

**WSR 18-07-049**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Developmental Disabilities Administration)  
 [Filed March 14, 2018, 12:06 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-18-083.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-845-0001 Definitions, 388-845-0110 Are there limitations to the waiver services you can receive?, 388-845-0210 What is the scope of services for the basic plus waiver?, 388-845-0215 What is the scope of services for the core waiver?, 388-845-0220 What is the scope of services for the community protection waiver?, 388-845-0225 What is the scope of services for the children's intensive in-home behavioral support (CIIBS) waiver?, 388-845-0230 What is the scope of services for the individual and family services (IFS) waiver?, 388-845-0420 Who is a qualified provider of assistive technology?, 388-845-0425 Are there limits to the assistive technology you can receive?, 388-845-0500 What is behavior support and consultation?, 388-845-0501 What is included in behavior support and consultation for the children's intensive in-home behavioral support (CIIBS) waiver?, 388-845-0505 Who is a qualified provider of behavior support and consultation?, 388-845-0506 Who is a qualified provider of behavior support and consultation for the children's intensive in-home behavioral supports (CIIBS) waiver?, 388-845-0510 Are there limits to the behavior support and consultation you can receive?, 388-845-0603 Who is eligible to receive community access services?, 388-845-0660 Are there limitations to the community engagement services you can receive?, 388-845-0700 What is a community guide service?, 388-845-0705 Who is a qualified community guide?, 388-845-0710 Are there limitations to the community guide services I can receive?, 388-845-0760 Are there limitations to community transition services I can receive?, 388-845-0800 What is emergency assistance?, 388-845-0820 Are there limits to your use of emergency assistance?, 388-845-0900 What are environmental adaptations?, 388-845-0910 What limitations apply to environmental adaptations?, 388-845-1150 What are behavioral health stabilization services?, 388-845-1600 What is respite care?, 388-845-1615 Who may be qualified providers of respite care?, 388-845-1620 Are there limits to the respite care you can receive?, 388-845-1650 What are sexual deviancy evaluations?, 388-845-1655 Who is a qualified provider of sexual deviancy evaluations?, 388-845-1660 Are there limitations to the sexual deviancy evaluations you can receive?, 388-845-1700 What is skilled nursing?, 388-845-1710 Are there limitations to the skilled nursing services you can receive?, 388-845-1810 Are there limitations to your receipt of specialized medical equipment and supplies?, 388-845-1865 Are there limitations to your receipt of specialized clothing?, 388-845-1900 What are specialized psychiatric services?, 388-845-2000 What is staff/family consultation and training?, 388-845-2010 Are there limitations to the staff/family consultation and training you can receive?, 388-845-2170 Are there limitations on your receipt of therapeutic equipment and supplies?, and 388-845-

3070 What happens if you do not sign your person-centered service plan/individual support plan (ISP)?

The department is proposing to create WAC 388-845-0515 What is chemical extermination of bedbugs?, 388-845-0520 Who are qualified providers of chemical extermination of bedbugs?, 388-845-0525 Are there limits to the chemical extermination of bedbugs services I may receive?, 388-845-1181 What is occupational therapy?, 388-845-1182 Who may be a qualified provider of occupational therapy?, 388-845-1183 Are there limits to occupational therapy?, 388-845-1315 What is physical therapy?, 388-845-1316 Who may be a qualified provider of physical therapy?, 388-845-1317 Are there limits to physical therapy?, 388-845-1915 What are speech, hearing, and language services?, 388-845-1916 Who may be a qualified provider of speech, hearing, and language services?, and 388-845-1917 Are there limits to the speech, hearing, and language services you may receive?

The department is proposing to repeal WAC 388-845-1000 What are extended state plan services?, 388-845-1010 Who is a qualified provider of extended state plan services?, 388-845-1015 Are there limits to the extended state plan services you may receive?, 388-845-1200 What are person-to-person services?, 388-845-1205 Who are qualified providers of person-to-person services?, 388-845-1210 Are there limits to the person-to-person service I can receive?, 388-845-1840 What is specialized nutrition?, 388-845-1845 Who are qualified providers of specialized nutrition?, and 388-845-1850 Are there limitations to your receipt of specialized nutrition?

Hearing Location(s): On May 22, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (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>.

Date of Intended Adoption: Not earlier than May 23, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., May 22, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by May 8, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules align developmental disabilities administration's (DDA) administrative rules with the waiver application approved by the Centers for Medicare and Medicaid Services (CMS). Other amendments clarify language and update policy.

Reasons Supporting Proposal: The proposed rules are necessary to provide services approved by CMS and for DDA to receive federal financial participation. Additionally, DDA must not authorize waiver services unless they are part of a waiver application approved by CMS; aligning the rules with the approved application maintains client access to waiver services.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.120, 42 C.F.R. 441 Subpart G.

Rule is necessary because of federal law, 42 C.F.R. 441 Subpart G.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1589; Implementation and Enforcement: Ann Whitehall, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1551.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-407-1589, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

Is exempt under RCW 19.85.025(4) because the rules do not affect small businesses.

Explanation of exemptions: The proposed amendments impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

March 12, 2018  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0001 Definitions.** "Aggregate services" means a combination of services subject to the dollar (~~limitations~~) limits in the basic plus waiver(s).

"Allocation" means the amount of individual and family services (IFS) waiver funding available to (~~the~~) a client for a maximum of twelve months.

"CARE" means comprehensive assessment and reporting evaluation.

~~("CHBS" means children's intensive in-home behavioral support waiver.)~~

"Client" (~~or "person"~~) means a person who has a developmental disability (~~as defined in~~) under RCW 71A.10.-020(5) and has been determined eligible to receive services (~~by~~) from the administration under chapter 71A.16 RCW.

"Community crisis stabilization services" or "CCSS" means a state-operated program that provides short-term supports to (~~participants who meet specific criteria and~~) clients who are in crisis (~~and/or~~), or who are at risk of hospitalization or institutional placement.

"DDA" means the developmental disabilities administration, of the department of social and health services.

"DDA assessment" refers to the standardized assessment tool (~~as defined in~~) under chapter 388-828 WAC, used by DDA to measure the support needs of (~~persons~~) people with developmental disabilities.

"Department" means the department of social and health services (DSHS).

~~("EPSDT" means early and periodic screening, diagnosis, and treatment, medicaid's child health component providing a mandatory and comprehensive set of benefits and services for children up to age twenty one as defined in WAC 182-534-0100.~~

~~"Enhanced respite services" means respite care for DDA enrolled children and youth, who meet specific criteria, in a DDA contracted and licensed staffed residential setting.)~~

"Evidence-based treatment" means the use of physical, mental, and behavioral health interventions for which systematic, empirical research has provided evidence of statistically significant effectiveness as treatments for specific conditions. Alternate terms with the same meaning are evidence-based practice (EBP) and empirically supported treatment (EST).

"Family" means one or more of the following relatives: Spouse or registered domestic partner; natural, adoptive or step parent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

"Family home" means the residence where you and your family (~~member(s)~~) live.

"Gainful employment" means employment that reflects achievement of or progress towards a living wage.

~~("HCBS waivers" means home and community based services waivers.)~~

"Home" means present or intended place of residence.

"ICF/IID" means an intermediate care facility for individuals with intellectual disabilities.

~~("IFS waiver" means the individual and family services waiver.)~~

"Integrated business settings" means a setting that enables participants to either work alongside or interact with individuals who do not have disabilities, or both.

"Integrated settings" mean typical community settings not designed specifically for individuals with disabilities in which the majority of persons employed and participating are individuals without disabilities.

"Legal representative" means a parent of a person who is under eighteen years of age, a person's legal guardian, a person's limited guardian when the subject matter is within the scope of limited guardianship, a person's attorney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

"Living wage" means the amount of earned wages needed to enable an individual to meet or exceed his or her living expenses.

"Necessary supplemental accommodation representative" means an individual who receives copies of DDA planned action notices (PANs) and other department correspondence in order to help a client understand the documents and exercise the client's rights. A necessary supplemental accommodation representative is identified by a client of DDA when the client does not have a legal guardian and the client is requesting or receiving DDA services.

"Participant" means a client who is enrolled in a home and community based services waiver program.

"Person-centered service plan (~~individual support plan or ISP~~)" is a document that identifies your goals and assessed health and welfare needs. Your person-centered service plan (~~individual support plan~~) also indicates the paid services and natural supports that will assist you to achieve your goals and address your assessed needs.

"Primary caregiver" means the person who provides the majority of your care and supervision.

"Provider" means an individual or agency who meets the provider qualifications and is contracted with DSHS to provide services to you.

"Respite assessment" means an algorithm within the DDA assessment that determines the number of hours of respite care you may receive per year if you are enrolled in the basic plus, children's intensive in-home behavioral support, or core waiver.

"SSI" means supplemental security income, an assistance program administered by the federal Social Security Administration for blind, disabled and aged individuals.

"SSP" means state supplementary payment program, a state-paid cash assistance program for certain clients of the developmental disabilities administration.

"State-funded services" means services that are funded entirely with state dollars.

"You" (~~or "your"~~) means the client or participant.

**AMENDATORY SECTION** (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0110** ~~What are ((there limitations)) the limits to the waiver services you ((can)) may receive?~~ ~~((There are limitations))~~ The following limits apply to the waiver services(~~-Those are~~) you may receive:

(1) A service must be available in your waiver and address an unmet need identified in your person-centered service plan.

(2) ~~((The need for a service must be identified and authorized in your person-centered service plan/individual support plan.~~

~~((3))~~ Behavioral health stabilization services may be added to your person-centered service ~~((plan/individual support))~~ plan after the services ~~((are))~~ have been provided.

~~((4))~~ (3) Waiver services are limited to services required to prevent ~~((ICF/IID))~~ placement in an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

~~((5))~~ (4) The daily cost of your waiver services ~~((cannot))~~ must not exceed the average daily cost of care in an ICF/IID.

~~((6))~~ (5) Waiver services ~~((cannot))~~ must not replace or duplicate other available paid or unpaid supports or services. Before DDA will cover a service through waiver services, you must first ((pursue benefits available to you)) request and be denied all applicable services through private insurance, medicare, the medicaid state plan, ((or)) and other resources.

~~((7))~~ (6) Waiver funding ~~((cannot))~~ must not be authorized for treatments determined by DSHS to be experimental or investigational under WAC 182-531-0050.

~~((8))~~ (7) For the individual and family services (IFS) and basic plus waivers, services must not exceed the yearly limits specified in these programs for specific services or combinations of services.

~~((9))~~ (8) Your choice of qualified providers and services is limited to the most cost-effective option that meets your ~~((health and welfare needs))~~ unmet need identified in your person-centered service plan.

~~((10))~~ (9) Services provided out-of-state, other than in recognized bordering cities, are limited to respite care and

personal care during vacations of not more than thirty consecutive days.

~~((11))~~ (10) You may receive services in a recognized out-of-state bordering city ~~((on the same basis as in-state services.~~

~~(b) The only recognized bordering cities per))~~ under WAC 182-501-0175 ((are:

~~(i) Coeur d'Alene, Moscow, Sandpoint, Priest River, and Lewiston, Idaho; and~~

~~(ii) Portland, The Dalles, Hermiston, Hood River, Rainier, Milton-Freewater, and Astoria, Oregon)).~~

(11) Other out-of-state waiver services require an approved exception to rule before DDA ~~((can))~~ will authorize payment.

(12) Waiver services do not cover:

(a) Copays~~((:));~~

(b) Deductibles~~((:));~~

(c) Dues~~((:));~~

(d) Membership fees~~((:));~~ or

(e) Subscriptions.

(13) Waiver services do not cover a product unless the product is:

(a) Necessary to meet a basic health and safety need; and

(b) The least restrictive means for meeting that need.

**AMENDATORY SECTION** (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0210** ~~What ((is the scope of)) services ((for)) are available under the basic plus waiver?~~ The following services are available under the basic plus waiver:

<del>((BASIC-PLUS-WAIVER))</del>	SERVICE(S)	YEARLY LIMIT
	AGGREGATE SERVICES: <del>((Behavior support and consultation))</del> <u>Chemical extermination of cimex lectularius (bedbugs)</u> Community guide Environmental adaptations  Occupational therapy Physical therapy <u>Positive behavior support and consultation</u> Skilled nursing Specialized medical equipment <del>((s))</del> and supplies	<del>((May))</del> <u>Total costs must not exceed (((\$6192)) six thousand one hundred ninety-two dollars per year ((on any combination of these services)) per participant</u>
	Specialized psychiatric services	

((BASIC-PLUS-WAIVER))	SERVICE(S)	YEARLY LIMIT
	Speech, hearing, and language services Staff(=) and family consultation and training Transportation Wellness education	
	EMPLOYMENT SERVICES: <del>((Prevocational services))</del> <u>Individual technical assistance</u> <del>((Supported employment))</del> <u>Prevocational services</u> <del>((Individual technical assistance))</del> <u>Supported employment</u>	Limits <del>((are))</del> determined by DDA assessment and employment status; no new enrollment in prevocational services after September 1, 2015
	Community <del>((access))</del> <u>inclusion</u>	Limits <del>((are))</del> determined by DDA assessment
	BEHAVIORAL HEALTH STABILIZATION SERVICES: <del>((Behavior support and consultation))</del> Behavioral health crisis diversion bed services <u>Positive behavior support and consultation</u> Specialized psychiatric services	Limits determined by a behavioral health professional or DDA
	Personal care	Limits determined by the CARE tool used as part of the DDA assessment
	Respite care	Limits <del>((are))</del> determined by <del>((the))</del> DDA assessment
	<del>((Sexual deviancy evaluation))</del> <u>Risk assessment</u>	Limits <del>((are))</del> determined by DDA
	Emergency assistance is only for basic plus waiver aggregate services	<del>(((\$6000))</del> <u>Six thousand dollars</u> per year; preauthorization required

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0215** What ~~((is the scope of))~~ services ~~((for the))~~ **are available under the core waiver?** (1) The following services are available under the core waiver:

((CORE-WAIVER	SERVICES	YEARLY LIMIT
	Behavior support and consultation Community guide Community transition Environmental adaptations  Occupational therapy Physical therapy Sexual deviancy evaluation Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation Wellness education Residential habilitation	Determined by the person-centered service plan/individual support plan, not to exceed the average cost of an ICF/IID for any combination of services
	Community access  Employment services    Prevocational services Supported employment Individualized technical assistance	Limits are determined by DDA assessment  Limits are determined by DDA assessment and employment status; no new enrollment in prevocational services after September 1, 2015

<u>((CORE-WAIVER</u>	<u>SERVICES</u>	<u>YEARLY LIMIT</u>
	<u>BEHAVIORAL HEALTH STABILIZATION SERVICES:</u> <u>Behavior support and consultation</u> <u>Behavioral health crisis diversion bed services</u> <u>Specialized psychiatric services</u>	<u>Limits determined by a behavioral health professional or DDA</u>
	<u>Respite care</u>	<u>Limits are determined by the DDA assessment)</u>

<u>SERVICE</u>	<u>YEARLY LIMIT</u>
<u>Community inclusion</u>	<u>Limits determined by DDA assessment</u>
<u>BEHAVIORAL HEALTH STABILIZATION SERVICES:</u> <u>Behavioral health crisis diversion bed services</u> <u>Positive behavior support and consultation</u> <u>Specialized psychiatric services</u>	<u>Limits determined by a behavioral health professional or DDA</u>
<u>Respite care</u>	<u>Limits determined by DDA assessment</u>

<u>SERVICE</u>	<u>YEARLY LIMIT</u>
<u>Chemical extermination of cimex lectularius (bedbugs)</u> <u>Community guide</u> <u>Community transition</u> <u>Environmental adaptations</u> <u>Occupational therapy</u> <u>Physical therapy</u> <u>Positive behavior support and consultation</u> <u>Residential habilitation</u> <u>Risk assessment</u> <u>Skilled nursing</u> <u>Specialized medical equipment and supplies</u> <u>Specialized psychiatric services</u> <u>Speech, hearing, and language services</u> <u>Staff and family consultation and training</u> <u>Transportation</u> <u>Wellness education</u>	<u>Determined by the person-centered service plan</u>
<u>EMPLOYMENT SERVICES:</u> <u>Individualized technical assistance</u> <u>Prevocational services</u> <u>Supported employment</u>	<u>Limits determined by DDA assessment and employment status; no new enrollment in prevocational services after September 1, 2015</u>

(2) A participant's core waiver services are subject to additional limits under this chapter.

(3) The total cost of a participant's core waiver services must not exceed the average cost of care at an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0220** What ~~(is the scope of)~~ services ~~(for)~~ are available under the community protection waiver? (1) The following services are available under the community protection waiver:

<u>((COMMUNITY-PROTECTION-WAIVER))</u>	<u>SERVICE(S)</u>	<u>YEARLY LIMIT</u>
	<del><u>(Behavior support and consultation)</u></del> <u>Chemical extermination of cimex lectularius (bedbugs)</u> <u>Community transition</u> <u>Environmental adaptations</u> <u>Occupational therapy</u> <u>Physical therapy</u>  <del><u>(Sexual deviancy evaluation)</u></del> <u>Positive behavior support and consultation</u> <u>Residential habilitation</u> <u>Risk assessment</u> <u>Skilled nursing</u>	<u>Determined by the person-centered service plan <del>((individual support plan, not to exceed the average cost of an ICF/IID for any combination of services))</del></u>

((COMMUNITY-PROTECTION-WAIVER))	SERVICE((S))	YEARLY LIMIT
	Specialized medical equipment and supplies Specialized psychiatric services Speech, hearing, and language services Staff(+) and family consultation and training Transportation	
	((Residential habilitation))	
	EMPLOYMENT SERVICES:  ((Prevocational services)) <u>Individual technical assistance</u> ((Supported employment)) <u>Prevocational services</u> ((Individual technical assistance)) <u>Supported employment</u>	Limits determined by DDA assessment and employment status; no new enrollment in prevocational services after September 1, 2015
	BEHAVIORAL HEALTH STABILIZATION SERVICES: ((Behavioral support and consultation)) Behavioral health crisis diversion bed services <u>Positive behavior support and consultation</u> Specialized psychiatric services	Limits determined by a behavioral health professional or DDA

intermediate care facility for individuals with intellectual disabilities (ICF/IID).

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0225** ~~What ((is the scope of)) services ((for)) are available under the children's intensive in-home behavioral support (CIIBS) waiver?~~ (1) The following services are available under the children's intensive in-home behavioral support (CIIBS) waiver:

((CIIBS-Waiver))	((Services)) SERVICE	YEARLY LIMIT
	<del>((Behavior support and consultation))</del> <u>Assistive technology</u> <del>((Staff/family consultation and training</del> •) Environmental adaptations <del>((Occupational therapy</del> • Physical therapy • Sexual devianey evaluation •) Nurse delegation <u>Positive behavior support and consultation</u> <u>Specialized clothing</u> ((•) Specialized medical equipment(+) and supplies <u>Staff and family consultation and training</u> <del>((Specialized psychiatric services</del> • Speech, hearing and language services • Transportation • Assistive technology •) Therapeutic equipment and supplies <del>((Specialized nutrition and clothing))</del> <u>Transportation</u> ((•) Vehicle modifications	Determined by the person-centered service plan((individual support plan)). Total cost of waiver services ((cannot)) <u>must not exceed the average cost of ((\$4,000)) four thousand dollars per month per participant.</u>

(2) A participant's community protection waiver services are subject to additional limits under this chapter.

(3) The total cost of a participant's community protection waiver services must not exceed the average cost of care at an

<del>((CIBS-Waiver))</del>	<del>((Services)) SERVICE</del>	<del>YEARLY LIMIT</del>
	Respite care	Limits determined by the DDA assessment. Costs are included in the total average cost of <del>(((\$4000))</del> <u>four thousand dollars</u> per month per participant for all waiver services.
	<u>BEHAVIORAL HEALTH STABILIZATION SERVICES:</u> <del>Behavioral ((support and consultation)) health crisis diversion bed services</del> <u>Positive behavior support and consultation</u> <del>((Specialized psychiatric services))</del>	Limits determined by behavioral health <del>((specialist))</del> <u>professional or DDA</u>
	<u>Risk assessment</u>	<u>Limits determined by DDA</u>

(2) A participant's CIIBS waiver services are subject to additional limits under this chapter.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0230** ~~What ((is the scope of)) services ((for)) are available under the individual and family services (IFS) waiver?~~ (1) ~~((IFS waiver))~~ The following services ~~((include))~~ are available under the individual and family services (IFS) waiver:

<del>((IFS Waiver))</del>	<del>((Services)) SERVICE</del>	<del>YEARLY LIMIT</del>
	<del>((*) Assistive technology</del> <del>((Behavior support and consultation</del> <del>*) Community engagement</del> <del>((Staff/family consultation and training</del> <del>*) Environmental adaptations</del> <del>((*) Occupational therapy</del>	Total cost of waiver services <del>((cannot))</del> <u>must not exceed annual allocation determined by the person-centered service plan((ASP)).</u>

<del>((IFS Waiver))</del>	<del>((Services)) SERVICE</del>	<del>YEARLY LIMIT</del>
	<del>((*) Peer mentoring</del> <del>Person-centered plan facilitation</del> <del>Physical therapy</del> <del>((Sexual deviancy evaluation (paid for outside of annual allocation))</del> <del>*) Nurse delegation</del> <del>*) Peer mentoring</del> <del>*) Person-centered plan facilitation</del> <del>*) Positive behavior support and consultation</del> <del>Respite care</del> <del>Skilled nursing</del> <del>((*) Specialized clothing</del> <del>*) Specialized medical equipment<del>((*)</del> and supplies</del> <del>((Specialized nutrition))</del> <del>((*) Specialized psychiatric services</del> <del>((*) Speech, hearing, and language services</del> <del>Staff and family consultation and training</del> <del>((*) Supported parenting services</del> <del>((*) Therapeutic equipment and supplies</del> <del>Transportation</del> <del>((Therapeutic equipment and supplies</del> <del>*) Vehicle modifications</del> <del>((*) Wellness education</del>	

((IFS Waiver))	((Services)) SERVICE	YEARLY LIMIT
	<u>Risk assessment</u>	<u>Limits determined by DDA. Costs are excluded from the annual allocation.</u>
	((*) <u>BEHAVIORAL HEALTH STABILIZATION SERVICES:</u> <del>((Behavioral))</del> <u>Positive behavior support and consultation</u> <del>((*)</del> Specialized psychiatric services	Limits determined by behavioral health <del>((specialist))</del> <u>professional or DDA. Costs are excluded from the annual allocation.</u>

(2) Your IFS waiver services annual allocation is based upon the DDA assessment ~~((described in))~~ under chapter 388-828 WAC. The DDA assessment determines your service level and annual allocation based on your assessed need. Annual allocations are as follows:

- (a) Level 1 = one thousand two hundred dollars;
- (b) Level 2 = one thousand eight hundred dollars;
- (c) Level 3 = two thousand four hundred dollars; or
- (d) Level 4 = three thousand six hundred dollars.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0420 Who ~~((is))~~ may be a qualified provider of assistive technology?** The provider of assistive technology must be an entity contracted with DDA to provide assistive technology, or one of the following professionals contracted with DDA and ~~((duly))~~ licensed, registered, or certified ~~((to provide this service))~~ as:

- (1) ~~((Occupational therapist))~~ An audiologist;
- (2) ~~((Physical therapist))~~ A behavior health professional;
- (3) ~~((Speech and language pathologist))~~ A certified music therapist;
- (4) ~~((Certified music therapist))~~ An occupational therapist;
- (5) ~~((Recreation therapist registered in Washington and certified by the national council for therapeutic recreation))~~ A physical therapist;
- (6) ~~((Audiologist))~~ A rehabilitation counselor;
- (7) ~~((Behavior specialist))~~ A speech and language pathologist; or
- (8) ~~((Rehabilitation counselor))~~ A speech therapist.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0425 Are there limits to the assistive technology you ~~((can))~~ may receive?** The assistive technology you may receive has the following limits:

(1) Clinical and support needs for assistive technology are identified in your DDA assessment and documented in the person-centered service ~~((plan/individual support))~~ plan.

~~((2))~~ ~~((Assistive technology may be authorized as a waiver service by obtaining an initial denial of funding or information showing that the technology is not covered by medicaid or private insurance.~~

~~((3))~~ ~~The department does not pay for experimental technology.~~

~~((4))~~ ~~The department))~~ DDA requires your treating professional's written recommendation regarding your need for the technology. This recommendation must take into account that:

(a) The treating professional has personal knowledge of and experience with the requested assistive technology; and

(b) The treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation of your use of the equipment and determined its effectiveness in meeting your identified need.

~~((5))~~ ~~(3)~~ Assistive technology requires prior approval by the DDA regional administrator or designee.

~~((6))~~ ~~The department))~~ ~~(4)~~ DDA may require a written second opinion from a ~~((department))~~ DDA-selected professional ~~((that meets the same criteria in subsection (4) of this section)).~~

~~((7))~~ ~~(5)~~ The dollar amounts for your individual and family services (IFS) waiver annual allocation limit the amount of assistive technology you are authorized to receive.

~~(6)~~ Assistive technology excludes any item that is for recreational or diversion purposes such as a television, cable, or DVD player.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0500 What is positive behavior support and consultation?** (1) Positive behavior support and consultation may be provided to persons on any of the DDA HCBS waivers and includes the development and implementation of programs designed to support waiver participants using:

(a) Individualized strategies for effectively relating to caregivers and other people in the waiver participant's life; and

(b) Direct interventions with the person to decrease aggressive, destructive, and sexually inappropriate or other behaviors that compromise their ability to remain in the community (i.e., training, specialized cognitive counseling, conducting a functional assessment, and development and implementation of a positive behavior support plan).

(2) Positive behavior support and consultation may also be provided as a behavioral health stabilization service in accordance with WAC 388-845-1150 through 388-845-1160.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0501 What is included in positive behavior support and consultation for the children's intensive in-home behavioral support (CIIBS) waiver?** (1) In addition to the definition in WAC 388-845-0500, positive behavior support and consultation in the children's intensive in-home behavioral support (CIIBS) waiver must include ~~((the following characteristics))~~:

(a) ~~((Treatment must be))~~ Treatments that are evidence based, driven by individual outcome data, and consistent with DDA's positive behavior support guidelines as outlined in contract;

(b) ~~((The following written components will be developed in partnership with the child and family by a behavior specialist as defined in WAC 388-845-0506:~~

(i) Functional behavioral assessment; and

(ii) Positive behavior support plan based on functional behavioral assessment;

(c) ~~Treatment goals must be)~~ Objective and measurable ~~((The))~~ treatment goals ~~((must relate to an increase in skill development and a resulting))~~ that decrease ~~((in))~~ challenging behaviors ~~((that impede))~~ and increase skills that promote quality of life for the child and family; ~~((and~~

(d) ~~((c))~~ Behavioral support strategies ~~((will be))~~ individualized and coordinated across all environments, such as home, school, and community, in order to promote a consistent approach among all involved persons; ~~and~~

The following components developed with the child, family, and a behavior specialist under WAC 388-845-0506:

(i) A functional behavioral assessment; and

(ii) A positive behavior support plan based on the functional behavioral assessment.

(2) Positive behavior support and consultation in the CIIBS waiver may ~~((also))~~ include ~~((the following components)):~~

(a) ~~((Behavioral technicians (as defined in WAC 388-845-0506) may implement))~~ Positive behavior support plans implemented by a behavioral technician under WAC 388-845-0506, which may include 1:1 behavior interventions and skill development activity ~~((:));~~

(b) ~~((Positive behavior support plans may include))~~ Recommendations ~~((by either a music and/or recreation therapist, as defined in))~~ from a music therapist under WAC 388-845-2005; and

(c) Recommendations from a recreation therapist under WAC 388-845-2005.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0505 Who is a qualified provider of positive behavior support and consultation?** Under the basic plus, core, ~~((CP))~~ community protection (CP), and individual and family services (IFS) waivers, the provider of positive behavior support and consultation must be one of the following professionals contracted with DDA and duly licensed, registered, or certified ~~((to provide this service))~~ as

- (1) Marriage and family therapist;
- (2) Mental health counselor;
- (3) Psychologist;
- (4) Sex offender treatment provider;
- (5) Social worker;
- (6) Registered nurse (RN) or licensed practical nurse (LPN);
- (7) Psychiatrist;
- (8) Psychiatric advanced registered nurse practitioner (ARNP);

(9) Physician assistant working under the supervision of a psychiatrist;

(10) Counselor~~((s))~~ registered or certified ~~((in accordance with the requirements of))~~ under chapter 18.19 RCW;

(11) Polygrapher; or

(12) State-operated positive behavior support agency ~~((limited))~~ qualified to provide behavioral health stabilization services.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0506 Who is a qualified provider of positive behavior support and consultation for the children's intensive in-home behavioral support((s)) (CIIBS) waiver?** ~~((H))~~ Under the children's intensive in-home behavioral support (CIIBS) waiver, providers of positive behavior support and consultation must be contracted with DDA to provide CIIBS intensive services as ~~((one of the following two provider types))~~ a:

~~((a))~~ (1) Master's or PhD-level behavior specialist ~~((s))~~ who is licensed, certified, or ~~((certified))~~ registered to provide behavioral assessments, interventions, and training; or

~~((b))~~ (2) Behavior technician, licensed, certified, or ~~((certified))~~ registered to provide behavioral intervention and training ~~((, following the lead of))~~ under the supervision of the behavior specialist.

~~((2))~~ Providers of behavior support and consultation per WAC 388-845-0505 may be utilized to provide counseling and/or therapy services to augment the work of the CIIBS intensive service provider types.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0510 Are there limits to the positive behavior support and consultation you** ~~((can))~~ may receive? (1) Clinical and support needs for positive behavior support and consultation ~~((are))~~ must be identified in your DDA assessment and documented in the person-centered service ~~((plan/individual support))~~ plan.

(2) DDA ~~((and the treating professional will))~~ determines the ~~((need and))~~ amount of ~~((service))~~ positive behavior support and consultation you ~~((will))~~ may receive ~~((, subject to the limitations in subsection (3) of this section))~~ based on your needs and information from your treating professional.

(3) The dollar amounts for aggregate services in your basic plus waiver or the dollar amounts in the annual allocation for the ~~((IFS))~~ individual and family services (IFS) waiver limit the amount of service unless provided as a behavioral health stabilization service.

(4) DDA ~~((reserves the right to))~~ may require a second opinion from a ~~((department))~~ DDA-selected provider.

(5) Positive behavior support and consultation not provided as a behavioral health stabilization service requires prior approval by the DDA regional administrator or designee for the following waivers:

(a) Basic plus;

(b) Core;

(c) Children's intensive in-home behavior support (CIIBS); and

(d) IFS.

