has overvoted;

(f) Where the voter validly transferred out of the county;

(g) Where the ballot was created for a prior election.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

**WAC 434-262-032 Provisional ballots—Disposition.** Upon receipt of the provisional ballot, including provisional ballots from other counties or states, the county auditor must investigate the circumstances surrounding the provisional ballot prior to certification of the primary or election. A voted ballot received from an unregistered voter, other than a service or overseas voter, is considered a provisional ballot. A provisional ballot cannot be counted unless the voter's name, signature and the date of birth, if available, matches a voter registration record. Once the provisional ballot has been investigated, disposition of the ballot is as follows:

(1) If there is no record of the voter ever having been registered, the voter must be offered the opportunity to register and the provisional ballot is not counted.

(2) If the voter was previously registered and later canceled and the auditor determines that the cancellation was in error, the voter's registration must be immediately restored and the provisional ballot counted.

(3) If the voter was previously registered and later canceled and the auditor determines that the cancellation was not in error, the voter must be offered the opportunity to reregister and the provisional ballot is not counted.

(4) If the voter is a registered voter but has voted a ballot other than the one which the voter would have received for his or her precinct, the auditor must ensure that only those

votes for the positions and measures for which the voter was eligible to vote are counted.

(5) If the voter is a registered voter in another county, the auditor shall forward the ballot and a corresponding voter guide, or other means by which the ballot can be interpreted, to the elections official for the jurisdiction in which the voter is registered. The ballot must be forwarded within seven calendar days after a primary or special election and fourteen calendar days after a general election, and as soon as possible if past that date.

(6) If the voter voted a regular ballot and a provisional ballot, the provisional ballot is not counted if the regular ballot has already been counted. The regular ballot is not counted if the provisional ballot has already been counted.

(7) If the voter voted a provisional ballot because he or she failed to produce identification at a voting center, the ballot is counted if the signature on the envelope matches the signature in the voter registration record.

(8) If the voter voted a provisional ballot because the voter is provisionally registered and the voter's registration record is still flagged as requiring verification of identity, the provisional ballot is not counted.

(9) Provisional ballots voted for reasons not covered by this section or state statute must be determined by the county canvassing board.

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

WAC 434-324-026 Voter registration form.

((

**Instructions**

**Use this form to register to vote or to update an existing registration.**  
 Print all information clearly using black or blue pen.  
 Mail or deliver this completed form to your county elections department. Addresses are on the next page.

**Deadline**  
 This registration will be in effect for the next election if postmarked or delivered no later than the Monday four weeks before Election Day.  
 If you miss this deadline, contact your county elections department.

**Voting**  
 You will receive your ballot in the mail. Contact your county elections department if you wish to vote in person.

**Notice**  
 If you knowingly provide false information on this voter registration form or knowingly make a false declaration about your qualifications for voter registration you will have committed a class C felony that is punishable by imprisonment for up to 5 years, a fine of up to \$10,000, or both.

**Public disclosure**  
 Your name, address, gender and date of birth are public information.

**For more information**  
**web** www.vote.wa.gov  
**call** 1-800-448-4881  
**visit** your county elections department

**Washington State Voter Registration Form**

Register online at www.myvote.wa.gov

**1 Personal information**

last name first middle

date of birth (mm / dd / yyyy)  male  female

residential address (in Washington) apt #

city ZIP

mailing address (if different than residential address)

city state / ZIP

phone number (optional) email address (optional)

**2 Qualifications**

If you mark no to either of these questions, do not complete this form

yes  no I am a citizen of the United States of America.

yes  no I will be at least 18 years old by the next election.

**3 Military / overseas status**

I am in the Armed Forces (includes National Guard and Reserves; and military spouses or dependents away from home because of service).

I live outside the U.S.

**4 Identification — Washington driver license / ID number**

If you do not have a Washington driver license or ID, provide the last four digits of your Social Security number x x x - x x -

**5 Former registration**

If you are already registered and are changing your name or address, fill out this section (this information will be used to update your registration)

former last name first middle

former residential address city state / ZIP

**6 Declaration**

I declare that the facts on this voter registration form are true. I am a citizen of the United States, I will have lived at this address in Washington for at least thirty days immediately before the next election at which I vote, I will be at least 18 years old when I vote, I am not disqualified from voting due to a court order, and I am not under Department of Corrections supervision for a Washington felony conviction.

sign here [ ] date here [ ]

)

The secretary of state is responsible for creating the official voter registration form. The voter registration form must contain at a minimum the following:

- (1) Voter's name;
- (2) Date of birth;
- (3) Gender;
- (4) Residential address;
- (5) Mailing address, if different;

- (6) Military status;
- (7) The statement, "I am a citizen of the United States of America" with space for the voter to indicate "yes" or "no";
- (8) The statement, "I will be at least 18 years old by the next election" with space for the voter to indicate "yes" or "no";
- (9) Washington driver's license/ID number or last four digits of a Social Security number;



(10) Former registration information:

(11) A declaration with a signature line. The declaration: "I declare that the facts on this voter registration form are true, I am a citizen of the United States, I will have lived at the address in Washington for at least thirty days immediately before the next election at which I vote, I will be at least 18 years old when I vote, I am not disqualified from voting due to a court order, and I am not under Department of Corrections supervision for a Washington felony conviction."

NEW SECTION

**WAC 434-324-103 Verification notices.** A verification notice must be sent when a voter registration application does not contain all the minimum information required in RCW 29A.08.010. The notice must be sent by first-class forwardable mail and must include a response form that:

- (1) Is preaddressed and postage paid or is accompanied by a preaddressed and postage paid return envelope.
- (2) Requests the applicant for the missing information only.
- (3) Notifies the voter they must provide the missing information within forty-five days.

If the voter does not respond by the deadline, the voter registration application is considered void.

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

**WAC 434-335-280 Logic and accuracy test conduct.** The county must provide adequate personnel to properly operate the ballot tabulation system. Whenever possible, the system shall be operated during the test by the same person or persons who will be responsible for operating the system on election day. The official logic and accuracy test shall be conducted as follows:

- (1) Every ballot tabulator and scanner to be used in the primary or election shall be tested. Digital scan test decks shall be scanned during the official logic and accuracy test.
- (2) Undervotes recorded by a digital scan system used to resolve or adjudicate ballots digitally shall be auto-resolved. Some undervotes may be manually resolved to demonstrate the process.
- (3) Optical scan tabulators and digital scan tabulators not used to resolve or adjudicate ballots digitally shall be set to out-stack blank ballots, overvotes, and write-in votes.
- (4) A printout of the test results shall be produced and compared to the expected test results. If the test results do not match the expected test results, the reason for the discrepancy must be satisfactorily determined and corrections made, if necessary.
- (5) The upload of results to the secretary of state's office shall be tested and verified.

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

**WAC 434-335-323 Preparing the logic and accuracy test.** (1) Each county shall prepare a matrix of the test pattern used to mark the test deck of ballots for the official logic and accuracy test. The matrix shall consist of a spreadsheet listing

the number of votes cast for each candidate and responses for and against each measure in each precinct or ballot style. The matrix shall include:

(a) For every precinct or ballot style, the first response position of every race or measure shall be marked so the total votes cast for the first candidate of a race or the first response to a measure equals the total number of precincts or ballot styles being tested for that contest or measure;

(b) Two votes for the second response position, three votes for the third response position, four votes for the fourth response position, etc.;

(c) For each tabulator's test deck:

- (i) One write-in vote;
- (ii) One overvoted race;
- (iii) One blank ballot; and

(iv) At least one of each type of ballot to be used during the election including ballots on demand, alternative language ballots, electronically marked ballots, and electronically duplicated ballots.

(d) For all responses within a race or measure, including write-ins, unique results. Additional ballots must be added to the test deck in the following circumstances:

(i) Within a race or measure, more than one response has the same results;

(ii) A candidate appears in two different races on the same ballot; and

(iii) More than one measure appears on a ballot within the same jurisdiction and each has the same response position names. For example, if two measures with "yes" and "no" response names appear for the same jurisdiction, the test results shall be unique between the two measures.

(2) A copy of the county's test matrix and a sample ballot shall be sent to the office of the secretary of state by the fourteenth day prior to the official logic and accuracy test. The office of the secretary of state shall review the provided matrix to determine if it is prepared in accordance with this section.

(3) The county auditor shall produce a test deck of ballots based on the test matrix to be used in the official logic and accuracy test.

AMENDATORY SECTION (Amending WSR 14-06-040, filed 2/26/14, effective 3/29/14)

**WAC 434-335-330 Logic and accuracy test certification.** (1) The official logic and accuracy test shall be certified by the county auditor or deputy, the secretary of state representative, and any political party observers for a state primary or general election in accordance with RCW 29A.12.130. Additionally, the county auditor must verify in writing that the version numbers for all software, firmware, and hardware of the voting system used have not changed from the certified versions.

(2) The county auditor shall provide the secretary of state representative copies of the following documents:

- (a) Test results;
- (b) A zero report;
- (c) Signed verification of the version numbers;
- (d) Signed certification of the official logic and accuracy test;

(e) A test log of:

(i) The number of accessible voting units to be used in the primary or election; and

(ii) The electronic duplication system, if electronic duplication will be used in the primary or election; and

(f) Any other documentation requested by the secretary of state representative in advance of the official test.

(3) Copies of the certification documents must be retained by the secretary of state and the county auditor. All test results, test ballots, the signed certification, and a copy of the tabulation programming or the actual tabulation equipment must be kept in secure storage until the ~~((day of the))~~ equipment is used for a primary or election. The secure storage must use numbered seals and logs that will detect any inappropriate access.

(4) If, for any reason, changes are made to the ballot counting programming after the official logic and accuracy test, an emergency logic and accuracy test must be conducted pursuant to WAC 434-335-310.

AMENDATORY SECTION (Amending WSR 09-03-110, filed 1/21/09, effective 2/21/09)

**WAC 434-379-005 Filing of an initiative or referendum—Fee—Required documents.** A person desiring to file with the secretary of state a proposed initiative to the people, initiative to the legislature, or referendum measure may do so by filing the following documents:

(1) A legible ~~((copy))~~ electronic copy of the language of the measure proposed, or the act or part of such act on which a referendum is desired or other arrangements made on a case-by-case basis;

(2) An affidavit declaring under penalty of perjury:

(a) That the person submitting the proposed measure is over eighteen years of age and competent to testify;

(b) That the person submitting the proposed measure is a registered voter in the state of Washington;

(c) Whether the proposed measure is an initiative to the people, initiative to the legislature, or referendum; and

(d) The subject of the initiative, or the bill number of the legislation being referred~~((; and))~~.

(e) All affidavits for sponsor and cosponsors are due at the time of the initial filing.

(3) A nonrefundable filing fee of five dollars for each measure submitted.

The proposed measure is not considered filed with the secretary of state until all documents and fees are filed, including any original versions required. Filing will be marked as incomplete if all fees and documents are not received within fifteen business days. The secretary of state will process complete filings within one business day of receipt of all required documents.

AMENDATORY SECTION (Amending WSR 12-14-074, filed 7/2/12, effective 8/2/12)

**WAC 434-379-008 Petition requirements.** (1) Petitions must be at least eleven inches wide by fourteen inches long.

(2) Petitions must include:

(a) The initiative or referendum number;

(b) The ballot title, which must include:

(i) The subject, not more than ten words;

(ii) The concise description, not more than thirty words; and

(iii) The question~~((;))~~.

(c) The form and text required by:

(i) RCW 29A.72.110 for an initiative to the legislature;

(ii) RCW 29A.72.120 for an initiative to the people; or

(iii) RCW 29A.72.130 for a referendum measure~~((;))~~.

(d) The warning in RCW 29A.72.140, printed on the front to cover at least four square inches;

(e) Numbered lines, not more than twenty, with space for each person to provide his or her:

(i) Original signature;

(ii) Printed name; and

(iii) Address, city, and county where registered to vote~~((;))~~.

(f) A ~~((one-inch margin))~~ blank space on the bottom left hand corner of the front side, one and one-half inch square;

(g) The full text of the measure printed on the back; ~~((and))~~

(h) The circulator's declaration printed on the back; and

(i) Petition sheets printed with a one-inch margin on the bottom may be submitted through December 31, 2016.

#### NEW SECTION

**WAC 434-379-0073 Transmittal to the attorney general.** Once the proposed text and certificate of review to an initiative or referendum is received, the secretary of state shall place the assigned serial number and the date filed on the top of the initiative or referendum text submitted by the sponsor. The secretary of state will submit the text with required information to the attorney general within one business day of the sponsor filing the proposed text.

#### NEW SECTION

**WAC 434-379-0077 Withdrawal of an initiative or referendum.** A sponsor may withdraw an initiative or referendum by submitting a written request to the secretary of state. The sponsor may withdraw an initiative or referendum until the time when the measure's ballot title and summary are finally established. The ballot title and summary are considered finally established five days after the attorney general submits the ballot title and summary to the secretary of state or, in the case of an appeal, when the court has rendered a final order. The sponsor cannot withdraw an initiative or referendum after it is finally established.

**WSR 16-07-117**

**PROPOSED RULES**

**DEPARTMENT OF REVENUE**

[Filed March 22, 2016, 9:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-13-110.

Title of Rule and Other Identifying Information: WAC 458-20-101 (Rule 101) Tax registration and reporting, explains the tax registration and reporting requirements for the department of revenue as established in RCW 82.32.060 and 82.32.045.

Hearing Location(s): Capital Plaza Building, 4th Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA, on April 26, 2016, at 10:00 a.m. *Call-in option can be provided upon request no later than three days before the hearing date.*

Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Date of Intended Adoption: May 3, 2016.

Submit Written Comments to: Jeannette Gute, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail JeannetteG@dor.wa.gov, by April 26, 2016.

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: The department is proposing revisions to Rule 101 to:

- Update terms and formatting, add headers, and make other general updates;
- Update the active nonreporting status requirements;
- Identify the information required to process a business license application;
- Remove references to seasonal revenue tax reporting accounts as they no longer apply; and
- Clarify when a change in ownership or location may require the completion of a new business license application.

Reasons Supporting Proposal: To update the rule and provide the required information that must be submitted with a business license application.

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: Jeannette Gute, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1585; Implementation and Enforcement: Marcus Glasper, 1025 Union Avenue S.E., Suite #500, Olympia, WA, (360) 534-1615.

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

March 22, 2016  
Kevin Dixon  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-15-025, filed 7/7/15, effective 8/7/15)

**WAC 458-20-101 Tax registration and tax reporting.**

(1) **Introduction.** This rule explains tax registration and tax reporting requirements for the Washington state department of revenue (~~department~~) as established in RCW 82.32.030 and 82.32.045. This rule discusses who is required to be registered, and who must file excise tax returns. This rule also discusses changes in ownership requiring a new registration, the administrative closure of taxpayer accounts, and the revocation and reinstatement of a tax reporting account with the department (~~of revenue~~). Persons required to file tax returns should also refer to WAC 458-20-104 (Small business tax relief based on (~~volume~~) income of business). Persons with certain ownership structures (e.g., corporations, limited liability companies, limited partnerships, limited liability partnerships, and limited liability limited partnerships) must also register with the office of the secretary of state.

**Examples.** Examples found in this rule identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all the facts and circumstances.

(2) **Persons required to obtain tax registration endorsements.** Except as provided in (a) of this subsection, every person who is engaged in any business activity for which the department (~~of revenue~~) is responsible for administering and/or collecting a tax or fee, (~~shall~~) must apply for and obtain a tax registration endorsement with the department (~~of revenue~~). (See RCW 82.32.030.) This endorsement (~~shall be reflected~~) is printed on the face of the business person's (~~registrations and~~) business license(s) document. The tax registration endorsement is nontransferable, and valid for as long as that person continues in business.

(a) **When registration is not required.** Registration under this rule is not required if all of the following conditions are met:

(i) The person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW (business and occupation B&O tax), is less than twelve thousand dollars per year;

(ii) A person's gross income from all business activities taxable under chapter 82.16 RCW (public utility tax), is less than twelve thousand dollars per year;

(iii) The person is not required to collect or pay to the department (~~of revenue~~) retail sales tax or any other tax or fee which the department is authorized to administer and/or collect; and

(iv) The person is not otherwise required to obtain a business license (~~or registration~~) subject to the business license application procedure provided in chapter 19.02 RCW. For the purposes of this rule, the term "business license (~~or registration~~)" means any agency permit, license, certificate, approval, registration, charter, or any form or permission required by law, including agency rule, to engage in any activity.

(b) **Tax registration endorsement.** The term "tax registration endorsement," as used in this rule, has the same meaning as the term "tax registration" or "certificate of registra-

tion" used in Title 82 RCW and other rules in chapter 458-20 WAC.

(c) **Person.** The term "person" has the meaning given in RCW 82.04.030 and WAC 458-20-203.

(d) **Tax reporting account number.** The term "tax reporting account number" as used in this rule, is the number used to identify persons registered with the department ((of revenue)).

(3) **Requirement to file tax returns.** Persons registered with the department must file tax returns and remit the appropriate taxes to the department, unless they are placed on an "active nonreporting" status by the department.

(a) **Active nonreporting status requirements.** The department may relieve any person of the requirement to file returns by placing the person in an active nonreporting status if all of the following conditions are met:

(i) The person's value of products (RCW 82.04.450), gross proceeds of sales (RCW 82.04.070), or gross income of the business (RCW 82.04.080), from all business activities taxable under chapter 82.04 RCW ((business and occupation)) B&O tax), is less than:

(A) Twenty-eight thousand dollars per year; or

(B) Forty-six thousand six hundred sixty-seven dollars per year for persons generating at least fifty percent of their gross amount from activities taxable under RCW 82.04.255 (real estate brokerage services), RCW 82.04.290 (2)(a) (service and other activities B&O tax classification), and RCW 82.04.285 (operating contests of chance);

(ii) The person's gross income (RCW 82.16.010) from all business activities taxable under chapter 82.16 RCW (public utility tax) is less than twenty-four thousand dollars per year; and

(iii) The person is not required to collect or pay to the department retail sales tax or any other tax or fee the department is authorized to collect.

(b) **Notification of active nonreporting status.** The department will notify those persons it places on an active nonreporting status. ((A)A person may request to be placed on an active nonreporting status if the conditions of (a) of this subsection are met.((A))

(c) **Responsibility to notify department about change in status.** Persons placed on an active nonreporting status by the department are required to timely notify the department if their business activities do not meet any of the conditions explained in (a) of this subsection. These persons will be removed from an active nonreporting status, and must file tax returns and remit appropriate taxes to the department, beginning with the first period in which they do not qualify for an active nonreporting status.

(d) **Obligation to file a tax return.** Persons that have not been placed on an active nonreporting status by the department must continue to file tax returns and remit the appropriate taxes.

(4) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The status of each situation must be determined after a review of all facts and circumstances.)) (a) **Example 1.** Bob Brown is starting a bookkeeping service. Income generated from this activity is taxable under the service and other activities B&O tax

classification. The gross income of the business is expected to be less than twelve thousand dollars per year. Bob's only income is earned from his bookkeeping activity. Due to the nature of the business activities, Bob is not required to pay or collect any other tax or fee which the department is authorized to collect. Bob has no other need to file a business license application.

Bob Brown is not required to apply for and obtain a tax registration endorsement with the department ((of revenue)). The conditions under which a business person may engage in business activities without obtaining the tax registration endorsement have been met. However, if Bob Brown in some future period has gross income exceeding twelve thousand dollars per year, he will be required to obtain a tax registration endorsement. If Bob's gross income exceeds ((~~twenty-eight thousand~~)) forty-six thousand six hundred sixty-seven dollars per year (because Bob generates all of his gross income under the service and other activities B&O tax classification), he will be required to file tax returns and remit the appropriate taxes.

(b) **Example 2.** Cindy Smith is opening a business to sell children's books ((~~written for children~~)) to local customers at retail. The gross proceeds of sales are expected to be less than twelve thousand dollars per year.

Cindy Smith must apply for and obtain a tax registration endorsement with the department ((of revenue)). While gross income is expected to be less than twelve thousand dollars per year, Cindy Smith is required to collect and remit retail sales tax.

(c) **Example 3.** Alice Smith operates a taxicab service with an average gross income of eighteen thousand dollars per year. She also owns a management consulting service with an average gross income of fifteen thousand dollars per year. Assume that Alice is not required to collect or pay to the department any other tax or fee the department is authorized to collect. Alice qualifies for an active nonreporting status because her taxicab income is less than the twenty-four thousand dollar threshold for the public utility tax((;)) and her consulting income is less than the ((~~twenty-four~~)) forty-six thousand six hundred sixty-seven dollar threshold for the ((~~business and occupation~~))B&O((;)) tax. If the department ((of revenue)) does not first place her on an active nonreporting status, she may request the department to do so.

(5) **Out-of-state businesses.** Out-of-state businesses may have to obtain a tax registration endorsement with the department.

(a) **B&O and public utility taxes.** The B&O and public utility taxes are imposed on the act or privilege of engaging in business activity within Washington. RCW 82.04.220 and 82.16.020. Out-of-state persons who have established sufficient nexus in Washington to be subject to Washington's B&O or public utility taxes must obtain a tax registration endorsement with this department if they do not satisfy the conditions expressed in subsection (2)(a) of this rule.

(b) **Retail sales and use taxes.** Out-of-state persons required to collect Washington's retail sales or use tax((; or who have elected to collect Washington's use tax, even though not statutorily required to do so;)) under RCW 82.04.067 must obtain a tax registration endorsement. Out-of-state persons who are not statutorily required to collect

Washington's use tax, may elect to obtain a tax registration endorsement.

**(c) Other relevant rules for out-of-state persons.** Out-of-state persons making sales into or doing business within Washington should also refer to the following rules in chapter 458-20 WAC for a discussion of their tax reporting responsibilities:

~~((a))~~ WAC 458-20-103 ~~((Time and place of sale));~~

~~((b))~~ (i) WAC 458-20-193 ~~((Inbound and outbound))~~

Interstate sales of tangible personal property ~~((+));~~

~~((e))~~ (ii) WAC 458-20-193D ~~((Transportation, communication, public utility activities, or other services in interstate or foreign commerce~~ ~~((+));~~

~~((f))~~ (iii) WAC 458-20-194 ~~((Doing business inside and outside the state~~ ~~((+));~~ ~~and~~

~~((g))~~ (iv) WAC 458-20-19401 Minimum nexus thresholds for apportionable activities; and

(v) WAC 458-20-221 ~~((Collection of use tax by retailers and selling agents~~ ~~((+)).~~

**(6) Registration procedure.** The state of Washington initiated the unified business identifier (UBI) program to simplify the registration and licensing requirements imposed on the state's business community. Completion of the business license application and payment of the applicable fee(s) enables a person to register or license with several state agencies and cities, including the department of revenue, using a single form. The person will be assigned one unified business identifier number, which will be used for all state agencies and cities participating in the UBI program. The department may assign the unified business identifier number as the taxpayer's revenue tax reporting account number, or it may assign a different or additional number as the revenue tax reporting account number.

**(a) Business license application.** Persons completing the business license application will be issued a ~~((registrations and))~~ business license ~~((s))~~ document. The face of this document will list the registrations and licenses (endorsements) which have been obtained.

**(b) Fees.** The department ~~((of revenue))~~ does not charge a separate registration fee for issuing a tax registration endorsement. Persons required to complete a business license application may, however, be subject to other fees.

**(c) Forms and submission.** While the UBI program is administered by the department ~~((of revenue))~~, business license applications are available ~~((at any participating UBI service provider location. The following agencies of the state of Washington participate in the UBI program (see RCW 19.02.050 for a more complete listing of participating agencies):~~

~~((i))~~ The office of the secretary of state;

~~((ii))~~ The department of licensing;

~~((iii))~~ The department of employment security;

~~((iv))~~ The department of labor and industries;

~~((v))~~ The department of revenue.

~~((7))~~ online from the state of Washington's business licensing service web site at [bls.dor.wa.gov](http://bls.dor.wa.gov).

**(7) Registration application.** The state of Washington requires the following items to process business license applications:

(a) Purpose or reason for application.

(b) The registration endorsement(s) that are needed.

(c) Owner information which includes, but is not limited to, the type of business; the business name and open date; the business contact information; and the address, date of birth, Social Security number (if the person is an individual) or federal employer identification number (FEIN) (if the person is an entity) and other contact information for all governing persons which includes the owners, members, officers, and partners. This same information may also be needed for spouses.

(d) Location and business information which includes, but is not limited to, location of business, type of business activities, FEIN (except for sole proprietorships that do not have employees), and estimated income and bank account information.

**(8) Temporary revenue registration certificate.** A temporary revenue registration certificate may be issued to any person who operates a business of a temporary nature.

(a) Temporary businesses, for the purposes of registration, are those with ~~((:~~

~~((+))~~ definite, predetermined dates of operation for no more than two events each year with each event lasting no longer than one month ~~((; or~~

~~((ii))~~ Seasonal dates of operation lasting no longer than three months. However, persons engaging in business activities on a seasonal basis every year should refer to subsection (8) of this rule).

(b) Each temporary registration certificate is valid for a single event. Persons that subsequently make sales into Washington may incur additional tax liability. Refer to WAC 458-20-193 ~~((Inbound and outbound))~~ Interstate sales of tangible personal property) for additional information on tax reporting requirements. It may be required that a tax registration endorsement be obtained, in lieu of a temporary registration certificate. See subsection (2) of this rule.

(c) Temporary revenue registration certificates may be obtained by ~~((making application at any participating UBI agency office, or by completing a seasonal registration form:~~

~~((8) Seasonal revenue tax reporting accounts. Persons engaging in seasonal business activities which do not exceed two quarterly reporting periods each calendar year may be eligible for a tax reporting account with a seasonal reporting status. This is a permanent account until closed by the taxpayer. The taxpayer must specify in which quarterly reporting periods he or she will be engaging in taxable business activities. The quarterly reporting periods in which the taxpayer is engaging in taxable business activities may or may not be consecutive, but the same quarterly period or periods must apply each year. The taxpayer is not required to be engaging in taxable business activities during the entire period.~~

The department will provide and the taxpayer will be required to file tax returns only for the quarterly reporting periods specified by the taxpayer. Examples of persons which may be eligible for the seasonal reporting status include persons operating Christmas tree and/or fireworks stands. Persons engaging in taxable business activities in more than two quarterly reporting periods in a calendar year will not qualify for the seasonal reporting status) following registration instructions on the department's web site at [dor.wa.gov](http://dor.wa.gov).

(9) **Display of ~~((registrations and))~~ business license(s) document.** The taxpayer is required to display the ~~((registrations and))~~ business license(s) document in a conspicuous place at the business location for which it is issued.

(10) **Multiple locations.** A ~~((registrations and))~~ business license(s) document is required for each place of business ~~((at which))~~ where a taxpayer engages in business activities for which the department ~~((of revenue))~~ is responsible for administering and/or collecting a tax or fee, and any main office or principal place of business from which excise tax returns are to be filed. This requirement applies to locations both within and without the state of Washington.

(a) **Place of business.** For the purposes of this subsection, the term "place of business" means:

(i) Any separate establishment, office, stand, cigarette vending machine, or other fixed location; or

(ii) Any vessel, train, or the like, ~~((at any of which))~~ where the taxpayer solicits or makes sales of tangible personal property, or contracts for or renders services in this state or otherwise transacts business with customers.

(b) **Multiple locations with a single excise tax return.** A taxpayer wishing to report all tax liability on a single excise tax return may request a separate ~~((registrations and))~~ business license(s) document for each location. The original ~~((registrations and))~~ business license(s) document shall be retained for the main office or principal place of business from which the returns are to be filed, with additional documents obtained for all branch locations. All ~~((registrations and))~~ business license(s) documents will reflect the same tax reporting account number.

(c) **Multiple locations with separate excise tax returns.** A taxpayer desiring to file a separate excise tax return covering a branch location, or a specific construction contract, may apply for and receive a separate revenue tax reporting account number. A ~~((registrations and))~~ business license(s) document will be issued for each tax reporting account number and will represent a separate account.

(d) **Application required for each location's business license document.** A business license application must be completed to obtain a separate ~~((registrations and))~~ business license(s) document, or revenue tax reporting account number, for a new location.

(11) **Change in ownership.** When a change in ownership of a business occurs, the new owner must generally apply for and obtain a new ~~((registrations and licenses document))~~ unified business identifier by filing a business license application and requesting all applicable license endorsements. A new business license document will be issued reflecting the ownership of the new business. The original business license document must be destroyed, and any further use of the tax reporting account number of the previous owner(s) for tax purposes is prohibited.

(a) **Change in ownership.** A "change in ownership," for purposes of registration, occurs ~~((upon))~~ when, but is not limited to:

(i) The sale of a business by one individual, firm or corporation to another individual, firm or corporation;

(ii) The dissolution of a partnership;

(ii) The withdrawal, substitution, or addition of one or more partners where the general partnership continues as a business organization and the change in the composition of the partners is equal to or greater than fifty percent;

(iv) Incorporation of a business previously operated as a partnership or sole proprietorship;

(v) Changing from a corporation to a partnership or sole proprietorship; or

(vi) Changing from a corporation, partnership or sole proprietorship to a limited liability company or a limited liability partnership.

(b) **Situations that are not a change in ownership.** For the purposes of registration, a "change in ownership" does not occur upon:

(i) The sale of all or part of the common stock of a corporation;

(ii) The transfer of assets to an assignee for the benefit of creditors or upon the appointment of a receiver or trustee in bankruptcy;

(iii) The death of a sole proprietor where there will be a continuous operation of the business by the executor, administrator, or trustee of the estate or, where the business was owned by a marital community or registered domestic partnership, by the surviving spouse or surviving domestic partner of the deceased owner;

(iv) The withdrawal, substitution, or addition of one or more partners where the general partnership continues as a business organization and the change in the composition of the partners is less than fifty percent; or

(v) A change in the trade name under which the business is conducted.

(c) **Situations where a new business license application may still be required.** While changes in a business entity may not result in a "change in ownership," the completion of a new business license application may be required to reflect the changes in the registered account.

(12) **Change in location.** Whenever the place of business is moved to a new location, the taxpayer must notify the department of the change. Although a new business license application may not be required to notify the department of a location change, some endorsements and licenses will require a new business license and reapproval of the license endorsements at the new location. A new ~~((registrations and))~~ business license(s) document will be issued to reflect the change in location.

(13) **Lost ~~((registrations and))~~ business license(s) documents.** If any ~~((registrations and))~~ business license(s) document is lost, destroyed or defaced as a result of accident or of natural wear and tear, a new document will be issued upon request.

(14) **Administrative closure of taxpayer accounts.** The department may, upon written notification to the taxpayer, close the taxpayer's tax reporting account and rescind its tax registration endorsement whenever the taxpayer has reported no gross income and there is no indication of taxable activity for two consecutive years.

The taxpayer may request, within thirty days of notification of closure, that the account remain open. A taxpayer may also request that the account remain open on an "active non-reporting" status if the requirements of subsection (3)(a) of

this rule are met. The request shall be reviewed by the department and if found to be warranted, the department will immediately reopen the account. The following are acceptable reasons for continuing as an active account:

(a) The taxpayer is engaging in business activities in Washington which may result in tax liability.

(b) The taxpayer is required to collect or pay to the department (~~(of revenue)~~) a tax or fee which the department is authorized to administer and/or collect.

(c) The taxpayer has in fact been liable for excise taxes during the previous two years.

(15) **Reopening of taxpayer accounts.** A business person choosing to resume business activities (~~(for which)~~) where the department (~~(of revenue)~~) is responsible for administering and/or collecting a tax or fee, may request a previously closed account be reopened. The business person must complete a new business license application. When an account is reopened a new (~~(registrations and)~~) business license(s) document, reflecting a current tax registration endorsement, (~~(shall)~~) will be issued. Persons requesting the reopening of an account (~~(which)~~) that had previously been closed due to a revocation action should refer to subsection (16) of this rule.

(16) **Revocation and reinstatement of tax registration endorsements.** Actions to revoke tax registration endorsements must be conducted by the department pursuant to the provisions of chapter 34.05 RCW, the Administrative Procedure Act, and the taxpayers bill of rights of chapter 82.32A RCW. Persons should refer to WAC 458-20-10001, Adjudicative proceedings—Brief adjudicative proceedings—Wholesale and retail cigarette license revocation/suspension—Certificate of registration (tax registration endorsement) revocation, for an explanation of the procedures and processes pertaining to the revocation of tax registration endorsements.

(a) The department (~~(of revenue)~~) may, by order, revoke a tax registration endorsement if:

(i) Any tax warrant issued under the provisions of RCW 82.32.210 is not paid within thirty days after it has been filed with the clerk of the superior court; or

(ii) The taxpayer is delinquent, for three consecutive reporting periods, in the transmission to the department of retail sales tax collected by the taxpayer; or

(iii) Either:

(A) The taxpayer was convicted of violating RCW 82.32.290(4) and continues to engage in business without fully complying with RCW 82.32.290 (4)(b)(i) through (iii); or

(B) A person convicted of violating RCW 82.32.290(4) is an owner, officer, director, partner, trustee, member, or manager of the taxpayer, and the person and taxpayer have not fully complied with RCW 82.32.290 (4)(b)(i) through (iii).

For purposes of (a)(iii) of this subsection, the terms "manager," "member," and "officer" mean the same as defined in RCW 82.32.145.

(b) The revocation order will be, if practicable, posted in a conspicuous place at the main entrance to the taxpayer's place of business. The department may also post a copy of the revocation order in any public facility, as may be allowed by

the public entity that owns or occupies the facility. The revocation order posted at the taxpayer's place of business must remain posted until the tax registration endorsement has been reinstated or the taxpayer has abandoned the premises. A revoked endorsement will not be reinstated until:

(i) The amount due on the warrant has been paid, or satisfactory arrangements for payment have been approved by the department, and the taxpayer has posted with the department a bond or other security in an amount not exceeding one-half the estimated average annual liability of the taxpayer; or

(ii) The taxpayer and, if applicable, the owner, officer, director, partner, trustee, member, or manager of the taxpayer who was convicted of violating RCW 82.32.290(4) are in full compliance with RCW 82.32.290 (4)(b)(i) through (iii), if the tax registration endorsement was revoked as described in (a)(iii) of this subsection.

(c) It is unlawful for any taxpayer to engage in business after its tax registration endorsement has been revoked.

(17) **Penalties for noncompliance.** The law provides that any person engaging in any business activity, for which registration with the department (~~(of revenue)~~) is required, (~~(shall)~~) must obtain a tax registration endorsement.

(a) The failure to obtain a tax registration endorsement prior to engaging in any taxable business activity constitutes a gross misdemeanor.

(b) Engaging in business after a tax registration endorsement has been revoked by the department constitutes a Class C felony.

(c) Any tax found to have been due, but delinquent, and any tax unreported as a result of fraud or misrepresentation, may be subject to penalty as provided in chapter 82.32 RCW, WAC 458-20-228 and 458-20-230.

## WSR 16-07-119

### PROPOSED RULES

### DEPARTMENT OF

### LABOR AND INDUSTRIES

[Filed March 22, 2016, 10:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-03-058.

Title of Rule and Other Identifying Information: Chapter 296-17A WAC, Classifications for Washington workers' compensation insurance.

Hearing Location(s): Labor and Industries Building, Room S117, 7273 Linderson Way S.W., Tumwater, WA 98501, on May 4, 2016, at 10:00 a.m.

Date of Intended Adoption: May 17, 2016.

Submit Written Comments to: Jo Anne Attwood, P.O. Box 44148, Olympia, WA 98504-4148, e-mail JoAnne.Attwood@lni.wa.gov, fax (360) 902-4799, by May 4, 2016, 5:00 p.m.

Assistance for Persons with Disabilities: Contact office of information and assistance by May 4, 2016, TTY (360) 902-5797.

## Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:

	WAC Numbers	WAC Description	What is Changing	Reason for Change
1.	296-17A-0504-21  296-17A-0512-00  296-17A-0512-01 296-17A-0521-00  296-17A-4305-20	Painting: Exterior buildings or structures, N.O.C.; Cleaning: Interior/exterior of oil or gas storage tanks, beer vats, and sewage treatment tanks.  Insulation or sound proofing materials: Installation, N.O.C.  Asbestos abatement.  Painting building interiors; wallpaper hanging/removal.  Hazardous waste and toxic material processing or handling, N.O.C.	Add the following reference for asbestos information: <i>Special note: See asbestos certification and training requirements at www.lni.wa.gov.</i>	Safety and ease of doing business. Staff from DOSH requested we reference requirements for handling asbestos in our classification rules. Asbestos handling is allowed in several classifications and DOSH staff want to make sure customers are thinking of the safety requirements also.
2.	296-17A-4808-01	Farms: Diversified field crops - not for fresh market.	Correcting reference from 2102, Warehouse general merchandise, to 2104, Vegetable packing - Fresh.	The wrong classification was referenced in the July 2015 rewrite of the classification.
3.	296-17A-4814 296-17A-4815 296-17A-4816	Farms - internship program.	Remove outdated references to "governing classification" and WAC 296-17-310171.	References are no longer correct due to rule language changes made in July 2014 that repealed WAC 296-17-310171, which removed the practice of identifying the governing classification.
4.	296-17A-6408  296-17A-6409	Dealers: Farm machinery/implement.  Dealers: Service/repair garages, machinery, equipment, N.O.C.	Add note that sales may be reported in 6303 if businesses have sales representatives with no exposure to machinery and who meet criteria for WAC 296-17-31018 Exception classifications.	Ease of doing business. The scopes language for 6408 and 6409 was not clear about whether sales activities in 6408 and 6409 were allowed to be reported in 6303.  Staff requested clarification due to the difficulty understanding the intent of the language. This will reduce confusion for external customers and allow staff to provide consistent guidance to customers.
5.	296-17A-6902-03	Logging railroad - construction or maintenance.	Correct classification reference from WAC 296-17-675 to 296-17A-5206.	This reference was overlooked when classifications were renamed and put into a new chapter 296-17A WAC in 2006.
6.	296-17A-6907	Household furnishings - moving and storage.	Add exclusion to 6907 for modular work stations and office furniture, which are to be reported in 2002-13.	Ease of doing business. Currently, the exclusions in 6907 do not reference moving/assembly of office furniture and modular work stations - 6907 exclusions only say that non-household furnishings go in the warehouse classification. Classification 2002 is not for warehouses; subclassification 2002-13 is freight handling, and already includes



	WAC Numbers	WAC Description	What is Changing	Reason for Change
				office furniture and modular work stations. Staff requested clarification due to the difficulty understanding the intent of the language. This will reduce confusion for external customers and allow staff to provide consistent guidance to customers.
7.	296-17A-7204	Preferred workers.	Delete descriptions of eligibility and program details; add reference to preferred worker, chapter 296-16 WAC; specify that all jobs are allowed in classification 7204.	SHB 1496, enacted July 24, 2015, allows employers of injury to employ their injured workers as preferred workers, if the employer and the injured worker qualify for the preferred worker program. 7204 currently outlines eligibility and program details of the PW program. By removing the chapter 296-16 WAC details, adding a reference to chapter 296-16 WAC, and specifying that all jobs are allowed in classification 7204, we are minimizing potential for future classification inconsistencies and required updates if changes happen within the preferred worker program.

The department intends to review these chapters and make revisions to:

- Correct typographical and other errors (such as invalid telephone numbers and out-of-date references),
- Revise wording and formatting to make the rules easier to understand and apply, and
- Incorporate and formalize existing agency practices (such as expressly including in a risk classification employment that the department currently includes by interpretation or analogy).
- Revise wording in Classification 7204, Preferred workers, to align with preferred worker program changes made as a result of SHB 1496 enacted July 24, 2015.

The purpose of this rule making is not to make substantive changes to how the department classifies employment, but to review and revise the classification plan to ensure it is clear and understandable. These changes will not change the way we calculate employer rates, our reporting requirements, or how we classify businesses.

As part of this rule making, the department also intends to review these chapters for need, clarity, and consistency as required by SSB 5679 (chapter 30, Laws of 2013 2nd sp. sess.) to make changes where possible to reduce the regulatory burden on employers insured with the state fund.

Statutory Authority for Adoption: RCW 51.04.020 and 51.16.035.

Statute Being Implemented: RCW 51.16.035.

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

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

Name of Agency Personnel Responsible for Drafting: Jo Anne Attwood, Tumwater, Washington, (360) 902-4777; Implementation: Mike Ratko, Tumwater, Washington, (360) 902-6369; and Enforcement: Victoria Kennedy, Tumwater, Washington, (360) 902-4997.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency is exempt from conducting a small business economic impact statement since the proposed rules set or adjust fees or rates pursuant to legislative standards described in RCW 34.05.310 (4)(f) and do not change current coverage options for employers and workers.