(6) Positive behavior support and consultation services are limited to services:

(a) Consistent with waiver objectives of avoiding institutionalization; and

(b) Not otherwise covered under the medicaid state plan.

#### NEW SECTION

**WAC 388-845-0515 What is chemical extermination of bedbugs?** (1) Chemical extermination of cimex lectularius (bedbugs) is professional chemical extermination of bedbugs.

(2) DDA covers professional chemical extermination of bedbugs in your primary residence if you:

(a) Receive residential habilitation services; or

(b) Live in a private house or apartment for which you are financially responsible.

#### NEW SECTION

**WAC 388-845-0520 Who are qualified providers of chemical extermination of bedbugs?** A qualified chemical extermination provider must be:

(1) Licensed as a chemical pesticide applicator by the Washington state department of agriculture; and

(2) Contracted with DDA to provide chemical extermination of bedbugs.

#### NEW SECTION

**WAC 388-845-0525 Are there limits to the chemical extermination of bedbugs services I may receive?** (1) Chemical extermination services covers only:

(a) The assessment or inspection by the qualified provider;

(b) Application of chemical-based pesticide; and

(c) One follow-up visit.

(2) Chemical extermination of bedbugs is limited to two treatments per plan year.

(3) Chemical extermination of bedbugs excludes:

(a) Lodging during the chemical extermination process; and

(b) Preparatory housework associated with the extermination process.

(4) DDA does not cover chemical extermination of bedbugs for a participant who lives with their family.

(5) DDA requires prior approval by the regional administrator or designee for chemical extermination of bedbugs.

AMENDATORY SECTION (Amending WSR 17-12-002, filed 5/24/17, effective 6/24/17)

**WAC 388-845-0603 Who is eligible to receive community ((access)) inclusion services?** You are eligible for community ((access)) inclusion services if you are enrolled in the basic plus or core waivers and:

(1) You are sixty-two or older; or

(2) You meet age requirements under WAC 388-845-2110(1) and((:));

(a) You have participated in ((the)) developmental disabilities ((administration (DDA's))) administration (DDA) supported employment services for nine consecutive months; or

(b) DDA has determined that you are exempt from the nine-month DDA supported employment service requirement because:

(i) Your medical or behavioral health records document a condition that prevents you from completing nine consecutive months of DDA supported employment services; or

(ii) You were referred to and were available for DDA supported employment services, but the service was not delivered within ninety days of the referral.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0660 Are there ((limitations)) limits to the community engagement services you ((can)) may receive?** (1) ((Support needs for)) Community engagement services are limited to ((those)) the support needs identified in your DDA assessment and documented in ((the)) your person-centered service plan((individual support plan)).

(2) The dollar amounts in the annual allocation for the individual and family services (IFS) waiver limit the amount of community engagement services you ((can)) may receive((:)).

(3) Community engagement services are limited to the community where you live((; and)).

(4) Community engagement services do not ((pay for the following costs)) cover:

(a) Membership fees or dues;

(b) Equipment related to activities; or

(c) The cost of any activities.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0700 What ((is-a)) are community guide services?** Community guide services ((increases)) increase access to informal community supports. Community guide services are short-term ((and)) services designed to develop creative, flexible, and supportive community resources for individuals with developmental disabilities to meet a goal identified in the waiver participant's person-centered service plan. ((This service is)) These services are available in basic plus and core waivers.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0705 Who ((is)) may be a qualified provider of community guide services?** Any individual or agency contracted with DDA as a ((a)) community guide((is)) may be qualified to provide ((this)) community guide services.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0710** Are there ~~((limitations))~~ limits to the community guide services I ~~((can))~~ may receive? (1) You ~~((may))~~ must not receive community guide services if you are receiving residential habilitation services ~~((as defined in))~~ under WAC 388-845-1500 ~~((because your residential provider can meet this need)).~~

(2) ~~((The dollar limitations for aggregate services in your basic plus waiver limit the amount of service))~~ You may receive community guide services up to the aggregate services dollar amount available to you in your basic plus waiver.

AMENDATORY SECTION (Amending WSR 08-20-033, filed 9/22/08, effective 10/23/08)

**WAC 388-845-0760** Are there ~~((limitations))~~ limits to community transition services I can receive? ~~((+))~~ Community transition services ~~((do))~~ do not include:

- (a) Diversional or recreational items such as televisions, cable TV access, VCRs, MP3, CD<sub>2</sub> or DVD players; ~~((and~~ ~~(b)))~~ (2) Computers, if primarily used as a ~~((diversional))~~ diversion or for recreation; or  
~~((2))~~ (3) Rent assistance ~~((is not available as a community transition service)).~~

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-0800** What is emergency assistance? Emergency assistance is a temporary increase to the yearly basic plus waiver aggregate dollar limit when additional waiver aggregate services are required to prevent ~~((ICF/IID))~~ placement in an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0820** Are there limits to your use of emergency assistance? All of the following ~~((limitations))~~ limits apply to ~~((your use of))~~ the emergency assistance you may receive:

(1) Prior approval by the DDA regional administrator or designee is required based on a reassessment of your person-centered service ~~((plan/individual support))~~ plan to determine the need for emergency services;

(2) Payment authorizations are reviewed every thirty days and ~~((cannot))~~ must not exceed six thousand dollars per twelve months based on the effective date of your current person-centered service ~~((plan/individual support))~~ plan;

(3) Emergency assistance services are limited to the following basic plus waiver aggregate services~~((and))~~:

- (a) Community guide;
- (b) Environmental adaptations;
- (c) Occupational therapy;

- (d) Physical therapy;
  - (e) Positive behavior support and consultation;
  - (f) Skilled nursing;
  - (g) Specialized medical equipment and supplies;
  - (h) Specialized psychiatric services;
  - (i) Speech, hearing, and language services;
  - (j) Staff and family consultation and training, which excludes individual and family counseling;
  - (k) Transportation; and
- (4) Emergency assistance may be used for interim services until:
- (a) The emergency situation has been resolved; ~~((or))~~
  - (b) You are transferred to alternative supports that meet your assessed needs; or
  - (c) You are transferred to an alternate waiver that provides the service you need.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0900** What are environmental adaptations? (1) ~~((Environmental adaptations are available in all of the DDA HCBS waivers.))~~ Environmental adaptations provide physical adaptations within the physical structure of the home, or outside the home to provide access to the home. The need must be identified by the DDA assessment and the participant's person-centered service plan~~((individual support plan)).~~

(2) Environmental adaptations are available in all of the DDA HCBS waivers.

(3) An environmental adaption must ~~((meet one or more of the following criteria))~~ be necessary to:

(a) ~~((Ensure))~~ Maintain the health, welfare, and safety of the ~~((individual or caregiver))~~ participant, the participant's caregiver, or both; or

(b) ~~((Enable the individual who would otherwise require institutionalization to function with greater))~~ Increase the participant's independence in the home.

~~((2))~~ Environmental adaptations may include the purchase and installation of the following:

- (a) Portable and fixed ramps;
- (b) Grab bars and handrails;
- (c) Widening of doorways, addition of pocket doors, or removal of nonweight bearing walls for accessibility;
- (d) Prefabricated roll in showers and bathtubs;
- (e) Automatic touchless or other adaptive faucets and switches;
- (f) Automatic turn-on and shut-off adaptations for appliances in the home;
- (g) Adaptive toilets, bidets, and sinks;
- (h) Specialized electrical or plumbing systems necessary for an approved modification or medical equipment and supplies necessary for either the individual's welfare and safety or caregiver's safety, or both;
- (i) Repairs to environmental adaptations due to wear and tear if necessary for client safety and are more cost-effective than replacement of the adaptation;
- (j) Debris removal necessary due to hoarding behavior addressed in the participant's positive behavior support plan (PBSP);

~~(k) Lowering or raising of counters, sinks, cabinets, or other modifications for accessibility;~~

~~(l) Reinforcement of walls and replacement of hollow doors with solid core doors;~~

~~(m) Replacement of windows with nonbreakable glass;~~

~~(n) Adaptive hardware and switches;~~

~~(o) Ceiling mounted lift systems or portable lift systems; and~~

~~(p) Other adaptations that meet identified needs.~~

~~(3)) (4) Only the children's intensive in-home behavioral support (CIIBS) and individual and family services (IFS) waivers ((only)) may include adaptations to the home necessary to prevent property destruction caused by the participant's behavior, as addressed in the participant's positive behavior support plan.~~

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-0910 What ((limitations)) limits apply to environmental adaptations?** The following service ~~((limitations))~~ limits apply to environmental adaptations:

(1) Clinical and support needs for environmental adaptations ~~((are))~~ must be identified in the waiver participant's DDA assessment and documented in the person-centered service ~~((plan/individual support))~~ plan.

(2) Environmental adaptations require prior approval by the DDA regional administrator or designee and must be supported by itemized and written bids from licensed contractors. For an adaptation that costs:

(a) One ((bid is required for adaptations costing one)) thousand five hundred dollars or less((-Two bids are required for adaptations costing)), one bid is required;

(b) More than one thousand five hundred dollars and equal to or less than five thousand dollars((-Three bids are required for adaptations costing)), two bids are required; or

(c) More than five thousand dollars, three bids are required.

(3) All bids must include:

(a) The cost of all required permits and sales tax; and

(b) An itemized and clearly outlined scope of work.

~~((3)) (4) DDA may require an occupational therapist, physical therapist, or construction consultant to review and recommend an appropriate environmental adaptation statement of work prior to the waiver participant soliciting bids or purchasing adaptive equipment.~~

~~((4)) (5) Environmental adaptations ((or improvements)) to the home are excluded if they are of general utility without direct medical or remedial benefit to the individual, such as carpeting, roof repair, or central air conditioning.~~

~~((5)) (6) Environmental adaptations must meet all local and state building codes. Evidence of any required completed inspections must be submitted to DDA prior to authorizing payment for work.~~

~~((6) Deteriorated) (7) The condition of the dwelling or other ((remodeling)) projects in progress in the dwelling may prevent or limit some or all environmental adaptations at the discretion of DDA.~~

~~((7)) (8) Location of the dwelling in a flood plain, landslide zone, or other hazardous area may limit or prevent any environmental adaptations at the discretion of DDA.~~

~~((8)) (9) Written consent from the dwelling landlord is required prior to starting any environmental adaptations for a rental property. The landlord must not require removal of the environmental adaptations at the end of the waiver participant's tenancy as a condition of the landlord approving the environmental adaptation to the waiver participant's dwelling.~~

~~((9)) (10) Environmental adaptations ((cannot)) must not add to the total square footage of the home.~~

~~((10)) (11) The dollar amounts for aggregate services in your basic plus waiver or the dollar amount of your annual IFS allocation limit the amount of service you may receive.~~

~~((11)) (12) For core, community protection, and CIIBS waivers, annual environmental adaptation costs must not exceed twelve thousand one hundred ninety-two dollars.~~

(13) Damage repairs under the CIIBS and IFS waivers are subject to the following restrictions:

(a) Limited to the cost of restoration to the original ~~((condition))~~ function;

(b) Limited to the dollar amounts of the IFS waiver participant's annual allocation;

(c) Behaviors of waiver participants that resulted in damage to the dwelling must be addressed in a positive behavior support plan prior to the repair of damages; ~~((and))~~

(d) Repairs to personal property such as furniture~~((s))~~ and appliances~~((, and normal wear and tear))~~ are excluded; and

(e) Repairs due to normal wear and tear are excluded.

~~((12)) (14) The following adaptations are not ((included in this service)) covered as an environmental adaptation:~~

(a) Building fences and fence repairs; ~~((and))~~

(b) Carpet or carpet replacement;

(c) Air conditioning, heat pumps, generators, or ceiling fans; and

(d) Roof repair or siding.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-1150 What are behavioral health stabilization services?** (1) Behavioral health stabilization services assist persons who are experiencing a behavioral health crisis ((or meet criteria for enhanced respite or community crisis stabilization services)).

~~((These)) (2) Behavioral health stabilization services are available in the basic plus, core, children's intensive in-home behavior support (CIIBS), individual and family services (IFS), and community protection waivers ((to individuals determined by)).~~

(3) A participant may be eligible for behavioral health stabilization services if:

(a) A behavioral health professional((s)) or DDA ((to be)) has determined the participant is at risk of institutionalization or hospitalization w((he need one or more of the following services));

(b) The participant needs:

~~((1))~~ (i) Positive behavior support and consultation;  
~~((2))~~ (ii) Specialized psychiatric services for people age twenty-one and older; or  
~~((3))~~ (iii) Behavioral health crisis diversion bed services ~~((not))~~ available to participants on the ~~((IFS))~~ basic plus, core, CIIBS, and community protection waivers.

**Reviser's note:** RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

#### NEW SECTION

##### **WAC 388-845-1181 What is occupational therapy?**

(1) Occupational therapy is a service provided to improve, maintain, or maximize the waiver participant's abilities for independent functioning and health maintenance.

(2) Occupational therapy is available under the basic plus, community protection, core, and individual and family services waivers.

#### NEW SECTION

**WAC 388-845-1182 Who may be a qualified provider of occupational therapy?** A qualified provider of occupational therapy must:

(1) Be licensed, registered, and certified as required by law;

(2) Be contracted with the developmental disabilities administration to provide occupational therapy; and

(3) Have a core provider agreement with the health care authority.

#### NEW SECTION

**WAC 388-845-1183 Are there limits to occupational therapy?** (1) Occupational therapy is limited to:

(a) Waiver participants age twenty-one or older;

(b) Services identified in your developmental disabilities administration (DDA) assessment and documented in your person-centered service plan;

(c) The dollar amounts for aggregate services in your basic plus waiver or the dollar amounts in the annual allocation for the individual and family services waiver; and

(d) An amount determined by DDA based on your needs and information from your treating professional.

(2) DDA may require a second opinion from a DDA-selected provider.

#### NEW SECTION

##### **WAC 388-845-1315 What is physical therapy?** (1)

Physical therapy is the evaluation and treatment of functional limitations in movement to facilitate self-care and reintegration into the home, community, or work.

(2) Physical therapy is available under the basic plus, community protection, core, and individual and family services waivers.

#### NEW SECTION

**WAC 388-845-1316 Who may be a qualified provider of physical therapy?** A qualified provider of physical therapy must:

(1) Be licensed, registered, and certified as required by law;

(2) Be contracted with the developmental disabilities administration to provide physical therapy; and

(3) Have a core provider agreement with the health care authority.

#### NEW SECTION

**WAC 388-845-1317 Are there limits to physical therapy?** (1) Physical therapy is limited to:

(a) Waiver participants age twenty-one and older;

(b) Services identified in your developmental disabilities administration (DDA) assessment and documented in your person-centered service plan;

(c) The dollar amounts for aggregate services in your basic plus waiver or the dollar amounts in the annual allocation for the individual and family services waiver; and

(d) An amount determined by DDA based on your needs and information from your treating professional.

(2) DDA may require a second opinion from a DDA-selected provider.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-1600 What is respite care?** (1) Respite care is short-term intermittent care to provide relief for a person~~((s))~~ who~~((=~~

~~((+))~~ lives with you, ~~((are))~~ is your primary care provider~~((s))~~, and ~~((are))~~ is:

(a) Your family member~~((s-who-are))~~ and your paid or unpaid care provider~~((s))~~;

(b) A nonfamily member~~((s))~~ who ~~((are))~~ is not paid to provide care for you;

(c) A contracted companion home provider~~((s))~~ paid by DDA to provide support to you; or

(d) A licensed children's foster home provider~~((s))~~ paid by DDA to provide support to you.

(2) ~~((This service))~~ Respite care is available in the:

(a) Basic plus~~((;))~~ waiver;

(b) Children's intensive in-home behavioral support ~~((CIIBS~~((;))~~))~~;

(c) Core~~((;))~~ waiver; and

(d) Individual and family services (IFS) waiver~~((s))~~.

AMENDATORY SECTION (Amending WSR 17-12-011, filed 5/26/17, effective 6/26/17)

**WAC 388-845-1615 Who may be qualified providers of respite care?** Providers of respite care may be any of the following individuals or agencies contracted with the developmental disabilities administration (DDA) for respite care:

(1) Individuals who meet the provider qualifications under chapter 388-825 WAC;

(2) Homecare~~(/)~~ and home health agencies licensed under chapter 246-335 WAC, Part 1;

(3) Licensed and contracted group homes, foster homes, child placing agencies, staffed residential homes, and foster group care homes;

(4) Licensed and contracted adult family homes;

(5) Licensed and contracted adult residential care facilities;

(6) Licensed and contracted adult residential treatment facilities under chapter 246-337 WAC;

(7) Licensed child care centers under chapter 170-295 WAC;

(8) Licensed child day care centers under chapter 170-295 WAC;

(9) Adult day care providers under chapter 388-71 WAC contracted with DDA;

(10) Certified providers under chapter 388-101 WAC when respite is provided within the DDA contract for certified residential services; ~~((or))~~

(11) A licensed practical nurse (LPN) or registered nurse (RN) acting within the scope of the standards of nursing conduct or practice under chapter 246-700 WAC and contracted with DDA to provide this service; or

(12) Other DDA contracted providers such as a community center, senior center, parks and recreation, and summer programs.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-1620 Are there limits to the respite care you ~~((can))~~ may receive?** The following ~~((limitations))~~ limits apply to the respite care you ~~((can))~~ may receive:

(1) For basic plus, core, and the children's intensive in-home behavioral support (CIIBS) waivers, the developmental disabilities administration (DDA) assessment will determine how much respite you ~~((can))~~ may receive ~~((per))~~ under chapter 388-828 WAC.

(2) For the individual and family services (IFS) waiver, the dollar amount for your annual allocation in your IFS waiver limits the amount of respite care you may receive.

(3) Respite ~~((cannot))~~ must not replace:

(a) Day care while your parent or guardian is at work; or

(b) Personal care hours available to you. ~~((When determining your unmet need, DDA will first consider the personal care hours available to you.))~~

(4) ~~((Respite providers have the following limitations and requirements:~~

~~((a))~~ If you receive respite ~~((is provided))~~ in a private home, the home must be licensed to provide respite care unless ~~((it is))~~ the ~~((client's))~~ home ~~((or))~~ is:

(a) Your private home; or

(b) The home of a relative ~~((of specified degree per))~~ under WAC 388-825-345~~((s))~~.

~~((b))~~ The respite provider cannot be the spouse of the caregiver receiving respite if the spouse and the caregiver reside in the same residence; and

~~((e))~~ (5) If you receive respite from a provider who requires licensure, the respite services are limited to ~~((those))~~

activities and age-specific ~~((services))~~ criteria contained in the provider's license.

~~((5))~~ (6) Your individual respite provider ~~((may))~~ must not provide:

(a) Other DDA services for you during your respite care hours; or

(b) DDA paid services to other persons during your respite care hours.

~~((6))~~ (7) Your primary caregivers ~~((may))~~ must not provide other DDA services for you during your respite care hours.

~~((7))~~ (8) If your personal care provider is your parent and you live in your parent's adult family home you ~~((may))~~ must not receive respite.

~~((8))~~ (9) DDA ~~((may))~~ must not pay for ~~((any))~~ fees ~~((associated with the respite care; for example,))~~ - such as a membership ~~((fees at a recreational facility,))~~ or insurance fee~~((s))~~ - associated with your respite care.

~~((9))~~ (10) If you require respite care from a licensed practical nurse (LPN) or a registered nurse (RN), respite services may be authorized ~~((as skilled nursing services per WAC 388-845-1700))~~ using an LPN or RN. Respite services are limited to the assessed respite care ~~((from a))~~ hours identified in your person-centered service plan. Respite provided by an LPN or RN requires a prior approval ~~((per WAC 388-845-1700(2). If you are on the IFS or basic plus waiver, skilled nursing services are limited to the dollar amounts of your basic plus aggregate services or IFS annual allocation per WAC 388-845-0210 and 388-845-0230))~~ by the regional administrator or designee.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-1650 What ~~((are sexual deviancy evaluations))~~ is a risk assessment? (1) ~~((Sexual deviancy evaluations))~~ A risk assessment is a professional evaluation that:**

(a) ~~((Are professional evaluations that assess the))~~ Assesses a person's needs and the person's level of risk of ~~((sexual offending or sexual recidivism))~~ sexual predatory behavior or aggression;

(b) Determines the need for psychological, medical, or therapeutic services; and

(c) Provides treatment recommendations to mitigate any assessed risk.

(2) ~~((Sexual deviancy evaluations are))~~ A risk assessment is available in all DDA HCBS waivers.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-1655 Who is a qualified provider of ~~((sexual deviancy evaluations))~~ a risk assessment? The provider of ~~((sexual deviancy evaluations))~~ a risk assessment must be a:**

(1) ~~((Be a certified sexual offender treatment provider (SOTP); and))~~ Licensed psychologist under chapter 246-924 WAC; or

(2) ~~((Meet the standards contained in))~~ Certified sexual offender treatment provider (SOTP) and meet requirements under WAC 246-930-030 ~~((education required prior to certi-~~

fication)) and WAC 246-930-040 ((professional experience required prior to examination)) if the provider is performing a risk assessment for sexually aggressive behavior.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-1660** Are there ((limitations)) limits to the ((sexual deviancy evaluations)) risk assessment you ((can)) may receive? (1) Clinical and support needs for ((sexual deviancy evaluations)) a risk assessment are limited to those identified in your DDA assessment and documented in ((the)) your person-centered service ((plan/individual support)) plan. ((Sexual deviancy evaluations))

(2) A risk assessment must meet ((the standards contained in)) requirements under WAC 246-930-320.

((2)) Sexual deviancy evaluations require)) (3) A risk assessment requires prior approval by the DDA regional administrator or designee.

((3)) (4) The cost((s)) of ((sexual deviancy evaluations de)) a risk assessment does not count toward the:

(a) Dollar limit((s)) for aggregate services in the basic plus waiver((s or the));

(b) Annual allocation in the ((IFS)) individual and family services waiver; or

(c) Monthly average cost limit in the children's intensive in-home behavior support waiver.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-1700** What is waiver skilled nursing? (1) Waiver skilled nursing ((is continuous)) means long-term, intermittent, ((or part time)) and hourly skilled nursing services consistent with waiver objectives of avoiding institutionalization. ((These))

(2) Waiver skilled nursing services are available in the basic plus, community protection (CP), core, ((IFS, and CP)) and individual and family services (IFS) waivers.

((2)) (3) Waiver skilled nursing services include nurse delegation services((, per)) provided by a registered nurse under WAC 388-845-1170((, provided by a registered nurse, including the initial visit, follow-up instruction, and supervisory visits)).

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-1710** Are there ((limitations)) limits to the skilled nursing services you ((can)) may receive? The following ((limitations)) limits apply to ((your receipt of)) skilled nursing services you may receive:

(1) Clinical and support needs for skilled nursing services are limited to those identified in your DDA assessment and documented in ((the)) your person-centered service ((plan/individual support)) plan.

(2) Skilled nursing services ((with the exception of)), except for nurse delegation and nursing evaluations, require prior approval by the DDA regional administrator or designee.

(3) ((DDA and the treating professional determine the need for and amount of service)) Skilled nursing hours must not exceed the number of hours determined by the nursing care consultant's skilled nursing assessment.

(4) DDA ((reserves the right to)) may require a second opinion by a ((department)) DDA-selected provider.

(5) The dollar amount for aggregate services in your basic plus waiver or the dollar amount of your annual allocation in your IFS waiver limits the amount of skilled nursing services you may receive.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-1810** Are there ((limitations)) limits to ((your receipt of)) the specialized medical equipment and supplies you may receive? The following ((limitations)) limits apply to ((your receipt of)) the specialized medical equipment and supplies you may receive:

(1) Clinical and support needs for specialized medical equipment and supplies are limited to those identified in ((the waiver participant's)) your DDA assessment and documented in ((the)) your person-centered service plan((/individual support plan)).

(2) Specialized medical equipment and supplies require prior approval by the DDA regional administrator or designee for each authorization.

(3) DDA may require a second opinion by a ((department)) DDA-selected provider.

(4) ((Items purchased with waiver funds must be in addition to any medical equipment and supplies furnished under the Medicaid state plan.

((5)) Items must be of direct medical or remedial benefit to ((the individual)) you and necessary as a result of ((the individual's)) your disability.

((6)) (5) Medications((, prescribed or nonprescribed,)) and vitamins are excluded.

((7)) (6) The dollar amounts for aggregate services in your basic plus waiver limit the amount of service you may receive.

((8)) (7) The dollar amounts for your annual allocation in your individual and family services (IFS) waiver limit the amount of service you may receive.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-1865** Are there ((limitations)) limits to your receipt of specialized clothing? (1) The following ((limitations)) limits apply to ((your receipt of)) specialized clothing you may receive:

(a) Clinical and support needs for specialized clothing are limited to those identified in your DDA assessment and documented in ((the)) your person-centered service ((plan/individual support)) plan.

(b) ((Specialized clothing may be authorized as a waiver service if the service is not covered by Medicaid or private insurance. You must assist the department in determining whether third-party payments are available.

((c)) The department)) DDA requires written documentation from an appropriate health professional regarding your

need for the service. This recommendation must take into account that the health professional has recently examined you, reviewed your medical records, and conducted an assessment.

~~((d) The department)~~ (c) DDA may require a second opinion from a ~~((department))~~ DDA-selected provider ~~((that meets the criteria in subsection (1)(e) of this section))~~.

(2) For the IFS waiver, the dollar amount for your annual allocation limits the amount of service you may receive.

(3) You must receive prior approval from the DDA regional administrator or designee to receive specialized clothing.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

**WAC 388-845-1900 What are specialized psychiatric services?** (1) Specialized psychiatric services are specific to the individual needs of persons with developmental disabilities who are experiencing behavioral health symptoms. These services are available ~~((in all DDA HCBS waivers))~~ to people age twenty-one and older.

(2) ~~((Service may be any of the following))~~ Specialized psychiatric services includes:

- (a) Psychiatric evaluation~~((;))~~;
- (b) Medication evaluation and monitoring~~((;))~~; and
- (c) Psychiatric consultation.

(3) ~~((These))~~ Specialized psychiatric services are also available as a behavioral health stabilization service ~~((in accordance with))~~ under WAC 388-845-1150 through 388-845-1160.

#### NEW SECTION

**WAC 388-845-1915 What are speech, hearing, and language services?** (1) Speech, hearing, and language services are services provided to a person with speech, hearing, and language disorders by or under the supervision of a speech pathologist or audiologist.

(2) Speech, hearing, and language services are available under the basic plus, community protection, core, and individual and family services waivers.

#### NEW SECTION

**WAC 388-845-1916 Who may be a qualified provider of speech, hearing, and language services?** To be a qualified provider of speech, hearing, and language services, a person must:

(1) Be licensed, registered, and certified as an audiologist or speech pathologist as required by law or work under the supervision of a qualified speech pathologist or audiologist;

(2) Be contracted with the developmental disabilities administration to provide speech, hearing, and language services; and

(3) Have a core provider agreement with the health care authority.

#### NEW SECTION

**WAC 388-845-1917 Are there limits to the speech, hearing, and language services you may receive?** (1) Speech, hearing, and language services are limited to:

- (a) Waiver participants age twenty-one and older;
- (b) Services identified in your developmental disabilities administration (DDA) assessment and documented in your person-centered service plan;
- (c) The dollar amounts for aggregate services in your basic plus waiver or the dollar amounts in the annual allocation for the individual and family services waiver; and
- (d) An amount determined by DDA based on your needs and information from your treating professional.

(2) DDA may require a second opinion from a DDA-selected provider.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-2000 What is staff~~((s))~~ and family consultation and training?** (1) Staff~~((s))~~ and family consultation and training is professional assistance to families or direct service providers to help them better meet the needs of ~~((the waiver person))~~ a participant.

~~((This service))~~ (2) Staff and family consultation and training is available in all DDA HCBS waivers.

~~((2))~~ (3) Staff and family consultation and training is provided to families, direct staff, or personal care providers to meet the specific needs of ~~((the waiver))~~ a participant as outlined in the participant's person-centered service plan ~~((individual support plan, including))~~.

- (4) Staff and family consultation and training includes:
- (a) Health and medication monitoring;
  - (b) Positioning and transfer;
  - (c) Basic and advanced instructional techniques;
  - (d) Positive behavior support;
  - (e) Augmentative communication systems;
  - (f) Diet and nutritional guidance;
  - (g) Disability information and education;
  - (h) Strategies for effectively and therapeutically interacting with the participant;
  - (i) Environmental consultation; and
  - (j) For the basic plus, IFS, and CIIBS waivers only, individual and family counseling.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-2010 Are there ~~((limitations))~~ limits to the ~~((staff/family))~~ staff and family consultation and training you ~~((can))~~ may receive?** (1) ~~((Clinical and support needs for staff/family))~~ Staff and family consultation and training are limited to ~~((those))~~ supports identified in your DDA assessment and documented in the person-centered service ~~((plan/individual support))~~ plan.

(2) Expenses to the family or provider for room and board or attendance, including registration, at conferences are excluded as a service under ~~((staff/family))~~ staff and family consultation and training.

(3) The dollar amounts for aggregate service in your basic plus waiver or the dollar amount of the annual allocation in your individual and family services (IFS) waiver limit the amount of ~~((staff/family))~~ staff and family consultation and training you may receive.

(4) Under the basic plus waiver, individual and family counseling is limited to family members who:

(a) Live with the participant; and

(b) Have been assaulted by the participant and the assaultive behavior was:

(i) Documented in the participant's person-centered service plan; and

(ii) Addressed in the participant's positive behavior support plan or therapeutic plan.

**AMENDATORY SECTION** (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-2170 Are there ((limitations on)) limits to your receipt of therapeutic equipment and supplies?** The following ~~((limitations))~~ limits apply to your receipt of therapeutic equipment and supplies under the children's intensive in-home behavior support (CIIBS) and individual and family services (IFS) waivers:

(1) ~~((Therapeutic equipment and supplies may be authorized as a waiver service if the service is not covered by Medicaid or private insurance. You must assist the department in determining whether third party payments are available.~~

(2) ~~The department does not pay for experimental equipment and supplies.~~

(3) ~~The department))~~ DDA requires your treating professional's written recommendation regarding your need for the service. This recommendation must take into account that the treating professional has recently examined you, reviewed your medical records, and conducted a functional evaluation.

~~((4) The department))~~ (2) DDA may require a ~~((written))~~ second opinion from a ~~((department))~~ DDA-selected professional ~~((that meets the same criteria in subsection (3) of this section)).~~

~~((5))~~ (3) The dollar amount of your annual allocation in your IFS waiver limits the amount of therapeutic equipment and supplies you are authorized to receive.