A cost-benefit analysis is not required under RCW 34.05.328. Since the proposed rules do not change any existing coverage options for employers or workers and adjust fees pursuant to legislative standards, they are exempted by RCW 34.05.328 (5)(b)(vi) from the requirement for a cost-benefit analysis.

March 22, 2016

Joel Sacks  
Director

AMENDATORY SECTION (Amending WSR 12-11-109, filed 5/22/12, effective 7/1/12)

**WAC 296-17A-0504 Classification 0504.**

**0504-06 Waterproofing, N.O.C.: Buildings or structures**

Applies to contractors engaged in waterproofing buildings or structures not covered by another classification (N.O.C.). This classification includes the application of waterproofing or sealant material to surfaces or cracks and voids to eliminate leaks in all types of buildings or structures, regardless of height. Such structures may include, but are not limited to:

- Foundations and foundation walls((?));
- Walls((?));
- Floors((?));
- Decks((?));
- Fences((?));
- Walkways; and
- Driveways.

Waterproof material is applied to a variety of surfaces such as:

- Wood((?));
- Concrete((?));
- Asphalt((?));
- Steel((?));
- Metal((?));
- Plaster((?)); or
- Stone.

There are several types of waterproof processes which may include:

- Membrane, which adheres long strips of rubber and pumice to exterior walls or foundations with the use of primer;
- Pressure injection, which uses a long wand inserted into the ground to fill cracks;
- Epoxy injection, which is performed on the interior or exterior with use of a caulk gun to inject a silicon material into cracks; or
- Application with use of a brush, roller or spray directly onto the surface.

This classification excludes:

- Excavation work performed in conjunction with a waterproofing contract which is to be reported separately in classification 0101;
- Waterproofing operations performed in connection with roofing or subaqueous work which are to be reported separately in the classification applicable to the work being performed;
- The application of asphalt sealant or waterproof materials to roadways and parking lots which is to be reported separately in classification 0219;
- Filling cracks or voids with like materials which is to be reported separately in the classification applicable to the repair work being performed; and
- The application of waterproof materials performed by a concrete contractor as part of the concrete construction project which is to be reported separately in the classification applicable to the work being performed.

*Special note:* If excavation work is performed (to remove dirt away from a foundation wall or to push it against

the wall after the waterproofing material is applied) classification 0101 applies, regardless of the type of contractor performing the excavation work.

**0504-18 Pressure washing services or sandblasting, N.O.C.: Buildings or structures**

Applies to contractors engaged in pressure washing or sandblasting buildings or structures, not covered by another classification (N.O.C.). This classification includes cleaning, washing, pressure washing or sandblasting to remove dirt, moss, rust or old paint. Pressure washing involves a forced spray of air and water to remove unwanted surface materials. Sandblasting, or abrasive blasting, involves a forced spray of sand, steel, or glass. This classification includes the cleaning of roofs, gutters, and downspouts, and the removal of moss or snow from multiple story buildings.

This classification excludes:

- Contractors engaged in multimedia blasting in shop which is to be reported separately in classification 3402;
- Pressure washing or sandblasting by a painting contractor as a part of the preparation for painting exterior buildings, structures, or the interior/exterior of tanks which is to be reported separately in the classification 0504-21;
- Pressure washing as a part of interior building painting contracts which is to be reported separately in classification 0521;
- Cleaning or washing roofs, or removing snow from, single story buildings (when the cleaning or washing is not part of a painting or roofing contract) which is to be reported separately in classification 6602;
- Waterproofing buildings or structures, N.O.C. which is to be reported separately in classification 0504-06; and
- Pressure washing or sandblasting operations performed in conjunction with and as a part of another type of business such as a foundry, metal goods manufacturer, auto body repair shop, etc., which is to be reported separately in the applicable classification.

**0504-20 Lead abatement**

Applies to contractors engaged in lead abatement which is performed on structures where there are significant amounts of lead-based paint and lead dust. Contractors must comply with various governmental regulations. The first step in all lead abatement projects is the preliminary testing of the site to determine the presence of lead and the extent of the contamination. If the ground surrounding the proposed worksite is contaminated, it will require remediation, which is done by a soil remediation contractor who is to be reported separately in the appropriate classification. The next step is deciding which abatement procedure is right for the project such as:

- Encapsulation which is used on interior surfaces to seal the lead-based paint with a bonding material;
- Enclosure which is used on interior and exterior surfaces and involves constructing special airtight enclosures made out of gypsum wallboard, plywood paneling, aluminum, vinyl or wood exterior sidings;
- Component replacement which involves removing building components such as paneling, moldings, windows and doors which are coated with lead-based paint and replacing them with new components; and

- Chemical removal, abrasive removal or hand scraping which are methods to physically remove the lead paint.

This classification includes all preparation work and all cleanup work.

This classification excludes:

- Soil remediation work which is to be reported separately in classification 0101;

- Asbestos abatement which is to be reported separately in classification 0512; and

- Lead abatement as part of a painting contract for interior/exterior of buildings or structures, or the interior/exterior of tanks which is to be reported separately in the applicable classification.

**0504-21 Painting: Exterior buildings or structures, N.O.C.; Cleaning: Interior/exterior of oil or gas storage tanks, beer vats, and sewage treatment tanks**

Applies to contractors engaged in painting the exterior of all types of buildings or structures not covered by another classification (N.O.C.), regardless of height. Buildings and structures include, but are not limited to:

- Bridges((:));
- Towers((:));
- Smokestacks((:));
- Stadiums((:));
- Factories((:));
- Warehouses((:));
- Stores((:));
- Churches((:)); and
- Residential or commercial single or multiple story buildings.

Paint is applied by brush, roller or spray to a variety of surfaces such as wood, concrete, steel, metal, plaster, stone, or other types of exterior surfaces. This classification includes all preparation work such as the set up of scaffolding or power lifts, pressure washing, removal of old paint or asbestos, sandblasting, taping or masking, and cleanup work. This classification also applies to cleaning, coating, or painting the interior/exterior of oil or gas storage tanks, beer vats, or sewage treatment tanks.

This classification excludes:

- Contractors engaged in waterproofing buildings or structures, N.O.C. which are to be reported separately in classification 0504-06;

- Pressure washing services or sandblasting of buildings or structures which are to be reported separately in classification 0504-18;

- Interior painting of buildings which is to be reported separately in classification 0521;

- Painting of murals or other artwork on the interior of buildings which is to be reported separately in classification 4109; and

- Painting of murals or other artwork on the exterior of buildings which is to be reported separately in classification 0403.

Special note: See asbestos certification and training requirements at [www.lni.wa.gov](http://www.lni.wa.gov).

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-0512 Classification 0512.**

**0512-00 Insulation or sound proofing materials: Installation, N.O.C.**

Applies to contractors engaged in installing insulation or sound proofing materials not covered by another classification (N.O.C.). This classification includes the installation or removal of insulation material for all types of residential or commercial buildings or structures. Insulation materials include, but are not limited to((:));

- Flexible types in the form of blankets, rolls or quilts((:));

- Loose fills or mineral substances in granulated, powder, cellulose or fibrous wood forms((:));

- Pads and bats of mineral wool((:));

- Slabs of cork board or wood fiber((:));

- Rigid types such as wood and sugarcane fiberboard or panels((:)); and

- The reflective type often consisting of aluminum foil encased in paper.

The methods of installation include hand, blower, nailing, or cementing with special adhesive.

This classification includes ((the));

- Installation of suspended or acoustical grid ceilings((-This classification includes));

- Installation of weather strip and caulking, roof or soffit ventilators, energy efficient doors and related carpentry work done in connection with the weatherization or retrofitting of buildings and residences((-This classification also includes the));

- Application of polystyrene strips placed as insulation on the tops of mobile homes.

This classification excludes ((the));

- Installation of glass windows in buildings which is to be reported separately in classification 0511;

- Energy auditors with no installation or delivery duties who may be reported separately in classification 6303 provided all the conditions of the general reporting rules covering standard exception employees have been met;

- Asbestos abatement which is to be reported separately in classification 0512-01; lead abatement which is to be reported separately in classification 0504; and ((the))

- Installation of insulated covering on boilers or steam pipes which is to be reported separately in classification 0306.

Special note: See asbestos certification and training requirements at [www.lni.wa.gov](http://www.lni.wa.gov).

**0512-01 Asbestos abatement**

Applies to contractors engaged in the removal of asbestos. Work contemplated by this classification includes all operations such as, but not limited to(((:the));

- Removal of damaged, deteriorated or unwanted existing asbestos coverings and material from buildings and other structures such as, but not limited to, ceilings, walls, partitions, floors, and from around air conditioning and heating ducts((-Also included in this classification is the));

- Removal of asbestos insulated covering around boilers and steam pipes, asbestos used as insulation, fireproofing,

and in various building materials such as floor coverings, ceiling tiles, cement sheeting, granular and corrugated wrap, and acoustical and decorative treatment for walls and ceilings.

This classification excludes:

- Contractors engaged in the installation of boiler and steam pipe insulation coverings who are to be reported separately in classification 0306;

- Lead abatement which is to be reported separately in classification 0504;

- Asbestos abatement as a part of painting the interior or exterior of buildings or structures or the interior/exterior of tanks which is to be reported separately in the applicable classification.

Special note: See asbestos certification and training requirements at [www.lni.wa.gov](http://www.lni.wa.gov).

**AMENDATORY SECTION** (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-0521 Classification 0521.**

**0521-00 Painting building interiors; wallpaper hanging/removal**

Applies to contractors engaged in painting building interiors regardless of the height inside the building. This classification includes building interiors such as, but not limited to:

- Single and multiple story residential houses and commercial buildings;

- Warehouses;

- Factories;

- Coliseums;

- Theaters;

- Stores; and

- Churches.

The following structures are examples which would *not* meet the definition of a building or qualify as interior painting:

- Bridges;

- Refineries;

- Grain silos;

- Water towers;

- Service station canopies; or

- Tanks.

Paint is applied by brush, roller or spray to a variety of surfaces such as wood, wallboard, plaster, stucco, metal, concrete, or other types of surfaces found within the interior of a building.

This classification includes:

- All preparation work such as the set up of scaffolding, sanding, removal of old paint or asbestos, taping or masking, and clean up work;

- The hanging or removal of wallpaper. The process of hanging wallpaper includes cleaning or scraping walls to ensure the wallpaper will adhere to the surface. Depending on the type of wallpaper, adhesive is applied to the wall surface, the wallpaper, or both. Patterns are matched and the strip is applied to the surface and brushed smooth to remove the air pockets. This process is repeated until the entire job is complete;

- Refinishing or resurfacing of tubs, sinks, appliances and countertops.

This classification excludes:

- Exterior painting of buildings or structures which is to be reported separately in classification 0504. Classifications 0521 and 0504 may be assigned to the same employer provided accurate records are maintained which distinguish interior building painting contracts from exterior building or structure painting contracts;

- Contractors engaged in waterproofing buildings or structures N.O.C., pressure washing services or sandblasting of buildings or structures, lead paint abatement, and the exterior painting of buildings or structures, including interior/exterior tanks which are all to be reported separately in classification 0504;

- Painting of murals or other artwork on the interior of buildings which is to be reported separately in classification 4109; and

- Painting of murals or other artwork on the exterior of buildings which is to be reported separately in classification 0403.

Special note: See asbestos certification and training requirements at [www.lni.wa.gov](http://www.lni.wa.gov).

**AMENDATORY SECTION** (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-4305 Classification 4305.**

**4305-06 Garbage works or landfill: Reduction or incineration**

Applies to establishments engaged in the disposal of refuse by processing or destruction, or in the operation of incinerators, landfills or other sites for disposal of such materials. Sanitary landfilling involves spreading typical household waste, in thin layers, compacting them to the smallest practical volume, and covering them with soil each working day in a manner that minimizes environmental impact. Sanitary landfills must have permits issued by a state regulatory program. Also included in this classification are solid waste landfills which are designed to accept construction debris such as plasterboard, cement, dirt, wood, and brush. Compactors may be used to compact the trash before it is discarded in the landfill. Incinerator operations reduce the volume of refuse with the remaining material and ashes being discarded in a landfill. Front end loaders are frequently used to feed the refuse into the incinerator. This classification includes:

- Cashiers collecting fees from customers;

- Incidental recycling or sorting operations conducted in connection with a landfill or garbage works operation by employees of an employer subject to this classification; and

- Establishments that only sort refuse. (Refuse sorting centers are distinguished from "buy back centers" in that "buy back centers" collect recyclable materials which they sell to others while refuse sorting centers collect and dispose of materials.)

This classification excludes:

- Establishments engaged in solid waste, refuse or ashes collecting, including curbside recycle services which are to be reported separately in classification 4305-18;
- Cities or towns engaged in solid waste, refuse or ashes collecting, including curbside recycle services which are to be reported separately in classification 0803;
- Counties and taxing districts engaged in operating garbage works, landfill, reduction or incineration operations which are to be reported separately in classification 1501;
- Establishments engaged in hazardous waste and toxic material processing or handling, including processing of medical or septic tank waste, drug lab or hazardous spill cleanup (excluding oil spill cleanup on land), and reprocessing or handling of low-level radioactive materials, which are to be reported separately in classification 4305-20;
- Establishments engaged in tire dumps or collection centers which are to be reported separately in classification 4305-21; and
- Buy back (recycle) center operations that include the collecting, buying from customers, sorting and the baling and sales of materials which are to be reported separately in classification 2102.

#### 4305-18 Solid waste, refuse or ashes collecting

Applies to establishments engaged in collecting and removing waste from private homes, commercial establishments, industrial facilities, and other sites. Refuse may be picked up on a daily, weekly, or other regular basis. Drivers are usually assigned designated routes to collect curbside garbage or transport metal dumpsters for commercial businesses. This classification also includes the curbside collection of recyclable material when performed by employees of an employer subject to this classification. Garbage collection companies have contracts to dump refuse at landfills or local transfer stations where refuse is compacted and later transferred to a landfill. Independent owners may also contract to run the services for a county or city. This classification also includes establishments engaged in mobile paper shredding services. A truck, similar to a small moving van, is outfitted with a paper shredder. Empty bins or cans are left at establishments such as banks and law offices which need to have documents shredded, the filled containers are picked up either on a regular basis or on call, and the paper shredded on-site. The shredded paper is delivered to recyclers or other businesses who use shredded paper.

This classification excludes:

- Establishments engaged in garbage works, landfill, reduction or incineration operations which are to be reported separately in classification 4305-06;
- Counties or taxing districts engaged in garbage works, landfill, reduction or incineration operations which are to be reported separately in classification 1501;
- Cities or towns engaged in solid waste, refuse or ashes collecting, including curbside recycling services which are to be reported separately in classification 0803;
- Establishments engaged in hazardous waste and toxic material processing or handling, including processing of medical or septic tank waste, drug lab or hazardous spill cleanup (excluding oil spill cleanup on land), and reprocess-

ing or handling of low-level radioactive materials, which are to be reported separately in classification 4305-20;

- Establishments engaged in tire dumps or collection centers which are to be reported separately in classification 4305-21; and

- Recycle ("buy-back") center operations that include the collecting, buying from customers, sorting, and the baling of materials which are to be reported separately in classification 2102.

#### 4305-20 Hazardous waste and toxic material processing or handling, N.O.C.

Applies to establishments engaged in the *processing or handling* of hazardous/toxic materials not covered by another classification (N.O.C.), including the *processing* of medical or septic tank waste, drug lab or hazardous spill *cleanup* (excluding oil spill cleanup on land), and *reprocessing or handling* of low-level radioactive materials. This classification is distinguished from classification 3701-27, in that 4305-20 applies to the *processing or cleanup* of hazardous/toxic materials while 3701-27 includes the *identifying and repackaging for disposal* of such materials as drugs, pesticides, chemicals, and toners. Hazardous waste can be defined as any material that contains hazardous elements in amounts high enough to pose a significant threat to human health and the environment and therefore should be isolated. Hazardous characteristics include the ability to bioconcentrate, ignite, corrode, react with water or other materials, or show toxicity such as toxic metals including lead, cadmium and mercury; organic solvents such as benzene and trichloroethylene; and toxic materials such as asbestos.

This classification excludes:

- Establishments engaged in garbage works, landfill, reduction or incineration operations which are to be reported separately in classification 4305-06;
- Establishments engaged in solid waste and refuse or ashes collecting, including curbside recycle services and mobile paper shredding operations, which are to be reported separately in classification 4305-18;
- Establishments engaged in tire dumps or collection centers which are to be reported separately in classification 4305-21;
- Soil remediation, including oil spill cleanup on land, which is to be reported separately in classification 0101;
- Asbestos abatement, all operations, which is to be reported separately in classification 0512;
- Processing of waste oils, solvents, antifreeze, paints, and other hazardous materials, which is to be reported separately in classification 3407; and
- Hazardous/toxic material repackaging for disposal, including drugs, pesticides, chemicals, and toners, which is to be reported separately in classification 3701.

Special note: See asbestos certification and training requirements at [www.lni.wa.gov](http://www.lni.wa.gov).

#### 4305-21 Tire dumps or collection centers

Applies to establishments engaged in operating tire dumps or collection centers. The primary source of used vehicle tires are tire retailers who remove the tires from their customers' vehicles when replacement tires are sold. Occasionally community or charitable groups will hold a fund

raising event where the public can drop off their used tires for a fee. Operations include, but are not limited to, picking up and hauling the used tires to a location where the tires can be stored or manually sorted into those with enough tread to be used on the highways; those casings suitable for retreading (either of which have a resale value); and those with no resale value which are hauled to an appropriate disposal site. This classification includes drivers as well as workers involved in the sorting operations.

**4305-22 Debris removal: Construction sites or nonconstruction debris N.O.C.**

Applies to establishments engaged in the collecting and removing of construction site debris left by construction crews. The debris may consist of scrap lumber, metal, wire, drywall, carpet and any other materials used in the construction of residential or commercial projects. This classification also includes the collecting and removal of nonconstruction debris. This includes, but is not limited to:

- Basement debris;
- Household junk;
- Garden waste;
- Furniture; and
- Appliances.

The debris is loaded into dump trucks, utility trucks, dump trailers, or roll off dumpsters then transferred to a landfill or local transfer station.

This classification excludes:

- Establishments engaged in residential or commercial construction that remove and haul their own debris which is to be reported in the construction classification applicable to the work being performed;
- Establishments engaged in garbage works, landfill reduction or incineration operations which are to be reported separately in classification 4305-06;
- Establishments engaged in solid waste and refuse or ashes collecting, including curbside recycle services and mobile paper shredding operations which are to be reported separately in classification 4305-18;
- Establishments engaged in hazardous waste and toxic material processing or handling, including processing of medical or septic tank waste, drug lab or hazardous spill cleanup (excluding oil spill cleanup on land), and reprocessing or handling of low-level radioactive materials which are to be reported separately in classification 4305-20;
- Establishments engaged in tire dumps or collection centers which are to be reported separately in classification 4305-21; and
- Establishments engaged in preoccupancy cleanup of newly constructed residential or commercial structures which includes washing windows, vacuuming carpets, dusting woodwork, doors, cabinets, washing floors and fixtures which are to be reported separately in classification 6602-03.

AMENDATORY SECTION (Amending WSR 15-02-060, filed 1/6/15, effective 7/1/15)

**WAC 296-17A-4808 Classification 4808.**

**4808-01 Farms: Diversified field crops - Not for fresh market**

**Applies to:**

Establishments engaged in growing a variety of grain, vegetable, or grass crops during a single season.

**Work in this classification includes,** but is not limited to:

- Preparing soil for new crops;
- Planting;
- Fertilizing;
- Weeding;
- Harvesting;
- Grading;
- Sorting;
- Packing;
- Shipping of farm products grown subject to this classification;
- Maintaining or installing sprinkler or irrigation systems.

**Typical crops:**

Alfalfa	Garlic	Rye
Barley	Grain	Sugar beets (for sugar)
Beans, dry	Grass seed	Timothy
Clover	Grass hay	Wheat
Corn (dry, silage)	Peas, dry	

*Notes:*

- Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.
- If all the conditions of the general reporting rules covering the operations of a secondary business are met, farms operating multiple retail locations, such as those found in parking lots of shopping centers or at farmer's markets, may qualify to have those activities reported separately.
- This classification differs from classification 4802 "Vegetable farm operations" in that vegetable crops in classification 4808 generally have a long growing season and are harvested upon reaching maturity at the end of the season. Vegetable crops grown in classification 4802 are generally planted so that harvesting will occur continuously over the season and in smaller quantities. Crops grown in classification 4808 are generally used as feed, flour, or cereal grains, as opposed to crops grown in classification 4802, which are used for fresh market, cannery or frozen foods.

**What activities are not included in this classification?**

- Fresh vegetable packing (report in classification ~~(2102)~~ 2104);
- Canneries or freezer operations (report in classification 3902);
- Employers growing only cereal grain crops, such as barley, corn, rye, or wheat (report in subclassification 4808-06);
- Establishments engaged exclusively in the sale of fresh vegetables but not involved in the cultivation of plants (report in classification 6403); and
- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

**What is a farm labor contractor?**

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and
- Generally the work involves manual labor tasks as opposed to machine operation.

**What risk classification are farm labor contractors to report in?**

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

**4808-02 Farms: Alfalfa, clover, and grass seed****Applies to:**

Establishments engaged exclusively in raising alfalfa, clover, and grass crops for seed.

**Work in this classification includes**, but is not limited to:

- Preparing soil for crops;
- Planting;
- Fertilizing;
- Machine harvesting;
- Drying of seeds;
- Grading;
- Sorting;
- Packing and shipping of seeds;
- Maintaining or installing sprinkler or irrigation systems.

**What activities are not included in this classification?**

- Grading, sorting, and packaging seeds; or selling baled alfalfa or clover by establishments not engaged in growing operations (report in classification 2101);
- Establishments engaged exclusively in grain or seed storage that are not engaged in growing operations (report in classification 2007); and
- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

**What is a farm labor contractor?**

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and
- Generally the work involves manual labor tasks as opposed to machine operation.

**What risk classification are farm labor contractors to report in?**

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

**4808-04 Farms: Hay****Applies to:**

Establishments engaged exclusively in raising hay, which includes, but is not limited to, grass hay, straw, clover, alfalfa, and timothy.

**Work in this classification includes**, but is not limited to:

- Raising of hay crops for seed;
- Preparing soil for crops;
- Planting;
- Fertilizing;
- Machine harvesting;
- Grading;
- Sorting;
- Drying of seeds;
- Packing and shipping of seeds;
- Maintaining or installing sprinkler or irrigation systems.

*Note:*

- Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.

**What activities are not included in this classification?**

- Grading, sorting, and packaging seeds, or selling baled hay by establishments not engaged in growing operations (report in classification 2101); and
- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

**What is a farm labor contractor?**

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and
- Generally the work involves manual labor tasks as opposed to machine operation.

**What risk classification are farm labor contractors to report in?**

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

**4808-06 Farms: Cereal grains****Applies to:**

Establishments engaged in growing cereal grain crops.

**Work in this classification includes**, but is not limited to:

- Preparing soil for new crops;
- Planting;
- Fertilizing;
- Weeding;
- Harvesting;
- Grading;
- Sorting;
- Packaging and shipping of farm products grown subject to this classification;

- Maintaining or installing sprinkler or irrigation systems.

*Note:*

- Roadside stands are included in the farming classification when operated at or near the farm, even if a small stock of products not produced by the employer is also sold.

**Typical crops:**

Barley	Rye
Corn	Wheat

**What activities are not included in this classification?**

- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

**What is a farm labor contractor?**

- A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating and fertilizing; and
- Generally the work involves manual labor tasks as opposed to machine operation.

**What risk classification are farm labor contractors to report in?**

- Farm labor contractors are to be reported in the classification that applies to the farm they are contracting with; and
- Contractors who provide both equipment or machinery and the machine operators are to be reported in classification 4808 "Custom farm services," as the process involved in operating machinery is the same regardless of the type of farm they are providing services to or the type of crop involved.

**4808-07 Potato sorting and storage**

**Applies to:**

Establishments engaged in storing potatoes in storage warehouses or cellars.

**Work in this classification includes**, but is not limited to:

- Sorting good potatoes from damaged ones, or from debris such as vines or rocks;
- Piling potatoes into storage area by size, and storing them until they are taken to processing or packaging plants;
- Sorting done in either the field or at a storage warehouse;
- Potato digging and piling when performed by employees of an employer who stores potatoes, but who is not engaged in growing potatoes.

**What activities are not included in this classification?**

- Fresh vegetable packing operations (report in classification 2104);
- Canneries or freezer operations (report in classification 3902);
- Potato chip manufacturing (report in classification 3906);
- Establishments engaged exclusively in the sale of fresh vegetables but not involved in the cultivation of plants (report in classification 6403); and
- Contractors hired by farm to install, repair or build any farm equipment or structures (report in the classification applicable to the work being performed).

*Special note:* The farm labor contractor provision is not applicable to this classification as such establishments are not engaged in a farming operation.

**4808-08 Custom hay baling**

**Applies:**

Exclusively to a specialist farm labor contractor engaged in mowing, turning, and baling hay owned by others.

**Work in this classification includes:**

- Incidental loading of hay onto trucks;
- Stacking of hay in barns or warehouses.

*Special note:* The farm labor contractor provision is not applicable to this classification as such establishments are not engaged in a farming operation.

**4808-11 Custom farm services by contractor**

**Applies:**

Exclusively to contractors engaged in supplying and operating agriculture machinery and equipment at their customers' locations.

**Typical equipment used:**

Boom loaders	Pickers	Reapers
Combines	Plows	Tractors
Fertilizer spreaders	Potato diggers	

**Work in this classification includes**, but is not limited to:

- Preparing fields for crops;
- Planting;
- Cultivating crops;
- Fertilizing;
- Harvesting;
- This classification also includes seasonal agriculture produce hauling from the field to a processing or storage plant when performed by employees of an employer not engaged in the related farming operations associated with the crops being hauled.

**What activities are not included in this classification?**

- Contractors subject to this classification are generally not responsible for the overall care of the crops, but are merely hired to provide specified services, which involve the use of machinery and employee equipment operators;
- Hauling of agriculture produce from anywhere other than field to processing or storage plant is to be reported in classification 1102.

AMENDATORY SECTION (Amending WSR 10-17-028, filed 8/9/10, effective 9/9/10)

**WAC 296-17A-4814 Classification 4814.**

**4814-00 Farms: Internship program** (to be assigned only by the agricultural specialist)

Applies to qualified farms engaged in providing an internship program for agricultural education. To qualify, the farm must hold a valid certification from labor and industries to provide an internship program that includes a curriculum of learning modules and supervised participation. The internship program is designed to teach farm interns about farming practices and farm enterprise.



Classification 4814 can only be assigned to those farms which have one of the following classifications assigned to their account as the governing classification: 4806, 4810, or 4813. ((For governing classification, reference: ~~WAC 296-17-310171.~~)

*Special note:* The term "farm intern" applies to those certified to participate in the farm internship program. Intern hours must be reported exclusively in classification 4814. All other farm employees' hours are to be reported separately in the applicable farm classification that applies to the farm operation.

AMENDATORY SECTION (Amending WSR 10-17-028, filed 8/9/10, effective 9/9/10)

**WAC 296-17A-4815 Classification 4815.**

**4815-00 Farms: Internship program** (*to be assigned only by the agricultural specialist*)

Applies to qualified farms engaged in providing an internship program for agricultural education. To qualify, the farm must hold a valid certification from labor and industries to provide an internship program that includes a curriculum of learning modules and supervised participation. The internship program is designed to teach farm interns about farming practices and farm enterprise.

Classification 4815 can only be assigned to those farms which have one of the following classifications assigned to their account as the governing classification: 4802, 4803, 4805, 4809, 4811, or 4812. ((For governing classification, reference: ~~WAC 296-17-310171.~~)

*Special note:* The term "farm intern" applies to those certified to participate in the farm internship program. Intern hours must be reported exclusively in classification 4815. All other farm employees' hours are to be reported separately in the applicable farm classification that applies to the farm operation.

AMENDATORY SECTION (Amending WSR 10-17-028, filed 8/9/10, effective 9/9/10)

**WAC 296-17A-4816 Classification 4816.**

**4816-00 Farms: Internship program** (*to be assigned only by the agricultural specialist*)

Applies to qualified farms engaged in providing an internship program for agricultural education. To qualify, the farm must hold a valid certification from labor and industries to provide an internship program that includes a curriculum of learning modules and supervised participation. The internship program is designed to teach farm interns about farming practices and farm enterprise.

Classification 4816 can only be assigned to those farms which have one of the following classifications assigned to their account as the governing classification: 4804, 4808, 7301, 7302, or 7307. ((For governing classification, reference: ~~WAC 296-17-310171.~~)

*Special note:* The term "farm intern" applies to those certified to participate in the farm internship program. Intern hours must be reported exclusively in classification 4816. All other farm employees' hours are to be reported separately in

the applicable farm classification that applies to the farm operation.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-6408 Classification 6408.**

**6408-03 Dealers: Farm machinery/implement**

Applies to establishments engaged in the sale, lease, and/or rental, of new or used farm machinery and implements. This classification also applies to the service, repair and/or demonstration of those items by the dealer either on their premises or at the customer's site. For purposes of this classification the term farm machinery refers to engine-powered machinery such as, but not limited to((:);

- Tractors, combines, and swathers((:);
- Riding mowers((:);
- Sprayers((:);
- Pumps((:); and
- Generators.

Implements include, but are not limited to((:);

- Plows((:);
- Discs((:);
- Balers((:); or

• Rakes which are attached to and/or powered by farm machinery.

The variety of merchandise varies with the needs of the geographical area and may be displayed in inside showrooms and/or outside yards. In addition to parts for the machinery or implements, establishments in this classification may carry some automobile parts, hardware items, and supplies such as oil, filters, and belts. This classification includes:

- Lot sales and lot personnel((:);
- Service managers and employees((:);
- Parts department employees who have exposure to the service/repair shop or duties related to the sale of farm machinery or implements((:);
- Towing service for in-shop repairs((:);
- Delivery of merchandise to the customer((:); and
- Regional sales and/or service representatives who provide factory service or training to local dealers and other customers.

Parts department employees who are not exposed to any hazards of the service/repair shop or have no duties related to the sale of farm machinery or implements may be reported separately in classification 6309. Sales employees with no exposure to machinery and who meet the criteria of WAC 296-17-31018 Exception classifications, may be reported in 6303.

This classification excludes:

- Establishments that repair and/or service farm type tractors, *but ((who)) that are not involved in the sale of them*, which are to be reported separately in classification 6409;
- Store operations of dairy equipment and supply dealers which are to be reported separately in classification 6407;
- The installation, service, or repair of dairy machinery or equipment which is to be reported separately in classification 0603;

- All field installation, service, or repair work of wind machine dealers which is to be reported separately in classification 0603; and

- The manufacture or structural repair of heavy machinery or equipment which is to be reported separately in classification 3402.

*Special note:* Care needs to be taken when considering the assignment of classification 6309 for the sale of parts. Most businesses assigned to classification 6408-03 have an inventory of parts or accessories which they use in the service or repair of farm machinery or implements, or maintain as a convenience to their customers. *Only* those businesses that maintain a complete line of replacement parts that is physically separated from the service/repair shop should be considered for classification 6309.

AMENDATORY SECTION (Amending WSR 14-17-085, filed 8/19/14, effective 9/19/14)

**WAC 296-17A-6409 Classification 6409.**

**6409-00 Dealers: Service/repair garages, machinery, equipment, N.O.C.**

Applies to establishments engaged in the sale, lease, rental, service, and/or repair of new or used machinery and equipment not covered by another classification (N.O.C.). For purposes of this classification the terms machinery or equipment include((s)), but are not limited to((s));

- Semi-trucks((s));
- Diesel tractors((s));
- Buses((s));
- Construction equipment((s));
- Concrete barriers and other flagging equipment used in construction projects((s));
- Logging equipment((s));
- Transportation equipment((s));
- Freight hauling equipment((s));
- Well drilling equipment((s));
- Power generators((s)); and
- Industrial or manufacturing machinery.

Operations of dealers include, but are not limited to, the sale, lease, rental, demonstration, service, or repair of their equipment, either on their premises or at the customer's site, and delivery to customer. The variety of merchandise carried by a machinery and equipment dealer varies with the needs of the geographical area and may be displayed in inside showrooms and/or outside yards. Operations of service centers include diagnostic services, all phases of mechanical service such as, but not limited to, tuning, overhauling and/or rebuilding engines, motors, or transmissions, resurfacing heads, repairing carburetors or fuel injection systems and grinding valves or brakes on equipment or machinery owned by others. In addition to parts for the machinery and equipment, establishments in this classification may carry some automobile parts, hardware items, and supplies such as oil, filters, and belts. This classification includes;

- Lot sales and lot personnel((s));
- Service managers and employees((s));
- Parts department employees who have exposure to the service/repair shop or duties related to the sale of machinery/equipment((s));

- Towing service for in-shop repairs(~~(-and)~~);

- Regional sales and/or service representatives who provide factory service or training to local dealers and other customers; and

- The rental and installation of temporary fences.

Parts department employees who are not exposed to any hazards of the service/repair shop or have no duties related to the sale of machinery/equipment may be reported separately in classification 6309. ~~((This classification also includes the rental and installation of temporary fences.))~~ Sales employees with no exposure to machinery and who meet the criteria of WAC 296-17-31018 Exception classifications, may be reported in 6303.

This classification excludes;

- Farm machinery and equipment dealers who are to be reported separately in classification 6408;

- Store operations of dairy equipment and supply dealers which is to be reported separately in classification 6407;

- The installation of industrial plant equipment which is to be reported separately in classification 0603;

- The installation, service, or repair of dairy machinery or equipment which is to be reported separately in classification 0603;

- All field installation, service, or repair work of wind machine dealers which is to be reported separately in classification 0603; and

- The manufacture or structural repair of heavy machinery or equipment which is to be reported separately in classification 5109.

*Special note:* Care needs to be taken when considering the assignment of classification 6309 for the sale of parts. Most businesses assigned to classification 6409-00 have an inventory of parts or accessories which they use in the service or repair of machinery or equipment, or maintain as a convenience to their customers. *Only* those businesses that maintain a complete line of replacement parts that is physically separated from the service/repair shop should be considered for classification 6309.

AMENDATORY SECTION (Amending WSR 14-17-085, filed 8/19/14, effective 9/19/14)

**WAC 296-17A-6902 Classification 6902.**

**6902-02 Logging road: Construction or maintenance**

Applies to the construction or maintenance of logging roads. For purposes of this classification logging roads are roads for which the basic use is to provide access into a timber or forest area and for the transporting of logs out of the area by truck. This classification includes roads constructed on public or private land in connection with timber sales or logging, such as roads being constructed in accordance with the State Department of Natural Resources or the United States Forest Service timber sales. Logging roads contemplated by this classification are typically cleared and graded with a bulldozer and then paved with gravel, crushed rock, or large stones. Logging roads are generally engineered to support the weight of logging equipment and trucks but not necessarily to handle speeds and volume of nonlogging traffic. As a rule, these roads are not surfaced with asphalt or paved with concrete. Classification 6902 includes log road maintenance.

nance which is limited to keeping the road bed in good repair such as regrading and fill to repair washouts and ruts.

This classification excludes:

- The felling of timber, bucking and delimiting of all trees in the proposed roadway or adjacent shoulder and all other logging activities which are to be reported separately in classification 5001;

- All excavation, land clearing or grading as a part of roadway construction not in connection with a logging road which is to be reported separately in classification 0101;

- Construction of asphalt roads which is to be reported separately in classification 0210;

- Construction of concrete roads which is to be reported separately in classification 0214;

- Mechanical roadside brushing or machine application of chemicals which is to be reported separately in classification 5006; and

- Permanent shop or yard operations which are to be reported separately in classification 5206 provided the conditions of WAC 296-17A-5206 have been met.

#### **6902-03 Logging railroad: Construction or maintenance**

Applies to the construction or maintenance of logging railroads. For purposes of this classification logging railroads are side tracks and spurs which feed into existing railroad main lines. Log trucks haul logs from the cutting site to the logging railroad where they are loaded onto the logging railroad cars and transported to the main line. This classification includes railroads constructed on public or private land in connection with timber sales or logging, such as roads being constructed in accordance with the State Department of Natural Resources or the United States Forest Service timber sales. The construction includes clearing and grading with use of a bulldozer; laying dirt, rock and ballast; laying ties and track; and installing crossover frogs, switches, switch stands, switch mechanisms and crossing planks as needed. This classification also includes log railroad maintenance which is limited to keeping the railroad line operational.

This classification excludes:

- The falling of timber, bucking and delimiting of all trees in the proposed roadway or adjacent shoulder, and all other logging activities which are to be reported separately in classification 5001;

- The construction of railroad lines not in connection with a logging railroad which is to be reported separately in classification 0101;

- Construction of logging roads which is to be reported separately in classification 6902-02; and

- Maintenance and storage of equipment and material at a permanent yard or shop which is to be reported separately in classification 5206 provided the conditions of WAC ((296-17-675)) 296-17A-5206 have been met.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

#### **WAC 296-17A-6907 Classification 6907.**

#### **6907-01 Household furnishings moving and storage**

Applies to establishments engaged in interstate and/or intrastate moving and/or storage of household furnishings.

Work contemplated by this classification includes packing and unpacking, loading and unloading of household goods, transportation from one residence to another, and temporary storage of household goods in a warehouse. This classification includes the moving van drivers, packing personnel, laborers who assist in the loading and unloading operations, warehouse employees and truck mechanics.

This classification excludes:

- Intrastate and/or interstate delivery of nonhousehold furnishings which are to be reported separately in either classification 1101 or 1102, as applicable(~~(-and)~~);

- Nonhousehold furnishing warehouses, which are to be reported separately in the appropriate warehouse classification; and

- Firms providing moving and assembly of office furniture and modular work stations, which are reported in classification 2002-13.

*Special note:* Establishments subject to this classification are to report actual hours worked for each driver. However, the hours are to be capped at 520 hours per driver per quarter. Detailed information can be found in the general audit rule covering the trucking industry and in RCW 51.12.095.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

#### **WAC 296-17A-7204 Classification 7204.**

#### **7204-00 Preferred workers**

Applies to "preferred workers" as certified by the department of labor and industries(~~(-Preferred workers are workers who, because of a work-related injury or occupational disease, are unable to return to work with the same employer or, because of substantial impairment, unable to return to the same type of work. Before this classification can be assigned to an employer's account, the department must receive a completed "intent to hire" form from that employer within sixty days from the first date of employment. A worker may be certified as a preferred worker for a period of thirty-six months. A qualified employer who hires a preferred worker will receive up to thirty-six months of premium relief provided the preferred worker is in their employment during the same period of time. The only cost to the preferred worker and the employer will be the supplemental pension premium. If an injured worker sustains an injury within three years of the hiring date, all claims will be paid by the department through the second injury fund with no costs to the employer))~~ chapter 296-16 WAC and employers qualified according to chapter 296-16 WAC. The type of work performed by the preferred worker has no bearing on the assignment of this classification.

**WSR 16-07-123**

**PROPOSED RULES**

**DEPARTMENT OF HEALTH**

[Filed March 22, 2016, 10:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-20-078.

Title of Rule and Other Identifying Information: Chapter 246-811 WAC, Chemical dependency professionals (CDP) and CDP trainees, the department of health is proposing to amend existing sections and add new sections to establish standards and procedures for alternative training programs to get certification as CDPs. The alternative training is for specified health care practitioners whose scope of practice includes treatment of chemical dependency.

Hearing Location(s): Department of Health, Town Center 2, Room 158, 111 Israel Road S.E., Tumwater, WA 98501, on April 28, 2016, at 9:30 a.m.

Date of Intended Adoption: May 27, 2016.

Submit Written Comments to: Brad Burnham, Department of Health, P.O. Box 47850, Olympia, WA 98504-7850, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4626, by April 28, 2016.

Assistance for Persons with Disabilities: Contact Brad Burnham by April 21, 2016, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal would establish an alternative method for specified health care practitioners whose scope of practice includes treatment of chemical dependency to become certified as a CDP including education, experience and national certification requirements. The proposal also sets requirements for the same group of specified health care practitioners to eventually become CDP supervisors.

Reasons Supporting Proposal: The proposed rule will expand the pool of qualified CDPs available to provide chemical dependency counseling services to the increasing population seeking services as a result of the federal Affordable Care Act and medicaid services expansion. The proposal also supports the state's efforts to integrate chemical dependency and mental health treatment services.

Statutory Authority for Adoption: RCW 18.205.100, 18.205.060.