~~((6))~~ (4) Therapeutic equipment and supplies requires a prior approval by the DDA regional administrator or designee.

(5) Therapeutic equipment and supplies excludes non-specialized recreational items such as trampolines, swing sets, and hot tubs.

**AMENDATORY SECTION** (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-3070 What happens if you do not sign your person-centered service plan(~~/individual support plan (ISP)~~)?** ~~((If DDA is unable to obtain the necessary signature for an initial assessment, reassessment, or review of your person-centered service plan/individual support plan (ISP), DDA will take one or more of the following actions:))~~

(1) If ~~((this))~~ you do not sign your initial person-centered service plan(~~/individual support plan is an initial plan~~) (PCSP), DDA ~~((will be unable to))~~ must not provide waiver

services~~((DDA will not assume consent for an initial plan and will follow the steps described in WAC 388-845-3056 (1) and (3)))~~ to you until you sign the PCSP.

(2) If ~~((this person-centered service plan/individual support plan))~~ you do not sign your PCSP and it is a reassessment or review, DDA will:

(a) ~~((DDA will))~~ Continue providing services ~~((as))~~ identified in your ~~((most))~~ current ~~((ISP))~~ PCSP until the end of the ~~((ten-day advance))~~ notice period ~~((as stated in))~~ under WAC 388-825-105~~((:))~~; and

(b) ~~((After DDA signs and dates your complete person-centered service plan/individual support plan, DDA will send it))~~ Return your PCSP to you for your signature.

(3) If you do not return your signed ~~((ISP to DDA))~~ PCSP within two months of your ~~((assessment completion))~~ reassessment or review, DDA ~~((will))~~ must terminate your services.

~~((3) If this person-centered service plan/individual support plan is a reassessment or review and you are not able to understand your ISP, DDA will continue your existing services and take the steps described in WAC 388-845-3056:))~~

(4) ~~((You will be provided written notification and appeal rights to this action to implement the new ISP.~~

~~((5))~~ Your appeal rights are ~~((in))~~ under:

(a) WAC 388-845-4000; and

(b) WAC 388-825-120 through 388-825-165.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-845-1000	What are extended state plan services?
WAC 388-845-1010	Who is a qualified provider of extended state plan services?
WAC 388-845-1015	Are there limits to the extended state plan services you can receive?
WAC 388-845-1200	What are "person-to-person" services?
WAC 388-845-1205	Who are qualified providers of person-to-person services?
WAC 388-845-1210	Are there limits to the person-to-person service I can receive?
WAC 388-845-1840	What is specialized nutrition?
WAC 388-845-1845	Who are qualified providers of specialized nutrition?
WAC 388-845-1850	Are there limitations to your receipt of specialized nutrition?

**WSR 18-09-023**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Economic Services Administration)  
[Filed April 11, 2018, 10:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-04-083.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-406-0010 How do I apply for cash assistance or basic food benefits? and 388-434-0010 How do I get basic food benefits after my certification period has ended?

Hearing Location(s): On May 22, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (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>.

Date of Intended Adoption: Not earlier than May 23, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., May 22, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by May 8, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes proposed under this filing will amend WAC 388-406-0010 and 388-434-0010 to clarify the acceptable means an applicant can use to sign their application for benefits.

Reasons Supporting Proposal: These changes are necessary to implement a state option for basic food authorized by the USDA Food and Nutrition Service allowing applicants to sign their applications via electronic means.

Statutory Authority for Adoption: The state legislature authorizes the department to administer SNAP and food assistance program for legal immigrants under RCW 74.04-500, 74.04.510, and 74.08A.120.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ezra Paskus, 712 Pear Street S.E., Olympia, WA, 360-725-4611.

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

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

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

Is exempt under RCW 19.85.030.

Explanation of exemptions: The proposed rule does not have an economic impact on small businesses.

April 9, 2018

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-10-046, filed 4/30/14, effective 6/1/14)

**WAC 388-406-0010 How do I apply for cash assistance or basic food benefits?** (1) You can apply for cash assistance or basic food by giving us an application form in person, by mail, by fax, or by completing an online application.

(2) ~~((If your entire assistance unit (AU) gets or is applying for supplemental security income (SSI), your AU))~~ You can file an application for basic food at the local Social Security Administration district office (SSADO) if your entire assistance unit (AU) gets or is applying for supplemental security income (SSI).

(3) ~~((If you are incapacitated, a dependent child, or cannot apply for benefits on your own for some other reason,))~~ A legal guardian, caretaker, or authorized representative can apply for you if you are incapacitated, a dependent child, or cannot apply for benefits on your own for some other reason.

(4) You can apply for cash assistance or basic food with ~~((just))~~ one application form.

(5) ~~((If you apply for benefits at a local office,))~~ We accept your application on the same day ~~((you come in,))~~ if you apply for benefits at ~~((an))~~ a local office ~~((that does not serve the area where you live, we send your application to the appropriate office by the next business day so that office receives your application on the same day we send it)).~~

(6) We accept your application for benefits if it has at least:

(a) For cash assistance, the name, address, and signatures of the responsible adult AU members or person applying for you. A minor child may sign if there is no adult in the AU. Signatures must be handwritten, electronic, or digital as defined by the department, or a mark if witnessed by another person.

(b) For basic food, the name, address, and signature of a responsible member of your AU or person applying for you as an authorized representative under WAC 388-460-0005. Signatures must be handwritten, electronic, or digital as defined by the department, or a mark if witnessed by another person.

(7) As a part of the application process, we may require you to:

(a) Complete an interview if one is required under WAC 388-452-0005;

(b) Meet WorkFirst participation requirements for four weeks in a row if required under WAC 388-310-1600(12);

(c) Give us the information we need to decide if you are eligible as required under WAC 388-406-0030;

(d) Give us proof of information as required under WAC 388-490-0005 so we can determine if you are eligible; and

(e) Complete the WorkFirst orientation if required under WAC 388-400-0005(2) or 388-400-0010(3).

(8) If you are eligible for necessary supplemental accommodation (NSA) services under chapter 388-472 WAC, we help you meet the requirements of this section.

AMENDATORY SECTION (Amending WSR 04-19-133, filed 9/21/04, effective 10/22/04)

**WAC 388-434-0010 How do I get basic food benefits after my certification period ~~((has ended))~~ ends?** To keep getting basic food benefits after your certification period in WAC 388-416-0005 ~~((has ended))~~ ends, we must determine if you are still eligible for benefits. This is called recertification.

(1) To be recertified for basic food, you must:

(a) ~~((Turn in and))~~ Sign and turn in an application for benefits as required under WAC 388-406-0010 ~~((If you complete an electronic application, your signature is the password you use to complete the electronic application))~~;

(b) Complete an interview if you are required to have ~~((an interview))~~ one under WAC 388-452-0005; and

(c) Submit needed proof of your circumstances if we ask for it.

(2) ~~((If you reapply timely and get recertified before your certification period ends,))~~ We ~~((will))~~ keep depositing your benefits into your EBT (electronic benefit transfer) account on the same day of the month if you reapply timely and get certified before your certification period ends. To reapply timely, we must get your application by the fifteenth day of the last month of your certification period.

(3) ~~((When we decide if you are eligible for benefits,))~~ We ~~((will))~~ send you a letter ~~((to tell))~~ telling you ~~((that))~~ if your benefits ~~((have been))~~ are approved or denied as required under chapter 388-458 WAC.

(4) ~~((If you reapply timely and complete the steps required in subsection (1) by the fifteenth day of the last month of your certification period,))~~ You will get ~~((the))~~ an approval or denial letter by the end of your current certification period if you reapply timely.

(5) ~~((If you do not turn in an application form by the end of your current certification period, you have not taken the action we require for you to get ongoing Basic Food benefits,))~~ Your basic food benefits stop at the end of your certification period if you do not turn in an application form by the end of your current certification period.

(6) ~~((If you turn in your application before your certification period ends,))~~ We start your basic food benefits from the first of the month of your new certification period ~~((after))~~ if we determine ~~((if))~~ you are eligible.

(a) ~~((If you do not reapply timely,))~~ Your benefits for the first month of your new certification period may be delayed if you do not reapply timely.

(b) You have until the end of the month following your certification period end date to complete an interview if required and provide any requested proof of your circumstances ~~((we requested))~~.

(c) We will not approve your recertification if you do not meet all requirements for verification by the end of the month following your certification end date ~~((, your recertification will not be approved))~~.

~~((7) If you turn in your application after your certification period ends,))~~ We treat ~~((the))~~ your application as a new application for benefits if we receive it after your certification period ends. We start your basic food from the date ~~((you turned in))~~ we received the application after we determine if you are eligible.

**Reviser's note:** The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

## WSR 18-09-039

### PROPOSED RULES

### BIG BEND

### COMMUNITY COLLEGE

[Filed April 12, 2018, 11:02 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-18-052.

Title of Rule and Other Identifying Information: Chapter 132R-175 WAC, Public records.

Hearing Location(s): On June 7, 2018, at 9:30 a.m., at the ATEC Building, Hardin Community Room, 7662 Chanute Street N.E., Moses Lake, WA.

Date of Intended Adoption: June 7, 2018.

Submit Written Comments to: Melinda Dourte, 7662 Chanute Street N.E., Moses Lake, WA 98837, email melindad@bigbend.edu, fax 509-762-6355, by June 4, 2018.

Assistance for Persons with Disabilities: Contact Loralynn Allen, phone 509-793-2027, fax 509-762-6355, email lora@a@bigbend.edu, by May 31, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Compliance with legislative updates (EHB 1595).

Reasons Supporting Proposal: EHB 1595.

Statutory Authority for Adoption: RCW 28B.50.140.

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

Name of Proponent: Big Bend Community College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kim Garza, Administration Building, 7662 Chanute Street N.E., Moses Lake, WA, 509-793-2010.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

Explanation of exemptions: EHB 1595.

April 12, 2018

Melinda Dourte  
Executive Assistant  
to the President

AMENDATORY SECTION (Amending WSR 03-15-063, filed 7/14/03, effective 8/14/03)

**WAC 132R-175-010 Authority and purpose.** (1) The purpose of this chapter ~~((shall be to ensure compliance by))~~ is to establish procedures the Community College District No. 18 ~~(also referred to herein as "the district")~~ will follow to ensure compliance with the provisions of chapter ~~((42.17))~~ 42.56 RCW, ((Disclosure — Campaign finances — Lobbying — Records; and in particular with RCW 42.17.250 through 42.17.348 that deal with public records)) Public Records Act.

(2) Per RCW 42.56.070(1), the Community College District No. 18 makes available for inspection and copying non-exempt "public records" as described in these rules. A public record includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by Community College District No. 18, regardless of physical form or characteristics.

AMENDATORY SECTION (Amending WSR 03-15-063, filed 7/14/03, effective 8/14/03)

**WAC 132R-175-030 ~~((Description of central and field organization of Community College District No. 18))~~ Public records officer.** ~~((The Community College District No. 18 is an institution of higher education. The administrative office of the district and its staff are located at Moses Lake, Washington.))~~ (1) Any person wishing to request access to public records of the district, or seeking assistance in making such a request should contact the district's public records officer, who shall manage all of the district's public records. Throughout this chapter, references to the public records officer shall mean the public records officer or his/her designee.

(2) Any person wishing to request access to public records of the district or seeking assistance in making such a request should contact the public records officer of the district at:

Public Records Officer  
Big Bend Community College  
7662 Chanute Street N.E.  
Moses Lake, WA 98837  
Phone: 509-793-2010  
Fax: 509-762-6355  
Email: publicrecords@bigbend.edu

(3) Information is also available at the Big Bend Community College web site at <http://www.bigbend.edu/information-center/public-information-request/>.

(4) The public records officer and the district shall assist requestors, comply with the Public Records Act, and provide public records training and assistance to college employees.

AMENDATORY SECTION (Amending Order 73-8, filed 5/4/73)

**WAC 132R-175-070 ~~((Office hours.))~~ Availability of public records.** (1) Public records shall be available for inspection and copying during the customary office hours of the district. For the purposes of this chapter, the customary office hours shall be from ~~((9:00 a.m. to noon))~~ 7:30 a.m. to 5:00 p.m., Monday through Thursday and from ~~((1:00 p.m. to 4:00 p.m., Monday through Friday))~~ 7:30 a.m. to 2:30 p.m. on Friday, excluding legal holidays.

(2) The district will maintain its records in a reasonably organized manner. The district will take reasonable actions to protect records from damage and disorganization. A requestor shall not take the district's records from the district's offices without the permission of the public records officer. If, in the judgment of the public records officer, there is a possibility of the destruction of the public record, the public records officer shall make a copy of the record available to the requestor.

(3) A variety of records are available on the Big Bend Community College web site at [www.bigbend.edu](http://www.bigbend.edu). Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

AMENDATORY SECTION (Amending WSR 03-15-063, filed 7/14/03, effective 8/14/03)

**WAC 132R-175-080 Requests for public records.** In accordance with requirements of chapter ~~((42.17 RCW that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency.))~~ 42.56 RCW public records may be inspected or copied or copies of such records may be obtained, by members of the public, upon compliance with the following procedures:

(1) A request ~~((shall))~~ to inspect or copy public records of the district should be made in writing upon a form prescribed by the district ~~((which shall be)),~~ or by letter, fax, or email addressed to the public records officer. The request form prescribed by the district is available at its administrative office and on Big Bend Community College's web page at <http://www.bigbend.edu/information-center/public-information-request/>. The ~~((form shall))~~ request should be presented to the public records officer ~~((; or to any member of the district's staff, if the public records officer is not available.))~~ at the administrative office of the district during customary office hours. The request shall include the following information:

- (a) The name of the person requesting the record;
- (b) The address of the person requesting the record;
- (c) Other contact information, including telephone number and any email address;
- (d) The ((time of day and calendar date on which)) date and time of day when the request was made;
- ~~((e))~~ The nature of the request;
- ~~((d))~~ If the matter requested is referenced within the current index maintained by the records officer, a reference to the requested record as it is described in such current index;

~~(e) If the requested matter is not identifiable by reference to the district's current index, an appropriate description of the record requested.~~

~~(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or staff member to whom the request is made, to assist the member of the public in appropriately identifying the public record requested.)) (e) Adequate identification of the public records for the public records officer to locate the records;~~

~~(f) A verification that the records requested shall not be used to compile a commercial sales list;~~

~~(g) The format the requestor wants to receive the documents in, which should include whether the request is to inspect documents or purchase copies.~~

~~(2) The public records officer or designee may accept requests for public records that contain the information in this section 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 132R-175-085 Processing of public records requests.** (1) The public records officer will process requests in the order that allows the most requests to be processed in the most efficient manner. District employees who receive a request for public records shall immediately forward the request to the public records officer.

(2) 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 and 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; or

(d) If the request is unclear or does not sufficiently identify the requested records, request clarification from the requestor. Such clarification may be requested and provided by telephone. The public records officer may revise the estimate of when records will be available; or

(e) Deny the request.

(3) If the district 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 determine the reason for the failure to respond.

(4) When a request for records in an electronic format is received, the public records officer will provide the nonexempt records or portion of such records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially available or in a format that is reasonably translatable from the format in which the agency keeps the record.

(5) In the event that the requested records contain information that may affect the rights of others and may be exempt from disclosure, the public records officer may, prior to pro-

viding the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(6) Some records are exempt from disclosure, in whole or in part. If the district 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, the public records officers will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(7) Inspection of records.

(a) Consistent with other demands, the district 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.

(b) The requestor must claim or review the assembled records within thirty days of the district's notification to him or her that the records are available for inspection or copying. The agency will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the agency to make arrangements or the district 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.

(8) 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.

(9) 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 district has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

(10) 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 district has closed the request.

(11) If, after the district has informed the requestor that it has provided all available records, the district 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 03-15-063, filed 7/14/03, effective 8/14/03)

**WAC 132R-175-090 ((Copying)) Costs of providing copies of public records.** The college may charge a reason-

able fee for providing public records in response to requests under chapter 42.56 RCW received on or after July 23, 2017.

(1) Pursuant to RCW 42.56.120 (2)(b), Big Bend Community College finds that it is unduly burdensome for the college to calculate the actual costs to provide records due to insufficient resources to conduct a comprehensive study to determine actual costs and the interruption of essential college business that would result from conducting such a comprehensive study.

(2) The college reserves the right to charge fees to the requester in accordance with the amounts provided in RCW 42.56.120. The college may also use any other method authorized by the Public Records Act for imposing charges for public records including, but not limited to, charging a flat fee, charging a customized service charge, or charging based on a contract, memorandum of understanding, or other agreement with a requestor.

(3) No fee shall be charged for the inspection of public records (~~The district shall charge a fee of twenty-five cents per page of copy for providing copies of public records and for use of the district copy equipment. This charge is the amount necessary to reimburse the district for its actual costs incident to such copying. At least five working days may be required to provide copies of public records~~) or locating public documents and making them available for copying, with the exception of the customized service charge allowed in RCW 42.56.120.

(4) The college may waive charges assessed for records when the public records officer determines collecting a fee is not cost effective.

(5) The public records officer may require an advance deposit of ten percent of the estimated fees when the copying fees for an installment or an entire request, or customized service charge, exceeds twenty-five dollars.

(6) All required fees must be paid in advance of release of the copies or an installment of copies, or in advance of when a deposit is required. The district will notify the requestor when payment is due.

(7) Payment should be made by check or money order to Big Bend Community College. The district prefers not to receive cash. For cash payments, it is within the public records officer's discretion to determine the denomination of bills and coins that will be accepted.

(8) The district will close a request when a requestor fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

**AMENDATORY SECTION** (Amending WSR 03-15-063, filed 7/14/03, effective 8/14/03)

**WAC 132R-175-100 Exemptions.** (1) The district reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 132R-175-080 is exempt under the provisions of (~~RCW 42.17-310~~) chapter 42.56 RCW or any other law that exempts or prohibits disclosure. All denials of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a

brief explanation of how the exemption applies to the record withheld.

(2) In addition, pursuant to chapter (~~42.17~~) 42.56 RCW, the district reserves the right to delete/redact portions of documents. If deletions/redactions are made they will be accompanied by a written statement specifying the reason for the deletion/redaction, including a statement of the specific exemption authorizing the deletion/redaction and a brief explanation of how the exemption applies to the information which is deleted/redacted.

(3) The district maintains a nonexclusive list of records that it considers exempt from disclosure on its public records web site at <http://www.bigbend.edu/information-center/public-information-request/>.

**AMENDATORY SECTION** (Amending WSR 03-15-063, filed 7/14/03, effective 8/14/03)

**WAC 132R-175-110 Review of denials of public records requests.** (1) Any person who objects to the initial denial or partial denial of a request for a public record may petition in writing (including email) for prompt review of such decision by tendering (~~a written~~) the request for review. The written request shall specifically refer to the written statement by the public records officer (~~or other staff member~~) which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other staff member denying the request shall refer it to the president of the college. The president shall immediately consider the matter and either affirm or reverse such denial or call a special meeting of the board of trustees as soon as legally possible to review the denial. In any case, the request shall be returned with a final decision, within two business days following the (~~original denial~~) receipt of the petition, or within such other time as the district and the requestor mutually agree upon.

(3) Administrative remedies shall not be considered exhausted until the district has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever occurs first.

(4) Pursuant to RCW 42.56.530, if the district 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.

(5) 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.

**AMENDATORY SECTION** (Amending WSR 03-15-063, filed 7/14/03, effective 8/14/03)

**WAC 132R-175-130 Records index.** (1) The public records officer shall establish a central district index which shall be the district's master index to be coordinated with subsidiary indexes established in each major administrative area of the college, specifically:

(a) The office of the secretary to the board of trustees of the district (which is the office of the president of Big Bend Community College);

(b) The office of the president of Big Bend Community College;

(c) The office of the vice president of learning and student success; and

(d) The office of the vice president for finance and administration.

(2) The district shall make available to all persons a current index which provides identifying information as to the following records issued, adopted or promulgated since its inception:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute and the constitution which have been adopted by the agency;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

~~((2))~~ (3) The current index promulgated by the district shall be available to all persons under the same rules and on the same conditions as are applied to public records available for inspection.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132R-175-020	Definitions.
WAC 132R-175-040	Operations and procedures.
WAC 132R-175-050	Public records available.
WAC 132R-175-060	Public records officer.
WAC 132R-175-120	Protection of public records.
WAC 132R-175-140	District's address.
WAC 132R-175-150	Adoption of form.
WAC 132R-175-160	Request for public record.

#### **WSR 18-09-062**

#### **PROPOSED RULES**

#### **WESTERN WASHINGTON UNIVERSITY**

[Filed April 16, 2018, 10:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-20-091.

Title of Rule and Other Identifying Information: Chapter 516-36 WAC, Use of university facilities—Scheduling and adoption of new chapter 516-35 WAC, Use of university property—Freedom of expression and assembly.

Hearing Location(s): On May 22, 2018, at 12:15 p.m., at Western Washington University, Main Campus, 516 High Street, Board Room, Old Main 340, Bellingham, WA 98225.

Date of Intended Adoption: June 15, 2018.

Submit Written Comments to: Jennifer L. Sloan, Western Washington University, 516 High Street, Bellingham, WA 98225-9015, email Jennifer.Sloan@wwu.edu, fax 360-650-6197, by May 21, 2018.

Assistance for Persons with Disabilities: Contact Jennifer Sloan, phone 360-650-3117, fax 360-650-6197, email Jennifer.Sloan@wwu.edu, by May 11, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The manifestation of violence and intimidation observed in on-campus demonstrations in Washington state and across the United States necessitate[s] changes to chapter 516-36 WAC, which includes separating regulations previously codified under the original chapter 516-36 WAC through the adoption of new chapter 516-35 WAC, in order to preserve the integrity of Western Washington University's educational mission, to protect the health, safety and welfare of students, faculty and staff, and to preserve university property and scarce state resources. Amendments to chapter 516-36 WAC include: Change in title from Use of university facilities—Scheduling to Use of university property—Scheduling and general use. New WAC 516-36-001 describes the general policy and purpose of the WAC. New WAC 516-36-004 directs readers to chapter 516-35 WAC for rules regarding freedom of expression and assembly. New WAC 516-36-008 defines terms used in the chapter. Amended WAC 516-36-020 states how to request use of university property and who should receive the request. New WAC 516-36-025 outlines the duties of the requester and states provisions that may be placed on use of university property. Amended WAC 516-36-030 includes limitations on use of university property. New WAC 516-36-035 concerns fees. The current rule has a fees section; however, due to organization of the amended chapter it was relocated and a new section was created. Amended WAC 516-36-040 states how university property may be used for private or commercial enterprise or charitable use. New WAC 516-36-060 describes how one could obtain a permit for a parade.

Reasons Supporting Proposal: To ensure the safety of the campus community and preserve university property and scarce state resources.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

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

Name of Proponent: [Western Washington University], public.

Name of Agency Personnel Responsible for Drafting and Implementation: Eric Alexander, Associate Dean, Student Engagement/Director VU, VU 545, 360-650-3451; and Enforcement: Darin Rasmussen, Director of Public Safety/Chief of Police, Campus Services, 360-650-3555.

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

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

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

Is exempt under RCW 19.85.025(4).

Explanation of exemptions: The proposed changes to chapter 516-36 WAC and adoption of chapter 516-35 WAC are for the purposes of regulating the noncommercial use of property wholly owned by the university.

April 16, 2018  
Jennifer L. Sloan  
Rules Coordinator

### Chapter 516-35 WAC

## USE OF UNIVERSITY PROPERTY—FREEDOM OF EXPRESSION AND ASSEMBLY

### NEW SECTION

**WAC 516-35-001 Definitions.** As used in this chapter, the following words and phrases mean:

(1) **Business day.** Any day, Monday through Friday (excluding holidays), during which university offices are open.

(2) **Freedom of expression and assembly.** Any activity protected by the first amendment to the Constitution of the United States and Article I, sections 4 and 5 of the Washington state Constitution. Such activities may include, but are not limited to, informational picketing, petition circulation, distribution of information leaflets or pamphlets, speech-making, demonstrations, rallies, noncontracted appearances of speakers, protests, meetings to display group feelings or sentiments, and other types of constitutionally protected assemblies to share information, perspective, or viewpoints. Freedom of expression or assembly that involves the placement of any furniture, hardware, prop, vehicle, display, sound amplification, or audio-visual device or other object on university property requires prior approved space reservation. To reserve use of university property, refer to chapter 516-36 WAC.

(3) **Limited public forum areas.** Areas of campus available as spaces for freedom of expression and peaceable assembly as protected by the Constitution of the United States and the Washington state Constitution, subject to reasonable time, place, and manner restrictions. Limited public forum areas do not include:

(a) Classrooms or academic buildings conducting scheduled educational programming with the exception that nothing herein shall be read to interfere between or with the aca-

demically freedom of the instructor and enrolled students to engage in educational programs;

(b) Reservable or scheduled property subject to the provisions of chapter 516-36 WAC;

(c) Private administrative or academic offices;

(d) Lavatory or maintenance facilities;

(e) Roadways or sidewalks necessary to permit the free flow of pedestrian, vehicular, emergency responder, or maintenance traffic; or

(f) Any other university property, on a case-by-case basis, where the reasonable application of time, place, and manner restrictions render the location inappropriate for expressive activities.

(4) **Nonuniversity group or individual.** An individual or a collection of individuals who do not have a formal relationship with the university. The term also includes members of these groups who are individually affiliated with the university who desire to use university property for personal, private, or nonuniversity group related activities.

(5) **Time, place, and manner.** Reasonable limitations on the exercise of expressive rights that are neutral as to the content of expression and leave open alternative channels of expression.

(6) **University.** Western Washington University.

(7) **University affiliate.** An entity that has a formal relationship with the university and also encompasses such entity's officers, agents, and employees. The term includes, but is not limited to, the office of the attorney general, contracted agencies, and 501(c)(3) organizations with formal relationships to the university.

(8) **University group or individual.** An individual or collection of individuals that has a formal relationship with the university, such as a recognized employee group of the university, a registered student group or organization or an individual acting on behalf of the group or organization as well as an individual who is a currently enrolled student or current employee.

(9) **University property.** All buildings, grounds, or assets owned or controlled by the university and the streets, sidewalks, plazas, parking lots, and roadways within the boundaries of property owned or controlled by the university.

### NEW SECTION

**WAC 516-35-005 General policy and purpose.** The university believes that freedom of expression and assembly are indispensable qualities of university life, and that active participation in political and social expression both enhances the education of the individual and contributes to the betterment of society. The university is committed to respecting and promoting the rights afforded by the constitutions of the United States and the state of Washington, including the right to free speech, petition, and to peaceably assemble.

University property is intended for use by students, faculty, and staff in support of the university's mission of teaching, research, and public service. Individuals, groups, or organizations may use university property in accordance with university rules and regulations.

To achieve the objectives of this chapter, it is essential that free expression be accomplished in a manner that allows

for the orderly function of normal university operations. Thus, the purpose of the time, place, and manner regulations set forth in this chapter are to:

(1) Promote opportunities for exercise of the rights protected by the constitutions of the United States and the state of Washington on the university campus.

(2) Ensure that these activities do not interfere with the furtherance of the university's mission-related responsibilities for which the university's property is dedicated by the state of Washington.

#### NEW SECTION

##### **WAC 516-35-010 Use of university property—**

**Notice.** (1) Any nonuniversity group or individual who desires to use a limited public forum area on a temporary basis for freedom of expression or assembly in which more than fifty people are likely to assemble, must submit notice of planned use to the university police department and to the dean of students not less than fifteen business days prior to use. However, use may be permitted with less notice so long as the use does not interfere with any other function or university operations.

(2) University affiliates or university groups or individuals who desire to use university property or a limited public forum area on a temporary basis for freedom of expression or assembly must adhere to applicable policies and laws and are requested to provide notice to the university police department and dean of students.

(3) Submitted notices may include, but are not limited to, the following:

(a) The contact information for the persons or organizations, including the organization's name and its contact person's name, person's name, address, email address, and telephone number;

(b) The date, time, and location requested for use;

(c) The nature and purpose of the use;

(d) The estimated number of people expected to be involved, including participants, spectators, supporters, and detractors or others; and

(e) Other information as may be reasonably requested.

#### NEW SECTION

##### **WAC 516-35-020 Use of university property—Evaluation.**

(1) The president, or the president's designee, shall have the authority to accept, modify, or reject, in whole or in part, the planned use outlined or described in the notice submitted pursuant to this chapter.

(2) In evaluating a notice submitted pursuant to this chapter, the president, or the president's designee, may consider a variety of factors including, but not limited to, the following:

(a) Whether a university program or activity is scheduled at the location requested. First priority shall be given to the university program or scheduled activity;

(b) Whether the use is in connection with a university program or activity;

(c) Whether the intended use is compatible with the educational mission and objectives of the university.

(3) The president, or the president's designee, may specify reasonable fire, safety, law enforcement, sanitation, cleanup, insurance, and other risk- or impact-mitigating requirements for the use of university property. Charges may be applied in the event any of these requirements are deemed to have costs associated with them. The university will not provide utility connections or hookups.

(4) Whenever the president, or the president's designee, rejects, either in whole or in part, a request for use of university property, the reasons for such rejection shall be stated in writing.

#### NEW SECTION

##### **WAC 516-35-030 Use of university property—**

**Exceptions and termination of use.** The president, or the president's designee, may apply time, place, and manner exceptions to limit, relocate, reschedule, terminate, cancel, or prohibit the use of university property for freedom of expression activities to protect persons or property from harm and the disruption of university operations including, but not limited to, violations of WAC 516-24-130, 516-52-020, or other laws or university policies.

#### NEW SECTION

##### **WAC 516-35-040 Unscheduled expression and assembly—University affiliates or a university group or individual.**

Protecting impromptu and spontaneous peaceable assembly for the purposes of expression, protest, and dissent is essential to fulfilling the university's commitment to freedom of expression and assembly. Thus, the lack of notice to use university property by university affiliates or a university group or individual is not necessarily a sole basis for terminating any expressive activity, including impromptu activities, unless the protest or assembly conflicts with a previously scheduled event in the same location or is in violation of law and/or university policy including, but not limited to, WAC 516-24-130 and 516-52-020.

To ensure space is available for expression or assembly, university affiliates or a university group or individuals are encouraged to provide notice.