Statute Being Implemented: RCW 18.205.100, 18.205.-060.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brad Burnham, 111 Israel Road, Tumwater, WA 98501, (360) 236-4912.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Brad Burnham, Department of Health, 111 Israel Road, Tumwater, WA 98501, phone (360) 236-4796, fax (360) 236-2901, e-mail [brad.burnham@doh.wa.gov](mailto:brad.burnham@doh.wa.gov).

March 22, 2016

John Wiesman, DrPH, MPH  
Secretary

AMENDATORY SECTION (Amending WSR 09-14-111, filed 6/30/09, effective 7/1/09)

**WAC 246-811-010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly states otherwise.

(1) **Approved school** means any college or university accredited by a national or regional accrediting body (~~recognized by the commission on recognition of postsecondary accreditation~~), at the time the applicant completed the required education or other educational programs approved by the secretary.

(2) **Certified chemical dependency professional (CDP)** means an individual certified in chemical dependency counseling under chapter 18.205 RCW.

(3) **Certified chemical dependency professional trainee (CDPT)** means an individual working toward the education and experience requirements for certification as a chemical dependency professional, and who has been credentialed as a CDPT under chapter 18.205 RCW.

(4) **Chemical dependency counseling** means employing the core competencies of chemical dependency counseling to assist or attempt to assist an alcohol or drug addicted person to develop and maintain abstinence from alcohol and other mood-altering drugs.

(5) **Core competencies of chemical dependency counseling** means (~~competency in~~) competencies oriented to assist alcohol and drug addicted patients to achieve and maintain abstinence from mood-altering substances and develop independent support systems. Core competencies include the following nationally recognized areas:

- (a) Knowledge;
- (b) Skills;
- (c) Attitudes of professional practice, including assessment and diagnosis of chemical dependency;
- (d) Chemical dependency treatment planning and referral;
- (e) Patient and family education in the disease of chemical dependency;
- (f) Individual and group counseling with alcoholic and drug addicted individuals; and
- (g) Relapse prevention counseling, and case management.

~~((All oriented to assist alcohol and drug addicted patient to achieve and maintain abstinence from mood-altering substances and develop independent support systems.~~

~~(5))~~ (6) **Direct supervision** means the supervisor is on the premises and available for immediate consultation.

~~((6))~~ (7) **Enrolled** means participating in an approved school and progressing toward the completion of the course work, or completion of the course work to be certified as a chemical dependency professional as described in WAC 246-811-030 (2)(a) through (w).

~~((7))~~ (8) **Individual formal meetings** means a meeting with an approved supervisor, involving one approved supervisor and no more than four supervisees.

~~((8))~~ (9) **Official transcript** means the transcript from an approved college or school, in an envelope readily identified as having been sealed by the school.

~~((9))~~ (10) **Related field** means health education, behavioral science, sociology, psychology, marriage and

family therapy, mental health counseling, social work, psychiatry, nursing, divinity, criminal justice, and counseling education.

AMENDATORY SECTION (Amending WSR 09-14-111, filed 6/30/09, effective 7/1/09)

**WAC 246-811-030 Educational requirements.** (1) Except as provided for in WAC 246-811-077 and 246-811-078, the minimum education requirements for a chemical dependency professional credential are:

(a) An associate's degree in human services or related field from an approved school; or

(b) Successful completion of ninety quarter or sixty semester college credits in courses from an approved school.

(2) At least forty-five quarter or thirty semester credits must be in courses relating to the chemical dependency profession and shall include the following topics specific to alcohol and drug addicted individuals:

(a) Understanding addiction;

(b) Pharmacological actions of alcohol and other drugs;

(c) Substance abuse and addiction treatment methods;

(d) Understanding addiction placement, continuing care, and discharge criteria, including American Society of Addiction Medicine (ASAM) criteria;

(e) Cultural diversity including people with disabilities and its implication for treatment;

(f) Chemical dependency clinical evaluation (screening and referral to include comorbidity);

(g) HIV/AIDS brief risk intervention for the chemically dependent;

(h) Chemical dependency treatment planning;

(i) Referral and use of community resources;

(j) Service coordination (implementing the treatment plan, consulting, continuing assessment and treatment planning);

(k) Individual counseling;

(l) Group counseling;

(m) Chemical dependency counseling for families, couples and significant others;

(n) Client, family and community education;

(o) Developmental psychology;

(p) Psychopathology/abnormal psychology;

(q) Documentation, to include, screening, intake, assessment, treatment plan, clinical reports, clinical progress notes, discharge summaries, and other client related data;

(r) Chemical dependency confidentiality;

(s) Professional and ethical responsibilities;

(t) Relapse prevention;

(u) Adolescent chemical dependency assessment and treatment;

(v) Chemical dependency case management; and

(w) Chemical dependency rules and regulations.

~~((3) All applicants, including individuals who are licensed under chapter 18.225 RCW, Psychologists under chapter 18.83 RCW, and Advance nurse practitioner under chapter 18.79 RCW, must meet the requirements in subsection (2) of this section.))~~

AMENDATORY SECTION (Amending WSR 09-14-111, filed 6/30/09, effective 7/1/09)

**WAC 246-811-045 Accumulation of experience.** (1)

The department ~~((of health))~~ will consider experience in the field of chemical dependency up to seven years prior to the date of application.

(2) Accumulation of the experience hours is not required to be consecutive.

(3) Experience that will count toward certification must meet the requirements outlined in WAC 246-811-046 through 246-811-049.

~~((3))~~ (4) Supervised experience is the practice as referred to in RCW 18.205.090 (1)(c) and is the experience received under an approved supervisor.

(5) A practicum or internship taken while acquiring the degree or semester/quarter hours is applicable.

AMENDATORY SECTION (Amending WSR 09-14-111, filed 6/30/09, effective 7/1/09)

**WAC 246-811-046 Number of experience hours required for certification as a chemical dependency professional.** ~~((You will be required to))~~ Except as provided in WAC 246-811-070(1), an applicant must complete ~~((one thousand to two thousand five hundred hours of supervised experience depending upon your))~~ the following requirements based on their level of formal education.

(1) Two thousand five hundred hours of chemical dependency counseling ~~((as defined in RCW 18.205.020(3)))~~, for individuals who ~~((possess))~~ have an associate degree; or

(2) Two thousand hours of chemical dependency counseling for individuals who ~~((possess))~~ have a baccalaureate degree in human services or a related field from an approved school; or

(3) One thousand five hundred hours of chemical dependency counseling for individuals who possess a master or doctoral degree in human services or a related field from an approved school; or

(4) One thousand hours of chemical dependency counseling for individuals who are ~~((licensed as advanced registered nurse practitioners under chapter 18.79 RCW, marriage and family therapists, mental health counselors, advanced social workers, and independent clinical social workers under chapter 18.225 RCW or licensed as a psychologist under chapter 18.83 RCW))~~ credentialed according to WAC 246-811-076. The experience must be supervised by an approved supervisor meeting the requirements under WAC 246-811-049(8).

AMENDATORY SECTION (Amending WSR 09-14-111, filed 6/30/09, effective 7/1/09)

**WAC 246-811-047 Competency—Experience requirements.** (1) It is the intent that an individual applying for a chemical dependency professional certificate has become competent in the core competencies of chemical counseling ~~((, as defined in WAC 246-811-010(5),))~~ through the experience requirements in this section.

(2) Individuals must have the following experiences to gain the core competencies of chemical dependency counseling (~~(listed in (a) through (i) of this subsection.)~~):

(a) Two hundred hours of clinical evaluation~~(-)~~, of which one hundred hours (~~(of the two hundred)~~) must be face-to-face patient contact hours~~(-)~~;

(b) Six hundred hours of face-to-face counseling to include:

(i) Individual counseling;

(ii) Group counseling; and

~~((Counseling))~~ (iii) Family, couples, and significant others~~(-)~~;

(c) Fifty hours of discussion of professional and ethical responsibilities~~(-)~~;

(d) Transdisciplinary foundations:

(i) Understanding addiction;

(ii) Treatment knowledge;

(iii) Application to practice; and

(iv) Professional readiness~~(-)~~;

(e) Treatment planning~~(-)~~;

(f) Referral~~(-)~~;

(g) Service coordination~~(-)~~;

(h) Client, family, and community education~~(-)~~; and

(i) Documentation, to include, screening, intake, assessment, treatment plan, clinical reports, clinical progress notes, discharge summaries, and other client related data.

(3) Of the total experience hours required under WAC 246-811-046, eight hundred fifty hours of experience must be divided among subsection (2)(a) through (c) of this (~~(subsection))~~ section. The remaining experience hours must be divided among subsection (2)(d) through (i) of this (~~(subsection))~~ section as determined by the supervisor.

**AMENDATORY SECTION** (Amending WSR 09-14-111, filed 6/30/09, effective 7/1/09)

**WAC 246-811-048 Supervision requirements.** (1) All of the experience required for CDP certification must be under an approved supervisor as defined in WAC 246-811-049.

(2) A ~~((chemical dependency professional trainee (-)CDPT(-) can))~~ or an individual credentialed according to WAC 246-811-076 may provide chemical dependency assessment, counseling, and case management to patients consistent with his or her education, training, and experience as documented by the approved supervisor.

(a) The first fifty hours of any face-to-face patient contact must be under direct ~~((observation))~~ supervision and within sight and hearing of an approved supervisor or a chemical dependency professional designated by the approved supervisor.

(b) An approved supervisor or the approved supervisor's designated certified chemical dependency professional must provide direct supervision when a ~~((CDPT))~~ supervisee is providing clinical services to patients until the approved supervisor documents in the employee file that the ~~((CDPT))~~ supervisee has obtained the necessary education, training, and experience.

(3) Approved supervisors must attest to the department ~~((of the supervised person's satisfactory progress in becom-~~

~~ing proficient))~~ that the supervisee has demonstrated competency in the (~~((addiction counseling competencies as))~~) areas listed in WAC 246-811-047(2) (~~((a) through (i))~~) on forms provided by the department.

**AMENDATORY SECTION** (Amending WSR 09-14-111, filed 6/30/09, effective 7/1/09)

**WAC 246-811-049 Approved supervisors** (~~((requirements))~~). (1) Except as provided in subsection (8) of this section, an approved supervisor is a certified (~~((chemical dependency professional (-)CDPT((-)))~~) or a person who meets or exceeds the requirements of a certified CDP in the state of Washington, and who would be eligible to take the examination required for certification.

(2) ~~((An approved supervisor has))~~ Except as provided in subsection (9) of this section, an approved supervisor must have at least four thousand hours of experience in a state approved chemical dependency treatment agency in addition to the supervised experience hours required to become a CDP.

(3) Except as provided in subsection (9) of this section, an approved supervisor may substitute twenty-eight clock hours of recognized supervisory training (~~((may be substituted))~~) for one thousand hours of experience.

(4) An approved supervisor is not a blood or legal relative, significant other, cohabitant of the supervisee, or someone who has acted as the supervisee's primary counselor.

(5) A chemical dependency professional trainee (CDPT) must receive documentation of his or her approved supervisor's qualifications before training begins.

(6) An approved supervisor or other certified CDP must review and sign all CDPT clinical documentation.

(7) An approved supervisor is responsible for all patients assigned to the CDPT they supervise.

(8) An approved supervisor may only provide supervision to an applicant completing the alternative training under WAC 246-811-077 if the approved supervisor holds a current Washington state credential as a CDP and meets all other requirements under this section.

(9) A CDP credentialed according to WAC 246-811-077 may meet the requirements to be an approved supervisor under subsections (2) and (3) of this section by:

(a) Completing fifteen hundred hours of experience in a state approved chemical dependency treatment agency. These hours are in addition to the supervised experience hours required to become a CDP;

(b) Completing twenty-eight clock hours of supervisory training provided by an industry-recognized local, state, national, or international organization or institution of higher learning as defined in WAC 246-811-200(5); and

(c) Completing thirty-six hours of education specific to:

(i) Counselor development;

(ii) Professional and ethical standards;

(iii) Program development and quality assurance;

(iv) Performance evaluation;

(v) Administration;

(vi) Treatment knowledge; and

(vii) Washington state law regarding substance use disorder treatment.

AMENDATORY SECTION (Amending WSR 09-14-111, filed 6/30/09, effective 7/1/09)

**WAC 246-811-060 Examination requirements for a chemical dependency certification professional.** (1) ~~((A))~~ An applicant(s) must take and pass the National Association of Alcoholism and Drug Abuse Counselor (NAADAC) National Certification Examination for Addiction Counselors or International Certification and Reciprocity Consortium (ICRC) Certified Addiction Counselor Level II or higher examination.

(2) The department will accept the passing score set by the testing company.

~~((3) The application and application fee must be submitted to the department at least ninety days prior to the scheduled examination date. All other supporting documents, including verification of education and experience, must be submitted at least sixty days prior to the examination date.))~~

AMENDATORY SECTION (Amending WSR 09-14-111, filed 6/30/09, effective 7/1/09)

**WAC 246-811-070 National certification.** (1) A person who is certified through the National Association of Alcoholism and Drug Abuse Counselors (NAADAC) or the International Certification and Reciprocity Consortium (ICRC) as an alcohol and drug counselor (ADC) or advanced alcohol and drug counselor (AADC), is considered to meet the experience requirements of WAC 246-811-046.

(2) A person who is certified through NAADAC or ICRC as an ADC or AADC is considered to have met the requirements of ~~((WAC 246-811-030 pertaining to the forty-five quarter or thirty semester credits in courses covering the subject content described in))~~ WAC 246-811-030(2). Verification of the additional forty-five quarter or thirty semester credits as required in WAC 246-811-030(1) will be required upon application to the department.

(3) Verification of certification must be sent directly to the department from NAADAC or ICRC.

NEW SECTION

**WAC 246-811-076 Eligibility for certification through alternative training.** A practitioner listed in subsections (1) through (7) of this section who holds an active license in good standing may apply for certification as a chemical dependency professional using alternative training under WAC 246-811-077 or 246-811-078:

(1) Advanced registered nurse practitioner under chapter 18.79 RCW;

(2) Marriage and family therapists, mental health counselor, advanced social worker, or independent clinical social worker under chapter 18.225 RCW;

(3) Psychologist under chapter 18.83 RCW;

(4) Osteopathic physician under chapter 18.57 RCW;

(5) Osteopathic physician assistant under chapter 18.57A RCW;

(6) Physician under chapter 18.71 RCW; or

(7) Physician assistant under chapter 18.71A RCW.

NEW SECTION

**WAC 246-811-077 Educational requirements to apply for chemical dependency certification with alternative training.** An applicant credentialed according to WAC 246-811-076 may meet the educational requirements for chemical dependency professional certification by demonstrating successful completion of fifteen quarter or ten semester college credits in courses from an approved school.

(1) Course work on each of the following topics specific to alcohol and drug addicted individuals is required:

(a) Survey of addiction;

(b) Treatment of addiction;

(c) Pharmacology;

(d) Physiology of addiction;

(e) American Society of Addiction Management (ASAM) criteria;

(f) Individual group, including family addiction counseling; and

(g) Substance use disorder law and ethics.

(2) Course work must be completed for credit.

(3) An applicant shall verify course completion by submitting official transcripts to the department. If the course title does not clearly identify the content area, the applicant shall provide the course syllabi.

(4) An applicant who meets the educational requirements of this section is considered to meet the educational requirements of WAC 246-811-030.

NEW SECTION

**WAC 246-811-078 National certification acceptable for alternative training.** (1) An applicant credentialed according to WAC 246-811-076 may submit a national certification listed in subsection (2) of this section in place of the following requirements for CDP certification:

(a) The educational requirements in WAC 246-811-077 and 246-811-030; and

(b) The supervised experience requirements in WAC 246-811-046.

(2) The department accepts the following national certifications from an applicant credentialed according to WAC 246-811-076:

(a) American Society of Addiction Medicine (ASAM) or the American Board of Addiction Medicine (ABAM);

(b) Addiction psychiatry from the American Board of Psychiatry and Neurology;

(c) Master addiction counselor (MAC) from the National Association of Alcoholism and Drug Abuse Counselors;

(d) Master addiction counselor (MAC) from the National Board of Certified Counselors;

(e) Certified addictions registered nurse or a certified addictions registered nurse - Advanced practice from the International Nurses Society on Addictions;

(f) Certified addiction specialist (CAS) from the American Academy of Health Care Providers in the Addictive Disorders;

(g) Certificate of Proficiency in the Treatment of Psychoactive Substance Abuse Disorders from the American Psychological Association;

(h) Advanced alcohol and drug counselor (AADC) from the International Certification and Reciprocity Consortium;

(i) American Osteopathic Board of Anesthesiology Certificate of Added Qualification in Addiction Medicine;

(j) American Osteopathic Board of Family Medicine Certificate of Added Qualification in Addiction Medicine;

(k) Osteopathic Board of Internal Medicine Certificate of Added Qualification in Addiction Medicine; and

(l) American Osteopathic Board of Neurology and Psychiatry Certificate of Added Qualification in Addiction Medicine.

(3) The certifying body of a national certification submitted according to this section must send verification of the certification directly to the department.

(4) A national certification submitted according to this section must be active and in good standing.

(5) Nothing in this section exempts any applicant from the examination requirements of WAC 246-811-060.

**AMENDATORY SECTION** (Amending WSR 09-14-111, filed 6/30/09, effective 7/1/09)

**WAC 246-811-220 Continuing competency program requirements.** ~~((+))~~ A chemical dependency professional, regardless of method of certification, must complete:

(1) ~~An~~ enhancement plan~~(s)~~ as described in WAC 246-811-200(7);

(2) Twenty-eight hours of continuing education~~(s)~~ as described in WAC 246-811-240; and

(3) Twelve hours of other professional development activities as described in WAC 246-811-047 and 246-811-200(2).

**WSR 16-07-134**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**  
[Filed March 22, 2016, 1:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-04-107.

Title of Rule and Other Identifying Information: WAC 392-169-005 Authority, 392-169-015 Running start program—Definition, 392-169-020 Eligible student—Definition, 392-169-025 Full-time equivalent (FTE) running start enrollment—Definition, 392-169-030 Annual average full-time (AAFTE) running start enrollment—Definition, 392-169-055 Enrollment—Extent and duration of running start enrollment, and 392-169-100 Running start enrollment count dates.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Policy Conference Room, 600 South Washington Street, Olympia, WA 98501, on April 28, 2016, at 10:00 a.m.

Date of Intended Adoption: May 2, 2016.

Submit Written Comments to: Becky McLean, P.O. Box 47200, Olympia, WA 98504-7200, e-mail [becky.mclean@k12.wa.us](mailto:becky.mclean@k12.wa.us), fax (360) 664-3683, by April 28, 2016.

Assistance for Persons with Disabilities: Contact Kristin Murphy by April 21, 2016, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Several sections of chapter 392-169 WAC require updating to address the following:

- Add to the definition of running start program the language from ESSHB [E2SHB] 1546.
- Remove language that addresses running start in the high school model.
- Add language regarding students who are disenrolled from a nonresident district after a rescindment of their choice transfer and plan to only take running start classes to allow a college to report their running start enrollment to the nonresident district.

Reasons Supporting Proposal: WAC 392-169-005 requires joint agreement with OSPI, state board of community and technical colleges, and Washington student achievement council. Both agencies have reviewed and approved the proposed changes.

Statutory Authority for Adoption: RCW 28A.600.390.

Statute Being Implemented: RCW 28A.600.390.

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

Name of Agency Personnel Responsible for Drafting: Becky McLean, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6306; Implementation: T. J. Kelly, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6301; and Enforcement: JoLynn Berge, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable, no small business impact, no school district fiscal impact.

A cost-benefit analysis is not required under RCW 34.05.328. OSPI is not subject to RCW 34.05.328 per subsection (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

March 22, 2016

Randy Dorn  
State Superintendent  
of Public Instruction

**AMENDATORY SECTION** (Amending WSR 95-09-042, filed 4/14/95, effective 5/15/95)

**WAC 392-169-005 Authority.** The authority for this chapter is RCW 28A.600.390, which authorizes the superintendent of public instruction, the state board for community and technical colleges, and the ~~((higher education coordinating board))~~ Washington student achievement council to jointly develop and adopt rules governing RCW 28A.600.300 through 28A.600.380, and 28A.150.260 and 28A.150.290 which authorize the superintendent of public instruction to adopt rules governing basic education allocation moneys. The rules set forth in this chapter have been jointly developed and agreed upon by the three agencies, and adopted and codified in separate chapters of the Washington Administrative



Code by each of the three agencies. The rules may be modified only by agreement of all three agencies.

AMENDATORY SECTION (Amending WSR 95-09-042, filed 4/14/95, effective 5/15/95)

**WAC 392-169-015 Running start program—Definition.** As used in this chapter, the terms "running start" and "running start program" mean the part-time to full-time equivalent enrollment under this chapter of eligible eleventh and twelfth grade high school students in an institution of higher education for the purpose of earning at least high school credit to be awarded by a school district, and such additional college level or university level credit as may be awarded by the institution of higher education. A running start program's course must be open for registration to matriculated students at the participating institution of higher education and may not be a course consisting solely of high school students in a high school classroom.

AMENDATORY SECTION (Amending WSR 95-09-042, filed 4/14/95, effective 5/15/95)

**WAC 392-169-020 Eligible student—Definition.** As used in this chapter, the term "eligible student" means any person, including a person who is otherwise attending a private school or receiving home-based instruction, who meets each of the following conditions:

(1) The person is under the age of twenty-one years of age as of September 1 of the school year.

(2) The person is eligible by reason of his or her residence or other criterion established by law to enroll in the school district through which the person seeks to obtain the award of running start program high school credit. See RCW 28A.225.160 (residents of a school district), RCW 28A.225.170 (residents of the United States and Indian Reservations), RCW 28A.225.210 (residents of "nonhigh" school districts), and RCW 28A.225.220 ("choice" students). Note: A running start student who changes his or her school district of residence, including after a rescindment of a choice transfer agreement following enrollment in running start, solely for the purpose of attending an institution of higher education under this chapter shall be deemed to have retained his or her residence in the school district of initial running start enrollment for high school graduation, funding and other purposes under this chapter.

(3) The person is eligible under the grade placement policies of the school district through which the person seeks to obtain running start program high school credit to be in the eleventh or the twelfth grade.

(4) The person has not as of the beginning of the school year earned the credits required for the award of a high school diploma by the school district through which the person seeks to obtain the award of running start program high school credit.

(5) The person has not as of the beginning of the school year received a high school diploma or its equivalent. Note: A general education development certificate is not considered to be the equivalent of a high school diploma for purposes of this subsection.

(6) The person's running start program enrollment to date is below the applicable eleventh or twelfth grade running start enrollment limitations established under WAC 392-169-055.

AMENDATORY SECTION (Amending WSR 14-22-079, filed 11/3/14, effective 12/4/14)

**WAC 392-169-025 Full-time equivalent (FTE) running start enrollment—Definition.** For the purposes of this chapter and chapter 392-121 WAC, "full-time equivalent (FTE) running start enrollment" (i.e., college or university enrollment) means the FTE of running start students on an enrollment count date when each student's FTE is determined subject to the limitations of WAC 392-169-022, 392-169-055 and 392-169-115 as follows:

(1) FTE for running start enrollment is the result of ~~((multiplying the quotient of))~~ dividing a student's enrolled college credits ~~((divided))~~ by fifteen ~~((and the quotient of three divided by the number of months the running start class is provided))~~. For Washington State University classes offered at the college campus only, the FTE for running start enrollment is the result of dividing a student's enrolled college semester credits by fifteen.

(2) The sum of the results of running start enrollment under subsection (1) of this section at all colleges shall not exceed 1.00 FTE per student on any count day except for the month of January or 1.00 annual average FTE in any school year.

AMENDATORY SECTION (Amending WSR 14-22-079, filed 11/3/14, effective 12/4/14)

**WAC 392-169-030 Annual average full-time equivalent (AAFTE) running start enrollment—Definition.** For purposes of this chapter and chapter 392-121 WAC, "annual average full-time equivalent (AAFTE) running start enrollment" means~~(:~~

~~((1) For running start classes offered at the college campus,))~~ the sum of the AAFTE of all running start students for a school year when each running start student's AAFTE equals the sum of the student's running start FTE enrollment on the nine running start count dates divided by nine.

~~((2) For running start classes offered in the high school setting, the sum of the AAFTE of all running start students for a school year when each running start student's AAFTE equals the sum of the student's running start FTE enrollment on the ten running start count dates divided by ten.))~~

AMENDATORY SECTION (Amending WSR 14-22-079, filed 11/3/14, effective 12/4/14)

**WAC 392-169-055 Enrollment—Extent and duration of running start enrollment.** Running start program enrollment under this chapter is limited as follows (and as may be further limited for academic reasons under WAC 392-169-057):

(1) An eligible student who enrolls in grade eleven may enroll in an institution of higher education while in the eleventh grade for no more than the course work equivalent to one academic year of enrollment as an annual average full-

time equivalent running start student (i.e., three college or university quarters as a full-time equivalent college or university student, two semesters as a full-time equivalent college or university student, or nine months as a full-time equivalent technical college student ~~((or ten months as a full-time equivalent student taking running start classes in the high school setting))~~)).

(2) An eligible student who enrolls in grade twelve may enroll in an institution of higher education while in the twelfth grade for no more than the course work equivalent to one academic year of enrollment as an annual average full-time equivalent running start student (i.e., three college or university quarters as a full-time equivalent community college or university student, two semesters as a full-time equivalent college or university student, or nine months as a full-time technical college student ~~((or ten months as a full-time equivalent student taking running start classes in the high school setting))~~)).

(3) Enrollment in an institution of higher education is limited to the fall, winter and spring college quarters, and the fall and spring college semesters ~~((and the district standard school year (September through June)))~~.

(4) As a general rule a student's eligibility for running start program enrollment terminates at the end of the student's twelfth grade regular academic year, notwithstanding the student's failure to have enrolled in an institution of higher education to the full extent permitted by subsections (1) and (2) of this section: Provided, That a student who has failed to meet high school graduation requirements as of the end of the student's twelfth grade regular academic year (September through June) due to the student's absence, the student's failure of one or more courses, or another similar reason may continue running start program enrollment for the sole and exclusive purpose of completing the particular course or courses required to meet high school graduation requirements, subject to the enrollment limitation established by subsection (2) of this section.

AMENDATORY SECTION (Amending WSR 14-22-079, filed 11/3/14, effective 12/4/14)

**WAC 392-169-100 Running start enrollment count dates.** Enrollment count dates for the running start program shall be as follows:

(1) For community and technical colleges and for Central Washington University and Eastern Washington University ~~((classes offered at the college campus))~~, the first college or university day of each of the months of October through June; and

(2) For Washington State University ~~((classes offered at the college campus))~~, the first university day of each of the months of September through May.

~~((3) For running start classes offered at the high school setting, the first instructional day of each of the months September through June.))~~

**WSR 16-07-135**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**  
 [Filed March 22, 2016, 1:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-03-078.

Title of Rule and Other Identifying Information: Chapter 392-145 WAC, Transportation—Operation rules.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), 2nd Floor, Policy Conference Room, 600 South Washington Street, Olympia, WA 98504-7200, on April 27, 2016, at 1:00 p.m.

Date of Intended Adoption: April 29, 2016.

Submit Written Comments to: Allan Jones, Director, Student Transportation, P.O. Box 47200, Olympia, WA 98504-7200, e-mail allan.jones@k12.wa.us, by April 27, 2016.

Assistance for Persons with Disabilities: Contact Kristin Murphy by April 20, 2016, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed revisions would restrict the use of personal communication devices while operating a school bus, restrict the distribution of edible items on a school bus, plus other technical corrections.

Statutory Authority for Adoption: RCW 46.61.380.

Statute Being Implemented: RCW 46.61.380.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Allan J. Jones, OSPI, Student Transportation, (360) 725-6122; and Enforcement: JoLynn Berge, OSPI, Financial Resources and Governmental Relations, (360) 725-6300.

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

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

March 9, 2016

Randy Dorn

State Superintendent  
of Public Instruction

AMENDATORY SECTION (Amending WSR 07-05-058, filed 2/20/07, effective 11/1/07)

**WAC 392-145-021 General operating requirements.**

The following operating procedures are required to assure maximum passenger safety:

(1) No school bus shall be operated unless each passenger aboard has been provided with a safe seat of sufficient size to accommodate each passenger within the seat compartment. There shall be no auxiliary seating accommodations such as temporary or folding jump seats in any school bus. Students shall remain seated while the school bus is in motion.

(2) Passengers in school buses equipped with seat belts shall be required to wear them properly adjusted whenever the school bus is in motion.

(3) Heavy, sharp, bulky, and/or other articles which may be hazardous in the event of an accident or an emergency stop shall not be transported unsecured in the passenger area of any school bus. Specific attention is directed to items such as skis, ski poles, vaulting poles, large musical instruments, riser platforms, etc. In no case will items be secured in such a manner as to impede access to any exit. Items which shall not be transported within the passenger area of a school bus include all forms of animal life (except service animals), firearms, weapons, breakable containers, flammables, and all other articles which could adversely affect the safety of the school bus and passengers.

Teachers and all other school district staff members shall be annually notified that students shall not be requested to transport prohibited items between home and school on a school bus.

(4) When a teacher, coach, or other (~~certificated~~) staff member is assigned to accompany students on a school bus, such person shall be responsible for the behavior of the students in his or her charge and shall ensure that passengers comply with state rules, and district policies and procedures for student transportation. However, the school bus driver shall have final authority and responsibility.

**AMENDATORY SECTION** (Amending WSR 07-05-058, filed 2/20/07, effective 11/1/07)

**WAC 392-145-031 General school bus driver requirements.** The following are school bus driver requirements:

(1) School bus drivers shall wear a properly adjusted seat belt whenever the school bus is in motion.

(2) School bus drivers shall immediately report any suspected malfunction or needed repair of the school bus in their charge.

(3) A school bus driver shall only allow individuals authorized under the provisions of chapter 392-144 WAC to operate the school bus with passengers on board. No person except the driver shall be allowed to sit in the driver's seat.

(4) Except in accordance with district policy no school bus driver shall leave the driver's seat without first securing the school bus by setting the parking brake, placing the transmission in the manufacturer's recommended position, shutting off the engine, and removing the key from the ignition switch. The keys shall be kept in the driver's or other authorized school official's possession.

(5) All school bus drivers shall meet the qualifications established in chapter 392-144 WAC prior to transporting students.

(6) Except in accordance with district policy, a school bus driver shall not use a personal electronic device for personal communications while operating a school bus, except for the use of such devices to report illegal activity, summon medical or other emergency help, or prevent injury to a person or property, as permitted under RCW 46.61.667. For the purpose of this section, operating a school bus is defined as when the school bus engine is running.

(7) Except in accordance with district policy, a school bus driver shall not distribute anything edible to students riding the bus.

**AMENDATORY SECTION** (Amending WSR 07-05-058, filed 2/20/07, effective 11/1/07)

**WAC 392-145-041 Pretrip and posttrip requirements.** The following are requirements to assure safety and security of the school bus during operation:

(1) Motor fuel shall not be put into the tank while the engine is running or while passengers are on the school bus. School bus drivers, prior to commencement of any trip, shall assure that the school bus has sufficient fuel to prevent the school bus from running out of fuel.

(2) School bus drivers, prior to commencement of any trip, shall assure that the mirrors, windshield and rear window(s) of the school bus are clean.

(3) Prior to commencement of and during any trip, with passengers aboard, every school bus driver shall ensure there are no articles in the following areas that could impede normal movement, visibility, or emergency egress: The service entrance step well; the entire main aisle from front to rear; the aisles or passage ways to any emergency door; the entire shelf area between the rearmost passenger seats and the rear emergency window (if so equipped).

(4) Tools and other miscellaneous articles shall be carried in appropriate compartments. They shall not be carried loose upon the floor or dashboard area of the school bus.

(5) School bus drivers shall be certain that all brakes, lights, stop signs, warning signal lamps, and other safety devices are working properly before starting on any trip and shall assure that the school bus is equipped with a fully stocked first-aid kit, three reflective triangles, a body fluid clean-up kit and a fire extinguisher certified to be in good working order.

(6) School bus drivers shall check the latch, safety lock, and warning system for all emergency exits prior to each trip and no school bus shall be operated with passengers aboard unless all the emergency exits are functioning properly.

(7) At the end of each trip or route segment, the school bus driver shall thoroughly check the school bus to (~~insure~~) ensure that no students are left on the school bus. Additionally, the school bus driver shall take reasonable action to (~~insure~~) ensure that any articles left behind by students are safe, secure, and dealt with according to district policy.

**AMENDATORY SECTION** (Amending WSR 07-05-058, filed 2/20/07, effective 11/1/07)

**WAC 392-145-060 Loading and unloading procedures.** The following procedures are required to assure maximum student safety:

(1) A school bus driver shall not order or allow a student to depart the school bus other than at his or her regular stop unless permission is first obtained in accordance with district policy.

(2) School bus drivers shall pick up only the students and persons designated by an authorized school district administrator.

(3) School bus drivers shall have the primary responsibility for the safety of passengers while they are boarding the school bus, while they are on the school bus, and while they are disembarking the school bus and crossing the roadway. If passengers must cross the road, the driver shall make every reasonable effort to (~~insure~~) ensure that they cross safely and that they pass in front of the school bus and never behind the school bus. The driver shall likewise (~~insure~~) ensure that passengers boarding or disembarking from the school bus are within his/her view at all times.

(4) Prior to stopping the school bus on the roadway for the purpose of loading or unloading passengers, school bus drivers shall activate the alternating flashing amber lamps by means of a master sequencing switch. The driver shall activate the alternating flashing amber lamps:

(a) No less than one hundred feet and no more than three hundred feet from the school bus stop where the posted speed limit is thirty-five miles per hour or less; and

(b) No less than three hundred feet and no more than five hundred feet from the school bus stop where the posted speed limit is more than thirty-five miles per hour.

(5) No school bus shall pull over to the left-hand side of the road to load or unload passengers.

(6) The stop sign and alternately flashing red lamps shall be activated whenever a school bus is stopped on any portion of a traveled roadway to load or unload school children. Simultaneously flashing amber hazard lamps shall be activated whenever a school bus is stopped off the roadway to load or unload school children.

(7) Whenever school children have to cross the roadway, the school bus shall stop on the roadway and display the stop sign and alternately flashing red lamps. A school bus driver shall not allow school children to cross any roadway having three or more marked traffic lanes or any highway divided into separate roadways as provided in RCW 46.61.150.

(8) The stop sign and alternately flashing red lamps on a school bus shall not be used while the school bus is moving or to indicate that the school bus is going to stop.

(9) While loading and unloading passengers on a traveled portion of the roadway, the school bus driver shall activate the alternating flashing red lights by means of a sequencing switch prior to opening the passenger load door.

(10) The school bus driver shall set the parking brake and place the transmission in neutral or park prior to loading or unloading passengers. When it is possible, the school bus driver shall maintain light pressure on the service brake to activate the brake lamps when loading or unloading passengers.

(11) The school bus driver shall assure that all students are seated or secure prior to releasing the brake.

(12) In any case in which a school bus passes a stopped school bus which is loading and unloading students off the traveled portion of the roadway, the passing school bus shall reduce speed and proceed with caution.

AMENDATORY SECTION (Amending WSR 14-15-049, filed 7/11/14, effective 8/11/14)

**WAC 392-145-070 Rail grade crossings.** The following requirements apply to drivers of school buses during rail grade crossings:

(1) All school buses shall stop at all rail grade crossings except:

(a) Where traffic is controlled by a police officer or flagger;

(b) Where a functioning traffic control signal is transmitting a green light;

(c) Where the tracks are used exclusively for a streetcar or industrial switching purposes;

(d) Where the utilities and transportation commission has approved the installation of an "exempt" sign; or

(e) Where the crossing is abandoned and is marked with a sign indicating it is out-of-service.

(2) In order to lessen the potential for collisions, school bus drivers shall use simultaneously flashing amber hazard lamps within two hundred feet prior to stopping for a rail grade crossing.

(3) The school bus driver shall open the door and driver window to listen for approaching trains.

(4) Drivers shall take reasonable action to (~~insure~~) ensure that passengers are quiet and shall turn off all noise making devices such as fans and radios while listening for approaching trains.

(5) Drivers shall not proceed until the door is closed, visibility is clear, and the school bus can safely proceed across and completely clear the rail grade.

(6) Drivers shall not change gears of a school bus equipped with a manual transmission while the school bus is crossing a rail grade.

## WSR 16-07-146

### PROPOSED RULES

### DEPARTMENT OF REVENUE

[Filed March 23, 2016, 8:53 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-21-096.

Title of Rule and Other Identifying Information: WAC 458-16A-100 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—Definitions.

Hearing Location(s): Capital Plaza Building, 2nd Floor Large Conference Room, 1025 Union Avenue S.E., Olympia, WA, on April 27, 2016, at 10:00 a.m. *Call-in option can be provided upon request no later than three days before the hearing date.*

Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Date of Intended Adoption: May 4, 2016.

Submit Written Comments to: Atif Aziz, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail AtifA@dor.wa.gov, fax (360) 534-1606, by April 27, 2016.

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 458-16A-100 contains definitions used to evaluate qualification for the senior citizen, disabled person, and one hundred percent disabled veteran exemption contained in RCW 84.36.381 through 84.36.389. The department is proposing narrowing the meaning of "annuity" to more closely fit the traditional meaning of that term; replacing the definition of "excess levies" with a reference to a definition for that term already contained in another rule, WAC 458-19-005; and revising the definition of "pension" to clarify that pensions triggered by a person's disability are included within the meaning of that term.

Copies of draft rules are available for viewing and printing on our web site at <http://dor.wa.gov/content/FindALawOrRule/RuleMaking/default.aspx>.

Reasons Supporting Proposal: The proposed changes will increase clarity on the definitions contained in the rule.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), and 84.36.865.

Statute Being Implemented: RCW 84.36.383.

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: Atif Aziz, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1593; Implementation and Enforcement: Marcus Glasper, 1025 Union Avenue S.E., Suite #500, Olympia, WA, (360) 534-1615.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impose any new performance requirement 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 rule is not a significant legislative rule as defined by RCW 34.05.328.

March 23, 2016  
Kevin Dixon  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-08-028, filed 3/27/13, effective 4/27/13)

**WAC 458-16A-100 Senior citizen, disabled person, and one hundred percent disabled veteran exemption—**

**Definitions.** (1) **Introduction.** This rule contains definitions of the terms used for the senior citizen, disabled person, and one hundred percent disabled veteran exemption from property taxes. The definitions apply to the senior citizen, disabled person, and one hundred percent disabled veteran exemption contained in sections RCW 84.36.381 through 84.36.389 unless the context clearly requires otherwise.

(2) **Annuity.** "Annuity" means a series of long-term periodic payments, (~~fixed or variable~~), under a contract or

agreement. (~~An annuity may be paid as the proceeds of a life insurance contract (other than as a lump sum payment), unemployment compensation, disability payments, or welfare receipts.~~) It does not include payments for the care of dependent children. For purposes of this subsection, long-term means a period of more than one full year from the annuity starting date.

~~((a))~~ Annuity distributions must be included in "disposable income," as that term is defined in subsection (12) of this section, whether or not they are taxable under federal law. A one-time, lump sum, total distribution is not an "annuity" for purposes of this section, and only the taxable portion that would be included in federal adjusted gross income should be included in disposable income.

~~((b))~~ Disability payments include, but are not limited to, payments made by such agencies as the federal Department of Veterans Affairs for service-connected disabilities, the federal Social Security Administration, and the Washington state department of labor and industries.

~~(c)~~ A "series of payments" means at least one payment per period over more than one period, where a period can be a week, month, or year. Payment amounts do not have to be equal. Annuity distributions may fluctuate based on the age of the individual, the performance of the investment options, etc. ~~Payment periods do not have to be consecutive. For example, if a distribution is made one year and four years pass before another distribution is made, this can still qualify as an "annuity" for purposes of this section.~~

(3) **Assessment year.** "Assessment year" means the year when the assessor lists and values the principal residence for property taxes. The assessment year is the calendar year prior to the year the taxes become due and payable. It is always the year before the claimant receives a reduction in his or her property taxes because of the senior citizen, disabled person, and one hundred percent disabled veteran exemption.

(4) **Capital gain.** "Capital gain" means the amount the seller receives for property (other than inventory) over that seller's adjusted basis in the property. The seller's initial basis in the property is the property's cost plus taxes, freight charges, and installation fees. In determining the capital gain, the seller's costs of transferring the property to a new owner are also added onto the adjusted basis of the property. If the property is acquired in some other manner than by purchase, the seller's initial basis in the property is determined by the way the seller received the property (e.g., property exchange, payment for services, gift, or inheritance). The seller adjusts (increases and decreases) the initial basis of the property for events occurring between the time the property is acquired and when it is sold (e.g., increased by the cost of improvements made later to the property).