#### **Chapter 516-36 WAC**

##### **USE OF UNIVERSITY ((~~FACILITIES~~)) PROPERTY—SCHEDULING AND GENERAL USE**

AMENDATORY SECTION (Amending WSR 90-10-042, filed 4/27/90, effective 5/1/90)

**WAC 516-36-001 Use of university ((~~facilities by off-campus persons or groups—Requests~~)) property—General policy and purpose. ((Any person who is not affiliated with the university and who desires to use university facilities on a temporary basis for purposes other than assigned university activities shall submit a request for use of university facilities to the president or his designee.)) Western Washington University is an educational institution provided and maintained by the people of the state of Washington in order to carry out its broad missions of teaching, research, and pub-**

lic service. A state agency is under no obligation to make its public property available to the community for private purposes, and the university generally reserves its property, buildings, and grounds for its mission-related activities, including: Instruction, research, assembly, student activities, and recreational activities related to education. However, the university makes property available for a variety of uses that are of benefit to the general public under the conditions set forth in these regulations if such general uses substantially relate to, or do not interfere with, university missions.

The purpose of these regulations is to establish procedures and reasonable controls for the use of university property by nonuniversity groups or individuals, university affiliates, university groups or individuals, or students, faculty, or staff who desire to use university property for personal, private, or nonuniversity group related activity.

Reasonable conditions may be imposed to regulate the timeliness of requests, to determine the appropriateness of space assigned, time of use, and to ensure the proper maintenance of the property.

#### NEW SECTION

**WAC 516-36-004 Freedom of expression and assembly activities not covered.** Use of university property for freedom of expression and assembly activities is governed by rules set forth in chapter 516-35 WAC. This chapter does not apply to those individuals or groups using university property for freedom of expression and assembly activities.

#### NEW SECTION

**WAC 516-36-008 Definitions.** As used in this chapter, the following words and phrases mean:

(1) **Business day.** Any day, Monday through Friday (excluding holidays), during which university offices are open.

(2) **Freedom of expression and assembly.** Any activity protected by the first amendment to the Constitution of the United States and Article I, sections 4 and 5 of the Washington state Constitution. Such activities may include, but are not limited to, informational picketing, petition circulation, distribution of information leaflets or pamphlets, speechmaking, demonstrations, rallies, noncontracted appearances of speakers, protests, meetings to display group feelings or sentiments, and other types of constitutionally protected assemblies to share information, perspective, or viewpoints.

(3) **Limited public forum areas.** Areas of campus available as spaces for freedom of expression and peaceable assembly as protected by the Constitution of the United States and the Washington state Constitution, subject to reasonable time, place, and manner restrictions. The use of limited public forum areas for freedom of expression and peaceable assembly activities is governed by chapter 516-35 WAC. Limited public forum areas are identified in WAC 516-35-001. Limited public forum areas do not include property such as:

(a) Classrooms or academic buildings conducting scheduled educational programming with the exception that nothing herein shall be read to interfere between or with the aca-

ademic freedom of the instructor and enrolled students to engage in educational programs;

(b) Reservable or scheduled property subject to the provisions of this chapter;

(c) Private administrative or academic offices;

(d) Lavatory or maintenance facilities;

(e) Roadways or sidewalks necessary to permit the free flow of pedestrian, vehicular, emergency responder, or maintenance traffic; or

(f) Any other university property, on a case-by-case basis, where the reasonable application of time, place, and manner restrictions render the location inappropriate for expressive activities.

(4) **Nonuniversity group or individual.** An individual or a collection of individuals who do not have a formal relationship with the university. The term also includes members of these groups who are individually affiliated with the university who desire to use university property for personal, private, or nonuniversity group related activities.

(5) **Space administrator.** A university employee, appointed by the president, or the president's designee, who has the authority and responsibility for a designated subset of university property to create and enforce policies and procedures for space use, delegate space approval authority, and are responsible for university space being used in accordance with this chapter, chapter 516-35 WAC, and the university mission.

(6) **Space approval authority.** A university employee who has the authority, consistent with these regulations and approved campus policies and procedures, to review, approve, amend, or deny requests for rental or use of university property.

(a) The university shall maintain a list of the approving authorities.

(b) Requests for approval to lease space shall be governed by chapter 516-34 WAC.

(7) **Time, place, and manner.** Reasonable limitations on the exercise of expressive rights that are neutral as to the content of expression and leave open alternative channels of expression.

(8) **University.** Western Washington University.

(9) **University affiliate.** An entity that has a formal relationship with the university and also encompasses such entity's officers, agents, and employees. The term includes, but is not limited to, the office of the attorney general, contracted agencies, and 501(c)(3) organizations with formal relationships to the university.

(10) **University group or individual.** An individual or collection of individuals that has a formal relationship with the university, such as a recognized employee group of the university, a recognized student group or organization, or an individual acting on behalf of the group or organization as well as an individual who is a currently enrolled student or current employee.

(11) **University property.** All buildings, grounds, or assets owned or controlled by the university and the streets, sidewalks, plazas, parking lots, and roadways within the boundaries of property owned or controlled by the university.

AMENDATORY SECTION (Amending WSR 90-10-042, filed 4/27/90, effective 5/1/90)

**WAC 516-36-020 Use of university ((facilities by off-campus persons or groups—Evaluation of request for use)) property—Requests.** ~~((1) The president, or the president's designee, shall have the authority to accept or reject, in whole or in part, a request submitted pursuant to WAC 516-36-001.~~

~~(2) In evaluating a request submitted pursuant to WAC 516-36-001, the president shall consider the following factors:~~

~~(a) Whether the facilities requested are to be used in connection with a regularly scheduled university program.~~

~~(b) Whether the intended use of the university's facilities is compatible with the educational mission and objectives of the university.~~

~~(c) Whether the intended use might cause a disruption of the university's relationship with the local community by conflicting with services provided by private enterprise within the Bellingham area.~~

~~(d) The capabilities, qualifications, experience, and financial stability of the individual, organization, or group submitting the request.~~

~~(3) Whenever the president (or the president's designee) rejects, either in whole or in part, a request for use of university facilities, the reasons for such rejection shall be stated in writing.) (1) Requests for rental or use of university property must be directed to the space approval authority.~~

(2) Requests for leasing of university property must be directed to the vice president for business and financial affairs, the university president, or the president's designee, and governed by chapter 516-34 WAC.

(3) If a requestor is uncertain where to direct a request to use university property, or if the approving authority for a particular university property is not on the university list, the requestor should address the request to the vice president for business and financial affairs or designee.

#### NEW SECTION

**WAC 516-36-025 Scheduling and reservation practices—Duties of requestor.** (1) The primary purpose of university property is to serve the university's instructional, research, and public service activities. However, when not required for scheduled university use, property may be available for rental by nonuniversity groups or individuals in accordance with current fee schedules and other relevant terms and conditions.

(2) No university property may be used by individuals or groups unless the property, including buildings, equipment, and land, have been reserved. Reservations may not be required in limited public forum areas if the intended use of the property would not cause cost to the university or impact scheduled university activity.

(3) Requests to use university property are made to the space approval authority, as defined in WAC 516-36-008(6) and in accordance with WAC 516-36-020.

(4) The space approval authority may deny the request to use university property when such use would violate any of the limitations set forth in WAC 516-36-030 or where the

requestor is unwilling to comply with university requirements for the use of property, as authorized by this chapter.

(5) The university may require an individual or organization to make an advance deposit, post a bond or obtain insurance to protect the university against cost or other liability as a condition to allowing use of any university property.

(6) When the university grants permission to an individual or organization to use its property it is with the understanding and on the condition that the individual or organization assumes full responsibility for any loss or damage resulting from such use and agrees to hold harmless and indemnify the university against any loss or damage claim arising out of such use.

(7) The university and/or government authorities may specify fire, safety, sanitation, and special regulations for activities occurring in, on or with university property. It is the responsibility of the user to obey those regulations, as well as to comply with other applicable university policies, procedures, rules, regulations, and state, local, and federal laws.

AMENDATORY SECTION (Amending WSR 90-10-042, filed 4/27/90, effective 5/1/90)

**WAC 516-36-030 Limitations on use ((of university facilities by off-campus persons or groups—Assessment of fees)).** ~~((1) The president, or the president's designee, shall have authority to establish a schedule of fees to govern the use of university facilities by persons who are not affiliated with the university, and to alter or modify the fee schedule whenever such action is deemed to be necessary or appropriate or in the best interests of the university. The fee for each campus facility shall be sufficient to insure the recovery by the university of all direct and indirect costs associated with the use of the facility, including all direct and indirect costs of goods or services furnished by the university in connection with the use of the facility.~~

(2) The president, or the president's designee, may waive all or part of the normal fee for use of a particular facility by persons not affiliated with the university under the following circumstances:

(a) Members of the university community will receive a substantial benefit from the intended use of the facility and no person or group will derive profit from the intended use of the facility; or

(b) ~~The group requesting the use of the university's facility is an agency of the state of Washington.)~~ The following limitations apply to all uses of any university property, unless specifically permitted by the university for special events:

(1) University property may not be used in ways which obstruct vehicular, bicycle, pedestrian, or other traffic or otherwise interfere with ingress or egress to the university, any university building or facility, or that obstruct or interfere with educational activities or other lawful activities on university grounds, university controlled property, or at university sponsored events unless approved by the president, or the president's designee.

(2) University property may not be used in ways that interfere with educational, research, or public service activities inside or outside any university building or otherwise

prevent the university from fulfilling its mission and achieving its primary purpose.

(3) University property may not be used for the purpose of campaigning regarding a ballot proposition or by, for, or against candidates who have filed for public office, except that:

(a) This provision does not apply to candidates for Western Washington University student offices or student ballot propositions:

(b) University groups may sponsor candidate forums as well as issue forums regarding ballot propositions:

(c) Candidates for office and proponents or opponents of ballot propositions may rent university property as a nonuniversity group or individual on a short-term basis for campaign purposes to the same extent and on the same basis as may other individuals or groups:

(d) Candidates for office and proponents or opponents of ballot propositions may use the limited public forum areas using the procedures of chapter 516-35 WAC to the same extent and on the same basis as may other individuals or groups; and

(e) For informational purposes, a university group may invite a candidate or another political speaker to one of the meetings of its membership on university property, if it has complied with the scheduling procedures of WAC 516-36-025 and applicable university policy.

(4) University property may not be used in ways that create safety hazards or pose unreasonable safety risks to students, employees, invitees, or guests.

(5) University property may not be used for commercial purposes, including: Advertising, commercial solicitation, sales, or other activities to promote a product, except as allowed under WAC 516-36-040.

(6) University property may not be used in furtherance of or in connection with illegal activity.

(7) University property may not be used in such manner as to create a hazard or result in damage to university property.

(8) University property may not be used where such use would create undue stress on university resources (e.g., a request for a major event may be denied if another major event is already scheduled for the same time period, because of demands for parking, security coverage, etc.); use of limited public forum areas for freedom of expression and assembly must be in accordance with chapter 516-35 WAC.

(9) Use of audio amplifying equipment or sound generation is permitted only in locations and at times that will not disturb the normal conduct of university operations. Advance permission by the president, or the president's designee, is required to use audio amplifying equipment or generate sound that may disturb the normal conduct of university operations.

(10) Alcoholic beverages may be served only as allowed under university policies. It is the responsibility of the event sponsor to obtain all necessary licenses from the Washington state liquor and cannabis board and adhere to their regulations, as well as all local ordinances, university rules, and regulations.

(11) No person may erect a tent or other shelter on university property or remain overnight on university property,

including in a vehicle, trailer, tent, or other shelter, with the following exceptions:

(a) The use and occupancy of university housing in accordance with chapter 516-56 WAC;

(b) The use of property by a university employee or agent who remains overnight to fulfill the responsibilities of their position;

(c) The use of property by a university student who remains overnight to fulfill the responsibilities of their course of study;

(d) The use of property where overnight stays are specifically permitted in identified locations for attendees at special events designated by the university.

(e) The use of property during a university, local, state or federal declaration of an emergency as determined by the president, or the president's designee.

(12) Signs and posters and visual displays may be placed only at those locations authorized under, and in accordance with university policies.

(13) Handbills, leaflets, pamphlets, flyers, and similar materials may be distributed only in relation to university sanctioned activities or for purposes of freedom of expression. Materials may not be distributed in a manner that results in littering or requires university resources for disposal.

(14) Animals are only allowed on university property in accordance with WAC 516-52-010 and university policies.

(15) Smoking is not allowed in or on university property, except in accordance with chapter 70.160 RCW.

(16) Mopeds, Segways, skateboards, roller skates, roller blades, bicycles, and similar personal transportation devices may be used on campus in accordance with chapters 516-13 and 516-15 WAC.

#### NEW SECTION

**WAC 516-36-035 University property rental/use fees.** (1) The president or the president's designee shall have authority to establish a schedule of fees to govern the use of university property and to alter or modify the fee schedule whenever such action is deemed to be necessary or appropriate or in the best interests of the university. The fee for use of university property shall be sufficient to ensure the recovery by the university of all direct and indirect costs associated with the use of the university property, including all direct and indirect costs of goods or services furnished by the university in connection with the use of the property.

(2) The president or the president's designee may waive all or part of the normal fee for use of a particular university property by persons not affiliated with the university under the following circumstances:

(a) Members of the university community will receive a substantial benefit from the intended use of the university property and no person or group will derive profit from the intended use of the property; or

(b) The group requesting the use of the university's property is a subdivision or agency of the state of Washington; or

(c) The intended use of the property is transient and would not cause a cost to the university.

(3) In the event that the fee for the use of particular university property has not been placed on the fee schedule, and

if the university determines to allow the use of the property, the university will assess a fee based upon the full cost, direct and indirect, of using the property.

(4) The president or the president's designee reserves the right to create differential fee schedules for use of university property by university groups and university affiliates.

AMENDATORY SECTION (Amending WSR 90-10-042, filed 4/27/90, effective 5/1/90)

~~WAC 516-36-040 ((Use of facilities by persons or groups affiliated with the university—Authority to develop policies.))~~ Private or commercial enterprise or charitable use. ((The president, or the president's designee, shall have authority to develop and implement policies relating to the use of university facilities by persons or groups affiliated with the university.)) (1) University property may not be used for private or commercial gain, including: Commercial advertising; solicitation and merchandising of any food, goods, wares, service, company, organization, or merchandise of any nature whatsoever; or any other form of sales or promotional activity; except that commercial activity is allowable:

(a) If the president or the president's designee has determined that the private or commercial enterprise or charitable use will serve an educational or public service purpose related to the university's mission;

(b) By special permission granted by the university president or the president's designee if an agreement, lease, or other formal arrangement is entered into between the university and the person, corporation, or other entity desiring to engage in private, commercial or charitable activity;

(c) To the extent it represents the regular advertising, promotional, or sponsorship activities carried on, by, or in any university media, university bookstore, university athletic events, or other university authorized event, agent, or contractor;

(d) If the university purchasing department has authorized vendor representatives to solicit university departments, colleges, or business units, and where those representatives have appropriate university identification.

(2) University property may not be used by faculty, staff, or students to assist or promote a private or third-party commercial enterprise, with the following exceptions:

(a) Faculty, staff, or students may use university property that is generally available to the public on the same basis, including payment of the same fees, as may other private citizens; and

(b) Faculty may make use of university property to encourage basic and applied research in accordance with the provisions of the university policy adopted pursuant to RCW 42.52.220.

(3) University property may not be used to benefit a charitable organization, with the following exceptions:

(a) Charities that are licensed in the state of Washington may use university property that is generally available to the public on the same basis, including payment of the same fees, as may private citizens;

(b) Charities that are licensed in the state of Washington may use university property without charge by special per-

mission granted by the university president or the president's designee where the university has determined that the charitable activity or use will serve an educational or public service purpose related to the university's mission and an agreement, lease, or other formal arrangement is entered into between the university and the person, corporation, or other entity desiring to engage in a charitable event; and

(c) Recognized student organizations may use university property to conduct fund-raising activities for charitable purposes pursuant to university policies, procedures and all scheduling requirements.

#### NEW SECTION

**WAC 516-36-060 Parades or other street and road activity.** Permits for parades, street/road runs, marches, or other events on university streets and roads may be obtained upon approval of the university chief of police.

Such events must be scheduled so as not to interfere with major traffic arterials or with university events or activities. For use of city streets on and adjacent to campus, permits must be obtained through the city of Bellingham.

**WSR 18-09-064**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**

[Filed April 16, 2018, 1:06 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-21-013.

Title of Rule and Other Identifying Information: Amending the agency's public records rules at chapter 208-12 WAC.

Hearing Location(s): On May 23, 2018, at 1:00 p.m., at the Department of Financial Institutions, 150 Israel Road S.W., Tumwater, WA.

Date of Intended Adoption: June 19, 2018.

Submit Written Comments to: Debbie Montgomery, 150 Israel Road S.W., Tumwater, WA, email [Debbie.montgomery@dfi.wa.gov](mailto:Debbie.montgomery@dfi.wa.gov), by May 22, 2018.

Assistance for Persons with Disabilities: Contact Debbie Montgomery, phone 360-725-7815, TTY 360-664-8126, email [Debbie.montgomery@dfi.wa.gov](mailto:Debbie.montgomery@dfi.wa.gov), by May 15, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 304, Laws of 2017 (EHB 1595), amended the act to require that if an agency uses the act's default copy fee schedule the agency must have a rule declaring it is not calculating the actual copying costs because to do so would be unduly burdensome. The rules are also being amended to make technical changes, and describe the agency public records request process.

Reasons Supporting Proposal: Passage of chapter 304, Laws of 2017.

Statutory Authority for Adoption: RCW 43.320.040, 42.56.040, 42.56.100, and 42.56.120.

Statute Being Implemented: Chapter 42.56 RCW.

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

Name of Proponent: Department of financial institution[s], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Isaac Williamson, 150 Israel Road S.W., Tumwater, WA, 360-902-8755.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

April 16, 2018

Charles Clark

Agency Deputy Director and  
Director of Consumer Services

AMENDATORY SECTION (Amending WSR 96-14-082, filed 7/1/96, effective 8/1/96)

**WAC 208-12-010 Purpose—Scope—Conflict with other regulations.** (1) The purpose of this chapter is to ensure compliance with RCW 42.56.040; with the applicable provisions of the Public Records Act, chapter ~~((42.17))~~ 42.56 RCW ~~((, Disclosure Campaign finances Lobbying Records; and in particular RCW 42.17.250 through 42.17.348 dealing with public records. It)); and to provide notice to the public of the organization and procedure of the department as required by the Administrative Procedure Act, chapter 34.05 RCW.~~

(2) This chapter establishes general ~~((, consistent))~~ rules regarding public records in the custody or control of the department.

(3) Department divisions may adopt additional rules to supplement this chapter.

(4) If specific rules adopted by a division conflict with this chapter, the specific rules control in those situations.

AMENDATORY SECTION (Amending WSR 96-14-082, filed 7/1/96, effective 8/1/96)

**WAC 208-12-020 Definitions.** As used in this chapter, unless the language clearly indicates otherwise:

"Department" means the Washington state department of financial institutions.

"Director" means the director of the department, who is a cabinet-level appointee of the governor of the state of Washington.

"Division" means an organizational division of the department as the director, pursuant to his or her authority under chapter 43.320 RCW, has or may hereafter designate and empower including, without limitation, the division of administration, division of banks, division of consumer services, division of credit unions, and division of securities.

"Person" means any individual, partnership, joint venture, public or private corporation, limited liability company, association, federal, state or local government entity or agency however constituted, or any other organization or group of persons, however organized.

~~(("Public record" means any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by the department regardless of physical form or characteristics.~~

~~"Writing" means handwriting, typewriting, printing, photostating, photographing and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds; or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.)~~

AMENDATORY SECTION (Amending WSR 96-14-082, filed 7/1/96, effective 8/1/96)

**WAC 208-12-030 Description of organization of department.** (1) The department is an administrative, supervisory, licensing, regulatory, public outreach, educational, and chartering agency.

~~((+))~~ (2) The department is organized pursuant to chapter 43.320 RCW under a director, appointed by the governor, and ~~((four))~~ assistant directors (also known as "division directors"), appointed by the director.

(3) The director has delegated authority to each assistant director to act in a specific functional area. The ~~((four))~~ functional areas are the: ((The)) Division of administration; division of banks; ((the consumer services and administration)) division of consumer services; ((the)) division of credit unions; and ((the securities)) division of securities.

(4) Four of these divisions regulate various programs ((, such as)) including, but not limited to:

(a) The chartering, licensing, and regulation of state banks ((,)); nonbank trust companies ((,)) and trust departments of banks; state savings banks ((, savings and loan associations, alien banks, bank holdings companies,)); holding companies of state banks and state savings banks; bureaus and other offices; and agricultural credit corporations, federally guaranteed small business loan companies, and business development companies, by and through the division of banks;

(b) The licensing and regulation of consumer loan companies, check cashers and sellers, small loan licensees, mortgage brokers, mortgage loan officers, mortgage loan facilitators, mortgage loan servicers, escrow agents, money transmitters, currency exchangers, and other money services

businesses, and tax refund anticipation lenders, by and through the division of consumer services;

(c) The chartering and regulation of state credit unions and credit union service organizations, which are administered by and through the division of credit unions;

(d) The registering and regulation of securities offerings and broker-dealers, commodities offerings and broker-dealers, franchises and franchise brokers, business opportunities, and investment advisers, by and through the division of securities; and

(e) The licensing and regulation of other similar institutions or incidental financial businesses or areas of financial regulation by one or more of the divisions enumerated in this section.

((2)) (5) The division of administration acts as support for the other divisions by providing administrative, fiscal, human resources, information technology, and other services. Included within the division of administration are also executive-level personnel, who report directly to the director of the department, and who provide:

(a) Public policy, regulatory, and other advice to the director and to the assistant directors of each of the divisions; and

(b) Public and media relations and communications services to the department and financial education outreach to the general public.

(6) The mission of the department is to regulate financial services to protect and educate the public and promote economic vitality.

(7) The department is charged with protecting the public interest, protecting the safety and soundness of depository institutions and entities under the jurisdiction of the department, ensuring access to the regulatory process for all concerned parties, and protecting the interests of investors.

((3)) (8) The governor appoints the director, with the consent of the senate. The director holds office at the pleasure of the governor.

(a) The director has complete charge of the department. The director may deputize one of the assistant directors to exercise the powers and duties of the director in the event of his or her absence. The director may delegate duties to assistant directors (but there are statutory limitations) in accordance with RCW 43.320.060 (to his power to delegate, and the director remains responsible for all official acts of the employees).

(b) By specific powers of legislation (and delegation), including the power to delegate, the director has the responsibility and authority to act and direct in the following areas:

(i) Administer the laws pertaining to chartering, licensing, registration, education, and regulation of (state banks, savings banks, foreign bank branches, savings and loan associations, credit unions, consumer loan companies, check cashers and sellers, trust companies and departments, securities, mutual funds, franchises, business opportunities, commodities, escrow agents, mortgage brokers, and other similar institutions or areas. A full-time staff, including field examiners, carries out these duties.) the financial institutions and businesses and areas of financial regulation set forth in subsection (4) of this section; and

(ii) Adopt and enforce rules consistent with and necessary to carry out the provisions of existing laws.

((4)) (9) Chapter 34.05 RCW, the Administrative Procedure Act, and department-related statutes and rules govern the formal and informal proceedings conducted by the department.

AMENDATORY SECTION (Amending WSR 96-14-082, filed 7/1/96, effective 8/1/96)

**WAC 208-12-040 Location and address of administrative office(s)—Public records officer contact information.** (1) The administrative office(s) of the department (and all), including each of its divisions, are located (in Room 300 of the General Administration Building, 210 11th Avenue SW, Olympia) at 150 Israel Road S.W., Tumwater, Washington 98501.

(2) The mailing address of the department and each of its divisions is P.O. Box 41200, Olympia, WA 98504-1200.

(3) The public records officer may be reached at:

Public Records Officer  
Department of Financial Institutions  
P.O. Box 41200  
Olympia, WA 98504-1200  
Email: dfipublicrecords@dfi.wa.gov

AMENDATORY SECTION (Amending WSR 96-14-082, filed 7/1/96, effective 8/1/96)

**WAC 208-12-050 Office hours.** (1) Public records are available for inspection and copying during customary office hours, consistent with chapter 42.56 RCW, the Public Records Act.

(2) For the purposes of this chapter, the customary office hours of the administrative office are from 8:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

AMENDATORY SECTION (Amending WSR 96-14-082, filed 7/1/96, effective 8/1/96)

**WAC 208-12-070 Procedure to request public records.** (1) (Members of the public may inspect, copy or obtain copies of) Many public records (by making a request on the public records request form prescribed by the division holding the record. The form is available at the administrative office and should be given or mailed to the appropriate division. The request shall) are available for inspection on the department's web site, www.dfi.wa.gov/public-records-index, at no cost. Requestors are encouraged to view the records available on the web site prior to submitting a records request.

(2) Any person seeking to inspect or copy public records of the department should make the request in writing on the department's request form, available at www.dfi.wa.gov/public-records-index, by letter, fax, email addressed to the public records officer at dfipublicrecords@dfi.wa.gov, or by submitting the request in person at the department's administrative office. The request should include the following information:

(a) The name of the ~~((person requesting the records))~~ requestor;

~~(b) ((The date and time of day on which the request was made;~~

~~(c) The nature of the request;~~

~~(d)) Contact information such as address, telephone number, email address, or other preferred contact information;~~

(c) The address where copies of records are to be mailed or emailed, or notification that the requestor wants to examine the records at the department's administrative office;

(d) An identification or description of the public records adequate for the public records officer or designee to locate the record or, if the record requested is referenced within the department's public records index, a reference to the requested record as it is described in the index; and

~~(e) ((If the requested matter is not identifiable by reference to the index, an appropriate description of the record requested.~~

~~(2) The staff person to whom the request is made will assist in identifying the public record requested.)~~ The date and time of the request.

(3) The department may inquire about the reason for a request for a list of individuals to determine whether the list will be used for commercial purposes.

~~(4) ((All requests for public records will be acknowledged within five working days after receipt with:~~

~~(a) The information requested;~~

~~(b) An estimated time required to respond to the request;~~

~~or~~  
~~(c) A denial of the request.))~~ The department's public records officer or his or her designee may accept, by telephone or in person, requests for public records that contain the above information. If the public records officer or designee accepts such a request, he or she will confirm the receipt and substance of the request in writing.

## NEW SECTION

**WAC 208-12-075 Processing public records requests.** (1) **Order of processing requests.** The department will process requests in the order that allows requests to be fulfilled in the most efficient manner feasible.

(2) **Acknowledging receipt of a request.** The department will acknowledge a request for public records within five business days after the department receives the request, by:

(a) Making the requested records available for inspection or copying or by providing copies of the records, including:

(i) If records are available on the department's web site, by providing an internet address and link on the web site to specific records requested;

(ii) If copies are requested and all applicable costs and deposits, if any, are paid by the requestor or other terms of payment are agreed upon, sending the copies to the requestor;

(b) Acknowledging receipt of the request and providing a reasonable estimate of when records or an installment of records will be available (the public records officer or designee may revise the estimate of when records will be available); or

(c) Acknowledging receipt of the request and asking the requestor to provide clarification for a request that is unclear, and providing, to the greatest extent possible, a reasonable estimate of time the department will require to respond to the request if it is not clarified;

(i) Such clarification may be requested and provided by telephone, and memorialized in writing;

(ii) If the requestor fails to respond to a request for clarification and the entire request is unclear, the department need not respond to the request; or

(d) Providing a written statement of denial of the request.

(3) **If no response is received.** If the requestor does not receive an acknowledgment of the records request within five business days, the requestor should contact the public records officer to confirm that the department received the request.

(4) **Records exempt from disclosure.** If a record or portion of a record is exempt from disclosure pursuant to chapter 42.56 RCW or as otherwise provided by law, the department may withhold or redact such record. If records are withheld or redacted, the department will, in writing, state the specific exemption and provide a brief explanation of why the record or portion of the record is being withheld or redacted.

(5) **Providing copies of records.** Copies may be provided in either hard copy or electronic format, as requested. The cost for copies is set forth in WAC 208-12-090, and costs must be paid to the department prior to delivery of copies. Copies may be emailed or mailed to the requestor, may be made available to the requestor for pickup at the department's administrative office, or may be made available via a file sharing service.

(6) **Records may be provided in installments.** When a requestor seeks a large volume of records or collection and review of the records will be resource intensive, the public records officer or designee may provide copies or access for inspection of records in installments. Costs for each installment must be paid prior to delivery of the installment.

(7) **Closing withdrawn or abandoned requests.** The public records officer or designee may close a request when: The request is withdrawn by the requestor; the requestor fails to remit fees or a deposit when due, pursuant to WAC 208-12-090(8); the requestor fails to inspect records or retrieve copies of records within thirty days of notice that the records are available for inspection or retrieval; or the requestor fails to provide requested clarification within thirty days and the entirety of the request is unclear. The requestor will be notified in writing that the request has been closed. If a requestor seeks to reopen a closed request, the request may be opened as a new request.

(8) **Bot requests.** The department may deny a "bot" request, which is one of multiple requests from a requestor to the department within a twenty-four-hour period, if the request causes excessive interference with other essential department functions. RCW 42.56.080(3). A "bot" request means a records request that the department reasonably believes was automatically generated by a computer program or script.

(9) **Protecting the rights of others.** If the requested records contain information that may affect the rights of others, and which may be exempt from disclosure, the public records officer or designee may, prior to providing the

records, give notice to such others whose rights may be affected by the disclosure.

AMENDATORY SECTION (Amending WSR 96-14-082, filed 7/1/96, effective 8/1/96)

**WAC 208-12-080 ((Protection)) Inspection of public records.** (1) It is the department's responsibility to ~~((prevent unreasonable invasions of privacy,))~~ protect public records from destruction, damage or disorganization, and prevent excessive interference with essential functions of the department.

(2) Before a person may ~~((review))~~ inspect original records, that person must agree to the following conditions:

~~((1))~~ (a) The records may not be removed from the area designated for review;

~~((2))~~ (b) The records may not be destroyed;

~~((3))~~ (c) The records may not be altered in any way;

~~((4))~~ (d) The records may not be defaced in any way, including marking upon, folding or folding anew if in folded form, tracing or fastening with clips or other fasteners except those that already exist in the file;

~~((5))~~ (e) The records may not be cut, torn or mutilated in any way;

~~((6))~~ (f) The records must be kept in the order in which received; and

~~((7))~~ (g) The records will be returned to the ~~((department))~~ department's public records officer or his or her designee when no longer required by the ~~((requester))~~ requestor, but no later than the end of customary business hours.

(3) If the requestor wishes to receive copies of particular records, they should so indicate to the public records officer or designee. Copies will be provided once payment arrangements are made, pursuant to WAC 208-12-090.

(4) The requestor must review assembled records within thirty days of the department's notification that the records are available for inspection. If the requestor fails to inspect assembled records or make other arrangements within thirty days, the department may close the request.

AMENDATORY SECTION (Amending WSR 96-14-082, filed 7/1/96, effective 8/1/96)

**WAC 208-12-090 ((Copying-)) Fees—Payments.** ~~((The department does not charge a fee for inspecting public records. The department may charge fifteen cents per page for providing copies of public records. If copies are requested, the department will make copies or make the department's copying facilities available.))~~ (1) Copy fees and payment procedures apply to requests to the department under chapter 42.56 RCW received by the department on or after the effective date of these rules.

(2) The department finds that it would be unduly burdensome to calculate the actual costs of providing public records to requestors for the following reasons:

(a) The scope of requests and staff time required to provide records varies widely depending on numerous factors;

(b) The department does not have the resources to conduct a study to determine its actual copying costs;

(c) To conduct such a study would interfere with other essential agency functions; and

(d) Through the 2017 legislative process, the public and requestors have commented on, and been informed of, authorized fees and costs, including for electronic records, provided in RCW 42.56.120 (2)(b) and (c), (3), and (4).

(3) In order to timely implement a fee schedule consistent with the Public Records Act, it is more cost efficient, expeditious, and in the public interest for the department to adopt the state legislature's approved fees and costs for the department's records, as authorized in RCW 42.56.120 and as published in the agency's fee schedule.

(4) The department will charge for copies of records pursuant to the default fees in RCW 42.56.120 (2)(b) and (c). The department will charge for customized services pursuant to RCW 42.56.120(3). Under RCW 42.56.130, the department may charge other copy fees authorized by statutes outside of chapter 42.56 RCW. The department may enter into an alternative fee agreement with a requestor under RCW 42.56.120(4). The charges for copying methods used by the department are summarized in the following fee schedule. Charges may be combined to the extent that more than one type of charge applies to copies produced in response to a particular request.

<b>Public Records Fee Schedule</b>	
<b>Charge:</b>	<b>Record Type:</b>
15 cents/page	Photocopies, printed copies of electronic records when requested by the requestor, or for the use of agency equipment to photocopy public records.
10 cents/page	Records scanned into an electronic format or for the use of agency equipment to scan the records.
5 cents for each 4 electronic files or attachments	Records uploaded to email, cloud-based data storage service, or other means of electronic delivery.
10 cents/giga-byte	Records transmitted in an electronic format or for the use of agency equipment to send the records electronically.
Actual cost	Digital storage media or device; any container or envelope used to mail copies; and postage or delivery charges.
Actual cost	A customized service charge, in addition to the charges set forth above, if the department estimates that the request would require the use of information technology expertise to prepare data compilations, or provide customized electronic access services when such compilations and customized access services are not used by the agency for other agency purposes.
<b>Alternative Fee</b>	
Up to \$2 flat fee	As an alternative to the charges set forth above, the department may charge a flat fee of up to \$2 when the department estimates that the costs are clearly equal to more than \$2.

(5) Fee waivers are an exception and are available for some small requests under the following conditions:

(a) It is within the discretion of the public records officer to waive copying fees when:

(i) All of the records responsive to an entire request are paper copies only and are twenty-five or fewer pages; or

(ii) All of the records responsive to an entire request are electronic and can be provided in a single email with attach-

ments of a size totaling no more than the equivalent of one hundred printed pages. If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requestor will be charged in accordance with this rule.

(b) Fee waivers are not applicable to records provided in installments unless approved by the director.

(6) The department may require an advance deposit of ten percent of the estimated fees when the copying fees for an installment or an entire request, or customized service charge, exceeds twenty-five dollars.

(7) All required fees and deposits must be paid in advance of release of copies or an installment of copies. Payment will be due within thirty days of notice of the amount due. The department will notify the requestor of when payment is due.

(8) Payment should be delivered to the department by check or money order payable to the Washington state treasurer. The department prefers not to receive cash. For cash payments, it is within the public records officer's discretion to determine the denomination of bills and coins that will be accepted. The department may provide a system that accepts certain forms of electronic payment.

(9) The department will close a request when a requestor fails by the payment date to pay in the manner prescribed by this section.

(10) Upon request, the department will provide a summary of applicable charges before any copies are made. The requestor may revise the request to reduce the number of copies to be made to reduce the charges.

AMENDATORY SECTION (Amending WSR 96-14-082, filed 7/1/96, effective 8/1/96)

**WAC 208-12-100 Exemptions from public records.**

(1) All public records of the department are available for public inspection and copying pursuant to ~~((these rules))~~ this chapter, unless the department determines that a requested public record or portion of a public record is exempt under the provisions of chapter 42.56 RCW ((42-17-310)) or other statute.

~~((+))~~ (2) Various statutes exempt certain records from disclosure~~(-)~~ including, but not limited to: ~~((Securities, RCW 19.100.242, 19.110.140, 21.30.170, 21.30.370, 21.20.480, 21.20.510, 21.20.700, 21.20.855; Banks, RCW 30.04.075; Savings and Loan Associations, RCW 33.04.110; Agricultural Lenders, RCW 31.35.070;))~~

(a) **Division of Banks** - Examination reports and information obtained by the department in relation to:

(i) Washington state commercial banks and their holding companies, RCW 30A.04.075;

(ii) Washington state savings banks and their holding companies, RCW 32.04.220; ~~((and Credit Unions, RCW 31.12.565.~~

~~(2))~~

(iii) Nondepository trust companies, RCW 30B.04.060;

(iv) Agricultural lenders, chapter 31.35 RCW;

(v) Federally guaranteed small business loan companies, chapter 31.40 RCW; and

(vi) Business development companies, RCW 31.24.120.

(b) **Division of consumer services** - Information obtained by the department in relation to:

(i) The personal residence address and telephone number of applicants for a check casher's and seller's license, RCW 31.45.030(3);

(ii) A trade secret as defined under RCW 19.108.010 regarding an applicant for or holder of a check casher's and seller's license, RCW 31.45.030(3);

(iii) Information or reports obtained by the department or prepared by, on behalf of, or for the use of the department regarding money transmitters, currency exchangers, and other money service businesses subject to licensure by the department, RCW 19.230.190.

(c) **Division of credit unions** - Examination reports and information obtained by the department in relation to Washington state-chartered credit unions and credit union service organizations, RCW 31.12.565; and

(d) **Division of securities** - Information obtained by the department in relation to:

(i) Investigation of securities offerors, broker-dealers, and investment advisers, RCW 21.20.480, 20.20.510, 21.20.700, and, especially, 21.20.855;

(ii) Investigation of commodities offerors or broker-dealers, RCW 21.30.170;

(iii) Investigation of franchisors and franchise brokers, RCW 19.100.242; and

(iv) Investigation of business opportunities offerors, RCW 19.110.140.

(3) Other statutory exemptions may cover records received by the department from another regulatory agency or under interagency agreement.

~~((3))~~ ~~In addition,~~ (4) Federal statutes and rules, including regulations of the federal reserve board of governors, federal deposit insurance corporation, national credit union administration, consumer financial protection bureau, securities and exchange commission, and other federal financial regulators implementing the Freedom of Information Act, at subsection (b)(8) of Title 5, United States Code, Section 552 (5 U.S.C. Sec. 552(b)(8)), which:

(a) Exempts from public disclosure examination and investigation information involving financial institutions that are also subject to regulation by the department; and

(b) May be more expansive than or supersede or preempt Washington state law with respect to public disclosure of such information.

(5) Pursuant to RCW ~~((42-17-260))~~ 42.56.050, 42.56.070, 42.56.210, 42.56.230, and 42.56.240, the department reserves ~~((the right))~~ its authority to delete identifying details when it makes available or publishes any public record, if there is reason to believe that disclosure of such details would be an invasion of personal privacy. All deletions will be justified in writing.

AMENDATORY SECTION (Amending WSR 96-14-082, filed 7/1/96, effective 8/1/96)

**WAC 208-12-110 Denials of public records requests —Review.** (1) ~~((If a request for a public record is denied, the person denying it will send the requester a written statement giving the reason for the denial. If based on an exemption, the~~

~~written statement will give the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld. A copy of the denial will be immediately forwarded to the director or designee for review.~~

~~(2) The director or designee will consider the denial and affirm or reverse it within two business days.) Any person who objects to the initial denial or partial denial of a records request may petition, in writing (including by email), to the public records officer for a review of that denial. The petition shall include a copy of, or reasonably identify, the written statement by the public records officer or designee denying the request.~~

~~(2) The director or director's designee will consider the petition and affirm, reverse, or modify the denial within two business days following the department's receipt of the petition, or within such other time as the department and the requestor mutually agree. The original denial becomes final if the director does not respond within two business days.~~

~~(3) Administrative remedies are not exhausted until the ((close of the second full business day following the original denial of inspection)) denial becomes final.~~

~~(4) Pursuant to RCW 42.56.530, if the department 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.~~

AMENDATORY SECTION (Amending WSR 96-14-082, filed 7/1/96, effective 8/1/96)

**WAC 208-12-120 Records index.** ~~((Each division))~~ The department maintains an index of its records available to the public((-The index is attached to the department's public records request procedure. Current indices are available upon request)) on its web site, at [www.dfi.wa.gov/public-records-index](http://www.dfi.wa.gov/public-records-index).

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 208-12-130 Information—Address.

### **WSR 18-09-068**

#### **PROPOSED RULES**

#### **DEPARTMENT OF HEALTH**

[Filed April 16, 2018, 2:51 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-247-035 National standards adopted by reference for sources of radionuclide emissions.

Hearing Location(s): On May 24, 2018, at 11:30 a.m., at the Department of Health, 111 Israel Road S.E., Town Center 2, Room 145, Tumwater, WA 98501.

Date of Intended Adoption: May 31, 2018.

Submit Written Comments to: Theresa Phillips, Department of Health, P.O. Box 47820, Olympia, WA 98504-7820, email <https://fortress.wa.gov/doh/policyreview>, by May 24, 2018.

Assistance for Persons with Disabilities: Contact Theresa Phillips, phone 360-236-3147, TTY 360-833-6388 or 711, email [theresa.phillips@doh.wa.gov](mailto:theresa.phillips@doh.wa.gov), by May 17, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is necessary to update the publication date of rules previously adopted by reference in WAC 246-247-035 National standards adopted by reference for sources of radionuclide emissions. The amendment makes no changes to any requirements previously adopted, but is required for the department of health (department) to receive full delegation of the radionuclide air emissions program from the United States Environmental Protection Agency (EPA).

Reasons Supporting Proposal: The intent of RCW 70.98.050 is to safely regulate the possession and use of radioactive material within the state of Washington. The intent of RCW 70.98.080(5) is to reduce redundant licensing requirements. The rule meets the intent of the statutes by adopting requirements as stringent as the federal requirements in order for the department to have full delegation authority from EPA.

Statutory Authority for Adoption: RCW 70.98.050 and 70.98.080(5).

Statute Being Implemented: RCW 70.98.050 and 70.98.080(5).

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: Theresa Phillips, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-3147; Implementation and Enforcement: John Martell, 309 Bradley Boulevard, Suite 201, Richland, WA 99352, 509-946-3798.

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

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not

adopted: A small business economic impact statement (SBEIS) was not prepared. Under RCW 19.85.025 and 34.05.310 (4)(c), an SBEIS is not required for proposed rules that adopt or incorporate by reference, without material change, federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Explanation of exemptions: The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

April 13, 2018  
Clark Halvorson  
Assistant Secretary

AMENDATORY SECTION (Amending WSR 17-13-037, filed 6/13/17, effective 7/14/17)

**WAC 246-247-035 National standards adopted by reference for sources of radionuclide emissions.** (1) The following federal standards, as in effect on July 1, ((2017)) 2018, are adopted by reference except as provided in subsections (2) and (3) of this section.

These standards apply in addition to other requirements of this chapter.

(a) For federal facilities:

(i) 40 C.F.R. Part 61, Subpart A - General Provisions.

(ii) 40 C.F.R. Part 61, Subpart H - National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.

(iii) 40 C.F.R. Part 61, Subpart I - National Emission Standards for Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.

(iv) 40 C.F.R. Part 61, Subpart Q - National Emission Standards for Radon Emissions From Department of Energy Facilities.

(b) For nonfederal facilities:

(i) 40 C.F.R. Part 61, Subpart A - General Provisions.

(ii) 40 C.F.R. Part 61, Subpart B - National Emission Standards for Radon Emissions From Underground Uranium Mines.

(iii) 40 C.F.R. Part 61, Subpart K - National Emission Standards for Radionuclide Emissions From Elemental Phosphorus Plants.

(iv) 40 C.F.R. Part 61, Subpart R - National Emissions Standards for Radon from Phosphogypsum Stacks.

(v) 40 C.F.R. Part 61, Subpart T - National Emission Standards for Radon Emissions From the Disposal of Uranium Mill Tailings.

(vi) 40 C.F.R. Part 61, Subpart W - National Emission Standards for Radon Emissions From Operating Mill Tailings.

(2) References to "Administrator" or "EPA" in 40 C.F.R. Part 61 include the department of health except in any section of 40 C.F.R. Part 61 for which a federal rule or delegation indicates that the authority will not be delegated to the state.

(3) Any change or alternative to standards, emission monitoring and test procedures, compliance and reporting requirements, or recordkeeping requirements must be approved by EPA.

**WSR 18-09-069**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Children's Administration)

[Filed April 16, 2018, 3:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-04-072.

Title of Rule and Other Identifying Information: The department is proposing to amend and repeal existing WAC sections and create new WAC sections in chapter 388-27 WAC, Child welfare services—Adoption services and adoption support.

Hearing Location(s): On June 5, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (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>.

Date of Intended Adoption: Not earlier than June 6, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., June 5, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by May 22, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending chapter 388-27 WAC to reflect recent changes in state legislation regarding the adoption support subsidy. Other changes are being made to clarify language and update the statutory authority.

Reasons Supporting Proposal: The proposed changes are necessary to align with statute.

Statutory Authority for Adoption: RCW 74.13A.020, 74.13A.025, 74.13A.030, 74.13A.031, 74.13A.040, 74.13A.045, 74.13A.047, 74.13A.060, 74.13A.075, 74.13A.080, 74.13A.085, 74.13A.100, 74.13A.120, 74.13A.125, 74.15.020, 42 U.S.C. § 671-675, 45 C.F.R. Sec. 1356.40.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Melanie Meyer, P.O. Box 45710, Olympia, WA 98504, 360-902-7567.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules are exempt under RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

April 12, 2018  
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 18-10 issue of the Register.

**WSR 18-09-070**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Children's Administration)

[Filed April 16, 2018, 3:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-04-084.

Title of Rule and Other Identifying Information: The department is proposing to amend and repeal sections in chapter 388-165 WAC, Children's administration child care subsidy programs.

Hearing Location(s): On May 22, 2018, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (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>.

Date of Intended Adoption: Not earlier than May 23, 2018.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAU RulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., May 22, 2018.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by May 8, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend and repeal sections in chapter 388-165 WAC in order to help clarify when the children's administration (CA) will pay for child care and what rates will be used pursuant to rules governing child care subsidy programs. Other changes are being made to reflect current practice.

Reasons Supporting Proposal: Representatives from the Service Employees International Union representing child care workers reviewed the proposed changes and concurred.

Statutory Authority for Adoption: RCW 74.12.340, 74.04.050, 74.04.055, 74.08.090.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Shelly Arneson, P.O. Box 45710, Olympia, WA 98504, 360-902-8109.

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

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable. These changes are not significant legislative rules and do not require a cost-benefit analysis.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

April 16, 2018  
Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 99-22-011, filed 10/22/99, effective 11/22/99)

**WAC 388-165-108 What are the types of child care subsidies?** This chapter relates to the following (~~programs~~) subsidies in children's administration (CA):

- (1) (~~Seasonal child care;~~
- (2) ~~Teen parent child care;~~

- ~~(3))~~ Child protective services child care;
- ~~((4))~~ (2) Child welfare services child care; and
- ~~((5))~~ (3) Employed foster parent child care.

AMENDATORY SECTION (Amending WSR 99-15-076, filed 7/20/99, effective 7/20/99)

**WAC 388-165-110 Definitions.** The following definitions apply ~~((to WAC 388-15-171, 388-15-174, 388-15-175 and 388-15-176))~~ throughout this chapter.

**"Child"** means a person twelve years of age or younger or a person under nineteen years of age who is physically, mentally, or emotionally incapable of self-care as verified by a licensed medical practitioner or masters level or above mental health professional.

~~("Copayment" means the amount of money the family is responsible to pay the child care provider toward the cost of child care each month.~~

~~"Income" means the gross earned income minus the average payroll and income tax paid at that income level, plus any unearned income.)~~

~~"In-home/relative child care provider" ((see definition for "in-home/relative provider" under WAC 388-290-020)) means a provider who meets the requirement in WAC 170-290-0130 through 170-290-0167.~~

~~"Parent" ((see definition for "parent" under WAC 388-290-020)) means a biological or adoptive parent of a child or an individual who have an established parent-child relationship under RCW 26.26.101, unless the legal rights of that person have been terminated or paternity has been disestablished.~~

~~("Teen parent" means a parent twenty-one years of age or younger.)~~

AMENDATORY SECTION (Amending WSR 13-08-064, filed 4/1/13, effective 5/2/13)

**WAC 388-165-180 What are the maximum child care subsidy rates ((DSHS)) CA pays for child care in a licensed or certified child care center? ((DSHS)) CA maximum child care subsidy rates for licensed child care centers ((are located on the Washington state child care resource & referral network website at: <http://wa.childcareaware.org>)) can be found in WAC 170-290-0200.**

AMENDATORY SECTION (Amending WSR 13-08-064, filed 4/1/13, effective 5/2/13)

**WAC 388-165-185 What are the maximum child care subsidy rates ((DSHS)) CA pays for child care in a licensed or certified family home child care ((home))? ((DSHS)) CA maximum child care subsidy rates for licensed or certified family home child care ((homes are located on the Washington state child care resource & referral network website at: <http://wa.childcareaware.org>)) can be found in WAC 170-290-0205.**

AMENDATORY SECTION (Amending WSR 99-22-011, filed 10/22/99, effective 11/22/99)

**WAC 388-165-190 When can ((DSHS)) CA pay ((in addition to)) more than the maximum ((DSHS)) CA child care subsidy rate? ((DSHS)) CA pays additional subsidies to a licensed or certified family child care home or center when:**

(1) Care is for nonstandard hours ~~((see))~~ under WAC 388-165-195 and 388-165-200(~~(?)~~);

(2) ~~((The infant bonus is authorized (see WAC 388-165-205);~~

~~(3)) A child has a documented special ((need(s)-(see)) needs under WAC 388-165-210, 388-165-215, or 388-165-220(~~(?)~~); ((or~~

~~(4)) (3) Care is not available at the ((DSHS)) CA rate and the provider's usual rate is authorized;~~

~~(4) The provider is participating in the state's early achievers program and receives tiered reimbursement and state funds are available; or~~

~~(5) A child registration fee is applicable under WAC 170-290-0245.~~

To the extent that funds are available, CA may pay additional subsidies to licensed or certified family home child care for field trip and quality enhancement fees under WAC 170-290-0245.

AMENDATORY SECTION (Amending WSR 99-22-011, filed 10/22/99, effective 11/22/99)

**WAC 388-165-195 What is nonstandard hour child care? ((DSHS)) CA authorizes nonstandard hours child care when ((fifteen or more)) the licensed or certified family home child care or center provider provides at least thirty hours of care ((are needed)) per month(~~(s)~~) that are:**

(1) Before 6:00 a.m. or after 6:00 p.m. Monday through Friday; ~~((and/or))~~ or

(2) Anytime on a Saturday ~~((or))~~, Sunday, or legal holiday as defined in RCW 1.16.050.

AMENDATORY SECTION (Amending WSR 99-22-011, filed 10/22/99, effective 11/22/99)

**WAC 388-165-200 How does ((DSHS)) CA pay for nonstandard hour child care? ((DSHS)) CA authorizes the nonstandard hour bonus to licensed or certified child care providers~~((DSHS pays:~~**

~~(1) The DSHS maximum child care subsidy rate as listed in WAC 388-165-180 or 388-165-185 or the provider's usual rate for that child, whichever is less; and~~

~~(2) The monthly nonstandard hour bonus as listed in the table below)) as specified in WAC 170-290-0249.~~

((Monthly Nonstandard Hour Bonus

Region 1	\$74.00
Region 2	\$73.00
Region 3	\$91.00
Region 4	\$108.00
Region 5	\$80.00

~~((Monthly Nonstandard Hour Bonus  
Region 6 \$83.00))~~

~~((Licensed Family Child Care Homes Special Needs  
Bonus~~

AMENDATORY SECTION (Amending WSR 99-22-011, filed 10/22/99, effective 11/22/99)

**WAC 388-165-215** ~~What is the ((DSHS)) CA child care subsidy rate for children with special needs in a licensed or certified child care center? ((DSHS)) For children with documented special needs, CA pays child care subsidies ((for a child with special needs)) to licensed or certified child care centers as described in WAC 388-165-180 ((and whichever of the following is greater)). In addition, CA pays the lesser of:~~

~~(1) The ((provider's documented additional cost associated with the care of that child with)) actual cost of providing the special needs care; or~~

~~(2) The applicable rate listed in ((the table below)) WAC 170-290-0225 (1)(a) or (b).~~

~~((Licensed Child Care Centers Special Needs Rate~~

		Infants (Birth-11- mos.)	Toddlers (12-29- mos.)	Preschool (30 mos.-5- years)	School-age (5-12- years)
Region 1	Full-Day	\$6.82	\$5.96	\$5.40	\$5.01
	Half-Day	\$3.41	\$2.98	\$2.70	\$2.51
Region 2	Full-Day	\$6.95	\$6.14	\$5.33	\$5.05
	Half-Day	\$3.48	\$3.07	\$2.66	\$2.52
Region 3	Full-Day	\$9.05	\$7.80	\$6.60	\$5.93
	Half-Day	\$4.53	\$3.90	\$3.30	\$2.97
Region 4	Full-Day	\$11.34	\$8.86	\$7.84	\$7.02
	Half-Day	\$5.67	\$4.43	\$3.92	\$3.51
Region 5	Full-Day	\$7.75	\$6.65	\$5.84	\$5.25
	Half-Day	\$3.87	\$3.33	\$2.92	\$2.63
Region 6	Full-Day	\$7.68	\$6.82	\$6.00	\$6.00
	Half-Day	\$3.84	\$3.41	\$3.00	\$3.00

~~(3) The maximum rate paid for a five year old child is:~~

~~(a) The preschool rate for a child who has not entered kindergarten; or~~

~~(b) The school age rate for a child who has entered kindergarten.)~~

AMENDATORY SECTION (Amending WSR 99-22-011, filed 10/22/99, effective 11/22/99)

**WAC 388-165-220** ~~What is the ((DSHS)) CA child care subsidy rate for children with special needs in a licensed or certified family home child care ((home))? ((DSHS)) For children with documented special needs, CA pays child care subsidies ((for a child with special needs)) to licensed or certified family child care homes as described in WAC ((388-165-195 and whichever of the following is greater)) 388-165-185. In addition, CA pays the lesser of:~~

~~(1) The ((provider's documented additional cost associated with the care of that child with)) actual cost of providing special needs care; or~~

~~(2) The applicable rate listed in ((the table below)) WAC 170-290-0230 (1)(a) or (b).~~

		Infants (Birth-11- mos.)	Toddlers (12-29- mos.)	Preschool (30 mos.-5- years)	School-age (5-12- years)
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Region 1	Full-Day	\$5.70	\$5.28	\$5.10	\$4.50
	Half-Day	\$2.85	\$2.64	\$2.55	\$2.25
Region 2	Full-Day	\$5.40	\$5.40	\$4.80	\$4.50
	Half-Day	\$2.70	\$2.70	\$2.40	\$2.25
Region 3	Full-Day	\$8.40	\$7.20	\$6.60	\$6.00
	Half-Day	\$4.20	\$3.60	\$3.30	\$3.00
Region 4	Full-Day	\$9.00	\$8.18	\$7.50	\$6.75
	Half-Day	\$4.50	\$4.09	\$3.75	\$3.38
Region 5	Full-Day	\$6.30	\$6.00	\$5.70	\$5.10
	Half-Day	\$3.15	\$3.00	\$2.85	\$2.55
Region 6	Full-Day	\$6.15	\$6.00	\$5.40	\$5.10
	Half-Day	\$3.08	\$3.00	\$2.70	\$2.55

~~(3) The maximum rate paid for a five year old child is:~~

~~(a) The preschool rate for a child who has not entered kindergarten; or~~

~~(b) The school age rate for a child who has entered kindergarten.)~~

AMENDATORY SECTION (Amending WSR 99-22-011, filed 10/22/99, effective 11/22/99)

**WAC 388-165-225** ~~What is the ((DSHS)) CA in-home/relative child care rate for children with special needs? ((DSHS subsidy programs pay)) For children with documented special needs, CA may authorize payment to in-home/relative child care providers ((for care of a child)) in accordance with the applicable special needs ((as described in WAC 388-15-185) two dollars per hour plus whichever is greater of the following:~~

~~(1) Sixty-two cents per hour; or~~

~~(2) The provider's documented additional cost associated with the care for that child with special needs)) rate listed in WAC 170-290-0235.~~

AMENDATORY SECTION (Amending WSR 99-22-011, filed 10/22/99, effective 11/22/99)

**WAC 388-165-230** ~~What is the maximum child care subsidy rate ((DSHS)) CA pays for in-home/relative child care? (((1) The DSHS child care subsidy programs pay toward)) CA pays the cost of child care directly to the ((parent, who is the employer. DSHS pays whichever of the following that is less:~~

~~(a) Two dollars and six cents per hours for the child who needs the greatest amount of care and one dollar and three cents per hour for the care of each additional child in the family; or~~

~~(b) The provider's usual rate for that care.~~

~~(2) DSHS may pay above the maximum rate for children who have special needs as stated in WAC 388-165-225)) provider as the rate specified in WAC 170-290-0240.~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-165-120 Subsidized child care for teen parents.
- WAC 388-165-205 Does DSHS pay a bonus for infants who receive child care subsidies?
- WAC 388-165-240 What are the parent/guardian payment responsibilities when they choose in-home/relative child care?

**WSR 18-09-098**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**  
 (Division of Consumer Services)  
 [Filed April 17, 2018, 7:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-14-047.

Title of Rule and Other Identifying Information: Chapter 208-690 WAC, implementing the Uniform Money Services Act at chapter 19.230 RCW.

Hearing Location(s): On May 22, 2018, at 10:00 - 11:00 a.m., at the Department of Financial Institutions, 150 Israel Road S.W., Room 319, Tumwater, WA.

Date of Intended Adoption: June 19, 2018.

Submit Written Comments to: Sara Rietcheck, 150 Israel Road S.W., Tumwater, WA 98501, email sara.rietcheck@dfi.wa.gov, www.dfi.wa.gov, by May 22, 2018.

Assistance for Persons with Disabilities: Contact Sara Rietcheck, phone 360-902-8793, TTY 360-664-8126, email sara.rietcheck@dfi.wa.gov, 360-902-8786, by May 15, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 30, Laws of 2017, amended chapter 19.230 RCW. The rules are proposed for amendment to implement the changes which include, but are not limited to, new rules and amendments to existing rules that take into account innovations in technology used by the regulated industry and to change the definition of stored value to be consistent with federal law. Other amendments include, but are not limited to, technical and clarifying changes, and making the regulated industry aware of the federal and other state laws they must comply with. The anticipated effect is clear and consistent rules for the regulated industry.

Reasons Supporting Proposal: Changes to the underlying state law; innovation in technology; federal law.

Statutory Authority for Adoption: RCW 43.320.040, 19.230.310. Proposed in accordance with OFM Guidance dated October 12, 2011.

Statute Being Implemented: Chapter 19.230 RCW.

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

Name of Proponent: Department of financial institutions, division of consumer services, governmental.

Name of Agency Personnel Responsible for Drafting: Cindy Fazio, 150 Israel Road S.W., Tumwater, WA, 360-902-8800; Implementation and Enforcement: Charles Clark, 150 Israel Road S.W., Tumwater, WA, 360-902-0511.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

April 17, 2018  
 Charles Clark, Director  
 Division of Consumer Services

AMENDATORY SECTION (Amending WSR 16-14-022, filed 6/27/16, effective 8/1/16)

**WAC 208-690-010 Definitions.** What definitions are applicable to these rules? In addition to the definitions herein, the definitions in ((RCW 19.230.010 and this section)) chapter 19.230 RCW apply throughout this chapter unless the context clearly requires otherwise.

"Act" means the Uniform Money Services Act, chapter 19.230 RCW.

"Advertise, advertising, or advertising material" means any form of sales or promotional materials used in connection with the business. Advertising material includes, but is not limited to, newspapers, magazines, leaflets, flyers, direct mail, indoor or outdoor signs or displays, point-of-sale literature or educational materials, other printed materials; radio, television, public address system, or other audio broadcasts; internet pages, social media pages, instant messages, or electronic bulletin boards.

"AML compliance officer" means the individual(s) employed by the licensee or licensee's parent or affiliate designated to implement the anti-money laundering (AML) program.

"Audited financial statement" means a statement prepared by an independent accountant according to generally accepted accounting principles.

"Authorized delegate" means a person a licensee designates to provide money services on behalf of the licensee. A person that is exempt from licensing under this chapter cannot have an authorized delegate. An authorized delegate must only perform the contractual duties as authorized by the licensee in the contract between the licensee and the authorized delegate.

"Bill payment" service means a type of money transmission when an intermediary accepts funds from a consumer for transmission to a merchant for payment on a consumer's account. The intermediary may or may not charge a fee for this service.

"Closed loop prepaid access" means prepaid access that can only be redeemed for a limited universe of goods, intangibles, services, or other items provided by the issuer of the prepaid access, its affiliates, or others involved in transactions functionally related to the issuer or its affiliates.

"Department" means the department of financial institutions.

"Executive officer" means a president, chairperson of the executive committee, chief financial officer, responsible individual, or other individual who performs similar functions.

"Funds" means money or its equivalent value.

~~("Material litigation" means the same as in RCW 19.230.010.)~~

"Money transmission" means receiving money or its equivalent value (equivalent value includes virtual currency) to transmit, deliver, or instruct to be delivered (~~(the money or its equivalent value)~~) to another location, inside or outside the United States, by any means including, but not limited to, by wire, facsimile, or electronic transfer. ~~(Money transmission does not include the provision solely of connection services to the internet, telecommunications services, or network access.)~~ Money transmission includes selling, issuing, or acting as an intermediary for open-loop (~~(stored value devices)~~) prepaid access and payment instruments, but not closed-loop (~~(stored value devices)~~) prepaid access. Money transmission does not include: The provision solely of connection services to the internet, telecommunications services, or network access; units of value that are issued in affinity or rewards programs that cannot be redeemed for either money or virtual currencies; and units of value that are used solely within online gaming platforms that have no market or application outside of the gaming platforms.