(5) **Claimant.** "Claimant" means a person claiming the senior citizen, disabled person, and one hundred percent disabled veteran exemption by filing an application with the county assessor in the county where the property is located.

(6) **Combined disposable income.** "Combined disposable income" means the annual disposable income of the claimant, the claimant's spouse or domestic partner, and any cotenant reduced by amounts paid by the claimant or the claimant's spouse or domestic partner for their:

(a) Legally prescribed drugs;

(b) Home health care;

(c) Nursing home, boarding home, or adult family home expenses; and

(d) Health care insurance premiums for medicare under Title XVIII of the Social Security Act.

Disposable income is not reduced by these amounts if payments are reimbursed by insurance or a government program (e.g., medicare or medicaid). When the application is made, the combined disposable income is calculated for the assessment year.

(7) **Cotenant.** "Cotenant" means a person who resides with the claimant and who has an ownership interest in the residence.

(8) **Department.** "Department" means the state department of revenue.

(9) **Depreciation.** "Depreciation" means the annual deduction allowed to recover the cost of business or investment property having a useful life of more than one year. In limited circumstances, this cost, or a part of this cost, may be taken as a section 179 expense on the federal income tax return in the year business property is purchased.

(10) **Disability.** "Disability" means the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months. (RCW 84.36.383(7); 42 U.S.C. Sec. 423(d)(1)(A).)

(11) **Disabled veteran.** "Disabled veteran" means a veteran of the armed forces of the United States entitled to and receiving compensation from the United States Department of Veterans Affairs at a total disability rating for a service-connected disability. (RCW 84.36.381 (3)(b).)

(12) **Disposable income.** "Disposable income" means the adjusted gross income as defined in the Federal Internal Revenue Code of 2001, and as amended after that date, plus all the other items described below to the extent they are not included in or have been deducted from adjusted gross income. (RCW 84.36.383.)

(a) Capital gains, other than gain excluded from the sale of a principal residence that is reinvested prior to the sale or within the same calendar year in a different principal residence;

(b) Losses. Amounts deducted for loss;

(c) Depreciation. Amounts deducted for depreciation;

(d) Pension and annuity receipts;

(e) Military pay and benefits other than attendant-care and medical-aid payments. Attendant-care and medical-aid payments are any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the military;

(f) Veterans benefits other than:

(i) Attendant-care payments and medical-aid payments, defined as any payments for medical care, home health care, health insurance coverage, hospital benefits, or nursing home benefits provided by the Department of Veterans Affairs (VA);

(ii) Disability compensation, defined as payments made by the VA to a veteran because of service-connected disability;

(iii) Dependency and indemnity compensation, defined as payments made by the VA to a surviving spouse, child, or parent because of a service-connected death.

(g) Federal Social Security Act and railroad retirement benefits;

(h) Dividend receipts;

(i) Interest received on state and municipal bonds.

(13) **Domestic partner.** "Domestic partner" means a person registered under chapter 26.60 RCW or a partner in a legal union of two persons, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

(14) **Domestic partnership.** "Domestic partnership" means a partnership registered under chapter 26.60 RCW or a legal union of two persons, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under chapter 26.60 RCW.

(15) **Excess levies.** "Excess levies" (~~means voter-approved levies by taxing districts, other than port or public utility districts, of additional taxes in excess of the statutory aggregate dollar rate limit, the statutory dollar rate limit, or the constitutional one percent levy limit. It does not include regular levies allowed to exceed a statutory limit with voter approval or voted regular levies.~~) has the same meaning as provided in WAC 458-19-005 for "excess property tax levy."

(16) **Excluded military pay or benefits.** "Excluded military pay or benefits" means military pay or benefits excluded from a person's federal gross income, other than those amounts excluded from that person's federal gross income for attendant-care and medical-aid payments. Members of the armed forces receive many different types of pay and allowances. Some payments or allowances are included in their gross income for the federal income tax while others are excluded from their gross income. Excluded military pay or benefits include:

(a) Compensation for active service while in a combat zone or a qualified hazardous duty area;

(b) Death allowances for burial services, gratuity payment to a survivor, or travel of dependents to the burial site;

(c) Moving allowances;

(d) Travel allowances;

(e) Uniform allowances;

(f) Group term life insurance payments made by the military on behalf of the claimant, the claimant's spouse or domestic partner, or the cotenant; and

(g) Survivor and retirement protection plan premiums paid by the military on behalf of the claimant, the claimant's spouse or domestic partner, or the cotenant.

(17) **Family dwelling unit.** "Family dwelling unit" means the dwelling unit occupied by a single person, any number of related persons, or a group not exceeding a total of eight related and unrelated nontransient persons living as a single noncommercial housekeeping unit. The term does not include a boarding or rooming house.

(18) **Home health care.** "Home health care" means the treatment or care of either the claimant or the claimant's spouse or domestic partner received in the home. It must be similar to the type of care provided in the normal course of

treatment or care in a nursing home, although the person providing the home health care services need not be specially licensed. The treatment and care must meet at least one of the following criteria. It must be for:

- (a) Medical treatment or care received in the home;
- (b) Physical therapy received in the home;
- (c) Food, oxygen, lawful substances taken internally or applied externally, necessary medical supplies, or special needs furniture or equipment (such as wheel chairs, hospital beds, or therapy equipment), brought into the home as part of a necessary or appropriate in-home service that is being rendered (such as a meals on wheels type program); or
- (d) Attendant care to assist the claimant, or the claimant's spouse or domestic partner, with household tasks, and such personal care tasks as meal preparation, eating, dressing, personal hygiene, specialized body care, transfer, positioning, ambulation, bathing, toileting, self-medication a person provides for himself or herself, or such other tasks as may be necessary to maintain a person in his or her own home, but shall not include improvements or repair of the home itself.

(19) **Lease for life.** "Lease for life" means a lease that terminates upon the demise of the lessee.

(20) **Legally prescribed drugs.** "Legally prescribed drugs" means drugs supplied by prescription of a medical practitioner authorized to issue prescriptions by the laws of this state or another jurisdiction.

(21) **Life estate.** "Life estate" means an estate whose duration is limited to the life of the party holding it or of some other person.

(a) Reservation of a life estate upon a principal residence placed in trust or transferred to another is a life estate.

(b) Beneficial interest in a trust is considered a life estate for the settlor of a revocable or irrevocable trust who grants to himself or herself the beneficial interest directly in his or her principal residence, or the part of the trust containing his or her personal residence, for at least the period of his or her life.

(c) Beneficial interest in an irrevocable trust is considered a life estate, or a lease for life, for the beneficiary who is granted the beneficial interest representing his or her principal residence held in an irrevocable trust, if the beneficial interest is granted under the trust instrument for a period that is not less than the beneficiary's life.

(22) **Owned.** "Owned" includes "contract purchase" as well as "in fee," a "life estate," and any "lease for life." A residence owned by a marital community or domestic partnership or owned by cotenants is deemed to be owned by each spouse or each domestic partner or each cotenant.

(23) **Ownership by a marital community or domestic partnership.** "Ownership by a marital community or domestic partnership" means property owned in common by both spouses or domestic partners. Property held in separate ownership by one spouse or domestic partner is not owned by the marital community or domestic partnership. The person claiming the exemption must own the property for which the exemption is claimed. Example: A person qualifying for the exemption by virtue of age, disability, or one hundred percent disabled veteran status cannot claim exemption on a residence owned by the person's spouse or domestic partner as a separate estate outside the marital community or domestic partnership unless the claimant has a life estate therein.

(24) **Pension.** "Pension" generally means ((an agreement to provide)) an arrangement providing for payments, not wages, to a person (or to that person's family) who has fulfilled certain conditions of service or reached a certain age. Pension distributions may be triggered by separation from service, attainment of a specific age, disability, death, or other events. A pension may allow payment of all or a part of the entire pension benefit, in lieu of regular periodic payments.

(25) **Principal residence.** "Principal residence" means the claimant owns and occupies the residence as his or her principal or main residence. It does not include a residence used merely as a vacation home. For purposes of this exemption:

(a) Principal or main residence means the claimant occupies the residence for more than six months each year.

(b) Confinement of the claimant to a hospital or nursing home does not disqualify the claim for exemption if:

- (i) The residence is temporarily unoccupied;
- (ii) The residence is occupied by the claimant's spouse or domestic partner or a person financially dependent on the claimant for support;
- (iii) The residence is occupied by a caretaker who is not paid for watching the house;
- (iv) The residence is rented for the purpose of paying nursing home, hospital, boarding home or adult family home costs.

(26) **Regular gainful employment.** "Regular gainful employment" means consistent or habitual labor or service which results in an increase in wealth or earnings.

(27) **Replacement residence.** "Replacement residence" means a residence that qualifies for the senior citizen, disabled person, and one hundred percent disabled veteran exemption and replaces the prior residence of the person receiving the exemption.

(28) **Residence.** "Residence" means a single-family dwelling unit whether such unit be separate or part of a multiunit dwelling and includes up to one acre of the parcel of land on which the dwelling stands, and it includes any additional property up to a total of five acres that comprises the residential parcel if land use regulations require this larger parcel size. The term also includes:

(a) A share ownership in a cooperative housing association, corporation, or partnership if the person claiming exemption can establish that his or her share represents the specific unit or portion of such structure in which he or she resides.

(b) A single-family dwelling situated upon leased lands and upon lands the fee of which is vested in the United States, any instrumentality thereof including an Indian tribe, the state of Washington, or its political subdivisions.

(c) A mobile home which has substantially lost its identity as a mobile unit by being fixed in location upon land owned or rented by the owner of said mobile home and placed on a foundation, posts, or blocks with fixed pipe connections for sewer, water or other utilities even though it may be listed and assessed by the county assessor as personal property. It includes up to one acre of the parcel of land on which a mobile home is located if both the land and mobile home are owned by the same qualified claimant and it

includes any additional property up to a total of five acres that comprises the residential parcel if land use regulations require this larger parcel size.

(29) **Veteran.** "Veteran" means a veteran of the armed forces of the United States.

(30) **Veterans benefits.** "Veterans benefits" means benefits paid or provided under any law, regulation, or administrative practice administered by the VA. Federal law excludes from gross income any veterans' benefits payments, paid under any law, regulation, or administrative practice administered by the VA.

**WSR 16-07-150**  
**PROPOSED RULES**  
**STATE BOARD FOR COMMUNITY**  
**AND TECHNICAL COLLEGES**

[Filed March 23, 2016, 9:34 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-02-088.

Title of Rule and Other Identifying Information: Institutional financial aid fund, WAC 131-36-050, 131-36-055, 131-36-100, and 131-36-250.

Hearing Location(s): Skagit Valley College, 2405 East College Way, Mount Vernon, WA 98273, on May 5, 2016, at 8:30 a.m.

Date of Intended Adoption: May 5, 2016.

Submit Written Comments to: Scott Copeland, 1300 Quince Street S.E., Olympia, WA 98504, e-mail scopeland@sbctc.edu, by April 21, 2016.

Assistance for Persons with Disabilities: Contact Beth Gordon by April 21, 2016, TTY (360) 704-4309 or bgordon@sbctc.edu.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to make rule amendments necessary to align with and meet recent statutory changes.

Reasons Supporting Proposal: RCW 28B.15.820 requires the state board to adopt necessary rules to implement subsection (11), which was added to the statute in 2009, allowing funds in this account to be used for "a locally administered financial aid program for high school students enrolled in dual credit programs. Moneys from this fund may be used for all educational expenses related to a student's participation in a dual credit program including but not limited to tuition, fees, course materials, and transportation."

Statutory Authority for Adoption: RCW 28B.15.067.

Statute Being Implemented: RCW 28B.15.067.

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

Name of Proponent: State board for community and technical colleges, governmental.

Name of Agency Personnel Responsible for Drafting: Scott Copeland, 1300 Quince Street S.E., Olympia, WA 98504, (360) 704-4397; Implementation and Enforcement: John Ginther, 1300 Quince Street S.E., Olympia, WA 98504, (360) 704-4380.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed changes do not impact small business or school district costs.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed changes do not create or change any costs.

March 23, 2016  
Beth Gordon  
Executive Director  
and Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-06-046, filed 2/25/09, effective 3/28/09)

**WAC 131-36-050 Definitions.** For the purposes of chapter 131-36 WAC, the following definitions shall apply:

(1) "Fund" shall mean the institutional financial aid fund established by RCW 28B.15.820.

(2) "Current federal methodology" shall mean the method of determining financial need as prescribed by the United States Department of Education.

(3) ("~~NELA~~") "Loan guarantor" shall mean (~~(Northwestern Education Loan Association, a private student loan guaranteeing association)~~) the Washington student loan guaranty association or its successor agency authorized to guarantee educational loans in Washington granted pursuant to 20 U.S. Code Section 1071.

(4) "Operational" shall mean that the institution has been approved as a lender and is eligible to provide loans guaranteed by (~~NELA~~) the Washington student loan guaranty association successor agency.

(5) "Needy student" is defined in RCW 28B.92.030(3).

(6) "Other institutional financial aid" shall be defined as locally administered, need-based institutional employment, tuition and fee scholarships, or grants.

AMENDATORY SECTION (Amending WSR 09-06-046, filed 2/25/09, effective 3/28/09)

**WAC 131-36-055 Use of fund.** Moneys in this fund shall be used for student financial aid:

(1) Long-term loans;

(2) Short-term loans; or

(3) Locally administered need-based grants, tuition scholarships and institutional employment programs for needy, resident students, or a financial aid program for high school students enrolled in a dual credit program to cover expenses including, but not limited to, tuition, fees, course materials, and transportation. The moneys in this fund shall not be used for college operating expenses.

AMENDATORY SECTION (Amending WSR 09-06-046, filed 2/25/09, effective 3/28/09)

**WAC 131-36-100 Eligibility.** (1) Long-term loans and other institutional financial aid to needy students shall be made only to students who qualify as residents for tuition purposes under RCW 28B.15.012 (~~(and 28B.15.013)~~) (2)(a) through (e) or to align with federal guidelines and are



enrolled for at least three credit hours of instruction or the equivalent.

(2) Priorities for use of other institutional financial aid shall be given to:

(a) Needy students who have accumulated excessive educational loan burdens;

(b) Needy single parents for educational expenses, including child care and transportation; ~~((and))~~

(c) Other eligible needy students; and

(d) Needy dual credit enrolled students for tuition, fees, course materials, and transportation.

(3) Short-term loans may be made to any student enrolled in the institution.

(4) For long-term and short-term loans, institutions must have ample evidence that students have the capability of repaying the loan within the time frame specified by the institution.

(5) No individual shall be eligible for long-term loans, short-term loans or other institutional financial aid for needy students if currently in default or delinquent in the payment on any educational loan or who owes a repayment on any federal or state grant.

AMENDATORY SECTION (Amending WSR 98-15-012, filed 7/2/98, effective 8/2/98)

**WAC 131-36-250 Initiating, servicing, and collecting loans.** (1) Community colleges shall utilize the loan collecting and servicing agency designated by the state director for community and technical colleges and the ~~((NELA))~~ loan guarantor.

(2) The state director of community and technical colleges shall determine and designate on behalf of the state board an appropriate entity to conduct servicing and collection activities with regard to loans made from the fund.

(3) The state director of community and technical colleges shall, when (s)he determines that it is in the best interest of the college system, determine and designate on behalf of the state board an appropriate entity to perform loan initiation activities and transaction reporting regarding loans made from the fund.

(4) Subsequent to granting loans from the fund each college shall cooperate with the ~~((NELA))~~ loan guarantor and the servicing and collection agency through informing students of their rights and responsibilities regarding such loans; timely provision of student status verification information and information pertaining to determinations of default, forbearance, and deferment of loans; consolidation of loans; and records maintenance.

**WSR 16-07-151**

**PROPOSED RULES**

**SUPERINTENDENT OF  
PUBLIC INSTRUCTION**

[Filed March 23, 2016, 9:58 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-04-109.

Title of Rule and Other Identifying Information: WAC 392-122-107 Definition—Report 1220 and 392-122-710 Distribution of state moneys for the transitional bilingual program.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Policy Conference Room, 600 South Washington, Olympia, WA 98501, on April 28, 2016, at 9:30 a.m.

Date of Intended Adoption: May 2, 2016.

Submit Written Comments to: Becky McLean, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, e-mail becky.mclean@k12.wa.us, fax (360) 664-3683, by April 28, 2016.

Assistance for Persons with Disabilities: Contact Kristin Murphy by April 21, 2016, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These WAC require updating to address the additional June count day that went into effect for the 2012-13 school year and changed the special education and transitional bilingual funding to a nine month average of reported enrollment.

Reasons Supporting Proposal: OSPI funds special education and transitional bilingual programs based on a nine month average as required by the operating budget. These revisions will update current practice.

Statutory Authority for Adoption: RCW 28A.150.290.

Statute Being Implemented: RCW 28A.150.250.

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

Name of Agency Personnel Responsible for Drafting: Becky McLean, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6306; Implementation: T. J. Kelly, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6301; and Enforcement: JoLynn Berge, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable - no small business impact, no school district fiscal impact.

A cost-benefit analysis is not required under RCW 34.05.328. OSPI is not subject to RCW 34.05.328 per subsection (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

March 22, 2016

Randy Dorn

State Superintendent  
of Public Instruction

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

**WAC 392-122-107 Definition—Report 1220.** "Report 1220" means the school district's and charter school's special education allocation report calculated and prepared by the superintendent of public instruction using the district's or charter school's ~~((eight-month))~~ nine-month average annual headcount enrollment as submitted on Form P-223H for the school year and for the 1994-95 school year the ratios and percentages established in the LEAP document for state spe-

cial education program allocation as defined in WAC 392-122-105. For the purpose of special education allocations, the district's or charter school's (~~eight-month~~) nine-month average annual headcount enrollment shall be the average of the enrollments for the first school day of (~~the second reporting month and the subsequent seven months~~) October through June.

**AMENDATORY SECTION** (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

**WAC 392-122-710 Distribution of state moneys for the transitional bilingual program.** The superintendent of public instruction shall apportion to districts or charter schools for the state transitional bilingual program the amount calculated per district in WAC 392-122-705 according to the apportionment schedule provided in RCW 28A.510.250. Monthly payments to districts and charter schools shall be adjusted during the year to reflect changes in the district's or charter school's reported eligible students as reported on the P223, monthly report of school district enrollment form. For the purpose of transitional bilingual allocations, the district's or charter school's (~~eight-month~~) nine-month average annual headcount enrollment of eligible students as defined in WAC 392-160-005(3) and 392-160-015 shall be the average of such enrollment for the first school day of (~~the second reporting month and the subsequent seven months~~) October through June.

**WSR 16-07-152**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Behavioral Health Administration)

[Filed March 23, 2016, 10:25 a.m.]

Supplemental Notice to WSR 16-01-026.

Preproposal statement of inquiry was filed as WSR 15-18-035.

Title of Rule and Other Identifying Information: The department is repealing, adopting, and amending sections in chapters 388-865, 388-875, 388-877, 388-877A, 388-877B, and 388-877C WAC that pertain to regional support networks (RSN) being renamed behavioral health organizations (BHO).

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>), on May 24, 2016, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 25, 2016.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., May 24, 2016.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by May 10, 2016, phone

(360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department determined while in the permanent rule adoption process, that the rules would be significant rules requiring a small business economic impact statement (SBEIS) and cost-benefit analysis (CBA). Because of that, the department is filing this supplemental CR-102 and completed the CBA and SBEIS. The permanent rule filed as part of this supplemental process will replace the emergency rule filed to be effective April 1, 2016. These rules support the requirements in 2SSB 6312, chapter 225, Laws of 2014, which requires the renaming of RSN to BHO effective April 1, 2016. The anticipated effect is to ensure BHOs provide or contract with behavioral health agencies to provide both substance use disorder treatment services and mental health services to individuals who need these services. An RSN currently provides only mental health services. Changes include updating definitions of "mental health professional" and "peer counselor," moving grievance system rules from chapter 388-877A WAC to chapter 388-877 WAC, and changing a grievance system rule concerning when a "notice of action" should be sent. Finally, processes and editing changes are made to provide clarification and consistency within the rules.

Reasons Supporting Proposal: The rule supports implementation of 2SSB 6312, chapter 225, Laws of 2014. The updated rule will provide more consistent statewide administration, continuity, delivery, and monitoring of behavioral health services which impact consumers, their families, advocates, and contracted providers.

Statutory Authority for Adoption: RCW 70.02.290, 70.96A.040(4), 71.05.560, 71.24.035 (5)(c), 71.34.380.

Statute Being Implemented: 2SSB 6312, chapter 225, Laws of 2014.

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: Kathy Sayre, P.O. Box 45330, Olympia, WA 98504-5330, (360) 725-1342; Implementation and Enforcement: Tony O'Leary, P.O. Box 45330, Olympia, WA 98504-5330, (360) 725-1039.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

See Reviser's note below.

A copy of the statement may be obtained by contacting Kathy Sayre, P.O. Box 45330, Olympia, WA 98504-5330, phone (360) 725-1342, fax (360) 586-0341, e-mail kathy.sayre@dshs.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Kathy Sayre, P.O. Box 45330, Olympia, WA 98504-5330, phone (360) 725-1342, fax (360) 586-0341, e-mail kathy.sayre@dshs.wa.gov.

March 18, 2016  
Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 16-09 issue of the Register.

**WSR 16-07-153**  
**PROPOSED RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

[Filed March 23, 2016, 10:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-21-182.

Title of Rule and Other Identifying Information: WAC 314-12-215 Alcohol impact areas—Definition—Guidelines.

Hearing Location(s): Washington State Liquor Control [and Cannabis] Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on May 4, 2016, at 10:00 a.m.

Date of Intended Adoption: May 18, 2016.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail rules@lcb.wa.gov, fax (360) 664-9689, by May 4, 2016.

Assistance for Persons with Disabilities: Contact Karen McCall by May 4, 2016, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is a result of a stakeholder request. Clarification of requirements for an alcohol impact area are requested.

Reasons Supporting Proposal: Alcohol impact areas are becoming more popular with local jurisdictions. Clarification of requirements will ensure that all stakeholders understand what is required for the board to recognize an alcohol impact area and to continue to keep the alcohol impact area in force.

Statutory Authority for Adoption: RCW 66.08.030.

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

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

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, 664-1631; Implementation: Becky Smith, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, 664-1615; and Enforcement: Justin Nordhorn, Chief Enforcement, 3000 Pacific Avenue S.E., Olympia, WA 98504, 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not required.

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

March 23, 2016  
Jane Rushford  
Chairman

AMENDATORY SECTION (Amending WSR 10-19-065, filed 9/15/10, effective 10/16/10)

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

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

(b) The board may place special conditions or restrictions upon off-premises sales privileges, liquor products, applicants, license assumptions or licensees that sell liquor for off-premises consumption (see subsection (3) of this section).

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

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

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

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

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

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

(c) A local authority must:

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

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

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

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

~~(iii))~~ inebriates.

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

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

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

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

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

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

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

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

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

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

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

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

(iv) Explain why past voluntary measures failed to sufficiently resolve the problem; and

(v);). The voluntary compliance report must:

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

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

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

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

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

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

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

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

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

(b) Requests for product restrictions (for example, prohibition of sale of certain liquor products or container sizes) must originate from a local authority's law enforcement agency or public health authority, whereas restrictions affecting business operations (for example, hours of operation) may originate from a local authority's law enforcement agency, public authority or governing body. (~~(e)~~) Product restrictions must be reasonably linked to problems associated with chronic public inebriation or illegal activity. Reasonable links include, but are not limited to: Police, fire or emergency medical response statistics; photographic evidence; law enforcement, citizen or medical-provider testimonial; testimony by current or former chronic public (~~(inebriants)) inebriates~~; litter pickup; or other statistically documented evidence that a reasonable person may rely upon to determine whether a product is associated with chronic public inebriation or illegal activity(;

(d) Restricted beer and wine products must have minimum alcohol content of five and seven tenths percent by volume and twelve percent by volume, respectively.

(e);) or

(c) Upon board approval and upon an individual product by individual product basis, a local authority may restrict a product that is already restricted in another board-recognized alcohol impact area provided that a product is significantly materially similar (for example, comparable alcohol percent content, container size or liquor category (~~(such as alcoholic energy drinks))~~) to products already restricted in its own alcohol impact area. Upon board approval and upon an individual product by individual product basis, a local authority may also restrict a product that is significantly materially similar to products already restricted in its own alcohol impact area. In both cases, a local authority must demonstrate to the board, in writing, the material similarities and need for product inclusion, but the board will not require a local authority to submit extensive documented evidence as described in (~~(e)~~) (b) of this subsection.

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

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

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

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

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

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

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

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

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

(iv) Distribution of educational materials to chronic public inebriants or licensees;

(v) Detoxification services;

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

(vii) Change in land use ordinances.

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

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

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

~~(b) ((No state liquor store or agency located within an alcohol impact area may sell that alcohol impact area's restricted products.~~

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

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

(a) When the board receives an application for a new liquor license or a license assumption that includes an off-premises sales privilege, the board will establish an extended time period of sixty calendar days for a local authority to comment upon the application.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Within ~~((ten))~~ twenty calendar days of receiving a local authority's fifth, tenth, fifteenth, et cetera, ~~((annual))~~ report, the board shall notify affected parties of the upcoming assessment, whereupon an affected party has twenty calendar days to comment upon, or petition the board to discontinue its

recognition of, an alcohol impact area (see (d) of this subsection). Affected parties may include, but are not limited to: Liquor licensees, citizens or neighboring local authorities.

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

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

(c) An assessment shall include an analysis of:

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

(ii) Comments or petitions submitted by affected parties~~(; and~~

~~(ii) Each annual report submitted during a five-year period~~)).

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

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

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

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

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

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

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

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

Money advances—Contracts—Gifts—Rebates, etc., 314-55-020 Marijuana license qualifications and application process, 314-55-035 What persons or entities have to qualify for a marijuana license?, 314-55-040 What criminal history might prevent a marijuana license applicant from receiving or keeping a marijuana license?, 314-55-045 What marijuana law or rule violation history might prevent an applicant from receiving a marijuana license?, 314-55-050 Reasons the WSLCB may seek denial, suspension, or cancellation of a marijuana license application or license, 314-55-070 Process if the WSLCB denies a marijuana license application, 314-55-075 What is a marijuana producer license and what are the requirements and fees related to a marijuana producer license?, 314-55-077 What is a marijuana processor license and what are the requirements and fees related to a marijuana processor license?, 314-55-079 What is a marijuana retailer license and what are the requirements and fees related to a marijuana retailer license?, 314-55-080 Medical marijuana endorsement, 314-55-081 Who can apply for a marijuana retailer license?, 314-55-082 Insurance requirements, 314-55-083 What are the security requirements for a marijuana licensee?, 314-55-084 Production of marijuana, 314-55-085 What are the transportation requirements for a marijuana licensee?, 314-55-086 What are the mandatory signs a marijuana licensee must post on a licensed premises?, 314-55-087 What are the recordkeeping requirements for a marijuana licensee?, 314-55-089 What are the tax and reporting requirements for marijuana licensees?, 314-55-092 What if a marijuana licensee fails to report or pay, or reports or pays late?, 314-55-095 Marijuana servings and transaction limitations, 314-55-096 Samples, 314-55-097 Marijuana waste disposal—Liquids and solids, 314-55-099 Standardized scales, 314-55-101 Sampling protocols, 314-55-102 Quality assurance testing, 314-55-103 Good laboratory practice checklist, 314-55-104 Marijuana processor license extraction requirements, 314-55-105 Packaging and labeling requirements, 314-55-107 Marijuana product compliance, 314-55-110 What are my responsibilities as a marijuana licensee?, 314-55-115 What method of payment can a marijuana licensee use to purchase marijuana?, 314-55-120 Ownership changes, 314-55-130 Change of business name, 314-55-135 Discontinue marijuana sales, 314-55-140 Death or incapacity of a marijuana licensee, 314-55-147 What hours may a marijuana retailer licensee conduct sales?, 314-55-155 Advertising, 314-55-160 Objections to marijuana license applications, 314-55-165 Objections to marijuana license renewals, 314-55-185 Does the WSLCB have the right to inspect my premises or vehicle licensed to produce, process, sell or transport marijuana?, 314-55-200 How will the WSLCB identify marijuana, useable marijuana, marijuana concentrates, and marijuana infused products during checks of licensed businesses?, 314-55-210 Will the WSLCB seize or confiscate marijuana, marijuana concentrates, useable marijuana, and marijuana infused products?, 314-55-220 What is the process once the WSLCB summarily orders marijuana, useable marijuana, marijuana concentrates, or marijuana infused products of a marijuana licensee to be destroyed?, 314-55-230 What are the procedures the WSLCB will use to destroy or donate marijuana, useable marijuana, marijuana concentrates and marijuana infused products to law enforcement?, 314-55-310

## WSR 16-07-154

### PROPOSED RULES

## LIQUOR AND CANNABIS BOARD

[Filed March 23, 2016, 10:42 a.m.]

Supplemental Notice to WSR 16-02-128.

Title of Rule and Other Identifying Information: WAC 314-55-010 Definitions, 314-55-015 General information about marijuana licenses, 314-55-018 Prohibited practices—

Transportation license, 314-55-410 Cooperatives, 314-55-415 What are the recordkeeping and reporting requirements for cooperatives?, 314-55-430 Qualifying patient or designated provider extraction requirements, 314-55-505 What are the procedures for notifying a licensee of an alleged violation of a WSLCB statute or regulation?, 314-55-506 What is the process once the WSLCB summarily suspends a marijuana license?, 314-55-507 How may a licensee challenge the summary suspension of his or her marijuana license?, 314-55-508 Review of orders on stay, 314-55-510 What options does a licensee have once he/she receives a notice of an administrative violation?, 314-55-515 What are the penalties if a marijuana license holder violates a marijuana law or rule?, 314-55-520 Group 1 violations against public safety, 314-55-525 Group 2 regulatory violations, 314-55-530 Group 3 license violations, 314-55-535 Group 4 marijuana producer and/or processor violations, 314-55-537 Group 5 license violations, and 314-55-540 Information about marijuana license suspensions.

Hearing Location(s): Washington State Liquor Control [and Cannabis] Board (WSLCB), Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on May 4, 2016, at 10:00 a.m.

Date of Intended Adoption: May 18, 2016.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail rules@lcb.wa.gov, fax (360) 664-9689, by May 4, 2016.

Assistance for Persons with Disabilities: Contact Karen McCall by May 4, 2016, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules are needed to implement legislation that passed in the 2015 legislative session (SB 5052 and HB 2136). SB 5052, known as the Cannabis Patient Protection Act aligns the medical marijuana market with the existing recreational market.

Reasons Supporting Proposal: Marijuana license applicants and licensees need clarification of the legislation passed in the 2015 legislative session.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345.

Statute Being Implemented: RCW 69.50.331; changes to chapter 69.51A RCW; new sections in chapter 69.50 RCW.

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

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Becky Smith, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, Chief Enforcement, 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

**Chapter 314-55 WAC, Marijuana licenses, application process, requirements and reporting.**

### **1. Description of Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule:**

The following additions have been made to the rules:

(a) Any vehicle assigned to transport marijuana is considered an extension of the licensed premises. This allows enforcement explicit authority to monitor vehicles transporting marijuana. No real change for business owners.

(b) New applicants for marijuana licenses and applicants who change their location must post a notice on their premises notifying the public that they intend to sell marijuana at that location.

(c) New applicants and their financiers must maintain residency in Washington for six months prior to applying. Previous requirement was three months.

(d) Local authorities may adopt ordinances reducing the one thousand foot rule for restricted entities except for elementary and secondary schools and playgrounds. Applicants must provide proof of ordinances if restricted entities are less than one thousand feet from the proposed premises.

(e) Outdoor producers must be physically separated from other outdoor grows by a minimum of twenty feet. They cannot share walls and fences.

(f) Prohibits characterizing flavor for marijuana infused inhalants related to fruit, chocolate, vanilla, honey, candy, cocoa, or dessert. May use mint flavors.

(g) Adds a free medical endorsement for retailers to sell marijuana for medical use. Applicants must:

i. Follow all rules adopted by the department of health (DOH).

ii. Have a consultant on staff in compliance with DOH rules.

iii. Maintain an assortment of medical marijuana - in the second year, the retailer must have not less than twenty-five percent of products designated for medical use.

iv. Enter qualifying patients into a data base established by DOH.

v. Issue recognition cards to qualifying patients.

vi. Keep copies of patients' recognition cards, marijuana provided free to patients, and tax exempt sales records for three years.

(h) Specifies prohibited plant growth regulators.

(i) Eliminates tax payments for marijuana producers and processors (increases exempt taxes for retailers from twenty-five to thirty-seven percent).

(j) Include types of solvents used for extraction on retail labels.

(k) Penalties for failure to comply with rules have been modified.

(l) Adds a transportation license for marijuana.

### **2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements:**

(a) Training for medical marijuana rules to be provided by a DOH contractor.

### **3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor and Increased Administrative Costs:**

(b) Medical marijuana retailers will have to have a printer, laminator, and bar code scanner to create and check registration cards.

(c) Medical marijuana retailers will need to send their staff for consultation training by a DOH contractor.

**4. Will Compliance with the Rules Cause Businesses to Lose Sales or Revenue?** No, businesses that choose to have a medical marijuana retail license are likely to increase sales and revenue. However, introducing more stores may have an impact on sales for existing retail stores.

**5. 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.
- d. Business card laminator: \$35 on Amazon - \$17 per twenty-five laminate inserts.
- e. Printers: \$25-\$100 on Amazon.
- f. Bar code scanners: \$18-\$50 on Amazon.
- g. Costs of consultant class - to be determined by DOH.

All of the marijuana businesses are virtually small businesses. The additional costs above are the same for all businesses, regardless of size.

**6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So:** The legislature mandated the changes for medical marijuana. DOH has done an excellent job reducing costs to agencies.

**7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule:** Most marijuana businesses are small businesses. They are invited to provide feedback to the rules during the rule-making process.

**8. A List of Industries That Will Be Required to Comply with the Rule:** All licensed marijuana producers, processors, retailers, and transporters will be required to comply with these rules.

**9. An Estimate of the Number of Jobs That Will Be Created or Lost as a Result of Compliance with the Proposed Rule:** Indeterminate, it is likely that adding medical marijuana to the legal marketplace will create a high number of additional jobs. We are working with a consultant to evaluate the approximate increase in business when medical marijuana is added to the legal market.

#### WAC 314-55-310 Transportation license.

**1. Description of Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule:** Marijuana transportation licensees are allowed to physically transport or deliver marijuana products between marijuana businesses within the state. Licensees must:

- (a) Apply for and be issued a transportation license from the WSLCB.
- (b) Have a transport manifest:
  - Information must be kept with the product at all times.
- (c) Records of transportation:
  - Kept for minimum of three years.
  - Copies of transportation manifest for all deliveries.

- Transportation log documenting the chain of custody.
- Bank statements.
- Accounting and tax records.
- Records of financial transactions.
- Employee records.

(d) Transportation of product:

- Only transportation licensee or employee, over twenty-one, may transport marijuana.
- Marijuana must be in sealed packaging or container.
- Sealed packages or containers cannot be opened during transport.
- Marijuana must be in locked, safe and secure storage compartment that is secured to the inside of the vehicle.
- Product must be delivered or returned to shipper within twenty-four hours from time of pickup.
- Live plants may be transported in a fully enclosed trailer or secured area within the inside of the van or box truck.
- All transport vehicles assigned to transport is [are] an extension of the licensed premises and subject to inspection by enforcement officer of the WSLCB.

**2. 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 obligations discussed in question one would be bookkeeping and accounting. Businesses may also need legal assistance for business purposes.

**3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor and Increased Administrative Costs:** Indeterminate - there are currently no legally established marijuana transportation licenses in the state.

Transportation license will need vehicles and employees for transport; they may also need administrative personnel for routine business practice to include creating manifest and using the traceability system.

**4. Will Compliance with the Rules Cause Businesses to Lose Sales or Revenue?** Indeterminate, there are currently no legally established marijuana transportation licenses in the state. Rules were drafted based on similar business practices of current marijuana producers, processors and retailers.

**5. 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 transportation licenses in the state. The transportation license rules were established to align it with the existing marijuana rules for producer[s], processors and retailers.

**6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So:** The requirements in the rules are designed to comply with section 501 of the SHB 2136 mandate.

**7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule:** Stake-



holders will be able to comment on the proposed rules during the rule-making process.

**8. A List of Industries That Will Be Required to Comply with the Rule:** All licensed marijuana transportation licensees will be required to comply with these rules.

**9. 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 transportation licenses in the state. The number of jobs created or lost will depend on the number of applications received and licenses issues [issued].

**WAC 314-55-515 to 314-55-540, administrative penalty guidelines for marijuana business.**

**1. Description of Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule:** When it is believed that a licensee has committed a violation of the WSLCB statute or regulation, an administrative violation notice is issued. A recommended penalty accompanies the violation. The WSLCB has divided the penalty structure into five groups.

1. Public safety.
2. Regulatory.
3. License violations.
4. Marijuana producer and processor violations.
5. Transportation.

Penalty guidelines for each group were revamped to include the following:

- Added a group five violation list to include the new transportation license.
- Defining inventory as it pertains to destruction.
- Eliminated suspension times from producers and processors.
- Added violation types to distinguish violations from each other.
- Eliminated duplicate violations in multiple categories.
- Brought penalties in line with other offenses.

**2. 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 obligations discussed in question one would be legal assistance for violation defense. However, legal assistance is not required in order to negotiate or contest a violation.

**3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor and Increased Administrative Costs:** None, unless there is a violation of statutes and rules apply. The licensee will pay a fine, suspension and/or destruction of product.

**4. Will Compliance with the Rules Cause Businesses to Lose Sales or Revenue?** Penalties can cause a business to [lose] sales or revenue; however, the draft rules align with the previous rules and their intent, as most monetary penalties remain the same. New violation types align with current violation category.

**5. 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.

None. Penalties are the same regardless of the size of the business.

**6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So:** The WSLCB took into account the extent of retail penalties compared to nonretail penalties. We cannot stop growth of plants without destroying them. WSLCB eliminated the suspension option for nonretail licensees.

**7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule:** Stakeholders will be able to comment on the proposed rules during the rule-making process.

**8. A List of Industries That Will Be Required to Comply with the Rule:** All licensed marijuana licensees will be required to comply with these rules.

**9. An Estimate of the Number of Jobs That Will Be Created or Lost as a Result of Compliance with the Proposed Rule:** None.

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 rules@lcb.wa.gov.

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

March 23, 2016  
Jane Rushford  
Chairman

AMENDATORY SECTION (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

**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))~~ WSLCB as a true party of interest in a marijuana license, as outlined in WAC 314-55-035. However, for purposes of determining an application's priority under RCW 69.50.331 (1)(a), only the person or business entity that is applying for the license will be considered the applicant.

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

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

(4) "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.

(5) "Consultant" means an expert who provides advice or services in a particular field, whether a fee is charged or not. A consultant who is in receipt of, or has the right to receive, a

percentage of the gross or net profit from the licensed business during any full or partial calendar or fiscal year is a true party of interest and subject to the requirements of WAC 314-55-035. A consultant who exercises any control over an applicant's or licensee's business operations is also subject to the requirements of WAC 314-55-035(4).

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

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

(8) "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.

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

((8)) (10) "Financier" means any person or entity, other than a banking institution, 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.

((9)) (11) "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.

((10)) (12) "Intermediate product" means marijuana flower lots or other material lots that have been converted by a marijuana processor to a marijuana concentrate or marijuana-infused product that must be further processed prior to retail sale.

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

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

(15) "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.

((13)) (16) "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.

((14)) (17) "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.

((15)) (18) "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.

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

((17)) (20) "Pesticide" means, but is not limited to: (a) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, snail, slug, fungus, weed, and any other form of plant or animal life or virus, except virus on or in a living person or other animal which is normally considered to be a pest; (b) any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and (c) any spray adjuvant. Pesticides include substances commonly referred to as herbicides, fungicides, insecticides, and cloning agents.

((18)) (21) "Perimeter" means a property line that encloses an area.

((19)) (22) "Plant" means a marijuana plant.

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

((20)) (24) "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.

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

((22)) (26) "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.

((23)) (27) "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, owned and/or managed by a charitable non-profit organization, city, county, state, or federal government.

~~((24))~~ (28) "Residence" means a person's address where he or she physically resides and maintains his or her abode.