"NMLS" means a multistate licensing system developed and maintained by the Conference of State Bank Supervisors for licensing and registration.

"Online currency exchanger" means a currency exchanger who transacts business over the internet or other electronic medium, regardless of whether the currency exchanger also has a physical location in Washington state.

"Open loop prepaid access" means prepaid access redeemable at multiple, unaffiliated merchants or service providers, or automated teller machines.

"Payment instrument" means a check, draft, money order, or traveler's check for the transmission or payment of money or its equivalent value, whether or not negotiable. Payment instrument does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services.

"Prepaid access" means access to money that has been paid in advance and can be retrieved or transferred through an electronic device or vehicle, such as a card, code, electronic serial number, mobile identification number, or personal identification number.

"Principal" means any person who controls, directly or indirectly through one or more intermediaries, alone or in concert with others, a ten percent or greater interest in a partnership, company, corporation, or association, or the owner of a sole proprietorship.

"RCW" means the *Revised Code of Washington*.

~~("Stored value" means the recognition of value or credit stored on a device. Stored value is either open loop, meaning the value is redeemable at multiple, unaffiliated merchants or service providers, or closed loop meaning the value is primarily intended to be redeemed for a limited universe of goods, intangibles, services, or other items provided by the issuer of the stored value, its affiliates, or others involved in transactions functionally related to the issuer or its affiliates.~~

~~"Stored value device" means a card or other device that electronically stores or provides access to funds and is available for transferring the funds or value to others.~~

~~"Subdelegate" means a person that provides money services on behalf of an authorized delegate without having a direct contractual relationship with a licensee.)~~

"Tangible net worth" means the physical worth of a licensee, calculated by taking a licensee's assets and subtracting its liabilities and its intangible assets, such as copyrights, patents, intellectual property, and goodwill.

"Unsafe or unsound practice" means a practice or conduct by a person licensed or required to be licensed by the act to provide money services, or an authorized delegate of such a person, which creates the likelihood of material loss, insolvency, or dissipation of the licensee's assets, or otherwise materially prejudices the financial condition of the licensee or the interests of its customers.

"Virtual currency" means a digital representation of value used as a medium of exchange, a unit of account, or a store of value, but does not have legal tender status as recognized by the United States government. Virtual currency does not include the software or protocols governing the transfer of the digital representation of value or other uses of virtual distributed ledger systems to verify ownership or authenticity in a digital capacity when the virtual currency is not used as a medium of exchange.

"Virtual currency storage" means storing access to virtual currency owned by another person.

## PART B

### APPLICATION OF CHAPTER—EXEMPTIONS

AMENDATORY SECTION (Amending WSR 16-14-022, filed 6/27/16, effective 8/1/16)

**WAC 208-690-015 What are some activities that are exempt from the act?** (1) The issuance, sale, use, redemption, or exchange of closed-loop (~~(stored value devices)~~) prepaid access.

(2) The issuance or sale of open-loop (~~(stored value devices)~~) prepaid access when the value (~~(on the devices are)~~) is covered by federal deposit insurance immediately upon sale or issue. See the Federal Deposit Insurance Corporation (FDIC) Financial Institution Letter 129-2008 dated November 13, 2008, to determine if the underlying funds (~~(of stored value devices)~~) are covered by FDIC insurance immediately upon sale or issue.

(3) Storage of virtual currency by a person when the virtual currency is owned by others and the person storing the virtual currency does not have the unilateral ability to transmit the value being stored.

(4) Payment processing by a person meeting the requirements in RCW 19.230.020(9), but not persons engaged in payment processing activities;

(a) Using virtual currencies;

(b) For the marijuana industry; or

(c) Holding funds longer than the time period needed to complete a transaction.

(5)(a) Activities regulated by the Commodities Futures Trading Commission (CFTC) or exempt from registration with the CFTC;

(b) Clearance or settlement services provided by a person to a board of trade as designated by the CFTC.

(6) Activities by persons providing clearance or settlement services under a registration as a clearing agency, or an exemption from that registration granted under the federal securities laws. The exclusion applies only to those activities.

(7) See also RCW 19.230.020.

**AMENDATORY SECTION** (Amending WSR 16-14-022, filed 6/27/16, effective 8/1/16)

**WAC 208-690-030 License application. What must I do to apply for a license?** You must file:

(1) A completed application in a form and in a medium prescribed by the director through the NMLS. The application must contain:

(a) The legal name, business and email address, and residential address, if applicable, of the applicant and any fictitious or trade name used by the applicant in conducting its business;

(b) The legal name, residential and business address, date of birth, Social Security number, employment history for the five-year period preceding the submission of the application of the applicant's proposed responsible individual, and documentation that the proposed responsible individual is a citizen of the United States or has obtained legal immigration status to work in the United States. In addition, the applicant must provide the fingerprints of the proposed responsible individual and a personal credit report from a recognized independent credit reporting agency on the proposed responsible individual;

(c) For the ten-year period preceding submission of the application, a list of any criminal convictions of the proposed responsible individual of the applicant, any material litigation in which the applicant has been involved, and any litigation involving the proposed responsible individual relating to the provision of money services;

(d) A description of any money services previously provided by the applicant and the money services the applicant seeks to provide in this state;

(e) A list of the applicant's proposed authorized delegates including the business name and any additional names by which the business may be known, the business address and name of the primary contact person for each authorized delegate, and the locations in this state where the applicant and its authorized delegates propose to engage in the provision of money services;

(f) A list of other states in which the applicant is licensed to engage in money transmission, or provide other money services, and any license revocations, suspensions, restric-

tions, or other disciplinary action taken against the applicant in another state;

(g) A list of any license revocations, suspensions, restrictions, or other disciplinary action taken against any money services business involving the proposed responsible individual;

(h) Information concerning any bankruptcy or receivership proceedings involving or affecting the applicant or the proposed responsible individual;

(i) A sample form of the contract for authorized delegates, if applicable;

(j) A description of the source of money and credit to be used by the applicant to provide money services;

(k) A full description of the screening process used by the applicant in selecting authorized delegates, including a sample of any forms used, and the method used to screen for criminal history; and

(1) Identification of the bank account established for the business including, but not limited to, the bank name, address, account number, and account type.

(2) If the applicant is a corporation, limited liability company, partnership, or other entity, the applicant must also provide:

(a) The date of the applicant's incorporation or formation and the state or country of incorporation or formation;

(b) If applicable, a certificate of good standing from the state or country in which the applicant is incorporated or formed;

(c) A brief description of the structure or organization of the applicant, including any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded;

(d) The legal name, any fictitious or trade name, all business and residential addresses, date of birth, Social Security number, and employment history in the ten-year period preceding the submission of the application for each executive officer, board director, AML compliance officer or other person that has control of the applicant;

(e) If the applicant or its corporate parent is not a publicly traded entity, the fingerprints of each executive officer, board director, AML compliance officer or other person that has control of the applicant;

(f) A list of any criminal convictions, material litigation, and any litigation related to the provision of money services, in the ten-year period preceding the submission of the application in which any executive officer, board director, AML compliance officer or other person in control of the applicant has been involved;

(g) A copy of the applicant's audited financial statements for the most recent fiscal year or, if the applicant is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent corporation or the applicant's most recent audited consolidated annual financial statement, and in each case, if available, for the two-year period preceding the submission of the application;

(h) A copy of the applicant's unconsolidated financial statements for the current fiscal year, whether audited or not, and, if available, for the two-year period preceding the submission of the application;

(i) If the applicant is publicly traded, a copy of the most recent report filed with the United States Securities and Exchange Commission under section 13 of the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78m);

(j) If the applicant is a wholly owned subsidiary of:

(i) A corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed under section 13 of the federal Securities Exchange Act of 1934 (15 U.S.C. Sec. 78m); or

(ii) A corporation publicly traded outside the United States, a copy of similar documentation filed with the regulator of the parent corporation's domicile outside the United States(§).

(k) If the applicant has a registered agent in this state, the name and address of the applicant's registered agent in this state.

~~(3) ((If the application is for money transmission, a) Surety bonds as required by WAC 208-690-040 or ((an assignment of a certificate of deposit, as required by WAC 208-690-045)) 208-690-041.~~

(4) An application fee as prescribed by WAC 208-690-130(1). The application fee is not refundable. The director may require all fees to be paid through the NMLS.

(5) An additional license fee as prescribed by WAC 208-690-130(2).

(6) If the application is for money transmission, a certification that the applicant's investment portfolio, if maintained as permissible investments for outstanding transmission liabilities, includes only the permissible investments under RCW 19.230.200 and 19.230.210.

(7) If you are engaged in virtual currency storage, an information security audit report which at a minimum: Occurred within one year of the date of an application submission; and was completed by a company or individual with information security credentials acceptable to the director.

(8) Application for a proposed license or trade name. The application may be denied if the proposed name is similar to a currently existing licensee name, including trade names, or is otherwise unsuitable.

The director may waive one or more requirements of this section or permit an applicant to submit other information in lieu of the required information.

AMENDATORY SECTION (Amending WSR 16-14-022, filed 6/27/16, effective 8/1/16)

**WAC 208-690-035 Authorized delegates. What are the rules I must comply with when I have authorized delegates?**

(1) Only a licensee may designate an authorized delegate.

(2) A person accepting consumers' funds for transmission through an exempt or excluded entity under RCW 19.230.020 is a money transmitter and must be licensed under the act.

(3) An authorized delegate, or any other person exempt or excluded from the licensing requirements of chapter 19.230 RCW, cannot have an authorized delegate.

(4) Any person you designate to provide money services on your behalf is an authorized delegate, regardless of whether that person would be exempt or excluded from the application of chapter 19.230 RCW if they provided money services on their own behalf.

(5) Your authorized delegates must be physically located in the state of Washington unless you have received prior approval from the director to designate an authorized delegate physically located outside of the state of Washington.

(6) The licensee has supervisory authority over the actions of the authorized delegate when providing services on behalf of the licensee. The department may take action against a licensee and/or the authorized delegate for any actions by the authorized delegate on behalf of the licensee in violation of the act or rules.

(7) A written contract between you and an authorized delegate must contain, among all the other contract provisions, provisions with language substantially similar to the following:

(a) The authorized delegate must operate in full compliance with chapter 19.230 RCW and the rules adopted under this chapter.

(b) The authorized delegate is prohibited from using sub-delegates or conducting business from locations not authorized by the department.

(c) A description of the specific money services you authorize the delegate to perform on your behalf.

(8) The authorized delegate may only conduct activities authorized by you in the written agreement, unless the authorized delegate is also a licensee.

(9) You may contract with another licensee to use that other licensee's existing authorized delegates to load funds onto your existing open-loop ~~((stored value cards))~~ prepaid access product. If the shared authorized delegate sells new open-loop ~~((stored value cards))~~ prepaid access product for you, you must add the authorized delegate to your authorized delegate roster.

(10) The authorized delegate must include the licensee's name along with the other applicable requirements of RCW 19.230.330(2) on any disclosures or receipts.

(11) The licensee's bond covers the actions of the authorized delegate while the authorized delegate is providing money services on behalf of the licensee pursuant to the written contract.

(12) You must maintain your authorized delegate agreements and contracts with other licensees to share existing authorized delegates as part of your books and records pursuant to RCW 19.230.170 and make them available to the department upon request.

AMENDATORY SECTION (Amending WSR 16-14-022, filed 6/27/16, effective 8/1/16)

**WAC 208-690-040 Surety bond—Money transmitters. What are the bonding requirements?**

(1) You must continuously maintain a surety bond as required by RCW 19.230.050, issued by a company authorized to do surety business in this state, as a surety. The surety may not be a wholly owned subsidiary or affiliate of the applicant or licensee.

(2) The penal sum of the bond must be calculated quarterly during the first year of licensing and thereafter annually. The calculation must be based on the previous twelve months' money transmission and payment instrument dollar volume. The bond amount must be calculated at ten thousand dollars for every one million dollars of money transmission and payment instrument dollar volume. The minimum surety bond amount is ten thousand dollars. The maximum surety bond amount is five hundred fifty thousand dollars.

(3) The initial bond amount will be ten thousand dollars and must be reevaluated based on the schedule set forth in subsection (2) of this section.

(4) The bond must be held for at least five years after the date the licensee violates the chapter or the licensee ceases to provide money services in this state, whichever is longer.

(5) The director may provide an alternative to a bond under certain circumstances.

#### NEW SECTION

#### **WAC 208-690-041 Surety bond—Online currency exchangers. What are the bonding requirements?**

(1) You must continuously maintain a surety bond as required by RCW 19.230.055, issued by a company authorized to do surety business in this state, as a surety. The surety may not be a wholly owned subsidiary or affiliate of the applicant or licensee.

(2) The penal sum of the bond must be calculated quarterly during the first year of licensing and thereafter annually. The calculation must be based on the previous twelve months' online currency exchange dollar volume. The bond amount must be calculated at ten thousand dollars for every one million dollars of currency exchange dollar volume. The minimum surety bond amount is ten thousand dollars. The maximum surety bond amount is fifty thousand dollars.

(3) The initial bond amount will be ten thousand dollars and must be reevaluated based on the schedule set forth in subsection (2) of this section.

(4) The bond must cover claims for at least one year after the date of an online currency exchanger licensee's violation of the chapter or the licensee ceases to provide online currency exchange services in this state, whichever is longer.

(5) The director may provide an alternative to a bond under certain circumstances.

AMENDATORY SECTION (Amending WSR 16-14-022, filed 6/27/16, effective 8/1/16)

**WAC 208-690-050 Increase of surety bond (~~or alternative~~). Will the department ever require an increase in the amount of the surety bond (~~or alternative~~)?** The director may increase the amount of the surety bond (~~or alternative~~), to a maximum of one million dollars, if the financial condition of a money transmitter or online currency exchanger applicant or licensee so requires. The director may consider, without limitation, the following criteria:

- (1) Significant reduction of net worth.
- (2) Financial losses.
- (3) Potential losses resulting from violations of chapter 19.230 RCW, or these rules.
- (4) Licensee filing for bankruptcy.

(5) The initiation of any proceedings against the licensee in any state, by any federal agency, or in any foreign country. This includes the filing of material litigation.

(6) The filing of a state or federal criminal charge against the licensee, person in control, responsible individual, executive officer, board director, AML compliance officer, employee, authorized delegate or principal, based on conduct related to providing money services or money laundering.

(7) A licensee, executive officer, board director, AML compliance officer, other person in control, responsible individual, principal or authorized delegate being convicted of a crime.

(8) Any unsafe or unsound practice.

(9) A judicial or administrative finding against a money transmitter licensee under chapter 19.86 RCW, or an examination report finding that the money transmitter licensee engaged in an unfair or deceptive act or practice in the conduct of its business.

(10) The nature and volume of the projected or established business activities.

(11) Other events and circumstances that, in the judgment of the director, impair the ability of the licensee to meet its obligations to its money services customers.

AMENDATORY SECTION (Amending WSR 16-14-022, filed 6/27/16, effective 8/1/16)

#### **WAC 208-690-060 Tangible net worth. What are the rules for my tangible net worth requirements?**

(1) A money transmitter applicant or licensee must demonstrate and maintain tangible net worth calculated at ten thousand dollars for every one million dollars of total company-wide money transmission and payment instrument dollar volume over the previous twelve months. The minimum tangible net worth is ten thousand dollars; the maximum required amount is three million dollars.

(2) The minimum tangible net worth if the company ~~((stores))~~ provides virtual currency ~~((on behalf of others))~~ storage is one hundred thousand dollars. See the definition of virtual currency storage.

(3) The director may increase the amounts specified in subsections (1) and (2) of this section up to a maximum of three million dollars if the director determines that a higher net worth is necessary to achieve the purposes of this chapter based on the:

- (a) Nature and volume of the projected or established business activities;
- (b) Amount, nature, quality, and liquidity of the company's assets;
- (c) Amount and nature of the company's liabilities;
- (d) History of the company's operations and prospects for earning and retaining income;
- (e) Quality of the company's operations;
- (f) Quality of the company's management;
- (g) Nature and quality of the company's principals, responsible individuals, and persons in control;
- (h) History of the company's compliance with applicable state and federal law; and
- (i) Any other factor the director considers relevant.

(4) Determinations of tangible net worth must be made according to generally accepted accounting principles.

AMENDATORY SECTION (Amending WSR 16-14-022, filed 6/27/16, effective 8/1/16)

**WAC 208-690-080 Audited annual financial statement. When must I provide audited financial statements?**

(1) You are required to have an audited financial statement prepared annually by a licensed or certified individual or firm in accordance with generally accepted accounting principles. The financials must be submitted prior to or with the annual assessment. The financials may be submitted through the NMLS. The director may waive the requirements of this subsection for licensees with minimal or no business activity conducted under their license.

(2) Applicants with no business operations prior to application must submit a copy of unconsolidated financial statements for the current fiscal year, whether audited or not. Audited annual financial statements are required in all future years of operation.

AMENDATORY SECTION (Amending WSR 16-14-022, filed 6/27/16, effective 8/1/16)

**WAC 208-690-085 Permissible investments.** (1) You must maintain permissible investment levels pursuant to RCW 19.230.200.

(2) In addition to the permissible investments allowed in RCW 19.230.210(2), a permissible investment may also include receivables from banks and credit cards.

(3) Monthly reports about permissible investments must include the monthly calculation of the average (~~outstanding~~) daily transmission liability. Average daily transmission liability means the sum of the daily amounts of a licensee's outstanding money transmission, as computed each day of the month divided by the number of days in the month.

(4) A licensee transmitting virtual currencies must hold virtual currencies of the same kind and volume (like-kind) as that held by the licensee but which is obligated to consumers. For example: A licensee transmitting 100 Bitcoins and 50 Ether on behalf of consumers must be able to demonstrate it possesses at least 100 Bitcoins and 50 Ether.

(5) A licensee transmitting both money and virtual currency must maintain volumes and types of permissible investments as described in subsections (3) and (4) of this section.

AMENDATORY SECTION (Amending WSR 16-14-022, filed 6/27/16, effective 8/1/16)

**WAC 208-690-090 Annual report and annual assessment. What are the annual report and assessment requirements?** Every licensee must submit a completed annual report and annual license assessment fee prescribed by WAC 208-690-140. The completed report and the fee must be received in the department office no later than 5:00 p.m. July 1, or 5:00 p.m. the next business day if July 1 is not a business day. A form for the preparation of the annual report and license assessment will be made available by the

department by electronic transmission or mailed upon request. The report must include the following:

(1) If the licensee is a money transmitter, a copy of the licensee's most recent audited annual financial statement or, if the licensee is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent company.

(2) A (~~list of current~~) certification that authorized delegate(s in a form and in a medium prescribed by the director.) information in the NMLS is current.

(3) If the licensee is a money transmitter, a certification that the (~~licensee's investment portfolio includes only~~) licensee meets permissible investment((s) requirements under RCW 19.230.200 and 19.230.210 ((and covers average outstanding daily transmission liability)).

(4) If the licensee is a money transmitter(~~, proof~~) or online currency exchanger, verification that the licensee has an adequate surety bond ((or assignment of a certificate of deposit)) and net worth as required by WAC 208-690-040 through 208-690-060.

(5) A (~~description of each~~) certification that material changes, as defined by WAC 208-690-110, ((which has not)) have been ((previously)) reported ((to the director.)) through the NMLS and are current.

(6) The annual report and assessment fee may be submitted through the NMLS.

AMENDATORY SECTION (Amending WSR 16-14-022, filed 6/27/16, effective 8/1/16)

**WAC 208-690-100 Is there a penalty for not filing my annual report and annual assessment on time?** (1) If you fail to submit the required annual report and annual assessment fee by July 1, each year, the director may suspend your license and assess a late fee. The late fee is ten percent of the annual assessment if (~~paid~~) submitted thirty or fewer days late and twenty-five percent of the annual assessment if (~~paid~~) submitted more than thirty days late. The annual report and annual assessment fee are not considered to be submitted until the date both have been submitted. If your license has been suspended under this section and you submit a completed annual report, the annual assessment and the late fee to the department office no later than 5:00 p.m., thirty calendar days after the original due date, the license suspension may be removed. If the delay extends past thirty days, your license has expired effective thirty-one days after the original due date.

(2) The director may reinstate an expired license under this section if, within twenty days after the license expiration, you:

(a) File the complete annual report and pay both the annual license assessment and the late fee; and

(b) You or your delegates did not engage in providing money services during the period the license was expired.

(3) If any of the deadlines in this section occur on a day that is not a business day, the deadline shall be the next business day.

NEW SECTION

**WAC 208-690-103 How is the annual assessment calculated and when is the annual assessment due?** (1) The annual assessment is calculated by multiplying 0.0004 by the previous year's adjusted Washington volume of money transmission, currency exchange, prepaid access sales, and payment instrument sales, with a minimum assessment of one thousand dollars and a maximum assessment of one hundred thousand dollars.

For purposes of this section, "adjusted Washington volume" means:

(a) For money transmission, ninety-five percent of all funds transmitted;

(b) For currency exchange, five percent of all currency exchanged;

(c) For prepaid access sales, ninety-five percent of all funds loaded onto open-loop prepaid access; and

(d) For payment instrument sales, seventy percent of the first ten million dollars of payment instrument sales, twenty percent of the volume over ten million through five hundred million dollars, and one percent of any amount over five hundred million dollars.

(2) The annual assessment is due no later than 5:00 p.m. July 1st each year or the next business day if July 1st is not a business day.

(3) If thirty days after the due date the annual assessment or any late fee for failure to report or pay the annual assessment is not paid, the department may make a claim against the surety bond.

NEW SECTION

**WAC 208-690-105 What are my quarterly call report filing requirements?** You are required to file accurate and complete call reports on the dates and in a form prescribed by the NMLS.

AMENDATORY SECTION (Amending WSR 16-14-022, filed 6/27/16, effective 8/1/16)

**WAC 208-690-110 Report of material change. What must I report to the department if something about my business changes?** Material changes described in this section must be reported to the director through the NMLS within thirty business days of the occurrence of the change. "Material change" means any change that is not trivial, and that, if not reported, would cause an investigation or examination to be misled or delayed. Such changes include, but are not limited to:

(1) A change of the licensee's physical, mailing, or email address. Additionally, a change to the physical, mailing, or emailing address of authorized delegates;

(2) A change of the responsible individual, AML compliance officer, executive officers or board members, or other person in control;

(3) A change of the licensee's name or DBA (doing business as);

(4) A change in the location where the records of the licensee that are required to be retained under RCW 19.230.170 are kept;

(5) The obtaining, revocation or surrender of a money services license in any other jurisdiction;

(6) The commencement of an administrative action against the licensee, an executive officer, responsible individual, board director, AML compliance officer, principal, or other person in control, in any jurisdiction;

(7) The conviction of the licensee, an executive officer, responsible individual, board director, AML compliance officer, principal, or other person in control of a misdemeanor or gross misdemeanor involving a financial transaction;

~~((7))~~ (8) A change in your business bank account including its closure or a change in the location or identity of the bank holding the account;

~~((8))~~ (9) A change in the business plan from that submitted at application; and

~~((9))~~ (10) Other similar activities or events affecting the business or executive officers or other persons in control;

~~(10))~~;

(11) For changes of control, see WAC 208-690-115;

(12) Other. Within ~~((forty-five))~~ ten days of a data breach you must notify the director in writing. This notification requirement may change based on directives or recommendations from law enforcement. See also WAC 208-690-270.

AMENDATORY SECTION (Amending WSR 16-14-022, filed 6/27/16, effective 8/1/16)

**WAC 208-690-140 How is the annual assessment calculated and when is the annual assessment due?** (1) The annual assessment is calculated by multiplying 0.0004 by the previous year's adjusted Washington volume of money transmission, currency exchange, ~~((stored value))~~ prepaid access sales, and payment instrument sales, with a minimum assessment of one thousand dollars and a maximum assessment of one hundred thousand dollars.

For purposes of this section, "adjusted Washington volume" means:

(a) For money transmission, ninety-five percent of all funds transmitted;

(b) For currency exchange, five percent of all currency exchanged;

(c) For ~~((stored value))~~ prepaid access sales, ninety-five percent of all funds loaded onto open-loop ~~((stored value devices))~~ prepaid access; and

(d) For payment instrument sales, seventy percent of the first ten million dollars of payment instrument sales, twenty percent of the volume over ten million through five hundred million dollars, and one percent of any amount over five hundred million dollars.

(2) The annual assessment is due no later than 5:00 p.m. July 1st each year or the next business day if July 1st is not a business day.

(3) If thirty days after the due date the annual assessment or any late fee for failure to report or pay the annual assessment is not paid, the department may make a claim against the surety bond.

AMENDATORY SECTION (Amending WSR 13-24-021, filed 11/22/13, effective 1/1/14)

**WAC 208-690-150 Transaction fee.** What fees must I pay to make changes to my license?

(1) You must pay fifty dollars to add an authorized delegate to your (~~quarterly~~) roster of authorized delegates. The fee for adding authorized delegates is capped at five thousand dollars per quarter.

(2) You must pay thirty dollars for the following changes to your license:

(a) Change of physical address, name or trade name (DBA or doing business as);

(b) Request for approval of a change in control;

(c) Change of the responsible individual or AML compliance officer;

(d) Addition of principal, executive officer, board member, or other person in control; or

(e) Change in registered agent.

(3) Transaction fees are separate, distinct from, and in addition to investigation and examination fees under WAC 208-690-170.

AMENDATORY SECTION (Amending WSR 16-14-022, filed 6/27/16, effective 8/1/16)

**WAC 208-690-180 Authority to conduct examinations and investigations.** (1) **When may the department examine or investigate my business?** For the purposes of discovering violations of chapter 19.230 RCW or these rules, discovering unsafe and unsound practices, or securing information lawfully required under chapter 19.230 RCW, the director may at any time, either personally or by designee, investigate or examine your business and, wherever located, the books, accounts, records, papers, documents, files, and other information used in your business or authorized delegates, and of every person who is engaged in the business of providing money services, whether the person acts or claims to act under or without the authority of chapter 19.230 RCW. For these purposes, the director or designated representative must have free access to the offices and places of business, books, accounts, papers, documents, other information, records, files, safes, and vaults of all such persons. The director may require the attendance of and examine under oath all persons whose testimony may be required about the business or the subject matter of any investigation, examination, or hearing and may require such person to produce books, accounts, papers, documents, records, files and any other information the director or designated person declares is relevant to the inquiry. The director may require the production of original books, accounts, papers, documents, records, files, and other information; may require that such original books, accounts, papers, documents, records, files, and other information be copied; or make copies himself or herself or by designee of such original books, accounts, papers, documents, records, files, or other information. If the director determines that there is a danger that original records may be destroyed, altered, or removed to deny access, or hinder an examination or investigation, or that original documents are necessary for the preparation of a criminal referral, the director may take possession of originals of any items described in

this section, regardless of the source of such items. Originals and copies taken by the director may be held, returned, or forwarded to other regulatory or law enforcement officials as determined necessary by the director. The director or designated person may issue a directive, subpoena, or subpoena duces tecum requiring attendance or compelling production of the books, accounts, papers, documents, records, files, or other information.

(2) The licensee, applicant, or person subject to licensing under this chapter must pay the cost of examinations and investigations as specified in RCW 19.230.320 and WAC 208-690-170.

(3) Information obtained during an examination or investigation under these rules may be disclosed only as provided in RCW 19.230.190.

(4) The director may retain attorneys, accountants, or other professionals and specialists as examiners, auditors or investigators, to conduct or assist in the conduct or examinations or investigations. The cost of these services must be borne by the person who is the subject of the examination or investigation.

(5) The director may participate in a joint or concurrent examination with other state or federal agencies. Such participation does not preclude the director from conducting an examination or investigation under this chapter.

## PART G

### RECEIPTS AND DISCLOSURES

AMENDATORY SECTION (Amending WSR 16-14-022, filed 6/27/16, effective 8/1/16)

**WAC 208-690-200 What (~~documentation must I provide to consumers~~) information must receipts contain to be in compliance with RCW 19.230.330(2)?** (1) For general money transmission transactions, the receipt must include your name, physical or mailing address, and phone number in addition to the fee and exchange rate disclosure information as required by RCW 19.230.330(2). A web site address may be used in lieu of a physical or mailing address for transactions conducted solely over the internet.

(2) For (~~stored value~~) prepaid access transactions the receipt may include the name, address, and telephone number of the authorized delegate, provided that your contact information is provided in or on the (~~stored value device~~) prepaid access packaging or on the (~~stored value device itself~~) prepaid access product.

(3) For bill payment transactions, the receipt may include the name, address, and telephone number of the authorized delegate; provided your name accompanies the authorized delegate's information on the receipt.

### NEW SECTION

**WAC 208-690-205 What disclosures must I provide to consumers?** (1) For virtual currency transactions. When applicable, you must make the following disclosures separately from any other information provided and in a clear and conspicuous manner:

(a) A schedule of all fees and charges you may assess on a transaction, how the fees and charges will be calculated if not set in advance and disclosed, and the timing of the fees and charges.

(b) Whether the product or service provided is insured or guaranteed by an agency of the United States, such as the federal deposit insurance corporation or the securities investor protection corporation or by private insurance against theft or loss, including cyber theft or theft by other means.

(c) A notice that the transfer of virtual currency or digital units is irrevocable and any exception to the irrevocability of transfer.

(d) A notice describing your liability for unauthorized, mistaken, or accidental transfers and, describing the consumer's responsibility for providing notice of such mistake to you, and the general error-resolution rights applicable to any transaction.

(e) A disclosure prior to the transaction that informs the consumer that the nature of virtual currency may lead to an increased risk of fraud or cyber attack and the consumer's virtual currency value may be irretrievably stolen. See also WAC 208-690-270.

(2) For currency exchange transactions. If the currency being sought has limited convertibility, you must provide a disclosure to the consumer indicating the limited convertibility.

(3) For all transactions. You must disclose to the consumer prior to the transaction that fraudulent transactions may result in the loss of their money with no recourse.

(4) Disclosures may be provided electronically.

**AMENDATORY SECTION** (Amending WSR 16-14-022, filed 6/27/16, effective 8/1/16)

**WAC 208-690-240 ((Cyber)) Information security program.** Each licensee shall establish and maintain ((# cyber)) an information security program to ensure the availability and functionality of the licensee's electronic systems and to protect those systems and any sensitive data stored on those systems from unauthorized access, use, or tampering. The program may be established and maintained by a parent or affiliate as long as the licensee has adopted the program and it is available to the department for review.

**AMENDATORY SECTION** (Amending WSR 16-14-022, filed 6/27/16, effective 8/1/16)

**WAC 208-690-250 Information security program required by the federal Safeguards Rule implementing the Gramm-Leach-Bliley Act (GLBA).** (1) Generally, applicants and licensees must have a written program appropriate to the company's size and complexity, the activity conducted, and the sensitivity of information at issue. The program must ensure the information's security and confidentiality, protect against anticipated threats or hazards to the security or integrity of the information, and protect against unauthorized access to or use of the information.

(2) The information security plan must be maintained as part of your books and records.

(3) ~~((Compliance with GLBA and Regulation P, 12 C.F.R. Part 1016, will be deemed compliance with this subsection.~~

(4)) For more information access the FTC web site on the Safeguards Rule at: <https://www.ftc.gov/tips-advice/business-center/guidance/financial-institutions-customer-information-complying> and see 16 C.F.R. 314.

**AMENDATORY SECTION** (Amending WSR 16-14-022, filed 6/27/16, effective 8/1/16)

**WAC 208-690-280 Business resumption plan.** You must have a written plan that details the company's response and recovery to any event that results in damage to or destruction of books and records or a data breach. The plan must be maintained as part of your books and records.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 208-690-045 Alternatives to the surety bond.

#### **WSR 18-09-099**

#### **PROPOSED RULES**

#### **CRIMINAL JUSTICE**

#### **TRAINING COMMISSION**

[Filed April 18, 2018, 8:17 a.m.]

Continuance of WSR 18-02-069.

Preproposal statement of inquiry was filed as WSR 17-22-024.

Title of Rule and Other Identifying Information: WAC 139-10-213 Employment of corrections personnel—Notification to commission.

Hearing Location(s): On Wednesday, June 13, 2018, at 10 a.m., at the Washington State Criminal Justice Training Commission, 19010 1st Avenue South, Room C-121, Burien, WA 98148.

Date of Intended Adoption: June 13, 2018.

Submit Written Comments to: Sonja Peterson, 19010 1st Avenue South, Burien, WA 98148, email [speterson@cjtc.state.wa.us](mailto:speterson@cjtc.state.wa.us), by June 6, 2018.

Assistance for Persons with Disabilities: Contact Sonja Peterson, phone 206-835-7356, TTY 206-835-7300, email [speterson@cjtc.state.wa.us](mailto:speterson@cjtc.state.wa.us), by June 11, 2018.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Tisha Jones, Lacey, Washington, 360-486-2431.

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

April 18, 2018

Sonja Peterson

Rules Coordinator

**WSR 18-09-100**  
**PROPOSED RULES**  
**CRIMINAL JUSTICE**  
**TRAINING COMMISSION**

[Filed April 18, 2018, 8:21 a.m.]

Continuance of WSR 18-02-070.

Preproposal statement of inquiry was filed as WSR 17-22-025.

Title of Rule and Other Identifying Information: WAC 139-10-214 Termination of corrections personnel—Notification to commission.

Hearing Location(s): On Wednesday, June 13, 2018, at 10 a.m., at the Washington State Criminal Justice Training Commission, 19010 1st Avenue South, Room C-121, Burien, WA 98148.

Date of Intended Adoption: June 13, 2018.

Submit Written Comments to: Sonja Peterson, 19010 1st Avenue South, Burien, WA 98148, email [speterson@cjtc.state.wa.us](mailto:speterson@cjtc.state.wa.us), by June 6, 2018.

Assistance for Persons with Disabilities: Contact Sonja Peterson, phone 206-835-7356, TTY 206-835-7300, email [speterson@cjtc.state.wa.us](mailto:speterson@cjtc.state.wa.us), by June 11, 2018.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Tisha Jones, Lacey, Washington, 360-486-2431.

April 18, 2018  
 Sonja Peterson  
 Rules Coordinator

**WSR 18-09-101**  
**PROPOSED RULES**  
**CRIMINAL JUSTICE**  
**TRAINING COMMISSION**

[Filed April 18, 2018, 8:28 a.m.]

Continuance of WSR 18-04-033.

Preproposal statement of inquiry was filed as WSR 17-24-094.

Title of Rule and Other Identifying Information: WAC 139-10-211 Backgrounding requirement for admission to basic corrections officers' academy.

Hearing Location(s): On Wednesday, June 13, 2018, at 10 a.m., at the Washington State Criminal Justice Training Commission, 19010 1st Avenue South, Room C-121, Burien, WA 98148.

Date of Intended Adoption: June 13, 2018.

Submit Written Comments to: Sonja Peterson, 19010 1st Avenue South, Burien, WA 98148, email [speterson@cjtc.state.wa.us](mailto:speterson@cjtc.state.wa.us), by June 6, 2018.

Assistance for Persons with Disabilities: Contact Sonja Peterson, phone 206-835-7356, TTY 206-835-7300, email [speterson@cjtc.state.wa.us](mailto:speterson@cjtc.state.wa.us), by June 11, 2018.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Tisha Jones, Lacey, Washington, 360-486-2431.

April 18, 2018  
 Sonja Peterson

Rules Coordinator

**WSR 18-09-106**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**EARLY LEARNING**

[Filed April 18, 2018, 9:51 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-20-108.

Title of Rule and Other Identifying Information: New WAC 170-290-0126 Electronic attendance records (for working connections child care (WCCC) and seasonal child care (SCC) programs).

Hearing Location(s): On May 22, 2018, at 3:00 p.m., at 1110 Jefferson Street S.E., Room 113, Olympia, WA. Comments can also be made online at <https://del.wa.gov/PolicyProposalComment/Detail.aspx>.

Date of Intended Adoption: May 31, 2018.

Submit Written Comments to: Rules Coordinator, P.O. Box 40970, email [rules@del.wa.gov](mailto:rules@del.wa.gov), fax 360-725-4925, by May 23, 2018.

Assistance for Persons with Disabilities: Contact rules coordinator, phone 360-725-4670, fax 360-725-4925, email [rules@del.wa.gov](mailto:rules@del.wa.gov), by May 18, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Require providers who participate in WCCC and SCC programs to use department of early learning's (DEL) or a DEL-approved electronic attendance system to track when program-eligible children receive child care. The proposed rule also establishes attendance tracking requirements that other systems must comply with in order to be approved for use.

Reasons Supporting Proposal: WCCC and SCC programs, administered by DEL, help families with low incomes pay for child care while they work or meet WorkFirst participation requirements. Child care providers who participate in WCCC and SCC programs currently track children's attendance on paper forms and use these forms to invoice the state. Attendance tracking has become a confusing process for families, providers and the state that sometimes results in incorrect payments to providers. In response to state audits and federal directives to improve billing accuracy, DEL has developed an electronic attendance system that has been available for use since March 1, 2018. Child care providers use the system to sign program-eligible children in and out of care and those records are uploaded to the state when the user submits an invoice for payment. Requiring WCCC and SCC participating child care providers to use the system will reduce inaccurate billings, reduce overpayments that providers must repay, and reduce the time users and state employees spend tabulating hours for these programs.

Statutory Authority for Adoption: RCW 43.215.060 and 43.215.070.

Statute Being Implemented: RCW 43.215.130.

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

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Jason Ramynke, DEL, P.O. Box 40970, Olympia, WA 98504, 360-688-0911; Implementation and Enforcement: DEL/DSHS, statewide.

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

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

The proposed rule does impose more-than-minor costs on businesses.

**Small Business Economic Impact Statement**

1. Describe the proposed rule, including: A brief history of the issue; an explanation of why the proposed rule is needed; and a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule.

WCCC and SCC programs, administered by DEL, help families with low incomes pay for child care while they work or meet WorkFirst participation requirements. Child care providers who participate in WCCC and SCC programs track children's attendance on paper forms and use these forms to invoice the state. Attendance tracking has become a confusing process for families, providers and the state and sometimes results in incorrect payments to providers. In response to state audits and federal directives regarding billing accuracy, DEL has launched an electronic attendance system that is expected to reduce billing and payment inaccuracies. In March 2018, child care providers began using the system to sign program-eligible children in and out of care and those records are uploaded to the state when the user submits an invoice for payment. By rule, DEL is making use of the electronic attendance system mandatory for WCCC and SCC payment beginning July 1, 2018.

Users' system requirements are an internet connection, a computer tablet, and a printer. DEL also recommends a computer for performing administrative tasks. Training is required before a provider may use the system. All training is provided by DEL at no cost to the user.

2. Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor cost thresholds are.

**Table A:**

NAICS Code (4, 5 or 6 digit)	NAICS Business Description	# of businesses in WA	Minor Cost Threshold = 1% of Average Annual Payroll	Minor Cost Threshold = .3% of Average Annual Receipts
624410	child day care services	2228*	\$1,548	937.9591562

\*Based on data from the 2012 U.S. Census. As of April 12, three thousand four hundred fifteen family homes and two thousand one hundred forty-one centers were licensed in Washington state for a total of five thousand five hundred sixty-six child care providers. Not all licensed providers participate in WCCC or SCC programs.

3. Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: Cost of equipment, supplies, labor, professional services and increased administrative costs; and whether compliance with the proposed rule will cause businesses to lose sales or revenue.

**One time costs:\***

Tablet:	\$100.00
Computer:	240.00 (optional)
Printer	<u>60.00</u>
TOTAL	\$460.00

**Ongoing costs:\***

Internet:	\$45.00 per month**
Paper:	\$ 6.00 per ream

\* Source: Walmart.com (one-time costs and paper). geoISP.com and broadbandnow.com (internet connection)

\*\* CenturyLink's monthly rate. Internet service costs vary by provider and depend on whether the user bundles other utilities in the service package. Some providers may use their smart phone's mobile hot spot/tethering capability instead of an Internet subscription.

**DEL provides free software and training to providers.**

4. Analyze whether the proposed rule may impose more-than-minor costs on businesses in the industry. The one-time equipment costs do not impose more-than-minor costs on businesses in the industry. This statement is supplied since child care providers without access to an internet connection in the licensed child care space will incur the cost of an ongoing monthly internet connection. The minor cost threshold will likely be exceeded after twenty-two months of internet service by users who must bear all one-time costs and pay for internet service.

5. Determine whether the proposed rule may have a disproportionate impact on small businesses as compared to the ten percent of businesses that are the largest businesses required to comply with the proposed rule. The proposed rule impacts only small businesses.

6. If the proposed rule has a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. If the costs cannot be reduced provide a clear explanation of why.

DEL is supporting users by providing training and staffing a help desk that provides online and telephone support. Training is offered in English, Spanish, and Somali and can be completed online, in-person at various locations around the state, or using a self-paced workbook. DEL began offering the two hour training on March 1, 2018, and is requiring existing providers to complete training by June 30, 2018.

DEL believes the electronic attendance system will reduce the time that users spend tabulating attendance hours for WCCC and SCC programs. DEL is supporting providers by giving them the option of using another electronic system instead of the DEL-supplied system. As of April 12 DEL had approved eighteen other systems already used by some providers.

DEL negotiated with SEIU 925 a \$200 technology incentive that represented providers who participate in WCCC and SCC programs may apply to receive, which includes approximately one thousand four hundred family child care providers. The incentive is meant to offset equipment and/or internet costs for these small businesses that must bear the initial start-up costs.

7. Describe how small businesses were involved in the development of the proposed rule. Two years before mandating use of an electronic attendance system, DEL informed the impacted small businesses of its plan to do so. Those small business owners were invited to participate in the electronic system development. Once the system was developed, DEL worked to reduce negative impacts on these small businesses by assembling a group of one hundred system testers who received training in January and used the application to check children in and out of care during the month of February. Beginning March 1, 2018, DEL launched the application and encouraged anticipated users to begin using the system in advance of July 1, when it becomes mandatory.

8. Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule. Required use of the electronic attendance system will most likely not impact a licensee's hiring decision. Use of the system is expected to reduce the time users must spend on administrative functions.

A copy of the statement may be obtained by contacting Rules Coordinator, P.O. Box 40970, phone 360-725-4670, fax 360-725-4925, email rules@del.wa.gov.

April 18, 2018  
Heather Moss  
Director

#### NEW SECTION

##### **WAC 170-290-0126 Electronic attendance records.**

(1) Providers must use the department's electronic attendance recordkeeping system or a department-approved electronic attendance recordkeeping system to record a child's attendance.

(2) The electronic attendance recordkeeping system must:

(a) Record an electronic signature, swipe card, personal identification number (PIN), biometric reader, or similar authentication by the parent or designee when signing the child in and out of the provider's care;

(b) Ensure the authenticity, confidentiality, integrity, security, accessibility, and protection against alterations of the electronic records;

(c) Produce an authentic, verifiable record for each transaction that complies with all legal and other requirements regarding the record's structure, content, and time of creation or receipt;

(d) Prove the identity of the sender of the record;

(e) Uniquely identify each record;

(f) Capture an electronic record for each transaction conducted;

(g) Maintain the integrity of electronic records as captured or created so that they can be accessed, displayed and managed as a unit;

(h) Retain electronic records in an accessible form for their legal minimum retention period;

(i) Search and retrieve electronic records in the normal course of business throughout their entire legal minimum retention period;

(j) Produce authentic copies of electronic records and supply them in usable formats for business purposes and all public access purposes;

(k) Contain all of the information necessary to reproduce the entire electronic record and associated signatures in a form that permits the person viewing or printing the entire electronic record to verify:

(i) The contents of the electronic record;

(ii) The method used to sign the electronic record, if applicable;

(iii) The person signing the electronic record; and

(iv) The date when the signature was executed.

#### **WSR 18-09-110**

#### **PROPOSED RULES**

#### **DEPARTMENT OF EARLY LEARNING**

[Filed April 18, 2018, 10:09 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: Rules related to public disclosure, specifically new WAC 170-01-0205 Third party requests for otherwise confidential records and 170-01-0206 Notifying third parties of a request; amending WAC 170-01-0010 Purpose, 170-01-0020 Definitions, 170-01-0030 Department locations, 170-01-0040 Public records officer, 170-01-0050 Records index, 170-01-0100 Availability of public records, 170-01-0110 Organization of records, 170-01-0120 How to make a public records request, 170-01-0200 How the department responds to public records request, 170-01-0230 Reasons for denying disclosure of all or part of a record, 170-01-0240 Types of records that may be exempt from disclosure, 170-01-0250 If the public record requested is exempt from disclosure, 170-01-0260 If only part of the record requested is exempt from disclosure, 170-01-0270 Department reviews of records request denials and 170-01-0290 Charges for public records; and repealing WAC 170-01-0210 What DEL considers a reasonable time estimate and 170-01-0220 Reasons for DEL extending the time needed to fill a public records request.

Hearing Location(s): On May 22, 2018, at 3:00 p.m., at 1110 Jefferson Street S.E., Room 113, Olympia, WA. Comments can also be made online at <https://del.wa.gov/PolicyProposalComment/Detail.aspx>.

Date of Intended Adoption: May 31, 2018.

Submit Written Comments to: rules coordinator, P.O. Box 40970, email rules@del.wa.gov, fax 360-725-4925 [360-725-4925], by May 23, 2018.

Assistance for Persons with Disabilities: Contact rules coordinator, phone 360-725-4670, fax 260-725-4925 [360-725-4925], email rules@del.wa.gov, by May 18, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Establish procedures for public records requests and associated fees.

Reasons Supporting Proposal: Effective July 1, 2018, chapter 6, Laws of 2017 3rd sp. sess. (2E2SHB 1661), creates the department of children, youth and families (DCYF), abolishes the department of early learning (DEL), and assigns DEL's powers and duties as well as the powers and duties of the department of social and health services' children's administration to DCYF. The rules explain for the general public and, in particular, records requestors how to request records from DCYF, when fees will be charged, and how requests will be processed. Codifying procedures will ensure that the agency consistently processes requests.

Statutory Authority for Adoption: RCW 43.215.070, chapter 42.56 RCW.

Statute Being Implemented: Chapter 42.56 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: DEL is conducting this rule making in order for DCYF to have public disclosure rules in effect on July 1, the first day DCYF officially opens for business. DEL expects to adopt the rules at the end of May and make them effective July 1. DCYF will recodify the rules to its Title 110 WAC effective July 1.

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Nathan Sherrard, OFM, 302 Sid Snyder Avenue S.W., Olympia, WA, 360-902-0540; Implementation and Enforcement: DCYF, statewide.

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

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

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

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045.

April 18, 2018  
Heather Moss  
Director

AMENDATORY SECTION (Amending WSR 12-09-035, filed 4/11/12, effective 5/12/12)

**WAC 170-01-0010 Purpose.** The purpose of this chapter is to provide rules for the department ~~((of early learning))~~ to implement the Public Records Act, chapter 42.56 RCW.

AMENDATORY SECTION (Amending WSR 16-09-060, filed 4/15/16, effective 5/16/16)

**WAC 170-01-0020 Definitions.** The definitions set forth in chapter 42.56 RCW shall apply to this chapter. ~~((Additional definitions not listed in the Public Records Act are listed in this section, except as provided in this section))~~ The following definitions also apply to this chapter.

"Authorization" means a detailed document that gives the department permission to use or disclose confidential information records for specified purposes.

"Client" means a person who receives services or benefits from the department.

~~(("DEL" or))~~ "Department" means the department of ((early learning)) children, youth, and families. Where appropriate, ~~((DEL))~~ "department" also may refer to the officials and employees of the department of ((early learning)) children, youth, and families.

"Disclosure" means inspection ((and/or)) or copying of public records, unless the record is exempt from disclosure by law.

"Public records" includes any writing, as defined in RCW 42.56.010, containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. Almost all records held by an agency relate to the conduct of government; however, some do not. A purely personal record having no relation to the conduct of government is not a "public record." While the contents of the personal record might not be a public record, a transaction of the record itself may be.

"Public records officer" or "PRO" means the designated person for the department who oversees all records requests under RCW 42.56.580. This person is identified in the Washington state register.

"Redact" means to edit from a released record information that is exempt from disclosure to the public, by covering over the information with black ink or other method without deleting the information from the original record.

AMENDATORY SECTION (Amending WSR 16-09-060, filed 4/15/16, effective 5/16/16)

**WAC 170-01-0030 ((Description of the)) Department ((of early learning)) locations.** (1) ~~((DEL was formed in July 2006 under chapter 265, Laws of 2006 to bring together child care and early learning programs previously under the departments of social and health services and commerce, as well as the state office of public instruction.~~

~~((2) The department was established to oversee child care licensing and early childhood learning programs and initiatives.~~

~~(3))~~ The administrative office of the department (~~(of early learning)~~) is located (~~(in Olympia, Washington. To request any information, contact: P.O. Box 40970, Olympia, WA 98504 0970, or call toll free 1 866 482 4325)~~) at 1500 Jefferson Street, S.E., Olympia, Washington.

~~((4))~~ (2) Field offices are located throughout the state and contact information can be found on ~~((DEL's))~~ the department's web site, [www.dcyf.wa.gov](http://www.dcyf.wa.gov).

AMENDATORY SECTION (Amending WSR 12-09-035, filed 4/11/12, effective 5/12/12)

**WAC 170-01-0040 Public records officer.** ~~((DEL's))~~ The department's director will appoint a public records officer (PRO) whose responsibility is to serve as a "point of contact" for members of the public seeking public records. ~~((DEL))~~ The department will provide the public records officer's name and contact information by publishing it in the state register. ~~((DEL))~~ The department will also provide the public records officer's contact information on ~~((the department))~~ its web site, [www.dcyf.wa.gov](http://www.dcyf.wa.gov).

A request may be fulfilled by the PRO, or ~~((other DEL))~~ department staff designated by the PRO.

AMENDATORY SECTION (Amending WSR 12-09-035, filed 4/11/12, effective 5/12/12)

**WAC 170-01-0050 Records index.** (1) The ~~((department keeps an index (list) of the following documents:~~

~~(a) Rules adopted by DEL under chapter 34.05 RCW.~~

~~(b) Substantive final orders issued by the department in adjudicative proceedings under chapter 34.05 RCW and chapter 170-03 WAC.~~

~~(c) Interpretive and policy statements filed by the department under chapter 34.05 RCW.~~

~~(2) The department finds that it would be unduly burdensome and would interfere with agency operations to maintain an index of other records because of the complexity and diversity of its operations and the resulting volume of manuals, correspondence, electronic data and constituent records.~~

~~(3) The department will make available for public disclosure all indices if at a future time they are developed for agency use.)~~ records retention schedule established by the division of state archives of the office of the secretary of state serves as an index for the identification and location of the department's records including those described in RCW 42.56.070(5).

(2) The records retention schedule indexes records according to the originating program or section, and then the record series title. Each title is further identified by a statement of function or purpose, and the retention period. The records retention schedule is available to the public for inspection and copying. The records retention schedule is updated by the department as needed. With the assistance of the public records officer or designee, any person can obtain access to the department's public records using the records retention schedule.

AMENDATORY SECTION (Amending WSR 12-09-035, filed 4/11/12, effective 5/12/12)

**WAC 170-01-0100 Availability of public records.** Public records are available for inspection and copying during ~~((DEL's))~~ the department's normal business hours, Monday through Friday, 8 a.m. to 5 p.m., excluding legal holidays. A department staff person must be present at all times when a record is being inspected. Appointments are not required, but significantly help ~~((DEL))~~ the department provide prompt and efficient service. Some ~~((DEL))~~ department records may be stored in other locations, in computer storage systems, or the state records warehouse, and may take time ~~((for DEL))~~ to identify and gather ~~((them))~~. Other records may be exempt from disclosure. Original records cannot be removed from ~~((a DEL building))~~ the inspection location. If required by law, ~~((DEL))~~ department staff must redact information in a record before making it available for inspection. ~~((DEL))~~ Department staff will make copies of records on request.

AMENDATORY SECTION (Amending WSR 12-09-035, filed 4/11/12, effective 5/12/12)

**WAC 170-01-0110 Organization of records.** ~~((DEL))~~ The department will maintain its records in an organized manner and will take reasonable actions to protect records from damage and disorganization. Records available on the ~~((DEL))~~ department's web site ~~((at [www.del.wa.gov](http://www.del.wa.gov)))~~, [www.dcyf.wa.gov](http://www.dcyf.wa.gov), are available to the public without a records request, and the department does not copy those records. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

AMENDATORY SECTION (Amending WSR 16-09-060, filed 4/15/16, effective 5/16/16)

**WAC 170-01-0120 How to make a public records request.** (1) Public records requests should be made directly to the ~~((DEL))~~ department's public records officer.

(2) Public records requests may be made verbally or in writing.

(a) Written requests may be sent by email to public.records@del.wa.gov, by fax to 360-725-4925 or mail. Requests may be delivered to ~~((: Department of Early Learning, P.O. Box 40970, Olympia, WA 98504 0970))~~ 1500 Jefferson Street S.E., Olympia, Washington or P.O. Box 40975, Olympia, WA 98504-0975.

(b) ~~((DEL's))~~ The department's public records request form is on its web site. The department recommends that requestors submit requests using the department's public records request form.

(c) A written request without using the DEL public records request form should contain:

(i) Name of requestor;

(ii) Address of requestor;

(iii) Other contact information, including telephone number and any email address;

(iv) The date on which the request was made;

(v) A sufficient description of the record requested; and

(vi) If the ~~((information))~~ record being requested may include a list of individuals or businesses, a statement that the list will not be used for commercial purposes, which is prohibited by law.

(3) The department may ask an individual requesting a public record for proof of identification when the law restricts disclosure to a specific person.

AMENDATORY SECTION (Amending WSR 12-09-035, filed 4/11/12, effective 5/12/12)

**WAC 170-01-0200 How ~~((DEL))~~ the department responds to ~~((your))~~ public records requests.** Within five business days ~~((after))~~ of receiving the request, ~~((DEL))~~ the department will either:

- (1) Provide the ~~((record(s)))~~ record;
- (2) Acknowledge the request and give a reasonable time estimate of how long the department will take to provide records;
- (3) Contact the requestor to clarify the request if it isn't understood by the public records officer; or
- (4) Deny all or part of the request in writing, with reasons for the denial. The explanation will include the law that ~~((DEL))~~ the department relied upon in its denial.

At his or her discretion, the public records officer may send the ~~((request))~~ requested records by email, fax, postal mail, or commercial delivery. The records may be delivered on paper, computer or compact discs, or other methods.

AMENDATORY SECTION (Amending WSR 12-09-035, filed 4/11/12, effective 5/12/12)

**WAC 170-01-0230 Reasons for ~~((DEL))~~ denying disclosure of all or part of a record.** RCW 42.56.030 states that the Public Records Act "shall be liberally construed and its exemptions narrowly construed." ~~((DEL))~~ The department will provide all records required by law. However, there are times when all or part of a record request ~~((would))~~ may be denied, such as when:

- (1) The record is exempt from disclosure by law.
- (2) The request is for lists of individuals for commercial purposes, including family home providers.
- (3) The requestor has not asked for an identifiable record. The Public Records Act requires access to existing, identifiable public records in an agency's possession at the time of the request.
- (4) The request requires ~~((DEL))~~ the department to collect or organize data to create a public record, or to give data that did not exist at the time of the public records request.

AMENDATORY SECTION (Amending WSR 12-09-035, filed 4/11/12, effective 5/12/12)

**WAC 170-01-0240 Types of records that may be exempt from disclosure.** ~~((With any public records request, disclosure must occur unless a specific exemption exists in statute that would allow for DEL to not disclose the record or the information within a record.~~

~~DEL is always prohibited by statute from disclosing lists of individuals, including family home providers, for commercial purposes.~~

~~The Public Records Act lists exemptions or allows for "other statute" exemptions. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by DEL, for inspection and copying: For example, RCW 5.60.060(2) restricts privileged attorney-client communications between DEL staff and the office of the attorney general.)~~ (1) Public records and information may be exempt from disclosure or production under chapter 42.56 RCW or other state or federal laws. Commonly applicable exemptions include, but are not limited to, the following:

(a) Under RCW 42.56.230(1), personal information in files maintained for welfare recipients and patients or clients of public institutions or public health agencies;

(b) Under RCW 42.56.230(2), personal information in files maintained for a child enrolled in licensed child care;

(c) Under chapter 13.50 RCW and related federal laws, information and records;

(d) Under chapter 26.33 RCW and related federal laws, information and records about adoption;

(e) Under RCW 42.56.230(3), personal information in files maintained for department employees or elected officials to the extent that disclosure would violate their privacy rights;

(f) Under RCW 42.56.250, personal information in personnel records, public employment related records, volunteer rosters, or included in any mailing list of employees or volunteers of any public agency; and

(g) Under RCW 42.56.640(2), names of family child care providers.

(2) If the requested public record contains information that is exempt from public disclosure, the department may:

(a) As appropriate, release the nonexempt portion, explaining what exemptions apply to redacted portions of the record;

(b) As appropriate, deny release of the entire record and send a written explanation citing the exemption that applies to the denial; or

(c) When a denial would reveal confidential information, neither confirm nor deny the existence of the requested records and provide the legal basis for confidentiality as if the responsive records existed.

AMENDATORY SECTION (Amending WSR 12-09-035, filed 4/11/12, effective 5/12/12)

**WAC 170-01-0250 If the public record requested is exempt from disclosure.** If ~~((DEL))~~ the department determines that a record is exempt from disclosure, ~~((you))~~ the requestor will be informed in writing of the specific exemption authorizing DEL to withhold the record.

AMENDATORY SECTION (Amending WSR 12-09-035, filed 4/11/12, effective 5/12/12)

**WAC 170-01-0260 If only part of the record requested is exempt from disclosure.** ~~((DEL))~~ The department may redact (see WAC 170-01-0020) identifying details or other information when the information is not subject to disclosure. The requestor will be informed in writing of the

exemptions authorizing ~~((DEL))~~ the department to withhold information within a record.

AMENDATORY SECTION (Amending WSR 16-09-060, filed 4/15/16, effective 5/16/16)

**WAC 170-01-0270 ~~((DEL))~~ Department reviews of records request denials.** (1) All review requests must be in writing (letter, fax or email). All review requests must specify the part or parts of the denial or redaction that the requestor wishes to be reviewed.

(2) If ~~((DEL))~~ the department denies all or part of a request, or redacts any portion of a record, the requestor may request a review of this decision by:

(a) Asking the public records officer for an internal ~~((DEL))~~ review. ~~((After receiving a request for an internal review, the public records officer will refer the matter for review to the deputy director who may consult with other agency leaders.))~~ The denial will either be upheld or reversed within two business days after the receipt of the review request.

(b) Asking for an external review by the attorney general's office.

Requestors may initiate this by sending a request for review to Public Records Review, Office of the Attorney General, P.O. Box 40100, Olympia, WA 98504-0100 or publicrecords@atg.wa.gov.

(c) Asking for a judicial review.

To initiate a court review of a public records case, a requestor can file a "motion to show cause" which directs the agency to appear before the court and show any cause why the agency did not violate the act. The case must be filed in the superior court in the county in which the record is maintained.

AMENDATORY SECTION (Amending WSR 17-22-072, filed 10/27/17, effective 11/27/17)

**WAC 170-01-0290 Charges for public records.** (1) There is no cost to inspect public records.

(2) Calculating the actual costs of charges for providing public records is unduly burdensome because ~~((it will consume scarce))~~ the department ~~((of early learning))~~ does not have resources to conduct a study of actual costs ~~((, and it is difficult to accurately calculate all costs directly incident to copying records, including equipment and paper costs, data storage costs, electronic production costs, and staff time for copying and sending))~~ for all requested records. In addition, conducting such a study would interfere with other essential agency functions.

(3) ~~((Instead of calculating the actual costs of charges for records, the director or director's designee shall establish, maintain, and make available for public inspection and copying a statement of costs that the department of early learning charges for providing photocopies or electronically produced copies of public records, and such charges for records shall not exceed the maximum default charges allowed in RCW 42.56.120(2)(b), as amended by section 3, chapter 304, Laws of 2017. The department may also use any other method authorized by the Public Records Act for imposing charges for public records including, but not limited to, charging a flat~~

~~fee, charging a customized service charge, or charging based on a contract, memorandum of understanding, or other agreement with a requestor.))~~ The department may do one or more of the following:

(a) Charge for copies of records according to the default fees in RCW 42.56.120(2)(b), (c), and (d);

(b) Charge for customized services pursuant to RCW 42.56.120(3);

(c) Charge other copy fees authorized by statutes outside of chapter 42.56 RCW; and

(d) Enter into an alternative fee agreement with a requestor under RCW 42.56.120(4).