~~((25))~~ (29) "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.

~~((26))~~ (30) "Selling price" means the same meaning as in RCW 82.08.010, except that when the product is sold under circumstances where the total amount of consideration paid for the product is not indicative of its true value. Selling price means the true value of the product sold as determined or agreed to by the ~~((board))~~ WSLCB. For purposes of this subsection:

(a) "Product" means marijuana, marijuana concentrates, usable marijuana, and marijuana-infused products; and

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

~~((27))~~ (31) "Unit" means an individually packaged marijuana-infused solid or liquid product meant to be eaten or swallowed, not to exceed ten servings or one hundred milligrams of active tetrahydrocannabinol (THC), or Delta 9.

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

AMENDATORY SECTION (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

**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. No one under twenty-one years of age is allowed to enter or remain on a marijuana licensed premises except as provided in RCW 69.50.357.

(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))~~ WSLCB approves the license application.

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

(7) The ~~((board))~~ WSLCB 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))~~ WSLCB in a conspicuous place on the premises.

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

(10) A marijuana producer, processor or retailer licensed by the ~~((board shall))~~ WSLCB must conduct the production, processing, storage, and sale of marijuana-infused products using sanitary practices ~~((and ensure marijuana infused edible processing facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapters 16-165 and 16-167 WAC)).~~

(11) A marijuana processor licensed by the board must ensure marijuana-infused edible processing facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapters 16-165 and 16-167 WAC.

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

AMENDATORY SECTION (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

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

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

- (a) Gifts;
- (b) Discounts;
- (c) Loans of money;
- (d) Premiums;
- (e) Rebates;
- (f) Free product of any kind except as allowed by WAC 314-55-083; or
- (g) Treats or services of any nature whatsoever except such services as are authorized in this rule.

(3) "Industry member" means a licensed marijuana producer, marijuana processor, marijuana retailer, their authorized representatives, and any affiliates, subsidiaries, officers, partners, financiers, agents, employees, and representatives of any industry member.

(4) No industry member or employee thereof shall sell to any ~~((retail))~~ marijuana licensee or solicit from any such licensee any order for any marijuana tied in with, or contingent upon, the ~~((retailer's))~~ licensee's purchase of some other marijuana, or any other merchandise, paraphernalia, property, or service.

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

AMENDATORY SECTION (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

**WAC 314-55-020 Marijuana license qualifications and application process.** Each marijuana license application is unique and investigated individually. The ~~((board))~~ WSLCB 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))~~ WSLCB 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) Applicants for a new marijuana producer, processor, or retailer license and those who apply to change their location must display a sign provided by the WSLCB on the outside of the premises to be licensed notifying the public that the premises are subject to an application for a marijuana license. Posting notices must occur within seven days of submitting the location confirmation form for new licenses or the change of location application for existing licensees. The WSLCB may check for compliance with this requirement at its discretion. The sign must:

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

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

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

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

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

(3) The WSLCB will use a priority system to determine the order that marijuana retailers are licensed.

**(a) First priority is given to applicants who:**

(i) Applied to the state liquor and cannabis board for a marijuana retail license prior to July 1, 2014. To meet this qualification, the applicant must provide the WSLCB a copy of the master business license from department of revenue business licensing service showing the applicant applied for a retail marijuana license prior to July 1, 2014;

(ii) Operated or were employed by a collective garden before January 1, 2013. To meet this qualification, the appli-

cant must provide the WSLCB with a copy of the master business license from department of revenue business licensing service showing the applicant owned a collective garden prior to January 1, 2013, or a pay stub or tax information indicating that the applicant was employed by a collective garden prior to January 1, 2013;

(iii) Have maintained a state business license and municipal business license, as applicable in the relevant jurisdiction. To meet this qualification, the applicant must provide the WSLCB a copy of the master business license from department of revenue business licensing service and copies of municipal business licenses from January 1, 2013, through the date of application; and

(iv) Have had a history of paying all applicable state taxes and fees. To meet this qualification, the applicant must provide the WSLCB evidence from the department of revenue, department of labor and industries, and the employment security department that the entity is up to date on all applicable state taxes since January 1, 2013, and that they have paid all applicable fees to the WSLCB for all businesses they are engaged in since January 1, 2013.

**(b) Second priority is given to applicants who:**

(i) Operated or were employed by a collective garden before January 1, 2013. To meet this qualification, the applicant must provide the WSLCB a copy of the master business license from department of revenue business licensing service showing the applicant owned a collective garden prior to January 1, 2013, or a pay stub or tax information indicating that the applicant was employed by a collective garden prior to January 1, 2013;

(ii) Have maintained a state business license and municipal business license, as applicable in the relevant jurisdiction. To meet this qualification, the applicant must provide the WSLCB a copy of the master business license from department of revenue business licensing service and copies of municipal business licenses from January 1, 2013, through the date of application; and

(iii) Have had a history of paying all applicable state taxes and fees. To meet this qualification, the applicant must provide the WSLCB evidence from the department of revenue, the department of labor and industries, and the employment security department that the entity is up to date on all applicable state taxes since January 1, 2013, and that they have paid all applicable fees to the WSLCB for all businesses they are engaged in since January 1, 2013, for all businesses they are engaged in since January 1, 2013.

**(c) Third priority is given to all other applicants who do not meet the qualifications and experience identified for priority one or two.**

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

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

~~((=))~~ (6) The ~~((board))~~ WSLCB will conduct an investigation of the applicants' criminal history and administrative violation history, per WAC 314-55-040 and 314-55-045.

(a) The criminal history background check will consist of completion of a personal/criminal history form provided

by the ~~((board))~~ WSLCB and submission of fingerprints to a vendor approved by the ~~((board))~~ WSLCB. The applicant will be responsible for paying all fees required by the vendor for fingerprinting. These fingerprints will be submitted to the Washington state patrol and the Federal Bureau of Investigation for comparison to their criminal records. The applicant will be responsible for paying all fees required by the Washington state patrol and the Federal Bureau of Investigation.

(b) Financiers will also be subject to criminal history investigations equivalent to that of the license applicant. Financiers will also be responsible for paying all fees required for the criminal history check. ~~((Financiers must meet the three month residency requirement.))~~

~~((4))~~ (7) The ~~((board))~~ WSLCB will conduct a financial investigation in order to verify the source of funds used for the acquisition and startup of the business, the applicants' right to the real and personal property, and to verify the true party(ies) of interest.

~~((5))~~ (8) The ~~((board))~~ WSLCB may require a demonstration by the applicant that they are familiar with marijuana laws and rules.

~~((6))~~ (9) The ~~((board))~~ WSLCB 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))~~ (10) Per RCW 69.50.331 (1)~~((b))~~ (c), all applicants applying for a marijuana license must have resided in the state of Washington for at least ~~((three))~~ six 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))~~ six month residency requirement. Managers or agents who manage a licensee's place of business must also meet the ~~((three))~~ six month residency requirement.

~~((8))~~ (11) Submission of an operating plan that demonstrates the applicant is qualified to hold the marijuana license applied for to the satisfaction of the ~~((board))~~ WSLCB. The operating plan shall include the following elements in accordance with the applicable standards in the Washington Administrative Code (WAC).

~~((9))~~ (12) As part of the application process, each applicant must submit in a format supplied by the ~~((board))~~ WSLCB 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	Transportation of product
Destruction of waste product	Destruction of waste product	Destruction of waste product
Description of growing operation including 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 to include all marijuana-infused edible processing facility 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	
<u>Employee compensation and benefits data (see subsection (13) of this section)</u>	<u>Employee compensation and benefits data (see subsection (13) of this section)</u>	<u>Employee compensation and benefits data (see subsection (13) of this section)</u>
	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	

Producer	Processor	Retailer
		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))~~ WSLCB in advance of any ~~((substantial))~~ change in their operating plan. ~~((Depending on the degree of change,))~~ Prior approval ~~((may be))~~ is required before the change is implemented.

~~((+0))~~ (13)(a) In order to aid the WSLCB in monitoring the industry as it develops, the WSLCB requests that all applicants and licensees seeking renewal provide the following information:

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

(i) Will the applicant/licensee provide a living wage (at least one hundred fifty percent of the state minimum wage) to eighty-five percent or more of its hourly employees?

(ii) Will the applicant/licensee provide health insurance to at least eighty-five percent of its hourly employees?

(iii) Will the applicant/licensee provide a defined benefit pension plan to at least eighty-five percent of its hourly employees?

(iv) Will the applicant/licensee provide five or more paid sick days annually to at least eighty-five percent of its hourly employees?

(v) Is there a signed labor peace agreement or collective bargaining agreement with a labor organization in place?

(14) Applicants applying for a marijuana license must be current in any tax obligations to the Washington state department of revenue and other state agencies, as an individual or as part of any entity in which they have an ownership interest. Applicants must sign an attestation that, under penalty of denial or loss of licensure, that representation is correct.

~~((+1))~~ (15) 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.

~~((+2))~~ (16) Upon failure to respond to the ~~((board))~~ WSLCB licensing and regulation division's requests for information and/or documentation within the timeline provided, the application may be administratively closed or denial of the application will be sought.

**AMENDATORY SECTION** (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

**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.

True party of interest	Persons to be qualified
Limited partnership, limited liability partnership, or limited liability limited partnership	<ul style="list-style-type: none"> <li>All general partners and their spouses.</li> <li>All limited partners and spouses.</li> </ul>
Limited liability company	<ul style="list-style-type: none"> <li>All members and their spouses.</li> <li>All managers and their spouses.</li> </ul>
Privately held corporation	<ul style="list-style-type: none"> <li>All corporate officers (or persons with equivalent title) and their spouses.</li> <li>All stockholders and their spouses.</li> </ul>
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).
Any entity or person (inclusive of <b>financiers</b> ) that are expecting a percentage of the profits in exchange for a monetary loan or expertise. <u>Financial institutions are not considered true parties of interest.</u>	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: <ul style="list-style-type: none"> <li>"Gross profit" includes the entire gross receipts from all sales and services made in, upon, or from the licensed business.</li> <li>"Net profit" means gross sales minus cost of goods sold.</li> </ul>

True party of interest	Persons to be qualified
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 pre-bonus 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)) WSLCB will conduct a financial investigation as well as a criminal background of financiers.

(4) **Persons who exercise control of business** - The ((board)) WSLCB 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.

(5) After licensure, a true party of interest, including financiers, must continue to disclose the source of funds for all moneys invested in the licensed business. The WSLCB must approve these funds prior to investing them into the business.

AMENDATORY SECTION (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

**WAC 314-55-040 What criminal history might prevent a marijuana license applicant from receiving or keeping a marijuana license?** (1) When the ((board)) WSLCB processes a criminal history check on an applicant, it uses a point system to determine if the person qualifies for a license. The ((board)) WSLCB 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

Description	Time period during which points will be assigned	Points assigned
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)) WSLCB will hold the application for the disposition of the case. If the disposition is not settled within ninety days, the ((board)) WSLCB will administratively close the application.

(3) The ((board)) WSLCB 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.**

(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)) WSLCB within fourteen days.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

**WAC 314-55-045 What marijuana law or rule violation history might prevent an applicant from receiving a marijuana license?** The ((board)) WSLCB will conduct an investigation of all applicants' marijuana law or rule administrative violation history. The ((board)) WSLCB 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
<ul style="list-style-type: none"> <li>Three or more public safety violations;</li> </ul>	<ul style="list-style-type: none"> <li>Violations issued within three years of the date the application is received by the board's licensing and regulation division.</li> </ul>
<ul style="list-style-type: none"> <li>Four or more regulatory violations; or</li> </ul>	
<ul style="list-style-type: none"> <li>One to four, or more license violations.</li> </ul>	<ul style="list-style-type: none"> <li>Violations issued within the last three years the true party(ies) of interest were licensed.</li> </ul>

**AMENDATORY SECTION** (Amending WSR 14-06-108, filed 3/5/14, effective 4/5/14)

**WAC 314-55-050 Reasons the ~~((board))~~ WSLCB may seek denial, suspension, or cancellation of a marijuana license application or license.** Following is a list of reasons the ~~((board))~~ WSLCB may deny, suspend, or cancel a marijuana license application or license. Per RCW 69.50-331, the ~~((board))~~ WSLCB has broad discretionary authority to approve or deny a marijuana license application for reasons including, but not limited to, the following:

- (1) Failure to meet qualifications or requirements 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))~~ WSLCB during the evaluation process.
- (3) The applicant makes a misrepresentation of fact, or fails to disclose a material fact to the ~~((board))~~ WSLCB 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))~~ WSLCB to be gained in a manner which is in violation by law.
- (7) Denies the ~~((board))~~ WSLCB 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))~~ WSLCB 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).

(10) The ~~((board))~~ WSLCB shall 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 from the property line of the proposed building/business location to the property line of the entities listed below:

- Elementary or secondary school;
- Playground;
- Recreation center or facility;
- Child care center;
- Public park;
- Public transit center;
- Library; or
- Any game arcade (where admission is not restricted to persons age twenty-one or older).

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

If a licensee applies for a marijuana license at a location less than one thousand feet of a recreation center or facility, child care center, public park, public transit center, library, or game arcade, the licensee must provide the WSLCB with a copy of the local ordinance that describes the distance required by the city or county the facility will be located.

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

~~((12))~~ (13) Failure to submit an attestation that they are current in any tax obligations to the Washington state department of revenue.

~~((13))~~ (14) Has been denied a liquor license or had a liquor license suspended or revoked in this or any other state.

~~((14))~~ (15) The operating plan does not demonstrate, to the satisfaction of the ~~((board))~~ WSLCB, the applicant is qualified for a license.

~~((15))~~ (16) Failure to operate in accordance with the ~~((board))~~ WSLCB approved operating plan.

~~((16))~~ (17) The ~~((board))~~ WSLCB determines the issuance of the license will not be in the best interest of the welfare, health, or safety of the people of the state.

**AMENDATORY SECTION** (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

**WAC 314-55-070 Process if the ~~((board))~~ WSLCB denies a marijuana license application.** If the ~~((board))~~ WSLCB 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.

**AMENDATORY SECTION** (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

**WAC 314-55-075 What is a marijuana producer license and what are the requirements and fees related to a marijuana producer license?** (1) A marijuana producer license allows the licensee to produce, harvest, trim, dry,



cure, and package marijuana into lots for sale at wholesale to marijuana processor licensees and to other marijuana producer licensees. A marijuana producer can also produce and sell marijuana plants, seed, and plant tissue culture 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. An outdoor grow must be physically separated at least twenty feet from another licensed outdoor grow. Outdoor grows cannot share common walls or fences.

(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))~~ WSLCB 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))~~ WSLCB 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))~~ WSLCB. The ~~((board))~~ WSLCB may reopen the marijuana producer application window after the initial evaluation of the applications received and at subsequent times when the ~~((board))~~ WSLCB deems necessary.

(5) Any entity and/or principals within any entity are limited to no more than three marijuana producer licenses.

(6) The maximum amount of space for marijuana production ~~((is initially limited to two million square feet, to be increased based on marketplace demand, but not to exceed eight and one-half million square feet without board approval))~~ will be imposed at a later date. Applicants must designate on their operating plan the size category of the production premises and the amount of actual square footage in their premises that will be designated as plant canopy. There are three categories as follows:

- (a) Tier 1 - Less than two thousand square feet;
- (b) Tier 2 - Two thousand square feet to ten thousand square feet; and
- (c) Tier 3 - Ten thousand square feet to thirty thousand square feet.

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

(a) If the amount of square feet of production of all licensees exceeds the maximum ~~((of two million))~~ square feet the ~~((board))~~ WSLCB will reduce the allowed square footage by the same percentage.

(b) If fifty percent production space used for plant canopy in the licensee's operating plan is not met by the end of the first year of operation the ~~((board))~~ WSLCB may reduce the tier of licensure.

(8) If the total amount of square feet of marijuana production exceeds ~~((two million))~~ the maximum square feet, the ~~((board))~~ WSLCB reserves the right to reduce all licensee's production by the same percentage or reduce licensee production by one or more tiers by the same percentage.

(9) The maximum allowed amount of marijuana on a producer's premises at any time is as follows:

- (a) Outdoor or greenhouse grows - One and one-quarter of a year's harvest; or
- (b) Indoor grows - Six months of their annual harvest.

AMENDATORY SECTION (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

**WAC 314-55-077 What is a marijuana processor license and what are the requirements and fees related to a marijuana processor license?** (1) A marijuana processor license allows the licensee to process, dry, cure, package, and label usable marijuana, marijuana concentrates, and marijuana-infused products for sale at wholesale to marijuana processors and marijuana retailers.

(2) A marijuana processor is allowed to blend tested usable marijuana from multiple lots into a single package for sale to a marijuana retail licensee providing the label requirements for each lot used in the blend are met and the percentage by weight of each lot is also included on the label.

(3) A marijuana processor licensee must obtain label and packaging approval from the ~~((liquor control board))~~ WSLCB for all marijuana-infused products ~~((, labeling, and packaging))~~ meant for ingestion prior to offering these items for sale to a marijuana retailer. The marijuana processor licensee must submit a picture of the product, labeling, and packaging to the ~~((liquor control board))~~ WSLCB for approval.

If the ~~((liquor control board))~~ WSLCB denies a marijuana-infused product for sale in marijuana retail outlets, the marijuana processor licensee may request an administrative hearing per chapter 34.05 RCW, Administrative Procedure Act.

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

(5) Marijuana-infused edible products in solid form must meet the following requirements:

(a) If there is more than one serving in the package, each serving must be packaged individually in childproof packaging (see WAC 314-55-105(7)) and placed in the outer package.

(b) The label must prominently display the number of servings in the package.

(c) Marijuana-infused solid edible products must be homogenized to ensure uniform disbursement of cannabinoids throughout the product.

(d) All marijuana-infused solid edibles must prominently display on the label "This product contains marijuana."

~~((5))~~ (6) Marijuana-infused edible products in liquid form must meet the following requirements:

(a) If there is more than one serving in the package, a measuring device must be included in the package with the product.

(b) The label must prominently display the number of servings in the package and the amount of product per serving.

(c) Marijuana-infused liquid edibles must be homogenized to ensure uniform disbursement of cannabinoids throughout the product.

(d) All marijuana-infused liquid edibles must prominently display on the label "This product contains marijuana."

~~((6))~~ (7) A marijuana processor is limited in the types of food or drinks they may infuse with marijuana. Marijuana-infused products that require cooking or baking by the consumer are prohibited. Marijuana-infused products that are especially appealing to children are prohibited. Marijuana-infused edible products such as, but not limited to, gummy candies, lollipops, cotton candy, or brightly colored products, are prohibited.

(a) To reduce the risk to public health, potentially hazardous foods as defined in WAC 246-215-01115 may not be infused with marijuana. Potentially hazardous foods require time-temperature control to keep them safe for human consumption and prevent the growth of pathogenic microorganisms or the production of toxins. Any food that requires refrigeration, freezing, or a hot holding unit to keep it safe for human consumption may not be infused with marijuana.

(b) Other food items that may not be infused with marijuana to be sold in a retail store are:

(i) Any food that has to be acidified to make it shelf stable;

(ii) Food items made shelf stable by canning or retorting;

(iii) Fruit or vegetable juices (this does not include shelf stable concentrates);

(iv) Fruit or vegetable butters;

(v) Pumpkin pies, custard pies, or any pies that contain egg;

(vi) Dairy products of any kind such as butter, cheese, ice cream, or milk; and

(vii) Dried or cured meats.

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

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

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

(f) The ~~((liquor control board))~~ WSLCB may designate other food items that may not be infused with marijuana.

~~((7))~~ (8) The recipe for any marijuana-infused solid or liquid products meant to be ingested orally must be kept on file at the marijuana processor's licensed premises and made available for inspection by the ~~((liquor control board))~~ WSLCB or its designee.

~~((8))~~ (9) 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.

~~((9))~~ (10) The annual fee for issuance and renewal of a marijuana processor license is one thousand dollars. The ~~((board))~~ WSLCB 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.

~~((10))~~ (11) A marijuana processor producing a marijuana-infused solid or liquid product meant to be ingested orally in a processing facility as required in WAC 314-55-015 (10) and (11) must pass a processing facility inspection. Ongoing annual processing facility compliance inspections may be required. The ~~((liquor control board))~~ WSLCB will contract with the department of agriculture to conduct required processing facility inspections. All costs of inspections are borne by the licensee and the hourly rate for inspection is sixty dollars. A licensee must allow the ~~((liquor control board))~~ WSLCB or their designee to conduct physical visits and inspect the processing facility, recipes and required records per WAC 314-55-087 during normal business hours or at any time of apparent operation without advance notice. Failure to pay for the processing facility inspection or to follow the processing facility requirements outlined in this section and WAC 314-55-015 will be sufficient grounds for the ~~((board))~~ WSLCB to suspend or revoke a marijuana license.

~~((11))~~ (12) The ~~((board))~~ WSLCB 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))~~ WSLCB. The ~~((board))~~ WSLCB 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))~~ WSLCB deems necessary.

~~((12))~~ (13) A currently licensed marijuana producer may submit an application to add a marijuana processor license at the location of their producer license providing they do not already hold three processor licenses.

(14) Any entity and/or principals within any entity are limited to no more than three marijuana processor licenses.

~~((13))~~ (15) Marijuana processor licensees are allowed to have a maximum of six months of their average usable marijuana and six months average of their total production on their licensed premises at any time.

~~((14))~~ (16) A marijuana processor must accept returns of products and sample jars from marijuana retailers for destruction, but is not required to provide refunds to the retailer. It is the responsibility of the retailer to ensure the product or sample jar is returned to the processor.

AMENDATORY SECTION (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

**WAC 314-55-079 What is a marijuana retailer license and what are the requirements and fees related to a marijuana retailer license?** (1) A marijuana retailer license allows the licensee to sell only usable marijuana, marijuana concentrates, marijuana-infused products, and marijuana paraphernalia at retail in retail outlets to persons twenty-one years of age and older.

(2) Marijuana-infused products listed in WAC 314-55-077(6) are prohibited for sale by a marijuana retail licensee.

(3) Internet sales and delivery of product to customers is prohibited.

(4) 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.

(5) The annual fee for issuance and renewal of a marijuana retailer's license is one thousand dollars. The ~~((board))~~ WSLCB 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.

(6) Marijuana retailers may not sell marijuana products below the current acquisition cost.

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

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

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

#### NEW SECTION

#### **WAC 314-55-080 Medical marijuana endorsement.**

**(1) A medical marijuana endorsement added to a marijuana retail license allows the marijuana retail licensee to:**

(a) Sell marijuana for medical use to qualifying patients and designated providers; and

(b) Provide marijuana at no charge, at their discretion, to qualifying patients and designated providers.

**(2) To maintain a medical marijuana endorsement in good standing, a marijuana retailer must:**

(a) Follow all rules adopted by the department of health regarding retail sales of medical marijuana;

(b) Have a consultant on staff in accordance with department of health rules;

(c) Prohibit the medical use of marijuana by anyone at the retail outlet at all times, including medical use by qualifying patients;

(d) Maintain at all times, a representative assortment of marijuana products necessary to meet the needs of qualified patients and designated providers;

(e) Not market marijuana concentrates, usable marijuana, or marijuana-infused products in a way that make them especially attractive to minors;

(f) Demonstrate the ability to enter qualifying patients and designated providers in the medical marijuana authorization data base established by the department of health;

(g) Issue recognition cards and agree to enter qualifying patients and designated providers into the data base in compliance with the department of health standards;

(h) Keep copies of the qualifying patient's or designated provider's recognition card or equivalent records to document the validity of tax exempt sales for a minimum of three years;

(i) Train employees on the following:

(i) Procedures regarding the recognition of valid authorizations and the use of equipment to enter qualifying patients and designated providers into the medical marijuana authorization data base;

(ii) Recognition of valid recognition cards; and

(iii) Recognition of strains, varieties, THC concentration, CBD concentration, and THC to CBD ratios of marijuana concentrates, usable marijuana, and marijuana-infused products available for sale when assisting qualifying patients and designated providers at the retail outlet.

**(3) A marijuana retailer holding a medical marijuana endorsement may sell products with a THC concentration of 0.3 percent or less.** The licensee may also provide these products at no charge to qualifying patients or designated providers.

**(4) Unlicensed practice of medicine.** No owner, employee, or volunteer of a retail outlet and holding a medical marijuana endorsement may:

(a) Offer or undertake to diagnose or cure any human or animal disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real or imaginary, by use of marijuana products or any other means or instrumentality; or

(b) Recommend or suggest modification or elimination of any course of treatment that does not involve the medical use of marijuana products.

(5) Failure to comply with subsections (3) and (4) of this section may result in suspension or revocation of the medical marijuana endorsement.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

**WAC 314-55-081 Who can apply for a marijuana retailer license?** (1) The WSLCB may accept applications for marijuana retail licenses at time frames published on its web site at [lcb.wa.gov](http://lcb.wa.gov). Using estimated consumption data and population data obtained from the office of financial management (OFM) population data, the ~~((liquor control board))~~ WSLCB will determine the maximum number of marijuana retail locations per county.

The number of retail locations will be determined using a method that distributes the number of locations proportionate to the most populous cities within each county~~((-Loca-~~

tions not assigned to a specific city will be at large. At large locations can be used for unincorporated areas in the county or in cities within the county that have no retail licenses designated. Once the number of locations per city and at large have been identified, the eligible applicants 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) and to accommodate the medical needs of qualifying patients and designated providers. Locations not assigned to a specific city will be at large. At large locations can be used for unincorporated areas in the county or in cities within the county that have no retail licenses designated.

(2) The number of ((marijuana)) retail licenses determined by the board can be found on the ((liquor control board)) WSLCB web site at ((www.liq.wa.gov)) lcb.wa.gov.

(3) Any entity and/or principals within any entity are limited to no more than three retail marijuana licenses ((with no multiple location licensee allowed more than thirty three percent of the allowed licenses in any county or city).

(4) 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 board deems necessary)).

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

**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)) WSLCB 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. The limits of liability insurance shall not be less than one million dollars.

(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 rat-

ing of A - Class VII or better in the most recently published edition of *Best's Reports*. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with chapters 48.15 RCW and 284-15 WAC.

(3) **Additional insured.** The ((board)) state and its employees, agents, and volunteers shall be named as an additional insured on all general liability, umbrella, and excess insurance policies. All policies shall be primary over any other valid and collectable insurance.

AMENDATORY SECTION (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

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

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

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

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

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

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

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

at a minimum of ten frames per second. The surveillance system storage device must be secured on the licensed premises in a lockbox, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft. All surveillance recordings must be kept for a minimum of forty-five days on the licensee's recording device. All videos are subject to inspection by any ~~((liquor control board))~~ WSLCB employee or law enforcement officer, and must be copied and provided to the ~~((liquor control board))~~ WSLCB or law enforcement officer upon request. All recorded images must clearly and accurately display the time and date. Time is to be measured in accordance with the U.S. National Institute Standards and Technology standards.

(a) Controlled areas include:

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

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

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

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

(b) All marijuana, marijuana concentrates, or marijuana-infused products that are intended to be removed or transported between two licensed premises shall be staged in an area known as the "quarantine" location for a minimum of twenty-four 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))~~ WSLCB or designees.

(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))~~ WSLCB. 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, marijuana-infused products, samples, and marijuana waste must be traceable from production through processing, and finally into the retail environment including being able to identify which lot was used as base material to create each batch of extracts or infused products. The following information is required and must be kept completely up-to-date in a system specified by the ~~((board))~~ WSLCB:

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

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

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

(d) When usable marijuana, marijuana concentrates, or marijuana-infused products are transported;

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

(f) There is a seventy-two hour mandatory waiting period after the notification described in this subsection is given before any plant may be destroyed, a lot or batch of marijuana, marijuana extract, marijuana-infused product, or marijuana waste may be destroyed;

(g) There is a twenty-four hour mandatory waiting period after the notification described in this subsection to allow for inspection before marijuana plants, seeds, plant tissue cultures, or lots of marijuana are transported from a producer to another producer or to a processor;

(h) There is a twenty-four hour mandatory waiting period after the notification described in this subsection to allow for inspection before usable marijuana, marijuana concentrates, or marijuana-infused products are transported from a processor to another processor or to a retailer;

~~((i) ((Prior to reaching eight inches in height or width, each marijuana plant must be tagged and tracked individually, which typically should happen when a plant is moved from the seed germination or clone area to the vegetation production area;))~~ All marijuana plants eight or more inches in height or width must be physically tagged and tracked individually;

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

(k) All marijuana, usable marijuana, marijuana-infused products, marijuana concentrates, seeds, plant tissue, clone lots, and marijuana waste must be physically tagged with the sixteen digit identification number generated by the traceability system and tracked;

~~((l))~~ (l) All point of sale records;

~~((m))~~ (m) Marijuana excise tax records;

~~((n))~~ (n) All samples sent to an independent testing lab, any sample of unused portion of a sample returned to a licensee, and the quality assurance test results;

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

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

~~((q))~~ (q) Samples containing usable marijuana provided to retailers;

~~((r))~~ (r) Samples provided to the ~~((board))~~ WSLCB or their designee for quality assurance compliance checks; and

~~((s))~~ (s) 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, clones, seeds, and plant tissue cultures physically on the licensed premises. The producer must, within twenty-four hours,

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, or used for product quality testing, 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. The outgoing sample must be clearly labeled as a sample to negotiate a sale and recorded on a transport manifest. The receiving licensee must receive the sample in the traceability system prior to sampling.~~

~~(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. The outgoing sample must be clearly labeled as a sample to negotiate a sale and recorded on a transport manifest. The receiving licensee must receive the sample in the traceability system prior to sampling.~~

~~(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. The outgoing sample must be clearly labeled as a sample to negotiate a sale and recorded on a transport manifest. The receiving licensee must receive the sample in the traceability system prior to sampling.~~

~~(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. The outgoing sample must be clearly labeled as a sample to negotiate a sale and recorded on a transport manifest. The receiving licensee must receive the sample in the traceability system prior to sampling.~~

~~(e) Samples are limited to one half gram and a processor may not provide any one licensed retailer more than one gram of marijuana infused extract meant for inhalation 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. The outgoing sample must be clearly labeled as a sample to negotiate a sale and recorded on a transport manifest. The receiving licensee must receive the sample in the traceability system prior to sampling.~~

~~(f) Producers may sample one gram of usable marijuana per strain, per month for quality sampling. Sampling for qual-~~

~~ity may not take place at a licensed premises. Only the producer or employees of the licensee may sample the usable marijuana for quality. The producer must record the amount of each sample and the employee(s) conducting the sampling in the traceability system.~~

~~(g) Processors may sample one unit, per batch of a new edible marijuana infused product to be offered for sale on the market. Sampling for quality may not take place at a licensed premises. Only the processor or employees of the licensee may sample the edible marijuana infused product. The processor must record the amount of each sample and the employee(s) conducting the sampling in the traceability system.~~

~~(h) Processors may sample up to one quarter gram, per batch of a new marijuana infused extract for inhalation to be offered for sale on the market. Sampling for quality may not take place at a licensed premises. Only the processor or employee(s) of the licensee may sample the marijuana infused extract for inhalation. The processor must record the amount of each sample and the employee(s) conducting the sampling in the traceability system.~~

~~(i) The limits described in subsection (6) 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(8).~~

~~(j) Retailers may not provide free samples to customers.))~~

AMENDATORY SECTION (Amending WSR 14-10-044, filed 4/30/14, effective 5/31/14)

**WAC 314-55-084 Production of marijuana.** (1) Only the following specified soil amendments, fertilizers, other crop production aids, and pesticides may be used in the production of marijuana:

~~((+)) (a) Pesticides registered by WSDA under chapter 15.58 RCW as allowed for use in the production, processing, and handling of marijuana. Pesticides must be used consistent with the label requirements.~~

~~((=)) (b) Commercial fertilizers registered by WSDA under chapter 15.54 RCW.~~

~~((#)) (c) Potting soil, crop production aids, soil amendments, and other growing media available commercially in the state of Washington may be used in marijuana production. Producers growing outdoors are not required to meet land eligibility requirements outlined in 7 C.F.R. Part 205.202.~~

~~(2) Examples of prohibited products:~~

~~(a) The use of products containing plant growth regulators not allowed for use on food crops including, but not limited to, any of the following ingredients, is prohibited:~~

- ~~• Ancymidol~~
- ~~• Chlormequat chloride~~
- ~~• Clofencet~~
- ~~• Colchicine~~
- ~~• Colloidal silver~~
- ~~• Daminozide~~
- ~~• Dikegulac-sodium~~
- ~~• Flumetralin~~
- ~~• Flurprimidol~~
- ~~• Pacllobutrazol~~

(b) The use of vitamin-hormone products not intended for use on food crops is prohibited.

(c) The use of products containing the insecticide DDVP (Dichlorvos) is prohibited in all areas where marijuana is being grown or processed.

(3) Soil amendments, fertilizers, growing media, other crop production aids, and pesticides that do not conform to subsections (1) and (2) of this section cannot be used, kept, or stored on the licensed premises.

(4) The following marijuana and marijuana products are subject to seizure and destruction:

(a) Marijuana exposed to unauthorized soil amendments or fertilizers; and

(b) Marijuana with detectable levels of unauthorized pesticides or plant growth regulators.

**AMENDATORY SECTION** (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

**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, retailer, or certified third-party testing lab shall notify the ~~((board))~~ WSLCB of the type and amount and/or weight of marijuana and/or marijuana products being transported, the name of transporter, information about the transporting vehicle, times of departure and expected delivery. This information must be reported in the traceability system described in WAC 314-55-083(4).

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

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

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

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

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

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

(c) Marijuana or marijuana products must be in a sealed package or container approved by the ~~((board))~~ WSLCB pursuant to WAC 314-55-105;

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

~~((d))~~ (e) 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))~~ (f) 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;

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

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

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

**AMENDATORY SECTION** (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

**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
<u>Medical marijuana retailer</u>	<u>"Persons under twenty-one years of age not permitted on these premises without a valid qualifying patient card. Juvenile qualifying patients must be accompanied by their designated provider at all times."</u>	<u>Conspicuous location at each entry to premises.</u>
<u>Marijuana retailer</u>	<u>"Warning: This product has intoxicating effects and may be habit forming. Smoking is hazardous to your health."</u>	<u>At each point of sale.</u>

Type of licensee	Sign must contain the following language:	Required location of sign
	"There may be health risks associated with consumption of this product." "Should not be used by women that are pregnant or breast feeding." "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug."	
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)) WSLCB 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)) WSLCB 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)) WSLCB enforcement officers.

(4) Firearms prohibited signs provided by the ((board)) WSLCB must be posted at the entrance of each producer, processor, and retailer licensed location.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

**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)) WSLCB:

- (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((s)) to include, but not limited to, training, payroll, and date of hire;
- (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. Liquid applications may be recorded as, but are not limited to, amount of product per one hundred gallons of liquid spray, gallons per acre of output volume, ppm, percent product in tank mix (e.g., one percent). For chemigation applications, record "inches of water applied" or other appropriate measure.
- (g) Soil amendment, fertilizers, or other crop production aids applied to the growing medium or used in the process of growing 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.



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

(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 print-outs of transactions are not made when they are processed, the system must have the ability to reconstruct these transactions.

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

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

AMENDATORY SECTION (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

**WAC 314-55-089 What are the tax and reporting requirements for marijuana licensees?** (1) Marijuana producer and marijuana processor licensees must submit monthly report(s) to the WSLCB. Marijuana retailer licensees must submit monthly report(s) and payments to the ~~(board)~~ WSLCB. The required monthly reports must be:

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

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

(c) Submitted, with payment due, to the ~~(board)~~ WSLCB 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 licensed marijuana processor or producer)~~ WSLCB.

(3) **Marijuana processor licensees:** On a monthly basis, marijuana processors must maintain records and report purchases from licensed marijuana producers, other marijuana processors, 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, marijuana concentrates, and marijuana-infused product to a licensed marijuana retailer)~~ WSLCB.

(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)~~ WSLCB.

A marijuana retailer licensee must ~~(pay)~~ collect from the buyer and remit to the ~~(board)~~ WSLCB a marijuana excise tax of ~~((twenty-five))~~ thirty-seven percent of the selling price on each retail sale of usable marijuana, marijuana concentrates, and marijuana-infused products.

AMENDATORY SECTION (Amending WSR 14-10-044, filed 4/30/14, effective 5/31/14)

**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/or payment(s) to the ~~(board)~~ WSLCB 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. Absent a postmark, the date received at the ~~((liquor control board))~~ WSLCB or authorized designee, will be used to assess the penalty of two percent per month on payments received after the twentieth day of the month following the month of sale.

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

AMENDATORY SECTION (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

**WAC 314-55-095 Marijuana servings and transaction limitations.** ~~((Marijuana dosage))~~ (1) For persons age twenty-one and older and qualifying patients or designated providers who are not entered into the medical marijuana authorization data base, marijuana serving and transaction limitations are as follows:

~~((+))~~ (a) **Single serving.** A single serving of a marijuana-infused product must not exceed ten milligrams active tetrahydrocannabinol (THC), or Delta 9.

~~((=))~~ (b) **Maximum number of servings.** The maximum number of servings in any one single unit of marijuana-infused product meant to be eaten or swallowed is ten servings or one hundred milligrams of active THC, or Delta 9,

((~~which ever is less~~)). A single unit of marijuana concentrate cannot exceed one gram.

~~((3))~~ (c) **Transaction limitation.** A single transaction is limited to one ounce of usable marijuana, sixteen ounces of marijuana-infused product meant to be eaten or swallowed in solid form, seven grams of marijuana-infused extract or marijuana concentrate for inhalation, and seventy-two ounces of marijuana-infused product in liquid form meant to be eaten or swallowed ((for persons twenty one years of age and older)).

(2) For qualifying patients and designated providers who are entered into the medical marijuana authorization data base, serving and transaction limits are as follows:

(a) **Single serving.** Except as provided in chapter 246-70 WAC, a single serving of a marijuana-infused product must not exceed ten milligrams active tetrahydrocannabinol (THC), or Delta 9.

(b) **Maximum number of servings.** Except as provided in chapter 246-70 WAC, the maximum number of servings in any one single unit of marijuana-infused product meant to be eaten, swallowed or applied is ten servings or one hundred milligrams of active THC, or Delta 9. A single unit of marijuana concentrate cannot exceed one gram.

(c) **Transaction limitation.** A single transaction by a retail store with a medical marijuana endorsement to a qualifying patient or designated provider who is entered into the medical marijuana data base is limited to three ounces of usable marijuana, forty-eight ounces of marijuana-infused product meant to be eaten or swallowed in solid form, twenty-one grams of marijuana-infused extract or marijuana concentrate for inhalation, and two hundred sixteen ounces of marijuana-infused product in liquid form meant to be eaten or swallowed.

#### NEW SECTION

**WAC 314-55-096 Samples.** (1) **Vendor samples:** Producers or processors may provide free samples of usable marijuana, marijuana-infused products, and marijuana concentrates in order to negotiate a sale. All sample limits are based on calendar months. The producer or processor must record the amount of each sample and the processor or retailer receiving the sample in the traceability system. The outgoing sample must be clearly labeled as a sample to negotiate a sale and recorded on a transport manifest. The receiving licensee must receive the sample in the traceability system prior to sampling.

(a) Producers may not provide any one licensed processor more than eight grams of marijuana flower per month free of charge for the purpose of negotiating a sale.

(b) Processors may not provide any one licensed retailer more than eight grams of usable marijuana per month free of charge for the purpose of negotiating a sale.

(c) Processors may not provide any one licensed retailer more than eight units of marijuana-infused products in solid form per month free of charge for the purpose of negotiating a sale. No single sample may exceed 10 mg of THC.

(d) Processors may not provide any one licensed retailer more than eight units of marijuana-infused product in liquid form per month free of charge for the purpose of negotiating a sale. No single sample may exceed 10 mg of THC.

(e) Processors may not provide any one licensed retailer more than two units of marijuana-infused extract meant for inhalation or infused marijuana mix per month free of charge for the purpose of negotiating a sale. No single sample may exceed 0.5 g.

(f) A marijuana producer must make quality assurance test results available to any processor receiving samples to negotiate a sale. The producer must also provide a statement that discloses all pesticides applied to the marijuana plants and growing medium during production.

(g) A marijuana processor must make quality assurance test results available to any retailer receiving samples to negotiate a sale. If a marijuana extract was added to the product, the processors must disclose 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.

(2) **Vendor sample labeling:** All vendor samples must be clearly labeled as a vendor sample and meet all labeling requirements of the product to be sampled.

(a) Sixteen digit identification number generated by the traceability system;

(b) The UBI number of the licensed entity providing the sample; and

(c) Weight of the product.

(3) **Education sampling.** Processors may provide free samples of useable marijuana, marijuana-infused products, and marijuana concentrates to retail licensees to give to their budtender employees for educational purposes. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system. The outgoing sample must be clearly labeled as "budtender sample" and recorded on a transport manifest. All budtender employees at a licensed retail location must be entered into the traceability system for the purpose of distributing education samples. Prior to sampling the receiving retailer must accept the sample in the traceability system, and distribute the education sample to the retail employee.

(a) All education samples are limited to a total of ten units per budtender employee per month, with a maximum of one hundred units per retail location per calendar month.

(b) The maximum size of samples for education are:

(i) Useable marijuana, marijuana mix, and infused marijuana mix - One unit not to exceed .5 g

(ii) Marijuana infused solid or liquid product meant to be eaten or swallowed - One unit not to exceed 10 mg THC

(iii) Marijuana-infused extract for inhalation - One unit not to exceed .25 g

(c) Products being sampled must be carried by the licensed retail premises.

(d) Distribution and consumption of all educational samples is limited to retail employees who directly sell product to retail customers. Retail employees who are not involved in direct sales to customers are not eligible for education samples.

(e) A marijuana processor must make quality assurance test results available to any retailer receiving education samples. If a marijuana extract was added to the product, the processors must disclose 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.

(f) Education sample labeling: All education samples must be clearly labeled as "budtender" samples and include the following information on the label:

(i) Sixteen digit identification number generated by the traceability system;

(ii) The UBI number and trade name of the licensed entity providing the sample;

(iii) Product name or strain name for usable marijuana;

(iv) Weight of the product; and

(v) Potency.

(4) A marijuana processor is not required to provide free samples to negotiate a sale or educational samples to a marijuana retail licensee, and a marijuana retail licensee may not require a marijuana processor to provide free sample to negotiate a sale or educational samples as a condition for purchasing the marijuana processor's products.

(5) Marijuana retail licensees may not provide educational samples to their budtender employees as a form of compensation.

(6) **Internal quality control sampling:** Producers and processors may conduct limited self-sampling for quality control. All sample limits are based on calendar months. Sampling for quality control may not take place at a licensed premises. Only the producer, processor, or employees of the licensee may sample the marijuana flower, usable marijuana, marijuana-infused products, marijuana concentrates, and edible marijuana-infused product. The producer or processor must record the amount of each sample and the employee(s) conducting the sampling in the traceability system.

(a) Producers may sample two grams of marijuana flower per strain, per month for quality sampling.

(b) Processors may sample one unit per batch of a new edible marijuana-infused product meant to be eaten or swallowed to be offered for sale on the market.

(c) Processors may sample up to one unit per batch of a new marijuana-infused extract for inhalation to be offered for sale on the market. No single sample may exceed 0.5 g.

(d) Processors may sample one unit per batch of a new marijuana mix packaged to be offered for sale on the market. No single sample may exceed 1 g.

(e) Processors may sample one unit per batch of a new infused marijuana mix to be offered for sale on the market. No sample may exceed 0.5 g.

(7) **Retailers may not provide free samples to customers.**

(8) **Sample jars:** 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 plastic or metal mesh screen must be sealed onto the container, and must be free of rips, tears, or holes greater than 2 mm in diameter. The sample jar and the usable marijuana within may not be sold to a customer and must be returned to the licensed processor who provided the usable marijuana and sample jar.

(9) **Sample labeling:** All vendor samples and sample jars must be labeled with the following:

(a) Sixteen digit identification number given by the traceability system;

(b) Information identifying whether it is a vendor sample or sample jar;

(c) The UBI number of the licensed entity providing the sample; and

(d) Weight of the product.

(10) A marijuana processor must make quality assurance test results available to any retailer receiving sample jars. The processor must also provide a statement that discloses all pesticides applied to the marijuana plants and growing medium during production.

If a marijuana extract was added to the product, the processor must disclose to the retailer 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.

(11) **Transportation.** Outgoing and return vendor samples and sample jars must adhere to the transportation requirements in WAC 314-55-085.

AMENDATORY SECTION (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

**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~~) is designated as a dangerous waste. If a generator's waste does designate as a dangerous waste, then that waste(s) is subject to the applicable management standards found in chapter 173-303 WAC.

(a) Wastes that must be evaluated against the dangerous waste regulations include, but are not limited to, the following:

(i) Waste from marijuana flowers, trim and solid plant material used to create an extract (per WAC 314-55-104).

(ii) Waste solvents used in the marijuana process (per WAC 314-55-104).

(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, 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))~~ WSLCB to test for quality assurance that must be disposed of.

(iv) Other wastes as determined by the ~~((LCB))~~ WSLCB.

(b) A producer or processor must provide the ~~((board))~~ WSLCB a minimum of seventy-two 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))~~ the WSLCB 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))~~ WSLCB.

(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))~~ WSLCB.

(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.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

**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 chapter ~~((s))~~ 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 314-55-101 Sampling protocols.** (1)(a) To ensure that quality assurance samples submitted to certified third-party labs are representative from the lot or batch from which they were sampled as required in RCW 69.50.348, licensed producers, licensed processors, certified third-party laboratories, and their employees must adhere to the following minimum sampling protocols.

(b) Samples must be deducted in a way that is most representative of the lot or batch and maintains the structure of the marijuana sample. Licensees, certified third-party laboratories, and their employees may not adulterate or change in any way the representative sample from a lot or batch before submitting the sample to certified third-party laboratories. This includes adulterating or changing the sample in any way as to inflate the level of potency, or to hide any microbiological contaminants from the required microbiological screening such as, but not limited to:

(i) Adulterating the sample with kief, concentrates, or other extracts;

(ii) Treating a sample with solvents to hide the microbial count of the lot or batch from which it was deducted. This is not meant to be construed as prohibiting the treatment of failed lots or batches with methods approved by the WSLCB; and

(iii) Pregrinding a flower lot sample.

(2) **Sampling protocols for all marijuana product lots and batches:** The deduction of all quality assurance samples must adhere to the following sampling protocols:

(a) All samples must be taken in a sanitary environment using sanitary practices and ensure facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapters 16-165 and 16-167 WAC.

(b) Persons taking samples must wash their hands prior to deducting samples from a lot or batch, wear gloves while preparing or deducting the lot or batch for sampling, and must use sanitary utensils and storage devices.

(c) Samples must be placed in a sterile plastic or glass container, and stored in a location that prevents the propagation of pathogens and other contaminants. This includes low light levels, mild temperatures, and low humidity environments.

(d) The licensee shall maintain the lot or batch from which the sample was deducted in a secure, cool, and dry location to prevent the marijuana from becoming contaminated or losing its efficacy.

**(3) Additional sampling protocols for flower lots:**

(a) Licensees or certified third-party labs are required to deduct four separate samples from each marijuana flower lot in order to ensure representativeness of the lot. The four samples must be of equal weight, not less than one gram each, and the cumulative weight of the four samples may not be more than the maximum allowed in WAC 314-55-102.

(b) The four separate samples must be taken from different quadrants of the flower lot. A quadrant is the division of a lot into four equal parts. This may be done visually or physically, but must be done in a manner that ensures the samples were deducted from four evenly distributed areas of the flower lot.

(c) The four separate samples may be placed together in a container that conforms to subsection (2) of this section for storage and transfer to a certified third-party lab.

(4) Certified third-party laboratories may reject a sample if they believe the sample was not collected in the manner required by this section, has been adulterated in any way, contaminated with known or unknown solvents, or was manipulated in a way that violates the sampling protocols.

(5) The WSLCB or its designee will take immediate disciplinary action against any licensee or certified third-party lab which fails to comply with the provisions of this section or falsifies records related to this section including, without limitation, revoking the license or certificate of the licensed producer or processor, or certified third-party lab.

AMENDATORY SECTION (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

**WAC 314-55-102 Quality assurance testing.** (1) A third-party testing lab must be certified by the ~~((board))~~ WSLCB or their vendor as meeting the ~~((board's))~~ WSLCB's accreditation and other requirements prior to conducting required quality assurance tests. Certified labs will receive a certification letter from the ~~((board))~~ WSLCB and must conspicuously display this letter in the lab in plain sight of the customers. The ~~((board))~~ WSLCB can summarily suspend a lab's certification if a lab is found out of compliance with the requirements of ~~((WAC 314-55-102))~~ this chapter.

(2) A person with financial interest in a certified 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. A person with direct or indirect financial interest in a certified third-party testing lab must disclose to the ~~((board))~~ WSLCB by affidavit any direct or indirect financial interest in a licensed marijuana producer or processor.

(3) As a condition of certification, 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.

(4) As a condition of certification, labs must follow the most current version of the Cannabis Inflorescence and Leaf monograph published by the *American Herbal Pharmacopoeia* or notify the ~~((board))~~ WSLCB what alternative scientifically valid testing methodology the lab is following for each quality assurance test. The ~~((board))~~ WSLCB 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.

(5) As a condition of certification, the ~~((board))~~ WSLCB may require third-party validation and ongoing monitoring of a lab's basic proficiency to correctly execute the analytical methodologies employed by the lab. The ~~((board))~~ WSLCB may contract with a vendor to conduct the validation and ongoing monitoring described in this subsection. The lab shall pay all vendor fees for validation and ongoing monitoring directly to the vendor.

(6) The lab must allow the ~~((board))~~ WSLCB or their vendor to conduct physical visits and inspect related laboratory equipment, testing and other related records during normal business hours without advance notice.

(7) 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))~~ WSLCB. The ~~((board))~~ WSLCB or authorized third-party organization can conduct audits of a lab's GLPs, SOPs, QC/QA, and inspect all other related records.

(8) The WSLCB or its designee will take immediate disciplinary action against any certified third-party lab which fails to comply with the provisions of this chapter or falsifies records related to this section including, without limitation, revoking the certificate of the certified third-party lab.

(9) The general body of required quality assurance tests for marijuana flowers and infused products may include moisture content, potency analysis, foreign matter inspection, microbiological screening, pesticide and other chemical residue and metals screening, and residual solvents levels.

~~((9))~~ (10) Table of required quality assurance tests defined in the most current version of the Cannabis Inflorescence and Leaf monograph published by the American Herbal Pharmacopoeia.

(a) Marijuana flower lots ~~((and other material lots))~~ require the following quality assurance tests:

Product	Test(s) Required	Maximum Sample Size
	<b>Flower Lots and Other Material Lots</b>	
Lots of marijuana flowers that will not be extracted	1. Moisture content 2. Potency analysis 3. Foreign matter inspection 4. Microbiological screening	7 grams

(b) Intermediate products must meet the following requirements:

(i) All intermediate products must be homogenized prior to quality assurance testing;

(ii) A batch for the purposes of this section is defined as a single run through the extraction or infusion process;

(iii) A batch of marijuana mix may not exceed five pounds and must be chopped or ground so no particles are greater than 3 mm; and

~~((iii))~~ (iv) All batches of intermediate products require the following quality assurance tests:

Product	Test(s) Required Intermediate Products	Maximum Sample Size
Marijuana mix	1. Moisture content 2. Potency analysis 3. Foreign matter inspection 4. Microbiological screening	7 grams
Concentrate or extract <u>made with hydrocarbons</u> (solvent based made using n-butane, isobutane, propane, heptane, or other solvents or gases approved by the board of at least 99% purity)	1. Potency analysis 2. Microbiological screening (only if using flowers and other plant material that has not passed QA testing) 3. Residual solvent test	2 grams
Concentrate or extract made with a CO <sub>2</sub> extractor like hash oil	1. Potency analysis 2. Microbiological screening (only if using flowers and other plant material that has not passed QA testing)	2 grams
Concentrate or extract made with ethanol	1. Potency analysis 2. Microbiological screening (only if using flowers and other plant material that has not passed QA testing)	2 grams
Concentrate or extract made with approved food grade solvent	1. Potency analysis 2. Microbiological screening (only if using flowers and other plant material that has not passed QA testing)	2 grams
Concentrate or extract (nonsolvent) such as <del>((keif))</del> <u>kief</u> , hashish, or bubble hash	1. Potency analysis 2. Microbiological <del>((screening (only if using flowers and other plant material that has not passed QA testing)))</del>	2 grams
Infused cooking oil or fat in solid form	1. Potency analysis 2. Microbiological screening (only if using flowers and other plant material that has not passed QA testing)	2 grams

(c) All marijuana, marijuana-infused products, ~~((and))~~ marijuana concentrates, marijuana mix packaged, and marijuana mix infused sold from a processor to a retailer require the following quality assurance tests:

Product	Test(s) Required End Products	Maximum Sample Size
Infused solid edible	1. Potency <u>analysis</u>	1 unit
Infused liquid (like a soda or tonic)	1. Potency analysis	1 unit
Infused topical	1. Potency analysis	1 unit

Product	Test(s) Required End Products	Maximum Sample Size
Marijuana mix <u>packaged</u> (loose or rolled)	1. Potency analysis	2 grams
<del>((Infused))</del> Marijuana mix <u>infused</u> (loose or rolled)	1. Potency analysis	2 grams
Concentrate or marijuana-infused product for inhalation	1. Potency analysis	1 unit

(d) End products consisting of only one intermediate product that has not been changed in any way is not subject to potency analysis.

~~((10) Independent testing))~~ (11) Certified third-party labs may request additional sample material in excess of amounts listed in the table in subsection ~~((9))~~ (10) of this section for the purposes of completing required quality assurance tests. Labs certified as meeting the ~~((board's))~~ WSLCB's accreditation requirements may retrieve samples from a marijuana licensee's licensed premises and transport the samples directly to the lab and return any unused portion of the samples.

~~((11))~~ (12) Labs certified as meeting the ~~((board's))~~ WSLCB's accreditation requirements are not limited in the amount of usable marijuana and marijuana products they may have on their premises at any given time, but they must have records to prove all marijuana and marijuana-infused products only for the testing purposes described in WAC 314-55-102.

~~((12))~~ (13) At the discretion of the ~~((board))~~ WSLCB, a producer or processor must provide an employee of the ~~((board))~~ WSLCB or their designee samples in the amount listed in subsection ~~((9))~~ (10) of this section or samples of the growing medium, soil amendments, fertilizers, crop production aids, pesticides, or water 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))~~ WSLCB. All costs of this testing will be borne by the producer or processor.

~~((13))~~ (14) No lot of usable flower, batch of marijuana concentrate, or batch of marijuana-infused product may be sold or transported until the completion of all required quality assurance testing. Business entities with multiple locations licensed under the same UBI number may transfer marijuana

products between the licensed locations under their UBI number prior to quality assurance testing.

~~((14))~~ (15) Any usable marijuana or marijuana-infused product that passed the required quality assurance tests may be labeled as "Class A." Only "Class A" usable marijuana or marijuana-infused product will be allowed to be sold.

~~((15))~~ (16) Upon approval of the ~~((board))~~ WSLCB, a lot that fails a quality assurance test and the associated trim, leaf and other usable material may be used to create extracts using hydrocarbon or CO<sub>2</sub> closed loop system. After processing, the CO<sub>2</sub> or hydrocarbon based extract must still pass all required quality assurance tests in WAC 314-55-102.

~~((16))~~ (17) At the request of the producer or processor, the ~~((board))~~ WSLCB 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.

~~((17))~~ (18) Labs must report all required quality assurance test results directly into ~~((LCB's))~~ the WSLCB's seed to sale traceability system within twenty-four hours of completion. Labs must also record in the seed to sale traceability system an acknowledgment of the receipt of samples from producers or processors and verify if any unused portion of the sample was destroyed or returned to the licensee.

AMENDATORY SECTION (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

**WAC 314-55-103 Good laboratory practice checklist.** A third-party testing lab must be certified by the ~~((Washington state liquor control board))~~ WSLCB ~~((or))~~ or its vendor as meeting the ~~((board's))~~ WSLCB's accreditation and other requirements prior to conducting required quality assurance tests. The following checklist will be used by the ~~((board))~~ WSLCB or its vendor to certify third-party testing labs:

ORGANIZATION	Document Reference	Y	N	NA	Comments
1. The laboratory or the organization of which it is a part of shall be an entity that can be held legally responsible.	-	-	-	-	-
2. The laboratory conducting third-party testing shall have no financial interest in a licensed producer or processor for which testing is being conducted.	-	-	-	-	-
If the laboratory is part of an organization performing activities other than testing and/or calibration, the responsibilities of key personnel in the organization that have an involvement or influence on the testing and/or calibration activities of the laboratory shall be defined in order to identify potential conflicts of interest.	-	-	-	-	-

ORGANIZATION	Document Reference	Y	N	NA	Comments
3. The laboratory shall have policies and procedures to ensure the protection of its client's confidential information and proprietary rights, including procedures for protecting the electronic storage and transmission of results.	-	-	-	-	-
4. The laboratory is responsible for all costs of initial certification and ongoing site assessments.	-	-	-	-	-
5. The laboratory must agree to site assessments every two years to maintain certification.	-	-	-	-	-
6. The laboratory must allow WSLCB staff or their representative to conduct physical visits and check I-502 related laboratory activities at any time.	-	-	-	-	-
7. The laboratory must report all test results directly into WSLCB's traceability system within twenty-four hours of completion. Labs must also record in the traceability system an acknowledgment of the receipt of samples from producers or processors and verify if any unused portion of the sample was destroyed or returned to the customer.	-	-	-	-	-

HUMAN RESOURCES	Document Reference	Y	N	NA	Comments
8. Job descriptions for owners and all employees: Key staff.	-	-	-	-	-
9. Qualifications of owners and staff: CVs for staff on file.	-	-	-	-	-
a. Have technical management which has overall responsibility for the technical operations and the provision of the resources needed to ensure the required quality of laboratory operations.	-	-	-	-	-
b. Documentation that the scientific director meets the requirements of WSLCB rules.	-	-	-	-	-
c. Chain of command, personnel organization/flow chart, dated and signed by the laboratory director.	-	-	-	-	-
d. Written documentation of delegation of responsibilities (assigned under chapter 314-55 WAC as related to quality assurance testing) to qualified personnel, signed and dated by the laboratory director.	-	-	-	-	-
e. Documentation of employee competency: Prior to independently analyzing samples, testing personnel must demonstrate acceptable performance on precision, accuracy, specificity, reportable ranges, blanks, and unknown challenge samples (proficiency samples or internally generated quality controls). Dated and signed by the laboratory director.	-	-	-	-	-
f. Designate a quality manager (however named) who, irrespective of other duties and responsibilities, shall have defined responsibility and authority for ensuring that the quality system is implemented and followed; the quality manager shall have direct access to the highest level of management at which decisions are made on laboratory policy or resources.	-	-	-	-	-
10. Written and documented system detailing the qualifications of each member of the staff.	-	-	-	-	-



HUMAN RESOURCES	Document Reference	Y	N	NA	Comments
The need to require formal qualification or certification of personnel performing certain specialized activities shall be evaluated and implemented where necessary.	-	-	-	-	-
11. Standard operating procedure manual that details records of internal training provided by facility for staff. Laboratory director must approve, sign and date each procedure.	-	-	-	-	-
a. Instructions on regulatory inspection and preparedness.	-	-	-	-	-
b. Instruction on law enforcement interactions.	-	-	-	-	-
c. Information on U.S. federal laws, regulations, and policies relating to individuals employed in these operations, and the implications of these for such employees.	-	-	-	-	-
d. Written and documented system of employee training on hazards (physical and health) of chemicals in the workplace, including prominent location of MSDS sheets and the use of appropriate PPE.	-	-	-	-	-
e. Written and documented system on the competency of personnel on how to handle chemical spills and appropriate action; spill kit on-site and well-labeled, all personnel know the location and procedure.	-	-	-	-	-
f. Information on how employees can access medical attention for chemical or other exposures, including follow-up examinations without cost or loss of pay.	-	-	-	-	-
g. Biosafety and sterile technique training.	-	-	-	-	-
STANDARD OPERATING PROCEDURES	Document Reference	Y	N	NA	Comments
12. As appropriate, laboratory operations covered by procedures shall include, but not be limited to, the following:	-	-	-	-	-
a. Environmental, safety and health activities;	-	-	-	-	-
b. Sample shipping and receipt;	-	-	-	-	-
c. Laboratory sample chain of custody and material control;	-	-	-	-	-
d. Notebooks/logbooks;	-	-	-	-	-
e. Sample storage;	-	-	-	-	-
f. Sample preparation;	-	-	-	-	-
g. Sample analysis;	-	-	-	-	-
h. Standard preparation and handling;	-	-	-	-	-
i. Postanalysis sample handling;	-	-	-	-	-
j. Control of standards, reagents and water quality;	-	-	-	-	-
k. Cleaning of glassware;	-	-	-	-	-
l. Waste minimization and disposition.	-	-	-	-	-
13. The following information is required for procedures as appropriate to the scope and complexity of the procedures or work requested:	-	-	-	-	-
a. Scope (e.g., parameters measured, range, matrix, expected precision, and accuracy);	-	-	-	-	-
b. Unique terminology used;	-	-	-	-	-
c. Summary of method;	-	-	-	-	-

STANDARD OPERATING PROCEDURES	Document Reference	Y	N	NA	Comments
d. Interferences/limitations;	-	-	-	-	-
e. Approaches to address background corrections;	-	-	-	-	-
f. Apparatus and instrumentation;	-	-	-	-	-
g. Reagents and materials;	-	-	-	-	-
h. Hazards and precautions;	-	-	-	-	-
i. Sample preparation;	-	-	-	-	-
j. Apparatus and instrumentation setup;	-	-	-	-	-
k. Data acquisition system operation;	-	-	-	-	-
l. Calibration and standardization;	-	-	-	-	-
m. Procedural steps;	-	-	-	-	-
n. QC parameters and criteria;	-	-	-	-	-
o. Statistical methods used;	-	-	-	-	-
p. Calculations;	-	-	-	-	-
q. Assignment of uncertainty;	-	-	-	-	-
r. Forms used in the context of the procedure.	-	-	-	-	-

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
14. Allocation of space: Adequate for number of personnel and appropriate separation of work areas.	-	-	-	-	-
15. Arrangement of space.	-	-	-	-	-
a. Allows for appropriate work flow, sampling, lab space separate from office and break areas.	-	-	-	-	-
b. Employee bathroom is separate from any laboratory area.	-	-	-	-	-
16. Adequate eyewash/safety showers/sink.	-	-	-	-	-
17. Procurement controls.	-	-	-	-	-
a. The laboratory shall have procedure(s) for the selection and purchasing of services and supplies it uses that affect the quality of the tests and/or calibrations. Procedures shall exist for the purchase, receipt and storage of reagents and laboratory consumable materials relevant for the tests and calibrations.	-	-	-	-	-
b. The laboratory shall ensure that purchased supplies and reagents and consumable materials that affect the quality of tests and/or calibrations are inspected or otherwise verified as complying with standard specifications or requirements defined in the methods for the tests and/or calibrations concerned.	-	-	-	-	-
c. Prospective suppliers shall be evaluated and selected on the basis of specified criteria.	-	-	-	-	-
d. Processes to ensure that approved suppliers continue to provide acceptable items and services shall be established and implemented.	-	-	-	-	-
e. When there are indications that subcontractors knowingly supplied items or services of substandard quality, this information shall be forwarded to appropriate management for action.	-	-	-	-	-
18. Utilities.	-	-	-	-	-
a. Electrical:	-	-	-	-	-

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
i. Outlets: Adequate, unobstructed, single-use, no multiplug adapters;	-	-	-	-	-
ii. No extension cords;	-	-	-	-	-
iii. Ground fault circuit interrupters near wet areas.	-	-	-	-	-
b. Plumbing:	-	-	-	-	-
i. Appropriateness of sink usage: Separate for work/personal use;	-	-	-	-	-
ii. Adequate drainage from sinks or floor drains;	-	-	-	-	-
iii. Hot and cold running water.	-	-	-	-	-
c. Ventilation:	-	-	-	-	-
i. Areas around solvent use or storage of waste solvent;	-	-	-	-	-
ii. Vented hood for any microbiological analysis - Class II Type A biosafety cabinet.	-	-	-	-	-
d. Vacuum: Appropriate utilities/traps for prevention of contamination.	-	-	-	-	-
e. Shut-off controls: Located outside of the laboratory.	-	-	-	-	-
19. Waste disposal: Appropriate for the type of waste and compliant with WAC 314-55-097((5)) Marijuana waste disposal—Liquids and solids.	-	-	-	-	-
20. Equipment list.	-	-	-	-	-
Equipment and/or systems requiring periodic maintenance shall be identified and records of major equipment shall include:	-	-	-	-	-
a. Name;	-	-	-	-	-
b. Serial number or unique identification;	-	-	-	-	-
c. Date received and placed in service;	-	-	-	-	-
d. Current location;	-	-	-	-	-
e. Condition at receipt;	-	-	-	-	-
f. Manufacturer's instructions;	-	-	-	-	-
g. Date of calibration or date of next calibration;	-	-	-	-	-
h. Maintenance;	-	-	-	-	-
i. History of malfunction.	-	-	-	-	-
21. Maintenance.	-	-	-	-	-
a. Regular preventive maintenance of equipment demonstration in logbook including, but not limited to: Thermometer calibration, pipette calibrations, analytical balances, and analytical equipment. Documentation of a schedule and reviewed by the laboratory director.	-	-	-	-	-
b. Documentation of curative maintenance in logbook, signed and dated by laboratory director.	-	-	-	-	-
c. Temperature maintenance logbook for refrigerators.	-	-	-	-	-
d. Decontamination and cleaning procedures for:	-	-	-	-	-
i. Instruments;	-	-	-	-	-
ii. Bench space;	-	-	-	-	-
iii. Ventilation hood.	-	-	-	-	-
e. Documentation of adequacy of training of personnel and responsibility for each maintenance task.	-	-	-	-	-

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
f. The organization shall describe or reference how periodic preventive and corrective maintenance of measurement or test equipment shall be performed to ensure availability and satisfactory performance of the systems.	-	-	-	-	-
22. Computer systems.	-	-	-	-	-
a. Adequate for sample tracking.	-	-	-	-	-
b. Adequate for analytical equipment software.	-	-	-	-	-
c. Software control requirements applicable to both commercial and laboratory developed software shall be developed, documented, and implemented.	-	-	-	-	-
d. In addition, procedures for software control shall address the security systems for the protection of applicable software.	-	-	-	-	-
e. For laboratory-developed software, a copy of the original program code shall be:	-	-	-	-	-
i. Maintained;	-	-	-	-	-
ii. All changes shall include a description of the change, authorization for the change;	-	-	-	-	-
iii. Test data that validates the change.	-	-	-	-	-
f. Software shall be acceptance tested when installed, after changes, and periodically during use, as appropriate.	-	-	-	-	-
g. Testing may consist of performing manual calculations or checking against another software product that has been previously tested, or by analysis of standards.	-	-	-	-	-
h. The version and manufacturer of the software shall be documented.	-	-	-	-	-
i. Commercially available software may be accepted as supplied by the vendor. For vendor supplied instrument control/data analysis software, acceptance testing may be performed by the laboratory.	-	-	-	-	-
23. Security.	-	-	-	-	-
a. Written facility security procedures during operating and non-working hours.	-	-	-	-	-
b. Roles of personnel in security.	-	-	-	-	-
c. SOP for controlled access areas and personnel who can access.	-	-	-	-	-
d. Secured areas for log-in of sample, and for short and long-term storage of samples.	-	-	-	-	-
24. Storage.	-	-	-	-	-
a. Appropriate and adequate for sample storage over time. The laboratory shall monitor, control and record environmental conditions as required by the relevant specifications, methods and procedures or where they influence the quality of the results. Due attention shall be paid, for example, to biological sterility, dust, electromagnetic disturbances, humidity, electrical supply, temperature, and sound and vibration levels, as appropriate to the technical activities concerned.	-	-	-	-	-
b. Adequate storage of chemical reference standards.	-	-	-	-	-
c. Appropriate storage of any reagents: Fireproof cabinet, separate cabinet for storage of any acids.	-	-	-	-	-

FACILITIES AND EQUIPMENT	Document Reference	Y	N	NA	Comments
d. Appropriate safe and secure storage of documents etc., archiving, retrieval of, maintenance of and security of data for a period of three years.	-	-	-	-	-
QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
25. Sampling/sample protocols: Written and approved by the laboratory director.	-	-	-	-	-
a. Demonstrate adequacy of the chain-of-custody tracking upon receipt of sample including all personnel handling the sample.	-	-	-	-	-
b. Sampling method (representative of an entire batch) including, but not limited to, homogenization, weighing, labeling, sample identifier (source, lot), date and tracking.	-	-	-	-	-
c. Condition of the sample: Macroscopic and foreign matter inspection - Fit for purpose test. Scientifically valid testing methodology: Either AHP monograph compliant, other third-party validation.	-	-	-	-	-
d. Failed inspection of product: Tracking and reporting.	-	-	-	-	-
e. Return of failed product documentation and tracking.	-	-	-	-	-
f. Disposal of used/unused samples documentation.	-	-	-	-	-
g. Sample preparation, extraction and dilution SOP.	-	-	-	-	-
h. Demonstration of recovery for samples in various matrices (SOPs):	-	-	-	-	-
i. Plant material - Flower;	-	-	-	-	-
ii. Edibles (solid and liquid meant to be consumed orally);	-	-	-	-	-
iii. Topical;	-	-	-	-	-
iv. Concentrates.	-	-	-	-	-
26. Data protocols.	-	-	-	-	-
a. Calculations for quantification of cannabinoid content in various matrices - SOPs.	-	-	-	-	-
b. Determination of the range for reporting the quantity (LOD/LOQ) data review or generation.	-	-	-	-	-
c. Reporting of data: Certificates of analysis (CA) - Clear and standardized format for consumer reporting.	-	-	-	-	-
d. Documentation that the value reported in the CA is within the range and limitations of the analytical method.	-	-	-	-	-
e. Documentation that qualitative results (those below the LOQ but above the LOD) are reported as "trace," or with a nonspecific (numerical) designation.	-	-	-	-	-
f. Documentation that the methodology has the specificity for the degree of quantitation reported. Final reports are not quantitative to any tenths or hundredths of a percent.	-	-	-	-	-
g. Use of appropriate "controls": Documentation of daily use of positive and negative controls that challenge the linearity of the curve; and/or an appropriate "matrix blank" and control with documentation of the performance for each calibration run.	-	-	-	-	-
27. Chemical assay procedure/methodology.	-	-	-	-	-

QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
28. Proficiency:	-	-	-	-	-
a. Documentation of use of an appropriate internal standard for any quantitative measurements as applicable to the method.	-	-	-	-	-
b. Appropriate reference standards for quantification of analytes, performing and documenting a calibration curve with each analysis.	-	-	-	-	-
c. Demonstration of calibration curve r <sup>2</sup> value of no less than 0.995 with a minimum of four points within the range.	-	-	-	-	-
d. Documentation of any proficiency testing as it becomes available. Laboratory director must review, evaluate and report to the WSLCB any result that is outside the stated acceptable margin of error.	-	-	-	-	-
29. Method validation: Scientifically valid testing methodology: Either AHP monograph compliant, other third-party validation; <b>or</b>	-	-	-	-	-
30. Level II validation of methodology used for quantification of THC, THCA and CBD for total cannabinoid content (if reporting other cannabinoids, the method must also be validated for those compounds):	-	-	-	-	-
a. Single lab validation parameters are demonstrated for GC, HPLC data review:	-	-	-	-	-
i. Linearity of reference standards;	-	-	-	-	-
ii. Use of daily standard curve;	-	-	-	-	-
iii. Accuracy;	-	-	-	-	-
iv. Precision;	-	-	-	-	-
v. Recovery (5 determinations not less than 90%);	-	-	-	-	-
vi. Reproducibility over time within a relative standard deviation of 5%.	-	-	-	-	-
b. Dynamic range of the instrumentation: Limits of quantification (LOQ) and limits of detection (LOD).	-	-	-	-	-
c. Matrix extensions for each type of product tested, data review of recovery for:	-	-	-	-	-
i. Solvent-based extract;	-	-	-	-	-
ii. CO <sub>2</sub> extraction or other "hash oil";	-	-	-	-	-
iii. Extract made with food grade ethanol;	-	-	-	-	-
iv. Extract made with food grade glycerin or propylene glycol;	-	-	-	-	-
v. Infused liquids;	-	-	-	-	-
vi. Infused solids;	-	-	-	-	-
vii. Infused topical preparations;	-	-	-	-	-
viii. Other oils, butter or fats.	-	-	-	-	-
d. Presence of QC samples and recording of daily testing.	-	-	-	-	-
e. Appropriate use of an internal reference standard.	-	-	-	-	-
f. Daily monitoring of the response of the instrument detection system.	-	-	-	-	-
31. Other methods.	-	-	-	-	-

QA PROGRAM AND TESTING	Document Reference	Y	N	NA	Comments
a. Microbiological methods fit for purpose.	-	-	-	-	-
b. Microbial contaminants within limits of those listed in the most recent AHP monograph and otherwise directed by WSLCB.	-	-	-	-	-
c. Moisture content testing fit for purpose. Scientifically valid testing methodology: Either AHP monograph compliant, other third-party validation.	-	-	-	-	-
d. Solvent residuals testing fit for purpose; solvent extracted products made with class 3 or other solvents used are not to exceed ((0.5% residual solvent by weight or)) 500 parts per million (PPM) per one gram of solvent based product and are to be tested.	-	-	-	-	-
e. Any other QA/QC methods is proven to be fit for purpose.	-	-	-	-	-
32. Laboratory notebooks.	-	-	-	-	-
a. Legible and in ink (or computerized system).	-	-	-	-	-
b. Signed and dated.	-	-	-	-	-
c. Changes initialed and dated.	-	-	-	-	-
d. Periodically reviewed and signed by a management representative.	-	-	-	-	-
33. Preventive/corrective action.	-	-	-	-	-
The laboratory shall have a process in place to document quality affecting preventive/corrective actions through resolution.	-	-	-	-	-
34. Periodic management review.	-	-	-	-	-
Laboratory management shall periodically review its quality system and associated procedures to evaluate continued adequacy. This review shall be documented.	-	-	-	-	-

**AMENDATORY SECTION** (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

**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)) WSLCB. 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 an environment with proper ventilation, controlling all sources of ignition where a flammable atmosphere is or may be present.

(3) Processors may use a professional grade closed loop CO<sub>2</sub> gas extraction system where every vessel is rated to a minimum of six hundred pounds per square inch. The CO<sub>2</sub> must be of at least ninety-nine percent purity.

(4) Closed loop systems for hydrocarbon or CO<sub>2</sub> extraction systems must be commercially manufactured and bear a permanently affixed and visible serial number.

(5) Certification from a licensed engineer must be provided to the ((liquor control board)) WSLCB for professional grade closed loop systems used by processors to certify that

the system was commercially manufactured, safe for its intended use, and built to codes of recognized and generally accepted good engineering practices, such as:

- (a) The American Society of Mechanical Engineers (ASME);
- (b) American National Standards Institute (ANSI);
- (c) Underwriters Laboratories (UL); or
- (d) The American Society for Testing and Materials (ASTM).

~~((5))~~ (6) The certification document must contain the signature and stamp of a professional engineer and the serial number of the ex-traction unit being certified.

(7) Professional closed loop systems, other equipment used, the extraction operation, and facilities must be approved for their use by the local fire code official and meet any required fire, safety, and building code requirements specified in:

- (a) Title 296 WAC;
- (b) Chapters 51-51 and 51-54A WAC;
- (c) National Fire Protection Association (NFPA) standards;
- ~~((e))~~ (d) International Building Code (IBC);
- ~~((d))~~ (e) International Fire Code (IFC); and
- ~~((e))~~ (f) Other applicable standards including following all applicable fire, safety, and building codes in processing and the handling and storage of the solvent or gas.

~~((6))~~ (8) 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.

~~((7))~~ (9) Under WAC 314-55-077, infused dairy butter and oils or fats derived from natural sources may be used to prepare infused edible products, but they may not be prepared as stand-alone edible products for sale.

~~((8))~~ (10) Processors may use food grade glycerin, ethanol, and propylene glycol solvents to create extracts. All ethanol must be removed from the extract in a manner to recapture the solvent and ensure that it is not vented into the atmosphere.

~~((9))~~ (11) 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.

~~((10))~~ (12) 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.

**AMENDATORY SECTION** (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

**WAC 314-55-105 Packaging and labeling requirements.** (1) All usable marijuana and marijuana-infused 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, marijuana concentrates, or marijuana-infused products must protect the product from contamination and must not impart any toxic or deleterious substance to the usable marijuana, marijuana concentrates, or marijuana-infused product.

(3) Upon the request of a retail customer, a retailer must disclose the name of the ~~((accredited))~~ certified third-party testing lab and results of the required quality assurance test for any usable marijuana, marijuana concentrate, or marijuana-infused product the customer is considering purchasing.

(4) Usable marijuana, marijuana concentrates, and marijuana-infused products ~~((may))~~ must 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))~~ certified 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 marijuana producer must make quality assurance test results available to any processor purchasing product. A marijuana producer must label each lot of marijuana with the following information:

- (a) Lot number;
- (b) UBI number of the producer; and
- (c) Weight of the product.

(7) Marijuana-infused products and marijuana concentrates meant to be eaten, swallowed, or inhaled, 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 or liquid form may be packaged in plastic four mil or greater in thickness and be heat sealed with no easy-open tab, dimple, corner, or flap as to make it difficult for a child to open and as a tamperproof measure. Marijuana-infused product in liquid form may also be sealed using a metal crown cork style bottle cap.

Marijuana-infused solid edible products. If there is more than one serving in the package, each serving must be packaged individually in childproof packaging (see WAC 314-55-105(7)) and placed in the outer package.

Marijuana-infused liquid edible products. If there is more than one serving in the package, a measuring device must be included in the package with the product. Hash marks on the bottle do not qualify as a measuring device. A measuring cap or dropper must be included in the package with the marijuana-infused liquid edible product.

~~(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 returned to the licensed processor who provided the usable marijuana and sample jar.~~

~~(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))~~ (9) **All ((usable)) marijuana and marijuana products when sold at retail must include accompanying material that ((contains)) is attached to the package or is given separately to the consumer containing the following warnings ((that state)):**

- (a) "Warning: This product has intoxicating effects and may 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 concentrates and 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 or swallowed, 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))~~ **(10) Labels affixed to the container or package containing ((usable)) marijuana or marijuana products sold at retail must include:**

(a) The business or trade name and the sixteen digit Washington state unified business identifier number of the licensee that produced, processed and sold the ((usable)) marijuana or marijuana products. The marijuana retail licensee trade name and Washington state unified business identifier number may be in the form of a sticker placed on the label;

(b) Sixteen digit inventory ID number assigned by the ((liquor control board's)) WSLCB's traceability system. This must be the same number that appears on the transport manifest;

(c) ((Concentration of THC, (total THC and activated THC-A), and CBD;

~~(d))~~ Net weight in ounces and grams or volume as appropriate;

~~((e))~~ **(d) 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 infused products; and**

**(e) If solvents were used, 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.**

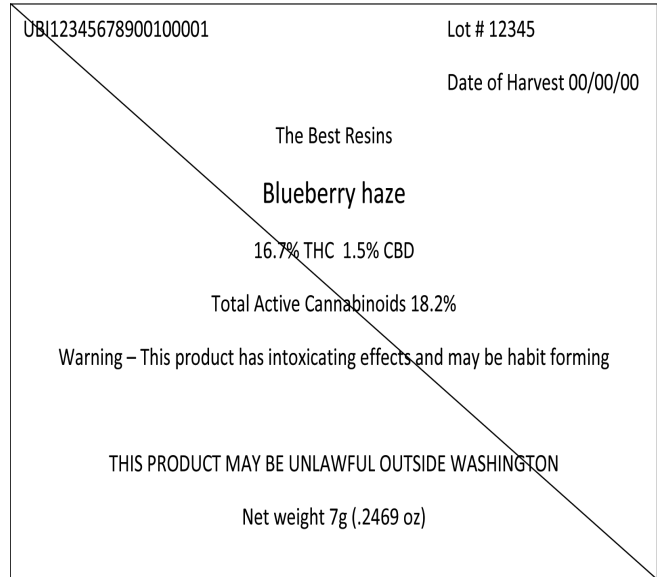
(f) Warnings that state: "This product has intoxicating effects and may be habit forming";

~~((f))~~ **(g) Statement that "This product may be unlawful outside of Washington state";**

~~((g) Date of harvest; and))~~

(h) The ((board)) WSLCB 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;~~



~~(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 licensee that produced, processed and sold the marijuana. The marijuana retail licensee trade name and Washington state unified business identifier number may be in the form of a sticker placed on the label;~~

~~(b) Inventory ID number assigned by the liquor control board's traceability system. This must be the same number that appears on the transport manifest;~~

~~(c) Date manufactured;~~

~~(d) Best by date;~~

~~(e) Products meant to be eaten or swallowed, recommended serving size and the number of servings contained within the unit, including total milligrams of active tetrahydrocannabinol (THC), or Delta 9;~~

~~(f) Net weight in ounces and grams, or volume as appropriate;~~

~~(g) List of all ingredients and major food allergens as defined in the Food Allergen Labeling and Consumer Protection Act of 2004;~~

~~(h) "Caution: When eaten or swallowed, the intoxicating effects of this drug may be delayed by two or more hours.";~~

~~(i) 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;~~

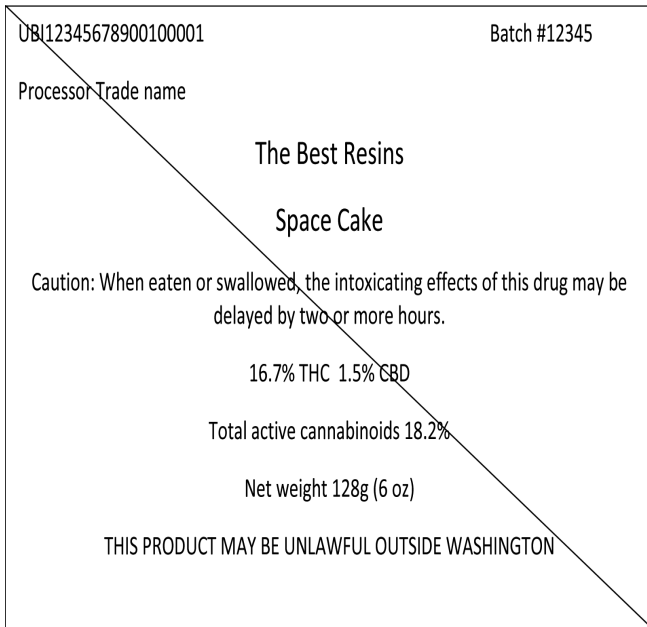
~~(j) Warnings that state: "This product has intoxicating effects and may be habit forming";~~

~~(k) Statement that "This product may be unlawful outside of Washington state";~~

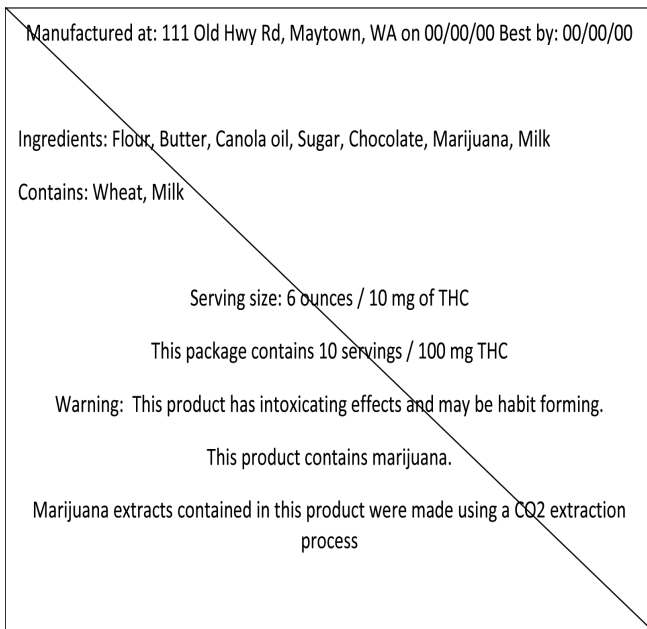
~~(l) The board may create a logo that must be placed on all usable marijuana and marijuana-infused products.~~

~~(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)



(Back of label)



(17) Labels affixed to the container or package containing marijuana concentrates sold at retail must include:

(a) The business or trade name and Washington state unified business identifier number of the licensee that produced, processed and sold the marijuana concentrate. The marijuana retail licensee trade name and Washington state unified business identifier may be in the form of a sticker placed on the label;

(b) Inventory ID number assigned by the liquor control board traceability system. This must be the same number that appears on the transportation manifest;

(c) Date manufactured;  
(d) Best by date;  
(e) Net weight in ounces and grams, or volume as appropriate;

(f) 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;

(g) Concentration of THC (total Delta 9 and Delta 9 THC-A) and CBD;

(h) Warnings that state "This product has intoxicating effects and may be habit forming";

(i) Statement that "This product may be unlawful outside Washington state"; and

(j) The board may create a logo that must be placed on all usable marijuana and marijuana infused products.)) **(11) In addition to requirements in subsection (10) of this section, labels affixed to the container or package containing usable marijuana, or packaged marijuana mix sold at retail must include:**

(a) Concentration of THC (total THC and activated THC-A) and CBD (total CBD and activated CBD-A);

(b) Date of harvest.

**(12) In addition to requirements in subsection (10) of this section, labels affixed to the container or package containing marijuana-infused products meant to be eaten or swallowed sold at retail must include:**

(a) Date manufactured;

(b) Best by date;

(c) Serving size and the number of servings contained within the unit;

(d) Total milligrams of active THC, or Delta 9 and total milligrams of active CBD;

(e) List of all ingredients and major food allergens as defined in the Food Allergen Labeling and Consumer Protection Act of 2004;

(f) "Caution: When eaten or swallowed, the intoxicating effects of this drug may be delayed by two or more hours."

**(13) In addition to requirements in subsection (10) of this section, labels affixed to the container or package containing marijuana-infused extract for inhalation, or infused marijuana mix sold at retail must include:**

(a) Date manufactured;

(b) Best by date;

(c) Concentration of THC (total Delta 9 and Delta 9 THC-A) and CBD (total CBD and activated CBD-A).

**(14) In addition to requirements in subsection (10) of this section, labels affixed to the container or package containing marijuana topicals sold at retail must include:**

(a) Date manufactured;

(b) Best by date;

(c) Total milligrams of active tetrahydrocannabinol (THC), or Delta 9 and total milligrams of active CBD.

**(15) Other cannabinoids and terpenes may be included on the label if:**

(a) The producer or processor has test results from a certified third-party lab to support the claim; and

(b) The lab results are made available to the consumer upon request.

NEW SECTION

**WAC 314-55-107 Marijuana product compliance.** A marijuana compliant product must meet all requirements in the department of health rules found in chapter 246-70 WAC in addition to all WSLCB requirements found in chapter 314-55 WAC.

NEW SECTION

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

(2) The penalties for violations of marijuana laws or rules are in WAC 314-55-515 through 314-55-535, as now or hereafter amended. The rules also outline aggravating and mitigating circumstances that may affect what penalty is applied if a licensee or employee violates a marijuana law or rule.

(3) Licensees and their employees must conduct the business and maintain the licensed premises, surrounding area, and vehicles transporting product, in compliance with the following laws, as they now exist or may later be amended:

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

NEW SECTION

**WAC 314-55-115 What method of payment can a marijuana licensee use to purchase marijuana?** A marijuana licensee must pay cash for marijuana prior to or at the time of delivery. The WSLCB will recognize the following

forms of payment as cash payment for the purpose of this section.

(1) **Checks.**

(2) **Credit/debit cards,** under the following provisions:

(a) The credit or debit card transaction agreement must be voluntary on the part of both licensees, and there must be no discrimination for nonparticipation in credit or debit card transactions.

(b) A sale must be initiated by an irrevocable invoice or sale order before or at the time of delivery.

(c) Both parties must bear their respective banking costs or other costs associated with the credit or debit card service.

(d) Both parties must maintain records of transactions and have the records readily available for the WSLCB review.

(e) The credit or debit card charge must be initiated by the marijuana licensee no later than the first business day following delivery.

(3) **Electronic funds transfer (EFT),** under the following provisions:

(a) The EFT agreement must be voluntary on the part of both the licensees, and there must be no discrimination for nonparticipation in EFT.

(b) Prior to any EFT transaction, the marijuana licensee must enter into a written agreement specifying the terms and conditions for EFT as payment for marijuana.

(c) A sale must be initiated by an irrevocable invoice or sale order before or at the time of delivery.

(d) Both parties must bear their respective banking costs or other costs associated with EFT service.

(e) Both parties must maintain records of transactions and have the records readily available for the WSLCB review.

(f) The electronic funds transfer must be initiated by the marijuana licensee no later than the first business day following delivery and must be paid as promptly as is reasonably practical, and in no event later than five business days following delivery. Any attempt by a marijuana licensee to delay payment on EFT transactions for any period of time beyond the minimum as is reasonably practical will be considered an unlawful attempt to purchase products on credit.

(4) **Prepaid accounts.** Both parties must keep accurate accounting records of prepaid accounts to ensure a cash deposit is not overextended, which is considered an extension of credit.

(5) **Transactions using a money transmitter,** under the following provisions:

(a) The money transmitter must be licensed by and in good standing with the Washington state department of financial institutions.

(b) A sale must be initiated by an irrevocable invoice or sale order before or at the time of delivery.

(c) Both parties must bear their respective costs associated with the money transmitter service.

(d) Both parties must maintain records of transactions and have the records readily available for the WSLCB review.

(e) The funds transfer through the money transmitter must be initiated by the marijuana licensee no later than the first business day following delivery and must be paid as

promptly as is reasonably practical, and in no event later than five business days following delivery. Any attempt by a marijuana licensee to delay payment on money transmitter transactions for any period of time beyond the minimum as is reasonably practical will be considered an unlawful attempt to purchase products on credit.

(6) Any transaction reported as having nonsufficient funds (NSF) will be considered an extension of credit. If a transaction is reported as NSF:

(a) The purchaser must pay the full amount of the transaction to the seller by 3:00 p.m. on the first business day following receipt of the NSF report.

(b) Until the NSF transaction is paid:

(i) The marijuana licensee who received the NSF transaction will not deliver any marijuana to the purchaser; and

(ii) It is the responsibility of the purchaser to not receive additional marijuana from any other marijuana licensee.

**AMENDATORY SECTION** (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

**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.	Application fee and 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
<u>Accepting additional funds from a new or previously approved financier.</u>	<u>Added financier.</u>	<u>\$75</u>

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

**AMENDATORY SECTION** (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

**WAC 314-55-130 Change of business name.** (1) If ~~((you wish))~~ a licensee wishes to change the name of ~~((your))~~ their business, ~~((you))~~ the licensee must apply for a change of trade name with the department of revenue, business license service.

(2) If ~~((you wish))~~ a licensee wishes to change ~~((your))~~ their corporation or limited liability company name, ~~((you))~~ the licensee must apply for a change of name through the secretary of state.

(3) See chapter 434-12 WAC for guidelines for trade names.

**AMENDATORY SECTION** (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

**WAC 314-55-135 Discontinue marijuana sales.** (1) **Notification:** ~~((You))~~ A licensee must notify the ~~((board's))~~ WSLCB's enforcement and education division in writing if ~~((you))~~ the licensee plans to stop doing business for more than thirty days, or if ~~((you))~~ the licensee plans to permanently discontinue marijuana sales.

(2) **Discontinued business: Sale of marijuana inventory and stock after discontinuance of business.** Notwithstanding any other provision of Title 69 RCW or 314 WAC, a producer, processor or retail licensee who permanently discontinues business for any reason shall dispose of the salable inventory and remaining stock to a ~~((board))~~ WSLCB approved licensed business at fair market value. Sales below cost are prohibited. The ~~((board))~~ WSLCB shall require tax expressed as a percent of the total price of the gross sales as reported on the profit and loss statement in the last published monthly report of the ~~((board))~~ WSLCB. In the event of remaining inventory after sale, the licensee shall notify the enforcement and education division of the ~~((liquor control board))~~ WSLCB. The enforcement division will establish conditions for destruction or arrange for the removal of product.

(3) **Assumptions: Assumption of license and purchases by licensee of certain marijuana inventory and stock.** In the case of a sale of business with a ~~((licensee))~~ license, after obtaining the approval of the ~~((board))~~ WSLCB and under the supervision of a representative of the ~~((board))~~ WSLCB, the licensee may sell the entire inventory at a negotiated fair market price. Sales below cost are prohibited.

(4) **Evictions.** ~~((You))~~ A licensee must notify the ~~((board's))~~ WSLCB's enforcement and education division immediately in writing upon notice of eviction from a licensed premises. Conditions to temporarily relocate and secure inventory will be established by the ~~((board))~~ WSLCB.

(5) **Abandoned marijuana inventory or product.** In the event a licensee abandons any marijuana on the premises, the property owner or their designated representative should notify the enforcement and education division of the ~~((liquor~~

~~control board~~) WSLCB. The enforcement division will work with the property owner to arrange for the removal and/or destruction of product. Any sales or distribution of marijuana by an unlicensed person is subject to the criminal provisions of Title 69 RCW.

**(6) Maintaining a licensed location.** Marijuana licenses are associated with a physical location. Persons operating without a WSLCB approved licensed location to produce, process, or sell marijuana will be discontinued.

**AMENDATORY SECTION** (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

**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))~~ WSLCB'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))~~ WSLCB 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.

**AMENDATORY SECTION** (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

**WAC 314-55-147 What hours may a marijuana retailer licensee conduct sales?** A marijuana retailer licensee may sell usable marijuana, marijuana concentrates, marijuana-infused products, and marijuana paraphernalia between the hours of 8 a.m. and 12 a.m.

**AMENDATORY SECTION** (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

**WAC 314-55-155 Advertising.** (1) **Advertising by retail licensees.** The ~~((board))~~ WSLCB 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))~~ a maximum of two separate signs identifying the retail outlet by the licensee's business name or trade name. Both signs must be affixed to the building or permanent structure and each sign is limited to sixteen hundred square inches.

(2) **General.** All marijuana advertising and labels of ~~((usable))~~ usable marijuana, marijuana concentrates, and marijuana-infused products sold in the state of Washington ~~((may))~~ must 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, marijuana concentrates, 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) Promotional items such as giveaways, coupons, and distribution of branded or unbranded merchandise are banned.

(5) Marijuana retail licensees holding a medical marijuana endorsement may donate product to qualifying patients or designated providers who hold a valid recognition card. Retail licensees may not advertise "free" or "donated" product.

(6) All advertising must contain the following warnings:

(a) "This product has intoxicating effects and may be habit forming.";

(b) "Marijuana can impair concentration, coordination, and judgment. Do not operate a vehicle or machinery under the influence of this drug.";

(c) "There may be health risks associated with consumption of this product."; and

(d) "For use only by adults twenty-one and older. Keep out of the reach of children."

**AMENDATORY SECTION** (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

**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))~~ WSLCB 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))~~ WSLCB regarding an application.

Type of application	Entities the ((board)) WSLCB will/may notify
<ul style="list-style-type: none"> <li>Applications for an annual marijuana license at a new location.</li> </ul>	<ul style="list-style-type: none"> <li>Cities and counties in which the premises is located will be notified.</li> </ul> <p>Tribal governments and port authorities in which the premises is located may be notified.</p>
<ul style="list-style-type: none"> <li>Applications to change the class of an existing annual marijuana license.</li> </ul>	
<ul style="list-style-type: none"> <li>Changes of ownership at existing licensed premises.</li> </ul>	<ul style="list-style-type: none"> <li>Cities and counties in which the premises is located will be notified.</li> </ul> <p>Tribal governments and port authorities in which the premises is located may be notified.</p>

**(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)) WSLCB will give substantial weight to input from governmental jurisdictions in which the premises is located based upon chronic illegal activity associated with the applicant's operations of the premises proposed to be licensed or the applicant's operation of any other licensed premises; and other persons or groups. Note: Per RCW 69.50.331, the ((board)) WSLCB 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)) WSLCB 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)) WSLCB, 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)) WSLCB 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)) WSLCB 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.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

**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)) WSLCB 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)) WSLCB 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)) WSLCB for an extension for good cause shown.

(d) This letter must be received by the ((board)) WSLCB 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)) WSLCB's licensing and regulation division will acknowledge receipt of the objection(s) and forward to the appropriate city, county, tribal government, or port authority. Such jurisdiction may or may not, based on the public objection, request nonrenewal.

**(2) What will happen if a city, county, tribal government, or port authority objects to the renewal of a marijuana license?** The ((board)) WSLCB will give substantial weight to a city, county, tribal government, or port authority objection to a marijuana license renewal of a premises in its jurisdiction based upon chronic illegal activity associated with the licensee's operation of the premises. Based on the jurisdiction's input and any information in the licensing file, the ((board)) WSLCB will decide to either renew the marijuana license, or to pursue nonrenewal.

(a) ((Board)) WSLCB decides to renew the marijuana license:	(b) ((Board)) WSLCB decides to pursue nonrenewal of the marijuana license:
(i) The ((board)) WSLCB will notify the jurisdiction(s) in writing of its intent to renew the license, stating the reason for this decision.	(i) The ((board)) WSLCB will notify the licensee in writing of its intent to not renew the license, stating the reason for this decision.

<p>(a) <del>((Board))</del> <b>WSLCB</b> decides to renew the marijuana license:</p>	<p>(b) <del>((Board))</del> <b>WSLCB</b> decides to pursue nonrenewal of the marijuana license:</p>
<p>(ii) The jurisdiction(s) may contest the renewal and request an adjudicative hearing under the provisions of the Administrative Procedure Act (chapter 34.05 RCW) by submitting a written request on a form provided by the <del>((board))</del> <b>WSLCB</b>. The request must be received within twenty days of the date the intent to renew notification was mailed. If the <del>((board))</del> <b>WSLCB</b>, in its discretion, grants the governmental jurisdiction(s) an adjudicative hearing, the applicant will be notified and given the opportunity to present evidence at the hearing.</p>	<p>(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 <del>((board))</del> <b>WSLCB</b>. The request must be received within twenty days of the date the intent to deny notification was mailed.</p> <p>(iii) If the licensee requests a hearing, the governmental jurisdiction will be notified.</p> <p>(iv) During the hearing and any subsequent appeal process, the licensee is issued a temporary operating permit for the marijuana license until a final decision is made.</p>

**NEW SECTION**

**WAC 314-55-185 Does the WSLCB have the right to inspect my premises or vehicle licensed to produce, process, sell, or transport marijuana?** (1) The following must be available for inspection at all times by an enforcement officer of the WSLCB:

(a) All licensed premises used in the production, processing, storage, transportation or sale of marijuana, usable marijuana, marijuana concentrates, marijuana-infused products, or any premises or parts of premises used or in any way connected, physically or otherwise, with the licensed business;

(b) Any vehicle assigned for the purpose of transporting marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products at any licensed location, or while en route during transportation;

(c) Records as outlined in WAC 314-55-087 and 314-55-310; and

(d) Marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products on the licensed premises for the purpose of analyzing samples (the licensee will be given a receipt for any product removed from the premises for this purpose).

(2) Every person being on a licensed premises or with a transporting vehicle, or having charge thereof, must admit an enforcement officer of the WSLCB demanding to enter therein in pursuance of this section in the execution of his/her

duty, and must not obstruct or attempt to obstruct the entry of such officer, or refuse to allow an officer to examine the premises, vehicles, records, and products subject to this section of the licensee.

**AMENDATORY SECTION** (Amending WSR 14-07-116, filed 3/19/14, effective 4/19/14)

**WAC 314-55-200 How will the ~~((liquor control board))~~ **WSLCB** identify marijuana, usable marijuana, marijuana concentrates, and marijuana-infused products during checks of licensed businesses?** Officers shall identify marijuana, usable marijuana, marijuana concentrates, and marijuana-infused products during on-site inspections of licensed producers, processors, and retailers of marijuana by means of product in the traceability system, and/or by observation based on training and experience. Products that are undetermined to be marijuana, usable marijuana, and marijuana-infused products will be verified by the following:

- (1) Officers may take a sample large enough for testing purposes;
- (2) Field test kits may be used if available and appropriate for the type of product being verified; and
- (3) Those samples not able to be tested with a field test kit may be tested through the Washington state toxicology or crime lab.

**AMENDATORY SECTION** (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

**WAC 314-55-210 Will the ~~((liquor control board))~~ **WSLCB** seize or confiscate marijuana, marijuana concentrates, usable marijuana, and marijuana-infused products?** The ~~((liquor control board))~~ **WSLCB** may seize ~~((☞))~~ destroy, confiscate, or place an administrative hold on marijuana, usable marijuana, marijuana concentrates, and marijuana-infused products under the following circumstances:

(1) During an unannounced or announced administrative search or inspection of ~~((☞))~~ licensed locations, areas of unlicensed locations used for business or commercial purposes, or vehicles involved in the transportation of marijuana products, where any product was found to be in excess of product limitations set forth in WAC 314-55-075, 314-55-077, and 314-55-079.

(2) Any product not properly logged in inventory records or untraceable product required to be in the traceability system.

(3) Marijuana, marijuana concentrates, usable marijuana, and marijuana-infused product that are altered or not properly packaged and labeled in accordance with WAC 314-55-105.

(4) During a criminal investigation, officers shall follow seizure laws detailed in RCW 69.50.505 and any other applicable criminal codes.

(5) ~~((Liquor control board))~~ **The WSLCB may destroy any marijuana, marijuana concentrate, usable marijuana, and/or marijuana-infused products in its possession that is not identifiable through the Washington marijuana traceability system or otherwise in a form that is not compliant with**

Washington's marijuana statutes or rules, chapters 69.50 RCW and 314-55 WAC.

(6) WSLCB officers may order an administrative hold of marijuana, usable marijuana, marijuana concentrates, and marijuana-infused products to prevent destruction of evidence, diversion or other threats to public safety, while permitting a licensee to retain its inventory pending further investigation, pursuant to the following procedure:

(a) If during an investigation or inspection of a licensee, a ~~((liquor control board))~~ WSLCB officer develops reasonable grounds to believe certain marijuana, usable marijuana, marijuana concentrates, and marijuana-infused products constitute evidence of acts in violation of the state laws or rules, or otherwise constitute a threat to public safety, the ~~((liquor control board))~~ WSLCB officer may issue a notice of administrative hold of any such marijuana, usable marijuana, marijuana concentrate, or marijuana-infused products. The notice of administrative hold shall provide a documented description of the marijuana, usable marijuana, marijuana concentrate, or marijuana-infused products to be subject to the administrative hold.

(b) The licensee shall completely and physically segregate the marijuana, usable marijuana, marijuana concentrate, and marijuana-infused products subject to the administrative hold in a limited access area of the licensed premises under investigation, where it shall be safeguarded by the licensee. Pending the outcome of the investigation and any related disciplinary proceeding, the licensee is prohibited from selling, giving away, transferring, transporting, or destroying the marijuana, usable marijuana, marijuana concentrate, and marijuana-infused products subject to the administrative hold.

(c) Nothing herein shall prevent a licensee from the continued cultivation or harvesting of the marijuana subject to the administrative hold. All marijuana, usable marijuana, marijuana concentrate, and marijuana-infused products subject to the administrative hold must be put into separate harvest batches from product not subject to the administrative hold.

(d) Following an investigation, the ~~((liquor control board))~~ WSLCB may lift the administrative hold, order the continuation of the administrative hold, or seek a final agency order for the destruction of the marijuana, usable marijuana, marijuana concentrate, and marijuana-infused products.

AMENDATORY SECTION (Amending WSR 14-07-116, filed 3/19/14, effective 4/19/14)

**WAC 314-55-220 What is the process once the ~~((board))~~ WSLCB summarily orders marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products of a marijuana licensee to be destroyed?**

(1) The ~~((board))~~ WSLCB may issue an order to summarily destroy marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products after the ~~((board's))~~ WSLCB's enforcement division has completed a preliminary staff investigation of the violation and upon a determination that immediate destruction of marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products is neces-

sary for the protection or preservation of the public health, safety, or welfare.

(2) Destruction of any marijuana, usable marijuana, marijuana concentrates, or marijuana-infused products under this provision shall take effect immediately upon personal service on the licensee or employee thereof of the summary destruction order unless otherwise provided in the order.

(3) When a license has been issued a summary destruction order by the ~~((board))~~ WSLCB, an adjudicative proceeding for the associated violation or other action must be promptly instituted before an administrative law judge assigned by the office of administrative hearings. If a request for an administrative hearing is timely filed by the licensee, then a hearing shall be held within ninety days of the effective date of the summary destruction ordered by the ~~((board))~~ WSLCB.

AMENDATORY SECTION (Amending WSR 14-07-116, filed 3/19/14, effective 4/19/14)

**WAC 314-55-230 What are the procedures the ~~((liquor control board))~~ WSLCB will use to destroy or donate marijuana, usable marijuana, marijuana concentrates, and marijuana-infused products to law enforcement?** (1) The ~~((liquor control board))~~ WSLCB may require a marijuana licensee to destroy marijuana, usable marijuana, marijuana concentrates, and marijuana-infused products found in a licensed establishment to be in excess of product limits set forth in WAC 314-55-075, 314-55-077, and 314-55-079.

(2) Destruction of seized marijuana, usable marijuana, marijuana concentrates, marijuana-infused products, or confiscated marijuana after case adjudication, will conform with ~~((liquor control board))~~ the WSLCB evidence policies, to include the option of donating marijuana, usable marijuana, marijuana concentrates, and marijuana-infused products, set for destruction, to local and state law enforcement agencies for training purposes only.

(3) Marijuana, usable marijuana, marijuana concentrates, and marijuana-infused products set for destruction shall not reenter the traceability system or market place.

NEW SECTION

**WAC 314-55-310 Transportation license.** (1) A transportation license allows the licensee to physically transport or deliver marijuana, marijuana concentrates, and marijuana-infused products between licensed marijuana businesses within Washington state. The application fee for the transportation license is two hundred fifty dollars and the annual fee is one thousand dollars.

(2) Applicants for the transportation license must submit the following information:

(a) Personal/criminal history forms for all true parties of interest (see WAC 314-55-035);

The criminal history background check will consist of completion of a personal/criminal history form provided by the WSLCB and submission of fingerprints to a vendor approved by the WSLCB. The applicant will be responsible for paying all fees required by the vendor for fingerprinting. These fingerprints will be submitted to the Washington state



patrol and the Federal Bureau of Investigation for comparison to their criminal records. The applicant will be responsible for paying all fees required by the Washington state patrol and the Federal Bureau of Investigation.

(b) Documents showing the right to the physical location to be licensed (purchase and sale agreement or lease in the name of the applicant);

(c) Copies of the current UTC common carrier permits. All vehicles and trailers must also be permitted by UTC as common carriers;

(d) Corporate information form or limited liability information form as applicable;

(e) Proof of insurance.

(i) Licensees shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the consumer should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the licensees. Licensees shall furnish evidence in the form of a certificate of insurance satisfactory to the WSLCB that insurance, in the following kinds and minimum amounts, has been secured. Failure to provide proof of insurance, as required, may result in license cancellation.

(ii) Commercial general liability insurance: The licensee shall at all times carry and maintain commercial general liability insurance and if necessary, commercial umbrella insurance for bodily injury and property damage arising out of licensed activities. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the licensee or its officers, agents, representatives, assigns, or servants. The insurance shall also cover bodily injury, including disease, illness and death, and property damage arising out of the licensee's premises/operations, products, and personal injury. The limits of liability insurance shall not be less than one million dollars.

(iii) Insurance carrier rating: The insurance required in (e)(i) of this subsection shall be issued by an insurance company authorized to do business within the state of Washington. Insurance must be placed with a carrier that has a rating of A - Class VII or better in the most recently published edition of *Best's Reports*. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with chapters 48.15 RCW and 284-15 WAC.

(iv) Additional insured. The state and its employees, agents, and volunteers shall be named as an additional insured on all general liability, umbrella, and excess insurance policies. All policies shall be primary over any other valid and collectable insurance.

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

(4) **Records of transportation.** Records of all transportation must be kept for a minimum of three years at the licensee's location and are subject to inspection if requested by an employee of the WSLCB or local law enforcement:

(a) Copies of transportation manifests for all deliveries;

(b) A transportation log documenting the chain of custody for each delivery to include driver(s) and vehicle(s) associated with each delivery;

(c) Bank statements and canceled checks for any accounts relating to the licensed business;

(d) Accounting and tax records related to the licensed business;

(e) Records of all financial transactions related to the licensed business, including invoices, contracts and/or agreements for services performed or received that relate to the licensed business;

(f) All employee records, to include training.

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

(a) Only the transportation licensee or an employee of the transportation licensee who is at least twenty-one years of age may transport product. All drivers must carry a valid Washington driver's license with the proper endorsements when operating a vehicle in the transportation of product. All passengers in the vehicle transporting marijuana or marijuana products must be employees of the transportation licensee who are at least twenty-one years of age;

(b) Marijuana or marijuana products must be in a sealed package or container approved by the WSLCB 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 be delivered or returned to the shipper within forty-eight hours from the time of pickup;

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

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

#### NEW SECTION

**WAC 314-55-410 Cooperatives.** (1) A cooperative may be formed by qualifying patients and/or designated providers to share responsibility for growing and processing

marijuana only for the medical use of the members of the cooperative. A cooperative must meet the following criteria:

(a) All members must be at least twenty-one years of age. The designated provider of a qualifying patient under twenty-one years of age may be a member of a cooperative on the qualifying patient's behalf;

(b) All members must hold valid recognition cards;

(c) No more than four members are allowed in a cooperative;

(d) A member can only belong to one cooperative;

(e) A member may only grow plants in the cooperative and may not grow plants elsewhere;

(f) Members must participate in growing plants. A monetary contribution or donation is not considered assistance. Members must provide nonmonetary resources and assistance in order to participate;

(g) Members may grow up to the total amount of plants for which each member is authorized on their recognition cards. At the location, the qualifying patients or designated providers may possess the amount of usable marijuana that can be produced with the number of plants permitted, but no more than seventy-two ounces;

(h) Members may not sell, donate, or otherwise provide marijuana, marijuana concentrates, usable marijuana, or other marijuana-infused products to a person who is not a member of the cooperative;

(i) A cooperative may not be located within a one mile radius of a marijuana retailer;

(j) A cooperative must be located in the domicile of one of the members. Only one cooperative may be located per property tax parcel; and

(k) To obscure public view of the premises, outdoor marijuana production must be enclosed by a sight obscure wall or fence at least eight feet high.

(2) People who wish to form a cooperative must register the location with the WSLCB. The location registered is the only location where cooperative members may grow or process marijuana. To register a cooperative a registered member must:

(a) Submit a completed Marijuana Cooperative Registration Form;

(b) Submit copies of each member's recognition card;

(c) Submit a deed, lease, rental agreement, or other document establishing ownership or control to the property where the cooperative is located. If the property is leased or rented, a sworn statement of the property owner granting permission to engage in a cooperative must also be submitted and must include a telephone number and address where the owner can be contacted for verification;

(d) Submit a sketch outlining where the medical marijuana is grown.

(3) WSLCB may inspect a cooperative between the hours of 8:00 a.m. and 8:00 p.m. unless otherwise agreed upon by cooperative members.

(4) If a person or persons seeking to register the cooperative fails to meet the requirements of a registered cooperative as provided in this section, the WSLCB will deny the cooperative registration.

(5) If the WSLCB finds a registered cooperative violated the requirements of this section, the WSLCB will revoke the cooperative's registration.

(6) A person may request an administrative hearing to contest a denial of registration or a revocation of a cooperative's registration under subsections (4) and (5) of this section as provided in chapter 34.05 RCW.

#### NEW SECTION

**WAC 314-55-415 What are the recordkeeping and reporting requirements for cooperatives?** (1) Marijuana cooperatives must keep records that clearly reflect all activity, inventory, and conditions of the cooperative. The following records must be kept in a format prescribed by the WSLCB. All records must be maintained on the cooperative premises for a three-year period and must be made available for inspection if requested by an employee of the WSLCB, the department of health, the department of revenue, or local law enforcement.

(a) Cooperatives must maintain a plant log to track each marijuana plant from the time it enters the cooperative. At minimum, tracking must include:

(i) Unique plant identification numbers for each plant at the cooperative;

(ii) The date the plant was brought into the cooperative; and

(iii) The date the plant leaves the cooperative, including the reason, (e.g., harvested, destroyed, or member left the cooperative).

(b) Cooperatives must maintain a log to track all harvested plant material from time of harvest until all harvested material has been dispersed. At minimum, tracking must include:

(i) A unique identification number for each harvest;

(ii) The total dry weight of harvested material;

(iii) The date quantities are removed from the harvested material;

(iv) The amount removed from the harvested material;

(v) The reason quantities are removed from the harvested material (e.g., taken for use by qualifying patient, used for extraction, etc.); and

(vi) The current weight of the harvested material.

(c) Cooperatives must maintain a log to track all extracts produced from the time they are produced until all extracted material has been dispersed. At minimum, tracking must include:

(i) A unique identification for the extract batch;

(ii) The date the extract batch was created;

(iii) The total initial weight of the extract batch;

(iv) ID number of the harvest the material used to make the extract came from;

(v) The weight of marijuana plant material used to create the batch;

(vi) The date quantities are removed from the extract batch;

(vii) The quantity removed from the extract batch and reason; and

(viii) The current weight of the extract batch.

- (2) Cooperatives must submit monthly activity report(s) to the WSLCB. The required monthly reports must be:
- (a) On an electronic system designated by the WSLCB;
  - (b) Filed every month, including months with no activity;
  - (c) Submitted to the WSLCB on or before the twentieth day of each month, for the previous month. (For example, a report listing activity for the month of January is due by February 20th.);
  - (d) Filed separately for each cooperative; and
  - (e) All records must be maintained and available for review for a three-year period on licensed premises.

#### NEW SECTION

**WAC 314-55-430 Qualifying patient or designated provider extraction requirements.** (1) Qualifying patients or designated providers, including those participating in a cooperative, may extract or separate the resin from marijuana using only the following noncombustible methods:

- (a) Heat, screens, presses, steam distillation, ice water, and other methods without employing combustible solvents or gases to create kief, hashish, or bubble hash;
  - (b) Dairy butter, cooking oils or fats derived from natural sources, or other home cooking substances;
  - (c) Food grade glycerin and propylene glycol solvent based extraction;
  - (d) CO<sub>2</sub> may be used if used in a closed loop system as referenced in WAC 314-55-104.
- (2) Only food grade substances may be used in any stage of processing.
- (3) Use of combustible materials including, but not limited to, butane, isobutane, propane, heptane, and ethanol is expressly forbidden.
- (4) Resins extracted or separated from marijuana are for the personal use of the qualifying patient or cooperative members only.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

**WAC 314-55-505 What are the procedures for notifying a licensee of an alleged violation of a ((~~liquor control board~~)) WSLCB statute or regulation?** (1) When an enforcement officer believes that a licensee has violated a ((~~board~~)) WSLCB 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.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

**WAC 314-55-506 What is the process once the ((~~board~~)) WSLCB summarily suspends a marijuana license?** (1) The ((~~board~~)) WSLCB may summarily suspend any license after the ((~~board~~)) WSLCB'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~~)) WSLCB, 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~~)) WSLCB.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

**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~~)) WSLCB pursuant to WAC 314-55-506, an affected licensee may petition the ((~~board~~)) WSLCB 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~~)) WSLCB 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.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

**WAC 314-55-508 Review of orders on stay.** (1) The licensee, or agency, may petition the ((board)) WSLCB for review of an initial order on stay. Any petition for review must be in writing and received by the ((board)) WSLCB 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)) WSLCB for purposes of RCW 34.05.467.

(2) If the ((board)) WSLCB receives a timely petition for review, the ((board)) WSLCB 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)) WSLCB on the petition for review shall be effective upon personal service unless another date is specified in the order and is final pursuant to RCW 34.05.467. Final disposition of the petition for stay shall not affect subsequent administrative proceedings for suspension or revocation of a license.

AMENDATORY SECTION (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

**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 or inventory destruction penalty will go into effect.

(b) If the penalty does not include a suspension or inventory destruction, 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.

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

(d) Licensees failing to respond to an administrative violation notice or have outstanding fines, shall not be eligible to renew their marijuana license.

**(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)) WSLCB, or designee, for approval.

(i) If the ((board)) WSLCB, 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)) WSLCB, 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 hearing 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)) WSLCB's hearings coordinator.

**(4) What is the process for nonpayment of monetary penalty?**

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

(b) An attempt to advise the debtor of the existence of the debt, and twenty-five percent late fee per subsection (2)(b) of this section will be made notifying that the debt may be assigned to a collection agency for collection if the debt is not paid, and at least thirty days have elapsed from the time notice was attempted.

AMENDATORY SECTION (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

**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)) WSLCB law or rule. (WAC rules listed in the categories provide reference areas, and may not be all inclusive. Any violation not listed in WAC 314-55-515 through 314-55-540 will be assessed following penalty progression of the license type group associated with the class of license.)**

(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~~) Nonretail violations involving the manufacture, supply, processing, and/or distribution of marijuana by nonretail licensees and prohibited practices between nonretail licensees and retail licensees, WAC 314-55-535.

(e) Group Five—Violations involving the transportation freight of marijuana, WAC 314-55-537.

(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) Penalties for violation committed by marijuana processor only licensees will be assessed following the penalty progression prescribed for tier 2 marijuana producers.

(5) The following schedules are meant to serve as guidelines. Based on mitigating or aggravating circumstances, the (~~liquor control board~~) WSLCB may impose a different penalty than the standard penalties outlined in these schedules. Based on mitigating circumstances, the (~~board~~) WSLCB 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) <b>Mitigating circumstances</b>	(b) <b>Aggravating circumstances</b>
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: • Having a signed acknowledgment of the business' responsible handling and sales policies on file for each employee;	Examples include: • Failing to call 911 for local law enforcement or medical assistance when requested by a customer, ( <del>a liquor control board</del> ) <u>WSLCB</u> officer, or when people have sustained injuries.
• Having an employee training plan that includes annual training on marijuana laws.	<u>Engaging in criminal activities, including money laundering, organized crime, fraud, firearms, and diversion of marijuana.</u>

AMENDATORY SECTION (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

**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~~) WSLCB may offer a monetary option in lieu of suspension days based on mitigating circumstances as outlined in WAC 314-55-515(4). Group 1 penalties imposed on a producer and/or processor license will not include license suspension. Penalties for a producer and/or processor license will be restricted to monetary fines, destruction of inventory, and/or license cancellation only.

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
<del>(Sale or service to minor: Sale of marijuana and/or paraphernalia to a person under twenty-one years of age.</del> WAC 314-55-079 RCW 69.50.4015 RCW 69.50.401 RCW 69.50.406 RCW 69.50.412	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license	
<b>Allowing a minor to frequent</b> a restricted area: RCW 69.50.357	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine

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
<b>Employee under legal age:</b> RCW 69.50.357 RCW 69.50.331(6)	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine
<b>Licensee and/or employee open and/or consuming marijuana on a retail licensed premises:</b> RCW 69.50.357	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine
<b>Conduct violations:- Criminal conduct:-</b> 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 314.55.084 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	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	
<b>Refusal to allow an inspection and/or obstructing a law enforcement officer from performing their official duties:</b> WAC 314.55.050 WAC 314.55.077	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license	
<b>Marijuana purchased from an unauthorized source:</b> RCW 69.50.360 RCW 69.50.363	Cancellation of license			
<b>Marijuana sold to an unauthorized source:</b> RCW 69.50.363 RCW 69.50.366 RCW 69.50.401	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
<p><b><u>Sales in excess of transaction limitations.</u></b>  WAC 314-55-095(3)  RCW 69.50.360</p>	<p>Cancellation of license))</p>			
<p><b><u>Furnishing to minor:</u></b>  Sale or otherwise provide marijuana and/or paraphernalia to a person under twenty-one years of age.  Chapter 314-55 WAC  Chapter 69.50 RCW</p>	<p>Retailer/transporter:  10-day suspension or \$2,500 monetary option  Producer/processor:  Tier 1: \$2,500  Tier 2: \$5,000  Tier 3: \$7,500 monetary fine</p>	<p>Retailer/transporter:  30-day suspension  Producer/processor:  Tier 1: \$15,000  Tier 2: \$30,000  Tier 3: \$60,000 monetary fine</p>	<p>Cancellation of license</p>	
<p><b><u>Allowing a minor to frequent retail store.</u></b>  Chapter 69.50 RCW</p>	<p>\$1,000 monetary fine</p>	<p>\$1,000 monetary fine</p>	<p>\$1,000 monetary fine</p>	<p>\$1,000 monetary fine</p>
<p><b><u>Allowing a minor to frequent a nonretail licensed premises or occupy a transport vehicle.</u></b>  Chapter 314-55 WAC</p>	<p>\$1,000 monetary fine</p>	<p>\$1,000 monetary fine</p>	<p>\$1,000 monetary fine</p>	<p>\$1,000 monetary fine</p>
<p><b><u>Employee under legal age.</u></b>  Chapter 69.50 RCW</p>	<p>\$1,000 monetary fine</p>	<p>\$1,000 monetary fine</p>	<p>\$1,000 monetary fine</p>	<p>\$1,000 monetary fine</p>
<p><b><u>Opening and/or consuming marijuana on a retail licensed premises.</u></b>  Chapter 69.50 RCW</p>	<p>\$1,000 monetary fine</p>	<p>\$1,000 monetary fine</p>	<p>\$1,000 monetary fine</p>	<p>\$1,000 monetary fine</p>
<p><b><u>Conduct violations:</u></b>  <b><u>Criminal conduct:</u></b>  Permitting or engaging in criminal conduct.  <b><u>Disorderly conduct</u></b> by licensee or employee, or permitting on premises.  Chapter 314-55 WAC  <b><u>Licensee and/or employee</u></b> intoxicated on the licensed premises.  Chapter 314-55 WAC</p>	<p>Retailer/transporter:  10-day suspension or \$2,500 monetary option  Producer/processor:  Tier 1: \$2,500  Tier 2: \$5,000  Tier 3: \$7,500 monetary fine</p>	<p>Retailer/transporter:  30-day suspension  Producer/processor:  Tier 1: \$15,000  Tier 2: \$30,000  Tier 3: \$60,000 monetary fine</p>	<p>Cancellation of license</p>	

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
<u>Refusal to allow an inspection and/or obstructing a law enforcement officer from performing their official duties.</u> Chapter 314-55 WAC	Retailer/transporter: 10-day suspension or \$2,500 monetary option  Producer/processor: Tier 1: \$5,000 Tier 2: \$10,000 Tier 3: \$15,000 monetary fine	Retailer/transporter: 30-day suspension  Producer/processor: Tier 1: \$15,000 Tier 2: \$30,000 Tier 3: \$60,000 monetary fine	Cancellation of license	
<u>Marijuana purchased from an unauthorized source.</u> Chapter 69.50 RCW	Cancellation of license			
<u>Marijuana sold to an unauthorized source.</u> Chapter 69.50 RCW	Cancellation of license			
<u>Operating an unapproved CO<sub>2</sub> or hydrocarbon extraction system.</u> Chapter 314-55 WAC	Cancellation of license			
<u>Condition of suspension violation: Failure to follow any suspension restriction while marijuana license is suspended (retailer).</u> Chapter 314-55 WAC	Original penalty plus 10-day suspension with no monetary option	Cancellation of license		
<u>Sales in excess of transaction limitations.</u> Chapter 69.50 RCW Chapter 314-55 WAC	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license	

AMENDATORY SECTION (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

**WAC 314-55-525 Group 2 regulatory violations.** Group 2 violations are violations involving general regulation and administration of retail or nonretail licenses. Group 2 penalties imposed on a producer and/or processor license will not include license suspension. Penalties for a producer and/or processor license will be restricted to monetary fines, destruction of inventory, and/or license cancellation only.

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
<del>((Hours of service: Sales of marijuana between 12:00 a.m. and 8:00 a.m. WAC 314-55-147</del>	<del>5-day suspension or \$500 monetary option</del>	<del>10-day suspension or \$2,500 monetary option</del>	<del>30-day suspension</del>	<del>Cancellation of license</del>
<del><b>Advertising:</b> Violations (statements/illustrations): WAC 314-55-155(2)</del>	<del>5-day suspension or \$500 monetary option</del>	<del>10-day suspension or \$2,500 monetary option</del>	<del>30-day suspension</del>	<del>Cancellation of license</del>



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
<b>Advertising violations</b> –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 WAC 314.55.155(1)	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine
<b>Packaging and/or labeling violations (processor/retailer).</b> 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
<b>Licensee/employee failing to display required security badge.</b> 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
<b>Failure to maintain required security alarm and surveillance systems.</b> 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
<b>Records:</b> Improper recordkeeping. WAC 314.55.087 WAC 314.55.089	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
<b>Failure to submit monthly tax reports and/or payments.</b> WAC 314.55.089 WAC 314.55.092 RCW 69.50.535	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
<b>Signs:</b> Failure to post required signs. WAC 314.55.086 RCW 69.50.331(5)	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
<b>Failure to utilize and/or maintain traceability (processor or retail licensee).</b> 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
<b>Violation of transportation requirements.</b> 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

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
<del>Exceeding maximum serving requirements for marijuana-infused products.</del> 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
<del>Failure for a processor to meet marijuana waste disposal requirements.</del> 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
<del>Failure to maintain standardized scale requirements (processor).</del> 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
<del>Failure to follow and maintain food processing facility requirements.</del> WAC 314-55-077	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
<del>Marijuana processor extraction requirements.</del> 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
<del>Retail outlet selling unauthorized products.</del> RCW 69.50.357 RCW 69.50.4121	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine
<del>Retailer displaying products in a manner visible to the general public from a public right of way.</del> RCW 69.50.357	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine
<del>Sale of Marijuana. Violations by retailer involving sales, delivery, inventory, and returns.</del> WAC 314-55-079 WAC 314-55-070(6)	5-day suspension or \$500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license))
<u>Hours of service:</u> <u>Sales of marijuana between 12:00 a.m. and 8:00 a.m.</u> Chapter 314-55 WAC	<u>5-day suspension or \$1,000 monetary option</u>	<u>10-day suspension or \$2,500 monetary option</u>	<u>30-day suspension</u>	<u>Cancellation of license</u>

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
<p><b>General advertising: Violations</b> Chapter 314-55 WAC</p>	<p>Retailer/transporter: 5-day suspension or \$1,000 monetary option</p> <p>Producer/processor: \$1,000 monetary fine</p>	<p>Retailer/transporter: 10-day suspension or \$2,500 monetary option</p> <p>Producer/processor: Tier 1: \$2,500 Tier 2: \$5,000 Tier 3: \$7,500 monetary fine</p>	<p>Retailer/transporter: 30-day suspension</p> <p>Producer/processor: Tier 1: \$15,000 Tier 2: \$30,000 Tier 3: \$60,000 monetary fine</p>	<p>Cancellation of license</p>
<p><b>Advertising violations</b> - Sign exceeding 1,600 square inches; within 1,000 feet of prohibited areas; on or in public transit vehicles, shelters, or publicly owned or operated property. Chapter 69.50 RCW Chapter 314-55 WAC</p>	<p>\$1,000 monetary fine</p>	<p>\$1,000 monetary fine</p>	<p>\$1,000 monetary fine</p>	<p>\$1,000 monetary fine</p>
<p><b>Engaging in conditional retail sales.</b> Chapter 314-55 WAC Chapter 69.50 RCW</p>	<p>5-day suspension or \$1,000 monetary option</p>	<p>10-day suspension or \$2,500 monetary option</p>	<p>30-day suspension</p>	<p>Cancellation of license</p>
<p><b>Licensee/employee failing to display required security badge.</b> Chapter 314-55 WAC</p>	<p>Retailer/transporter: 5-day suspension or \$500 monetary option</p> <p>Producer/processor: \$500 monetary fine</p>	<p>Retailer/transporter: 10-day suspension or \$1,500 monetary option</p> <p>Producer/processor: All tiers: \$1,500 monetary fine</p>	<p>Retailer/transporter: 30-day suspension</p> <p>Producer/processor: All tiers: \$5,000 monetary fine</p>	<p>Cancellation of license</p>
<p><b>Failure to maintain required security alarm and surveillance systems.</b> Chapter 314-55 WAC</p>	<p>Retailer/transporter: 5-day suspension or \$2,500 monetary option</p> <p>Producer/processor: \$2,500 monetary fine</p>	<p>Retailer/transporter: 10-day suspension or \$5,000 monetary fine</p> <p>Producer/processor: Tier 1: \$5,000 Tier 2: \$10,000 Tier 3: \$15,000 monetary fine</p>	<p>Retailer/transporter: 30-day suspension</p> <p>Producer/processor: Tier 1: \$15,000 Tier 2: \$30,000 Tier 3: \$60,000 monetary fine</p>	<p>Cancellation of license</p>
<p><b>Records: Improper recordkeeping.</b> Chapter 314-55 WAC</p>	<p>Retailer/transporter: 5-day suspension or \$1,000 monetary option</p> <p>Producer/processor: \$1,000 monetary fine</p>	<p>Retailer/transporter: 10-day suspension or \$2,500 monetary option</p> <p>Producer/processor: Tier 1: \$2,500 Tier 2: \$5,000 Tier 3: \$7,500 monetary fine</p>	<p>Retailer/transporter: 30-day suspension</p> <p>Producer/processor: Tier 1: \$15,000 Tier 2: \$30,000 Tier 3: \$60,000 monetary fine</p>	<p>Cancellation of license</p>

<b>Violation Type</b>	<b>1st Violation</b>	<b>2nd Violation in a three-year window</b>	<b>3rd Violation in a three-year window</b>	<b>4th Violation in a three-year window</b>
<b><u>Failure to submit monthly tax/sales reports and/or payments.</u></b> Chapter 69.50 RCW Chapter 314-55 WAC	Retailer/transporter: 5-day suspension or \$1,000 monetary option Producer/processor: \$1,000 monetary fine	Retailer: 10-day suspension or \$2,500 monetary option Producer/processor: Tier 1: \$2,500 Tier 2: \$5,000 Tier 3: \$7,500 monetary fine	Retailer: 30-day suspension Producer/processor: Tier 1: \$15,000 Tier 2: \$30,000 Tier 3: \$60,000 monetary fine	<u>Cancellation of license</u>
<b><u>Signs: Failure to post required signs.</u></b> Chapter 69.50 RCW Chapter 314-55 WAC	Retailer/transporter: 5-day suspension or \$500 monetary option Producer/processor: \$500 monetary fine	Retailer/transporter: 10-day suspension or \$1,500 monetary option Producer/processor: All tiers: \$1,500 monetary fine	Retailer/transporter: 15-day suspension or \$5,000 monetary option Producer/processor: All tiers: \$5,000 monetary fine	<u>Cancellation of license</u>
<b><u>Failure to utilize and/or maintain traceability.</u></b> Chapter 314-55 WAC	5-day suspension or \$2,500 monetary option Producer/processor: \$2,500 monetary fine	Retailer: 10-day suspension or \$5,000 monetary fine Producer/processor: Tier 1: \$5,000 Tier 2: \$10,000 Tier 3: \$15,000 monetary fine	Retailer: 30-day suspension Producer/processor: Tier 1: \$15,000 Tier 2: \$30,000 Tier 3: \$60,000 monetary fine	<u>Cancellation of license</u>
<b><u>Violation of transportation requirements.</u></b> Chapter 314-55 WAC	Retailer: 5-day suspension or \$2,500 monetary option Producer/processor: \$2,500 monetary fine	Retailer: 10-day suspension or \$5,000 monetary fine Producer/processor: Tier 1: \$5,000 Tier 2: \$10,000 Tier 3: \$15,000 monetary fine	Retailer: 30-day suspension Producer/processor: Tier 1: \$15,000 Tier 2: \$30,000 Tier 3: \$60,000 monetary fine	<u>Cancellation of license</u>
<b><u>Marijuana sold below cost of acquisition, true value, or illegally given away.</u></b>	Retailer: 5-day suspension or \$1,000 monetary option Producer/processor: \$2,500 monetary fine	Retailer: 10-day suspension or \$5,000 monetary option Producer/processor: Tier 1: \$5,000 Tier 2: \$10,000 Tier 3: \$15,000 monetary fine	Retailer: 30-day suspension Producer/processor: Tier 1: \$15,000 Tier 2: \$30,000 Tier 3: \$60,000 monetary fine	<u>Cancellation of license</u>
<b><u>Retail outlet selling unauthorized products.</u></b> Chapter 69.50 RCW	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine
<b><u>Retailer displaying products in a manner visible to the general public from a public right of way.</u></b> Chapter 69.50 RCW	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine

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
<b><u>Retail sales: Unauthorized marijuana-infused products, internet sales, and accepting returns.</u></b> Chapter 314-55 WAC	<u>5-day suspension or \$1,000 monetary option</u>	<u>10-day suspension or \$2,500 monetary option</u>	<u>30-day suspension</u>	<u>Cancellation of license</u>

AMENDATORY SECTION (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

**WAC 314-55-530 Group 3 license violations.** Group 3 violations are violations involving licensing requirements, license classification, and special restrictions. Group 3 penalties imposed on a producer and/or processor license will not include license suspension. Penalties for a producer and/or processor license will be restricted to monetary fines, destruction of inventory, and/or license cancellation only.

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
<del>((True party of interest violation:</del> WAC 314-55-035	Cancellation of license			
<del>Failure to furnish required documents:</del> WAC 314-55-050	Cancellation of license			
<del>Misrepresentation of fact:</del> WAC 314-55-050	Cancellation of license			
<b>Operating plan:</b> Violations of a board-approved operating plan: WAC 314-55-020	<u>5-day suspension or \$500 monetary option</u>	<u>10-day suspension or \$1,500 monetary option</u>	<u>30-day suspension</u>	<u>Cancellation of license</u>
<del>Failing to gain board approval for changes in existing ownership:</del> WAC 314-55-120 RCW 69.50.339	<u>30-day suspension</u>	<u>Cancellation of license</u>		
<del>Failure to maintain required insurance:</del> WAC 314-55-082	<u>30-day suspension</u>	<u>Cancellation of license))</u>		
<b><u>True party of interest/financier violation.</u></b> Chapter 314-55 WAC	<u>Cancellation of license</u>			
<b><u>Failure to furnish required documents.</u></b> Chapter 314-55 WAC	<u>Cancellation of license</u>			

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
<p><b><u>Misuse or unauthorized use of marijuana license (operating outside of license class).</u></b>                      Chapter 69.50 RCW                      Chapter 314-55 WAC</p>	<p>Retailer/transporter:  <u>10-day suspension or \$5,000 monetary fine</u></p> <p>Producer/processor:                      Tier 1: \$5,000                      Tier 2: \$10,000                      Tier 3: \$15,000 monetary fine</p>	<p><u>Cancellation of license</u></p>		
<p><b><u>Misrepresentation of fact.</u></b>                      Chapter 314-55 WAC</p>	<p><u>Cancellation of license</u></p>			
<p><b><u>Unauthorized change of business name.</u></b>                      Chapter 314-55 WAC</p>	<p><u>5-day suspension or \$1,000 monetary option</u></p> <p>Producer/processor:                      All tiers: \$500 monetary penalty</p>	<p><u>10-day suspension or \$1,500 monetary option</u></p> <p>Producer/processor:                      All tiers: \$1,500 monetary fine</p>	<p><u>30-day suspension or \$5,000 monetary option</u></p> <p>Producer/processor:                      All tiers: \$5,000 monetary fine</p>	<p><u>Cancellation of license</u></p>
<p><b><u>Operating/floor plan: Violations of a WSLCB approved operating plan.</u></b>                      Chapter 314-55 WAC</p>	<p><u>5-day suspension or \$1,000 monetary option</u></p> <p>Producer/processor:                      All tiers: \$1,000 monetary fine</p>	<p>Retailer/transporter:  <u>10-day suspension or \$2,500 monetary option</u></p> <p>Producer/processor:                      Tier 1: \$2,500                      Tier 2: \$5,000                      Tier 3: \$7,500 monetary fine</p>	<p>Retailer/transporter:  <u>30-day suspension</u></p> <p>Producer/processor:                      Tier 1: \$15,000                      Tier 2: \$30,000                      Tier 3: \$60,000 monetary fine</p>	<p><u>Cancellation of license</u></p>
<p><b><u>Failing to gain WSLCB approval for changes in existing ownership.</u></b>                      Chapter 69.50 RCW                      Chapter 314-55 WAC</p>	<p><u>30-day suspension</u></p> <p>Producer/processor:  <u>\$15,000 monetary fine and destruction of 50% of inventory</u></p>			
<p><b><u>Failure to respond to administrative violation notice and/or failure to pay fines and penalties.</u></b> Chapter 314-55 WAC</p>	<p><u>\$1,000 monetary penalty</u></p>	<p><u>Cancellation of license</u></p>		
<p><b><u>Failure to maintain required insurance.</u></b>                      Chapter 314-55 WAC</p>	<p>Retailer/transporter: <u>5-day suspension or \$2,500 monetary fine</u></p> <p>Producer/processor:                      Tier 1: \$2,500                      Tier 2: \$5,000                      Tier 3: \$7,500 monetary fine</p>	<p>Retailer/transporter:  <u>30-day suspension or \$15,000 monetary option</u></p> <p>Producer/processor:                      Tier 1: \$15,000                      Tier 2: \$30,000                      Tier 3: \$60,000 monetary fine</p>	<p><u>Cancellation of license</u></p>	

## AMENDATORY SECTION (Amending WSR 15-11-107, filed 5/20/15, effective 6/20/15)

**WAC 314-55-535 Group 4 marijuana producer and/or processor violations.** Group 4 violations are violations involving the manufacture, supply, processing, and/or distribution of marijuana by marijuana producer and/or processor licensees and prohibited practices between a marijuana producer, processor, and transportation licensees 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
<b><del>Unauthorized sale to a retail licensee.</del></b> WAC 314-55-075 RCW 69.50.366 RCW 69.50.401	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<b><del>Failure to utilize and/or maintain traceability.</del></b> WAC 314-55-083(4)	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<b><del>Packaging and/or labeling violations (producer).</del></b> WAC 314-55-105	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<b><del>Unauthorized product/unapproved storage or delivery.</del></b> RCW 69.50.366 RCW 69.50.401	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<b><del>Failure for a producer to meet marijuana waste disposal requirements.</del></b> WAC 314-55-097	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<b><del>Records: Improper recordkeeping.</del></b> WAC 314-55-087 WAC 314-55-089	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<b><del>Violation of transportation requirements.</del></b> WAC 314-55-085	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<b><del>Failure to maintain required security alarm and surveillance systems.</del></b> WAC 314-55-083 (2) and (3)	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<b><del>Failure to maintain standardized scale requirements (producer).</del></b> WAC 314-55-099	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<b><del>Failure to submit monthly tax reports and/or payments.</del></b> WAC 314-55-089 WAC 314-55-092	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	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
<b>Sale or service to minor:</b> Sale of marijuana and/or paraphernalia to a person under twenty-one years of age. WAC 314-55-079 RCW 69.50.4015 RCW 69.50.401 RCW 69.50.406 RCW 69.50.412	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<b>Conduct violations- Criminal conduct:</b> Permitting or engaging in criminal conduct.	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Using unauthorized pesticides, soil amendments, fertilizers, other crop production aids. WAC 314-55-084 WAC 314-55-087 (+)(f)	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Adulterate usable marijuana with organic or nonorganic chemical or other compound. WAC 314-55-105	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
Using unauthorized solvents or gases in processing. WAC 314-55-104	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<b>Refusal</b> to allow an inspection and/or obstructing a law enforcement officer from performing their official duties. WAC 314-55-050 WAC 314-55-077	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<b>Marijuana purchased from an unauthorized source:</b> RCW 69.50.360 RCW 69.50.363	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<b>Marijuana sold to an unauthorized source:</b> RCW 69.50.363 RCW 69.50.366 RCW 69.50.401	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	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
<b>Sales in excess of transaction limitations.</b> WAC 314-55-095(3) RCW 69.50.360	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<b>Advertising.</b> Violations (statements/illustrations): WAC 314-55-155(2)	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<b>Packaging and/or labeling violations (producer/processor).</b> WAC 314-55-105	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<b>Licensee/employee failing to display required security badge.</b> WAC 314-55-083(1)	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<b>Failure to maintain required security alarm and surveillance systems.</b> WAC 314-55-083 (2) and (3)	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<b>Records:</b> Improper recordkeeping: WAC 314-55-087 WAC 314-55-089	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<b>Signs:</b> Failure to post required signs. WAC 314-55-086 RCW 69.50.331(5)	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<b>Violation of transportation requirements.</b> WAC 314-55-085	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<b>Exceeding maximum serving requirements for marijuana-infused products.</b> WAC 314-55-095(2)	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<b>Failure to maintain standardized scale requirements (producer/processor).</b> WAC 314-55-099	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<b>Marijuana processor extraction requirements.</b> WAC 314-55-104	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	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
<b>Operating plan:</b> Violations of a board-approved operating plan. WAC 314-55-020	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<b>Failing to gain board approval for changes in existing ownership.</b> WAC 314-55-120 RCW 69.50.339	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license
<b>Failure to maintain required insurance.</b> WAC 314-55-082	\$2,500 monetary fine	\$5,000 monetary fine and destruction of 25% of harvestable plants	\$15,000 monetary fine and destruction of 50% of harvestable plants	Cancellation of license))
<b>Unauthorized sale to a retail licensee.</b> Chapter 69.50 RCW Chapter 314-55 WAC	\$2,500 monetary fine	Tier 1: \$5,000 Tier 2: \$10,000 Tier 3: \$20,000 monetary fine	Tier 1: \$15,000 Tier 2: \$30,000 Tier 3: \$60,000 monetary fine	Cancellation of license
<b>Packaging and/or labeling violations.</b> Chapter 314-55 WAC	\$2,500 monetary fine	Tier 1: \$5,000 Tier 2: \$7,500 Tier 3: \$10,000 monetary fine	Tier 1: \$10,000 Tier 2: \$15,000 Tier 3: \$20,000 monetary fine	Cancellation of license
<b>Unauthorized product/unapproved storage or delivery.</b> Chapter 69.50 RCW	\$2,500 monetary fine	Tier 1: \$5,000 Tier 2: \$10,000 Tier 3: \$15,000 monetary fine	Tier 1: \$15,000 Tier 2: \$30,000 Tier 3: \$60,000 monetary fine	Cancellation of license
<b>Failure to meet marijuana waste disposal requirements.</b> Chapter 314-55 WAC	\$2,500 monetary fine	Tier 1: \$5,000 Tier 2: \$10,000 Tier 3: \$15,000 monetary fine	Tier 1: \$15,000 Tier 2: \$30,000 Tier 3: \$60,000 monetary fine	Cancellation of license
<b>Sampling violations.</b> Chapter 314-55 WAC	\$2,500 monetary fine	Tier 1: \$5,000 Tier 2: \$10,000 Tier 3: \$15,000 monetary fine	Tier 1: \$15,000 Tier 2: \$30,000 Tier 3: \$60,000 monetary fine	Cancellation of license
<b>Failure to follow and maintain food processing facility requirements.</b> Chapter 314-55 WAC	\$2,500 monetary fine	Tier 1: \$5,000 Tier 2: \$10,000 Tier 3: \$15,000 monetary fine	Tier 1: \$15,000 Tier 2: \$30,000 Tier 3: \$60,000 monetary fine	Cancellation of license
<b>Unauthorized pesticides, soil amendments, fertilizers, other crop production aids.</b> Chapter 314-55 WAC	Tier 1: \$5,000 Tier 2: \$10,000 Tier 3: \$15,000 monetary fine and destruction of affected marijuana	Tier 1: \$15,000 Tier 2: \$30,000 Tier 3: \$60,000 monetary fine and destruction of affected marijuana	Cancellation of license	
<b>Adulterate usable marijuana with organic or nonorganic chemical or other compound.</b> Chapter 314-55 WAC	Tier 1: \$5,000 Tier 2: \$10,000 Tier 3: \$15,000 monetary fine and destruction of affected marijuana	Tier 1: \$15,000 Tier 2: \$30,000 Tier 3: \$60,000 monetary fine and destruction of affected marijuana	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
<b><u>Exceeding maximum serving requirements for marijuana-infused products.</u></b> Chapter 314-55 WAC	\$2,500 monetary fine	Tier 1: \$5,000 Tier 2: \$10,000 Tier 3: \$15,000 monetary fine	\$15,000 monetary fine	Cancellation of license
<b><u>Failure to maintain standardized scale requirements.</u></b> Chapter 314-55 WAC	\$2,500 monetary fine	Tier 1: \$5,000 Tier 2: \$7,500 Tier 3: \$10,000 monetary fine	Tier 1: \$15,000 Tier 2: \$30,000 Tier 3: \$60,000 monetary fine	Cancellation of license
<b><u>Marijuana processor extraction requirements.</u></b> Chapter 314-55 WAC	\$2,500 monetary fine	Tier 1: \$5,000 Tier 2: \$7,500 Tier 3: \$10,000 monetary fine	Tier 1: \$15,000 Tier 2: \$30,500 Tier 3: \$60,000 monetary fine	Cancellation of license
<b><u>Selling or purchasing marijuana on credit.</u></b> Chapter 314-55 WAC	Retailer: 5-day suspension or \$2,500 monetary option  Producer/processor: \$2,500 monetary fine	Retailer: 10-day suspension or \$5,000 monetary option  Producer/processor: Tier 1: \$5,000 Tier 2: \$10,000 Tier 3: \$15,000 monetary fine	Retailer: 30-day suspension  Producer/processor: Tier 1: \$15,000 Tier 2: \$30,000 Tier 3: \$60,000 monetary fine	Cancellation of license
<b><u>Payment with NSF check.</u></b> Chapter 314-55 WAC	Retailer: 5-day suspension or \$500 monetary option  Producer/processor: \$500 monetary fine	Retailer: 5-day suspension or \$5,000 monetary option  Producer/processor: All tiers: \$5,000 monetary fine	Retailer: 10-day suspension  Producer/processor: All tiers: \$5,000 monetary fine	Cancellation of license
<b><u>Engaging in nonretail conditional sales or prohibited practices.</u></b> Chapter 314-55 WAC	Retailer/transporter: 5-day suspension or \$2,500 monetary option  Producer/processor: \$2,500 monetary fine	Retailer/transporter: 10-day suspension and \$5,000 monetary option  Producer/processor: Tier 1: \$5,000 Tier 2: \$10,000 Tier 3: \$20,000 monetary fine	Retailer/transporter: 30-day suspension  Producer/processor: Tier 1: \$15,000 Tier 2: \$30,000 Tier 3: \$60,000 monetary fine	Cancellation of license

NEW SECTION

**WAC 314-55-537 Group 5 license violations.** Group 5 violations are violations involving marijuana transportation licensees.

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
<b><u>Transportation of marijuana in an unauthorized vehicle.</u></b> Chapter 314-55 WAC	5-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license	
<b><u>Exceeding maximum delivery time frame.</u></b> Chapter 314-55 WAC	5-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
<b>Transportation or storage of marijuana from an unlicensed source and/or diversion of product.</b> Chapter 69.50 RCW	Cancellation of license			
<b>Pickup, unload, or delivery at an unauthorized location.</b> Chapter 314-55 WAC	30-day suspension	Cancellation of license		
<b>Transportation of marijuana outside of Washington state boundaries.</b> Chapter 314-55 WAC	Cancellation of license			
<b>Load exceeding maximum delivery amount.</b> Chapter 314-55 WAC	5-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license	
<b>Transportation of marijuana without a valid manifest.</b> Chapter 314-55 WAC	5-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license	
<b>Driver transporting without a valid driver's license.</b> Chapter 314-55 WAC	5-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license	
<b>Unauthorized driver or passenger.</b> Chapter 314-55 WAC	5-day suspension or \$2,500 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
<b>Criminal violation of motor vehicle laws.</b> Title 46 RCW Chapter 314-55 WAC	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license	

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

**WAC 314-55-540 Information about marijuana license suspensions.** (1) On the date a marijuana license suspension goes into effect, a ~~((liquor control))~~ WSLCB enforcement officer will post a suspension notice in a conspicuous place on or about the licensed premises. This notice will state that the license has been suspended by order of the ~~((liquor control board))~~ WSLCB due to a violation of a ~~((board))~~ WSLCB 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))~~ WSLCB'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).

**WSR 16-07-160**  
**PROPOSED RULES**  
**GAMBLING COMMISSION**

[Filed March 23, 2016, 11:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 16-04-052.

Title of Rule and Other Identifying Information: Amending WAC 230-13-067 Electronic puzzle and pattern solving game standards.

Hearing Location(s): Red Lion, 2525 North 20th Avenue, Pasco, WA 99301, (509) 547-0701, on May 12 or 13, 2016, at 9:30 a.m. or 1:00 p.m. NOTE: Meeting dates and times are tentative. Visit our web site at [www.wsgc.wa.gov](http://www.wsgc.wa.gov) and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: May 12 or 13, 2016.

Submit Written Comments to: Susan Newer, P.O. Box 42400, Olympia, WA 98504-2400, e-mail [Susan.Newer@wsgc.wa.gov](mailto:Susan.Newer@wsgc.wa.gov), fax (360) 486-3625, by May 1, 2016.

Assistance for Persons with Disabilities: Contact Michelle Rancour by May 1, 2016, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In July 2015, the commissioners authorized Group 12 amusement games to be played by persons twenty-one and over. Since this time, numerous questions and concerns have been raised. This proposed rule change provides the commission with the option of repealing the rule authorizing Group 12 amusement games.

Statutory Authority for Adoption: RCW 9.46.070 and 9.46.0201.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Newer, Lacey, (360) 486-3466; Implementation: David Trujillo, Director, Lacey, (360) 486-3512; and Enforcement: Josh Stueckle, Acting Assistant Director, Lacey, (360) 486-3579.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

Small Business Economic Impact Statement

**Rule Proposed to be Repealed:** WAC 230-13-067 Group 12—Electronic puzzle and pattern solving game standards.

**Involvement of Small Businesses:** We filed the CR-101 on January 28, 2016, under WSR 15-22-054.

In July 2015, the commissioners approved Group 12 amusement games, a new category of amusement games. In approximately September 2015, commission staff approved the first Group 12 amusement game for placement in Washington. Shortly thereafter, based on questions received from stakeholders and how the games were being operated, commission staff determined additional rules were needed to effectively regulate Group 12 amusement games.

On November 9, 2015, we sent an e-mail to the Class B and above amusement game licensees that we had e-mail addresses for informing them that we had drafted rules for discussion on Group 12 amusement games. (Class B and above amusement game licensees own the amusement games they lease for operation at Class A amusement game licensees or operate the amusement games in their facility.) The letter referred licensees to our web site, which the general public can access, to view the draft rules. The proposed rules were posted on our web site under "Breaking News" on our home page for Group 12 amusement game updates.

On November 12, 2015, draft rules for operating, licensing, and regulating Group 12 amusement games were discussed at study session, which was open to the general public. Those in attendance were asked to submit any comments or rule change language to commission staff by November 30, 2015. The rules were also discussed at the November 12, 2015, commission meeting, also open to the public.

On December 24, 2015, we sent notice to all commercial and nonprofit amusement game licensees, Class A and above, of the updated Group 12 amusement game rule proposals based the feedback we received during the comment period. We also posted the draft rules on our web site.

On January 4, 2016, commission staff approved the second Group 12 amusement game for placement in Washington. The third and fourth Group 12 amusement games, both manufactured by the same entity, were approved by commission staff on January 7, 2016.

The Group 12 amusement game rules were discussed at study session on January 14, 2016. The rules were also discussed at the January 14 commission meeting, also open to the public.

On January 28, 2016, a commissioner requested that staff prepare a new rule proposal to repeal Group 12 amusement games as another option available to the commissioners, in conjunction with the other Group 12 amusement game rule packages.

The Group 12 amusement game repealer was posted on our web site on February 2, 2016. Prior to that, staff reached out to the representatives of each of the three approved Group 12 amusement game manufacturers that have games approved, as well as other industry leaders, to let them know of this rule proposal.

The rule was discussed at the February 11, 2016, study session and commission meeting and the March 11, 2016, study session and commission meeting. In addition, the proposed repealer will be discussed at the April and May commission meetings. The public can provide comment during the study session and testimony before the commissioners at the commission meeting.

**1. Description of the Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule:**

This rule package would repeal Group 12 amusement games in the state. As of this date, we have approved four Group 12 games from three manufacturers. As of January 11, 2016, there were two hundred four Group 12 amusement games placed in about eighty licensed locations. As of February 10, there were over four hundred Group 12 amusement games placed in at least two hundred eighty locations.

If this rules package were approved, all of these amusement games would have to be removed from the state by the effective date. The Group 12 amusement games that are currently in the state could be sold to businesses in other states where the amusement games are allowed. Those that are leased from manufacturers would have to be returned to the manufacturers.

**2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply:** Small businesses may need to consult an attorney if they have entered into any type of a contract or an agreement for Group 12 amusement games. They may also need to consult with someone to help them sell and ship any Group 12 amusement games to a jurisdiction where they are allowed.

**3. The Actual Costs to Small Businesses of Compliance, Including Costs of Equipment, Supplies, Labor and Increased Administrative Costs:** We do not have sufficient information to determine the actual costs to small businesses if Group 12 amusement games were no longer authorized. However, we have had a fourteen percent increase in the number of commercial and charitable, nonprofit amusement game licensees from August 1, 2015, through January 31, 2016. (Eighty-two more Class A and five more Class B amusement game licensees during this period.) As of January 11, 2016, about eighty licensees had at least one Group 12 amusement game in their facility. As of February 10, at least two hundred eighty licensees had at least one Group 12 amusement game in their facility.

Anecdotally, two licensees that have purchased Group 12 amusement games state they have spent approximately \$230,000. Other licensees have purchased or leased the Group 12 amusement games, but we do not know those costs because licensees are not required to report these costs to us. A manufacturer stated they spent about \$100,000 on research and development to manufacture the amusement games to meet Washington requirements.

Four amusement game licensees have stated that they will incur a combined estimated loss of \$9 million if Group 12 amusement games were repealed. This estimated loss includes such costs as the actual amusement game purchase and lease costs, research and development, license and identification stamp fees, and four year lost revenue projections for the amusement game contracts currently in place.

Distributors who purchased the amusement games may be able to mitigate their loss by selling the amusement games to businesses in jurisdictions where they are allowed.

**4. Whether Compliance with the Rule, Based on Feedback Received from Licensees, Will Cause Businesses to Lose Sales or Revenue:** The first amusement game was approved on September 23, 2015. Compliance with the proposed rule will cause businesses to lose sales or revenue, as they would have to stop selling and/or operating Group 12 amusement games. Based on information provided by licens-

ees, the estimated lost revenue is unknown at this time, but it could include the costs described above. Some licensees report possible lost sales or revenues totaling approximately \$9 million should this rule be repealed.

**5. A Determination of Whether the Proposed Rule Will Have a Disproportionate Impact on Small Businesses:** We do not know which or how many of our seven hundred forty-five amusement game licensees as of January 31, 2016, will be impacted by the repeal of Group 12 amusement games. We do not distinguish between whether a business is getting a license to operate a Group 12 amusement game or Groups 1 through 11 upon licensure. However, given that we have seen a fourteen percent increase in overall amusement game licenses issued from August 1, 2015, through January 31, 2016, it is estimated that twelve to fourteen percent of amusement game licensees would be impacted.

Because we do not know which licensees have Group 12 amusement games, we cannot determine if there will be a disproportionate impact to small businesses with the proposed repeal of Group 12 amusement games.

**6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So. Agencies "must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:"** Repeal of Group 12 amusement games would apply to all businesses equally, as they would not be able to operate these games.

Class A and B amusement game licensees that may have gotten a license to have Group 12 amusement games can still use their license for the remainder of their license year for Group 1 through 11 amusement games.

**a. Reducing, modifying, or eliminating substantive regulatory requirements;**

Repeal of Group 12 amusement games would apply to all businesses equally, as they would not be able to operate these games.

Class A and B amusement game licensees that may have gotten a license to have Group 12 amusement games can still use their license for the remainder of their license year for Group 1 through 11 amusement games.

**b. Simplifying, reducing, or eliminating recordkeeping and reporting requirements;**

Repeal of Group 12 amusement games would apply to all businesses equally, as they would not be able to operate these games.

Class A and B amusement game licensees that may have gotten a license to have Group 12 amusement games can still use their license for the remainder of their license year for Group 1 through 11 amusement games.

**c. Reducing the frequency of inspections;**

Repeal of Group 12 amusement games would apply to all businesses equally, as they would not be able to operate these games.

Class A and B amusement game licensees that may have gotten a license to have Group 12 amusement games can still use their license for the remainder of their license year for Group 1 through 11 amusement games.

**d. Delaying compliance timetables;**

Repeal of Group 12 amusement games would apply to all businesses equally, as they would not be able to operate these games.

Class A and B amusement game licensees that may have gotten a license to have Group 12 amusement games can still use their license for the remainder of their license year for Group 1 through 11 amusement games.

**e. Reducing or modifying fine schedules for noncompliance; or**

Repeal of Group 12 amusement games would apply to all businesses equally, as they would not be able to operate these games.

Class A and B amusement game licensees that may have gotten a license to have Group 12 amusement games can still use their license for the remainder of their license year for Group 1 through 11 amusement games.

**f. Any other mitigation techniques including those suggested by small businesses or small business advocates.**

In November 2015, when we began receiving inquiries regarding Group 12 amusement games, we notified stakeholders and told them to monitor our web site for updates. We have consistently posted updated information as soon as it became available.

On approximately February 4, 2016, we began notifying all amusement game applicants that have a pending application that the Group 12 amusement game rule could possibly [be] repealed. On February 8, 2016, we posted a notice on our web site with the amusement game application notifying them of the rules that are pending. We also included the notice on all hardcopy applications that are mailed out and with each amusement game license that is mailed.

**7. A Description of How the Gambling Commission Will Involve Small Businesses in the Development of the Rule:** In July 2015, the commissioners approved Group 12 amusement games, a new category of amusement games. In approximately September 2015, commission staff approved the first Group 12 amusement game for placement in Washington. Shortly thereafter, based on questions received from stakeholders and how the games were being operated, commission staff determined additional rules were needed to effectively regulate Group 12 amusement games.

On November 9, 2015, we sent an e-mail to the Class B and above amusement game licensees that we had e-mail addresses for informing them that we had drafted rules for discussion on Group 12 amusement games. (Class B and above amusement game licensees own the amusement games they lease for operation at Class A amusement game licensees or operate the amusement games in their facility.) The letter referred licensees to our web site, which the general public can access, to view the draft rules. The proposed rules were posted on our web site under "Breaking News" on our home page for Group 12 amusement game updates.

On November 12, 2015, draft rules for operating, licensing, and regulating Group 12 amusement games were discussed at study session, which was open to the general public. Those in attendance were asked to submit any comments or rule change language to commission staff by November 30,

2015. The rules were also discussed at the November 12, 2015, commission meeting, also open to the public.

On December 24, 2015, we sent notice to all commercial and nonprofit amusement game licensees, Class A and above, of the updated Group 12 amusement game rule proposals based [on] the feedback we received during the comment period. We also posted the draft rules on our web site.

On January 4, 2016, commission staff approved the second Group 12 amusement game for placement in Washington. The third and fourth Group 12 amusement games, both manufactured by the same entity, were approved by commission staff on January 7, 2016.

The Group 12 amusement game rules were discussed at study session on January 14, 2016. The rules were also discussed at the January 14 commission meeting, also open to the public.

On January 28, 2016, a commissioner requested that staff prepare a new rules proposal to repeal Group 12 amusement games as another option available to the commissioners, in conjunction with the other Group 12 amusement game rule packages.

The Group 12 amusement game repealer was posted on our web site on February 2, 2016. Prior to that, staff reached out to the representatives of each of the three approved Group 12 amusement game manufacturers that have games approved, as well as other industry leaders, to let them know of this rule proposal.

The rule was discussed at the February 11, 2016, study session and commission meeting and the March 11, 2016, study session and commission meeting. In addition, the proposed repealer will be discussed at the April and May commission meetings. The public can provide comment during the study session and testimony before the commissioners at the commission meeting.

**8. A List of Industries That Will Be Required to Comply with the Rule:** Seven thousand one hundred thirty-two.

**9. An Estimate of the Number of Jobs That Will Be Created or Lost as the Result of Compliance with the Proposed Rule:** We do not have sufficient information to determine what, if any, jobs will be lost should Group 12 games be repealed. We cannot determine the impact of jobs lost as a result of compliance with the proposed repeal of the rule because this is a new group of amusement games that was authorized in July 2015 and has only been in effect since late-September 2015, when the first game was approved. We don't have any information on the impact Group 12 games have actually had on the industry, how many new jobs (if any) were created due to authorization of Group 12 amusement games, or how many jobs might be affected by the repeal of them.

A copy of the statement may be obtained by contacting Susan Newer, Rules Coordinator, P.O. Box 42400, Olympia, WA 98504, phone (360) 486-3466, fax (360) 486-3625, e-mail [susan.newer@wsgc.wa.gov](mailto:susan.newer@wsgc.wa.gov).

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

March 23, 2016  
Susan Newer  
Rules Coordinator

**Option 3**

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 230-13-067 Group 12—Electronic puzzle and pattern solving game standards.