(4) **Fee waivers.** ~~((Fee waivers are an exception and are available for some small requests under the following conditions:~~

~~(a) It is within the discretion of the public records officer to waive copying fees when:~~

~~(i) All of the records responsive to an entire request are paper copies only and are twenty five or fewer pages; or~~

~~(ii) All of the records responsive to an entire request are electronic and can be provided in a single email with attachments of a size totaling no more than the equivalent of one hundred printed pages. If that email for any reason is not deliverable, records will be provided through another means of delivery, and the requestor will be charged in accordance with this rule.~~

~~(b) Fee waivers are not applicable to records provided in installments.))~~ The department may waive copying fees in one or more of the following circumstances:

(a) Clients receiving the first copy of their file;

(b) Producing records assists in managing a program;

(c) The expense of billing exceeds the cost of producing records; and

(d) All of the records responsive to an entire request are paper copies only and are twenty-five or fewer pages.

(5) **Advance deposits.** The public records officer may require an advance deposit of ten percent of the estimated ~~((fees when the copying fees for an installment or an entire request, or customized service charge, exceeds twenty-five dollars.~~

~~(6) All required fees must be paid in advance of release of the copies or an installment of copies, or in advance of when a deposit is required. DEL will notify the requestor when payment is due. Payment should be delivered to the DEL Financial Services Office, P.O. Box 40970, Olympia, WA 98504-0970. Payment may be made by cash, check, or money order to the department of early learning. It should clearly be marked as payment for public records.~~

~~(7) DEL will close))~~ costs of copying records. The public records officer may also require the payment of the remainder of the copying costs before providing all of the records, or, when records are provided on an installment basis, require payment of the costs of copying an installment before providing that installment. If the requestor does not claim an installment of a records request, the department is not obligated to continue producing the balance of the request.

(6) A request will be closed when a requestor fails by the payment date to pay in the manner prescribed for records, an installment of records, or a required deposit.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 170-01-0210 What DEL considers a reasonable time estimate.
- WAC 170-01-0220 Reasons for DEL extending the time needed to fill a public records request.

NEW SECTION

**WAC 170-01-0205 Third-party requests for otherwise confidential records.** (1) A third party, such as a department client's attorney or lay representative, may access otherwise confidential records about a department client with a valid authorization.

- (2) The authorization should:
- Identify the client;
  - Identify the individual(s) or organization(s) authorized to receive the records;
  - State that the department may disclose the information to the requestor;
  - Identify the record(s) that the client wants the department to release;
  - State the date the authorization expires or an expiration event that relates to the client or the purpose of the use of disclosure;
  - State the reason for disclosure;
  - State the right to revoke;
  - State the potential for redisclosure;
  - As appropriate, include specific language authorizing the department to release any one or more of the following to the requestor: Substance use disorder records, child welfare records, adoption records, records concerning reproductive health and sexually transmitted diseases, and mental health records; and
  - Include a dated, verified signature of the individual with legal authority to authorize the release of records.
- (3) The department may ask for additional proof to verify the third-party's authority to access confidential records when required by law.
- (4) In general, a parent may access confidential records about a child under age eighteen. A child must consent to disclosure of the following confidential records:
- At any age, birth control, and abortion records (see RCW 9.02.100);
  - If over age thirteen, substance use disorder and mental health records (see 42 C.F.R., Part 2 and RCW 71.34.530);
  - If over age fourteen, sexually transmitted disease records (see RCW 70.24.110); and
  - If over age eighteen, all client records held by the department.
- (5) Legal guardians under Title 13 RCW and legal custodians under chapter 26.10 RCW are not considered third parties for the purposes of accessing records pertaining to children in their care and custody.

NEW SECTION

- WAC 170-01-0206 Notifying third parties of a request.** (1) If records responsive to a public records request identify or pertain directly to an individual or organization other than the requestor, the department may notify the named individual or organization about the request.
- (2) The department's third-party notice may include:
- A copy of the original request;
  - If appropriate, a copy of the records that identify or pertain to the third party;
  - The date the department intends to release the record; and
  - A statement that the third party may prevent release of the record by agreement or by bringing a lawsuit and getting an injunction against the department and the requestor under RCW 42.56.540 prior to the intended release date.
- (3) The department may inform the requestor that:
- A third party has been notified of the request;
  - The department provided the third party with a due date for objecting to disclosure; and
  - The third party may bring a lawsuit against the requestor and the department under RCW 42.56.540 to prohibit disclosure.

**WSR 18-09-112**  
**PROPOSED RULES**  
**HEALTH CARE AUTHORITY**

[Filed April 18, 2018, 10:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 17-17-087.

Title of Rule and Other Identifying Information: WAC 182-550-3600 Diagnosis-related group (DRG) payment—Hospital transfers, 182-550-3700 DRG high outliers, 182-550-3800 Rebasing, and 182-550-4800 Hospital payment methods—State-administered programs.

Hearing Location(s): On May 22, 2018, at 10:00 a.m., at Cherry Street Plaza, Sue Crystal Room 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at [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.

Date of Intended Adoption: Not sooner than May 23, 2018.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by May 22, 2018.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, TTY 800-848-5429 or 711, email [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov), by May 18, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is amending WAC 182-550-3600 and 182-550-3700 to align with medicare changes to outlier pricing. The agency is amending WAC 182-550-3800 to reflect changes in the rebasing process. Changes to the rebasing process in WAC

182-550-3800 are being made due to audit findings by the office of the Washington state auditor and in response to provider inquiries regarding the grouper version used by the agency. The agency is amending WAC 182-550-4800 to remove specification of the APR-DRG grouper version.

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: Health care authority, governmental.

Name of Agency Personnel Responsible for Drafting: Katie Pounds, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1346; Implementation and Enforcement: Grant Stromsdorfer, P.O. Box 45500, Olympia, WA 98504-5500, 360-725-1678.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The updates to WAC 182-550-3600, 182-550-3700, 182-550-3800, and 182-550-4800 do not impose additional compliance costs or requirements on providers.

April 18, 2018  
Wendy Barcus  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 14-12-047, filed 5/29/14, effective 7/1/14)

**WAC 182-550-3600 Diagnosis-related group (DRG) payment—Hospital transfers.** (1) The rules in this section apply when an eligible client transfers from an acute care hospital or distinct unit to any of the following:

- (a) Another acute care hospital or distinct unit;
- (b) A skilled nursing facility (SNF);
- (c) An intermediate care facility (ICF);
- (d) Home care under the medicaid agency's home health program;
- (e) A long-term acute care facility (LTAC);
- (f) Hospice (facility-based or in the client's home);
- (g) A hospital-based, medicare-approved swing bed, or another distinct unit such as a rehabilitation or psychiatric unit (see WAC 182-550-3000); or
- (h) A nursing facility certified under medicaid but not medicare.

(2) The medicaid agency pays a transferring hospital the lesser of:

- (a) The appropriate diagnosis-related group (DRG) payment; or
- (b) The prorated DRG payment, which the agency calculates by:

(i) Using the average length of stay (ALOS) for the assigned DRG:

(A) The agency uses the 3M national average length of stay for paying inpatient claims.

(B) The agency publishes ALOS values on its web site;

(ii) Dividing the hospital's allowed payment amount for the assigned DRG by the ALOS in (b)(i) of this subsection;

(iii) Determining the client length of stay as all medically necessary days at the transferring hospital, plus one day; and

(iv) Multiplying the number in (b)(ii) of this subsection by the length of stay determined in (b)(iii) of this subsection.

(3) The agency applies the outlier payment method if a transfer case qualifies as a high outlier. To qualify for a high outlier, the costs (ratio of cost-to-charges multiplied by covered allowed charges) for the transfer must exceed the outlier threshold. The threshold is the ~~((DRG allowed amount (hospital specific rate multiplied by DRG relative weight)))~~ prorated DRG amount plus forty thousand dollars. The prorated amount is the lesser of:

(a) The per diem DRG allowed amount (hospital's rate multiplied by relative weight for the DRG code assigned to the claim by the agency) divided by the average length of stay (for the DRG code assigned by the agency for the claim) multiplied by the client's length of stay plus one day; or

(b) The total DRG payment allowed amount calculation for the claim.

(4) The agency does not pay a transferring hospital for a nonemergency case when the transfer is to another acute care hospital.

(5) The agency pays the full DRG payment to the discharging hospital for a discharge to home or self-care. This is the agency's maximum payment to a discharging hospital.

(6) The agency pays an intervening hospital a per diem payment based on the method described in subsection (2) of this section.

(7) The transfer payment policy described in this section does not apply to claims grouped into DRG classifications the agency pays based on the per diem, case rate, or ratio of costs-to-charges (RCC) payment methods.

(8) The agency applies the following to the payment for each claim:

- (a) All applicable adjustments for client responsibility;
- (b) Any third-party liability;
- (c) Medicare payments; and
- (d) Any other adjustments as determined by the agency.

**AMENDATORY SECTION** (Amending WSR 14-12-047, filed 5/29/14, effective 7/1/14)

**WAC 182-550-3700 DRG high outliers.** (1) The medicaid agency identifies a diagnosis-related group (DRG) high outlier claim based on the claim's estimated costs. The agency allows a high outlier payment for claims paid using the DRG payment method when high outlier criteria are met.

(a) To qualify as a DRG high outlier claim, the estimated costs for the claim must be greater than the outlier threshold effective for the date of admission. The outlier threshold amount is depicted in the following table:

Dates of Admission	Pediatric	Nonpediatric
February 1, 2011 - July 31, 2012	Base DRG * 1.50	Base DRG * 1.75
August 1, 2012 - June 30, 2013	Base DRG * 1.429	Base DRG * 1.667
July 1, 2013 - June 30, 2014	Base DRG * 1.563	Base DRG * 1.823
July 1, 2014, and after	Base DRG + \$40,000	Base DRG + \$40,000

(b) The agency calculates the estimated costs of the claim by multiplying the total submitted charges, minus the nonallowed charges on the claim, by the hospital's ratio of costs-to-charges (RCC).

(c) When a transferring hospital submits a transfer claim to the agency, the high outlier criteria used to determine whether the claim qualifies for high outlier payment is the prorated DRG (~~allowed~~) amount for the claim before the transfer payment (~~reduction~~).

(2) The agency calculates the high outlier payment by multiplying the hospital's estimated cost above threshold (CAT) by the outlier adjustment factor. The outlier adjustment factors, which vary by dates of admission and inpatient payment policy, are depicted in the table at the end of this subsection.

(a) For inpatient claims paid under the all-patient-diagnosis-related group (AP-DRG), the agency uses a separate outlier adjustment factor for:

- (i) Pediatric services, including all claims submitted by children-specialty hospitals;
- (ii) Burn services; and
- (iii) Nonpediatric services.

(b) For inpatient claims paid under the all-patient refined-DRG (APR-DRG), the agency uses a separate outlier adjustment factor for a:

- (i) Severity of illness (SOI) of one or two; or
- (ii) SOI of three or four.

AP-DRG Dates of Admission	Pediatric	Burn	Nonpediatric
Before August 1, 2012	CAT * 0.95	CAT * 0.90	CAT * 0.85
August 1, 2012 - June 30, 2013	CAT * 0.998	CAT * 0.945	CAT * 0.893
July 1, 2013 - June 30, 2014	CAT * 0.912	CAT * 0.864	CAT * 0.816
APR-DRG Dates of Admission	SOI 1 or 2	SOI 3 or 4	
July 1, 2014, and after	CAT * 0.80	CAT * 0.95	

(3) For state-administered programs (SAP), the agency applies the hospital-specific ratable to the outlier adjustment factor.

(4) This subsection contains examples of outlier claim payment calculations.

DRG SOI	DRG Allowed Amount	Threshold <sup>1</sup>	Cost <sup>2</sup>	Outlier Percent	Ratable	Base DRG	Outlier <sup>3</sup>	Claim Payment <sup>4</sup>
1	\$10,000	\$50,000	\$100,000	0.80	n/a	\$10,000	\$40,000	\$50,000
3	\$10,000	\$50,000	\$100,000	0.95	n/a	\$10,000	\$47,500	\$57,500

<sup>1</sup> Threshold = \$40,000 + base DRG

<sup>2</sup> Cost = Billed charges - noncovered charges - denied charges

<sup>3</sup> Outlier = (cost - threshold) \* outlier percent

<sup>4</sup> Claim payment = base DRG + outlier

(5) When directed by the legislature to achieve targeted expenditure levels, as described in WAC 182-550-3000(8), the agency may apply an inpatient adjustment factor to any of the high outlier thresholds and to any of the outlier adjustment factors described in this section.

(6) The agency applies the following to the payment for each claim:

- (a) All applicable adjustments for client responsibility;
- (b) Any third-party liability;
- (c) Medicare payments; and
- (d) Any other adjustments as determined by the agency.

**AMENDATORY SECTION** (Amending WSR 14-12-047, filed 5/29/14, effective 7/1/14)

**WAC 182-550-3800 Rebasing.** The medicaid agency redesigns (rebases) the medicaid inpatient payment system as needed. The base inpatient conversion factor and per diem rates are only updated during a detailed rebasing process, or as directed by the state legislature. Inpatient payment system factors such as the ratio of costs-to-charges (RCC), weighted costs-to-charges (WCC), and administrative day rate are rebased on an annual basis. As part of the rebasing, the agency does all of the following:

(1) Gathers data. The agency uses the following data resources considered to be the most complete and available at the time:

(a) One year of fee-for-service (FFS) paid claim data from the agency's medicaid management information system (MMIS). The agency excludes:

(i) Claims related to state programs and paid at the Title XIX reduced rates from the claim data; and

(ii) Critical access hospital claims paid per WAC 182-550-2598; and

(b) The hospital's most current medicare cost report data from the health care cost report information system (HCRIS) maintained by the Centers for Medicare and Medicaid Services (CMS). If the hospital's medicare cost report from HCRIS is not available, the agency uses the medicare cost report provided by the hospital.

(c) FFS and managed care encounter data.

(2) Estimates costs. The agency uses one of two methods to estimate costs. The agency may perform an aggregate cost determination by multiplying the ratio of costs-to-charges (RCC) by the total billed charges, or the agency may use the following detailed costing method:

(a) The agency identifies routine and ancillary cost for operating capital, and direct medical education cost components using different worksheets from the hospital's medicare cost report;

(b) The agency estimates costs for each claim in the dataset as follows:

(i) Accommodation services. The agency multiplies the average hospital cost per day reported in the medicare cost report data for each type of accommodation service (e.g., adult and pediatric, intensive care unit, psychiatric, nursery) by the number of days reported at the claim line level by type of service; and

(ii) Ancillary services. The agency multiplies the RCC reported for each ancillary type of services (e.g., operating room, recovery room, radiology, laboratory, pharmacy, or clinic) by the allowed charges reported at the claim line level by type of service; and

(c) The agency uses the following standard cost components for accommodation and ancillary services for estimating costs of claims:

(i) Routine cost components:

(A) Routine care;

(B) Intensive care;

(C) Intensive care-psychiatric;

(D) Coronary care;

(E) Nursery;

(F) Neonatal ICU;

(G) Alcohol/substance abuse;

(H) Psychiatric;

(I) Oncology; and

(J) Rehabilitation.

(ii) Ancillary cost components:

(A) Operating room;

(B) Recovery room;

(C) Delivery/labor room;

(D) Anesthesiology;

(E) Radio, diagnostic;

(F) Radio, therapeutic;

(G) Radioisotope;

(H) Laboratory;

(I) Blood administration;

(J) Intravenous therapy;

(K) Respiratory therapy;

(L) Physical therapy;

(M) Occupational therapy;

(N) Speech pathology;

(O) Electrocardiography;

(P) Electroencephalography;

(Q) Medical supplies;

(R) Drugs;

(S) Renal dialysis/home dialysis;

(T) Ancillary oncology;

(U) Cardiology;

(V) Ambulatory surgery;

(W) CT scan/MRI;

(X) Clinic;

(Y) Emergency;

(Z) Ultrasound;

(AA) NICU transportation;

(BB) GI laboratory;

(CC) Miscellaneous; and

(DD) Observation beds.

(3) Specifies resource use with relative weights. The agency uses national relative weights designed by 3M™ Corporation as part of its all-patient refined-diagnostic related group (APR-DRG) payment system. The agency periodically reviews and determines the most appropriate APR-DRG grouper version to use.

(4) Calculates base payment factors. The agency calculates the average, or base, DRG conversion factor and per diem rates. The base is calculated as the maximum amount that can be used, along with all other payment factors and adjustments described in this chapter (~~(, to maintain aggregate payments across the system)~~). The agency models the rebased system to be budget neutral on a prospective basis, including global adjustments to the budget target determined by the agency. The agency ensures that base DRG conversion factors and per diem rates are sufficient to support economy, efficiency, and access to services for medicaid recipients. The agency will publish base rate factors on its web site.

(5) (~~(Determines)~~) To maintain budget neutrality, the agency makes global adjustments as needed.

(a) Claims paid under the DRG, rehab per diem, and detox per diem payment methods were reduced to support an estimated three million five hundred thousand dollar increase in psychiatric payments to acute hospitals.

(b) Claims for acute hospitals paid under the psychiatric per diem method were increased by a factor to inflate estimated system payments by three million five hundred thousand dollars.

(c) Effective for dates of admission on and after October 1, 2017, the agency increased psychiatric per diem rates as directed by the legislature. The increase applies to any hospital with two hundred or more psychiatric bed days.

(i) The agency prioritized the increase for hospitals not currently paid based on provider-specific costs using a similar methodology to set rates for existing inpatient facilities

utilizing cost report information for hospital fiscal years ending in 2016.

(ii) The distribution of funds for each fiscal year is as follows:

(A) Free-standing psychiatric hospitals receive 68.15 percent of the statewide average cost per day.

(B) All other hospitals receive the greater of 78.41 percent of their provider-specific cost, or their current medicaid psychiatric per diem rate.

(iii) The agency set the increased rates to assure that the distribution of funds does not exceed the amounts provided by the legislature.

(iv) The agency conducts annual reviews for updated cost information to determine whether new and existing providers meet the two hundred or more bed criteria.

(v) The agency will apply the same cost percentage criteria for future rebasing of the psychiatric per diem rates.

(6) Determines provider specific adjustments. The following adjustments are applied to the base factor or rate established in subsection (4) of this section:

(a) Wage index adjustments reflect labor costs in the cost-based statistical area (CBSA) where a hospital is located.

(i) The agency determines the labor portion by multiplying the base factor or rate by the labor factor established by medicare; then

(ii) The amount in (a)(i) of this subsection is multiplied by the most recent wage index information published by CMS at the time the rates are set; then

(iii) The agency adds the nonlabor portion of the base rate to the amount in (a)(ii) of this subsection to produce a hospital-specific wage adjusted factor.

(b) Indirect medical education factors are applied to the hospital-specific base factor or rate. The agency uses the indirect medical education factor established by medicare on the most currently available medicare cost report that exists at the time the rates are set; and

(c) Direct medical education amounts are applied to the hospital-specific base factor or rate. The agency determines a percentage of direct medical education costs to overall costs using the most currently available medicare cost report that exists at the time the rates are set.

(7) The final, hospital-specific rate is calculated using the base rate established in subsection (4) of this section along with any applicable adjustments in subsections (5) and (6) of this section.

AMENDATORY SECTION (Amending WSR 14-12-047, filed 5/29/14, effective 7/1/14)

**WAC 182-550-4800 Hospital payment methods—State-administered programs.** This section does not apply to out-of-state hospitals unless they are border hospitals (critical or noncritical).

(1) The medicaid agency:

(a) Pays for services provided to a client eligible for a state-administered program (SAP) based on SAP rates;

(b) Establishes SAP rates independently from the process used in setting the medicaid payment rates;

(c) Calculates a ratable each year to adjust each hospital's SAP rates for their percentage of community-based dollars to the total revenues for all hospitals;

(d) Calculates an equivalency factor (EF) to keep the SAP payment rates at the same level before and after the medicaid rates were rebased.

(2) The agency has established the following:

(a) SAP diagnosis-related group (DRG) conversion factor (CF) for claims grouped under DRG classifications services;

(b) SAP per diem rates for claims grouped under the following specialty service categories:

(i) Chemical-using pregnant (CUP) women;

(ii) Detoxification;

(iii) Physical medicine and rehabilitation (PM&R); and

(iv) Psychiatric;

(c) SAP per case rate for claims grouped under bariatric services; and

(d) SAP ratio of costs-to-charges (RCC) for claims grouped under transplant services.

(3) This subsection describes the SAP DRG CF and payment calculation processes used by the agency to pay claims using the DRG payment method. The agency pays for services grouped to a DRG classification provided to clients eligible for a SAP based on the use of a DRG CF, a DRG relative weight, and a maximum service adjustor. This process is similar to the payment method used to pay for medicaid and CHIP services grouped to a DRG classification.

(a) The agency's SAP DRG CF calculation process is as follows:

(i) The hospital's specific DRG CF used to calculate payment for a SAP claim is the medicaid DRG CF multiplied by the applicable EF multiplied by the ratable;

(ii) For hospitals that do not have a ratable or an EF, the SAP CF is the hospital's specific medicaid CF multiplied by the average EF and the average ratable; and

(iii) For noncritical border hospitals, the SAP DRG CF is the lowest in-state medicaid DRG CF multiplied by the average ratable and the average EF.

(b) The agency calculates the SAP DRG EF as follows:

(i) The hospital-specific current SAP DRG CF is divided by the rebased medicaid DRG CF and then divided by the ratable factor to compute the preliminary EF.

(ii) The current SAP DRG payment is determined by multiplying the hospital specific SAP DRG CF by the AP-DRG version 23 relative weight.

(iii) The current aggregate DRG payment is determined by summing the current SAP DRG payments for all hospitals.

(iv) The hospital projected SAP DRG payment is determined by multiplying the hospital specific current SAP DRG CF by the APR-DRG relative weights (~~(version 31.0)~~) and the maximum service adjustor.

(v) The projected aggregate DRG payment is determined by summing the projected SAP program DRG payments for all hospitals.

(vi) The aggregate amounts derived in (b)(iii) and (v) of this subsection are compared to identify a neutrality factor that keeps the projected aggregate SAP DRG payment (based on DRG-APR relative weights (~~(version 31.0)~~)) at the same

level as the ~~((current))~~ previous aggregate SAP DRG payment (based on AP-DRG relative weights version 23.0).

(vii) The neutrality factor is multiplied by the hospital specific preliminary EF to determine the hospital specific final EF that is used to determine the SAP DRG conversion factors for the rebased system implementation.

(c) The agency calculates the DRG payment for services paid under the DRG payment method as follows:

(i) The agency calculates the allowed amount for the inlier portion of the SAP DRG payment by multiplying the SAP DRG CF by the DRG relative weight and the maximum service adjustor.

(ii) SAP claims are also subject to outlier pricing. See WAC 182-550-3700 for details on outlier pricing.

(4) This subsection describes how the agency calculates the SAP per diem rate and payment for CUP, detoxification, PM&R, and psychiatric services.

(a) The agency calculates the SAP per diem rate for in-state and critical border hospitals by multiplying the hospital's specific medicaid per diem by the ratable and the per diem EF.

(b) The agency calculates the SAP per diem rate for non-critical border hospitals by multiplying the lowest in-state medicaid per diem rate by the average ratable and the average per diem EF.

(c) For hospitals with more than twenty nonpsychiatric SAP per diem paid services during SFY 2011, the agency calculates a per diem EF for each hospital using the individual hospital's claims as follows:

(i) The agency calculates a SAP average payment per day by dividing the total current SAP per diem payments by the total number of days associated with the payments.

(ii) The agency calculates a medicaid average payment per day by dividing the aggregate payments based on the rebased medicaid rates by the total number of days associated with the aggregate payments (same claims used in (c)(i) of this subsection).

(iii) The agency divides the hospital estimated SAP average payment per day in (a) of this subsection by the hospital medicaid average payment per day in (b) of this subsection.

(iv) The agency divides the result of (c)(iii) of this subsection by the hospital specific ratable factor to determine the EF.

(d) For hospitals with twenty or less nonpsychiatric SAP per diem paid services during SFY 2011, the EF is an average for all hospitals. The agency uses the following process to determine the average EF:

(i) The agency calculates a SAP average payment per day by dividing the total current SAP per diem payments for all hospitals by the total number of days associated with the aggregate payments.

(ii) The agency calculates a medicaid average payment per day by dividing the aggregate payments based on the rebased medicaid rates by the total number of days associated with the aggregate payment (same claims used in (d)(i) of this subsection).

(iii) The agency divides the SAP average per day in (a) of this subsection by the medicaid average payment per day in (b) of this subsection.

(iv) The agency divides the result of (d)(iii) of this subsection by the hospital specific ratable factor to determine the EF. The EF is an average based on claims for all the hospitals in the group.

(e) A psychiatric EF is used to keep SAP psychiatric rates at the level required by the Washington state legislature. The agency's SAP psychiatric rates are eighty-five and four one hundredths of a percent (85.04%) of the agency's medicaid psychiatric rates. The factor is applied to all hospitals.

(f) The agency calculates the SAP per diem allowed amount for CUP, detoxification, PM&R, and psychiatric services by multiplying the hospital's SAP per diem rate by the agency's allowed patient days.

(g) The agency does not apply the high outlier or transfer policy to the payment calculations for CUP, detoxification, PM&R, and psychiatric services.

(5) This subsection describes the SAP per case rate and payment processes for bariatric surgery services.

(a) The agency calculates the SAP per case rate for bariatric surgery services by multiplying the hospital's medicaid per case rate for bariatric surgery services by the hospital's ratable.

(b) The per case payment rate for bariatric surgery services is an all-inclusive rate.

(c) The agency does not apply the high outlier or transfer policy to the payment calculations for bariatric surgery services.

(6) The agency calculates the SAP RCC by multiplying the medicaid RCC by the hospital's ratable.

(7) The agency establishes annually the hospital-specific ratable factor used in the calculation of SAP payment rate based on the most current hospital revenue data available from the department of health (DOH). The agency uses the following process to determine the hospital ratable factor:

(a) The agency adds the hospital's medicaid revenue, medicare revenue, charity care, and bad debts as reported in DOH data.

(b) The agency determines the hospital's community care dollars by subtracting the hospital's low-income disproportionate share hospital (LIDSH) payments from the amount derived in (a) of this subsection.

(c) The agency calculates the hospital net revenue by subtracting the hospital-based physician revenue (based on information available from the hospital's medicare cost report or provided by the hospitals) from the DOH total hospital revenue report.

(d) The agency calculates the preliminary hospital-specific ratable by dividing the amount derived in (b) of this subsection by the amount derived in (c) of this subsection.

(e) The agency determines a neutrality factor by comparing the hospital-specific medicaid revenue (used in (a) of this subsection) multiplied by the preliminary ratable to the hospital-specific medicaid revenue (used in (a) of this subsection) multiplied by the prior year ratable. The neutrality factor is used to keep the projected SAP payments at the same current payment level.

(f) The agency determines the final hospital-specific ratable by multiplying the hospital-specific preliminary ratable by the neutrality factor.

(g) The agency applies to the allowable for each SAP claim all applicable adjustments for client responsibility, any third-party liability, medicare payments, and any other adjustments as determined by the agency.

(8) The agency does not pay an SAP claim paid by the DRG method at greater than the billed charges.

(9) SAP rates do not apply to the critical access hospital (CAH) program's weighted cost-to-charges, to the long-term acute care (LTAC) program's per diem rate, or to the certified public expenditure (CPE) program's RCC (except as the RCC applies to the CPE hold harmless described in WAC 182-550-4670).

**WSR 18-09-114**  
**PROPOSED RULES**  
**HEALTH CARE AUTHORITY**

[Filed April 18, 2018, 10:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-01-028.

Title of Rule and Other Identifying Information: WAC 182-546-0150 Client eligibility for ambulance transportation and 182-546-0400 General limitations on payment for ambulance services.

Hearing Location(s): On May 22, 2018, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, 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 <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf>, or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than May 23, 2018.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727, by May 22, 2018.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, TTY 800-848-5429 or 711, email [amber.lougheed@hca.wa.gov](mailto:amber.lougheed@hca.wa.gov), by May 18, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Effective January 1, 2018, the agency began covering all emergency and non-emergency ambulance services provided to apple health clients through fee-for-service, including those transports for clients enrolled in an agency-contracted managed care organization. The agency also removed all references to managed care from appropriate sections within chapter 182-546 WAC. The agency filed emergency rules, effective January 1, 2018, under WSR 18-02-023 for this change. This rule-making order is the permanent rule making.

Reasons Supporting Proposal: Implementation of HB 2007 (ground emergency medical transportation-GEMT), subsection (10), Laws of 2015, 64th legislature, 2015 regular session required approval from the Centers for Medicare and Medicaid Services (CMS) before implementation. CMS approved the state plan amendment with the requirement that

the agency begin paying for all ground ambulance services through fee-for-service by January 1, 2018.

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: Amy Emerson, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1348; Implementation and Enforcement: Abigail Cole, P.O. Box 45510, Olympia, WA 98504-5510, 360-725-1835.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The updates to WAC 182-546-0150 and 182-546-0400 do not impose additional compliance costs or requirements on providers.

April 18, 2018  
Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-07-042, filed 3/12/14, effective 4/12/14)

**WAC 182-546-0150 Client eligibility for ambulance transportation.** (1) Except for ~~((persons))~~ people in the Family Planning Only and TAKE CHARGE programs, fee-for-service clients are eligible for ambulance transportation to covered services with the following limitations:

(a) ~~((Persons))~~ People in the following Washington apple health ~~((WAH))~~ programs are eligible for ambulance services within Washington state or bordering cities only, as designated in WAC 182-501-0175:

(i) Medical care services (MCS) as described in WAC 182-508-0005;

(ii) Alien emergency medical (AEM) services as described in chapter 182-507 WAC.

(b) ~~((Persons))~~ People in the ~~((WAH))~~ apple health categorically needy/qualified medicare beneficiary (CN/QMB) and ~~((WAH))~~ apple health medically needy/qualified medicare beneficiary (MN/QMB) programs are covered by medicare and medicaid, with the payment limitations described in WAC 182-546-0400(5).

(2) ~~((Persons))~~ People enrolled in an agency-contracted managed care organization (MCO) must coordinate:

(a) Ground ambulance services through ~~((their designated MCO, subject to the MCO coverage and limitations))~~ the agency under fee-for-service, subject to the coverage and limitations within this chapter; and

(b) Air ambulance services through the agency under fee-for-service, subject to the coverage and limitations within this chapter.

(3) ~~((Persons))~~ People enrolled in the agency's primary care case management (PCCM) program are eligible for ambulance services that are emergency medical services or that are approved by the PCCM in accordance with the agency's requirements. The agency pays for covered services for these ~~((persons))~~ people according to the agency's published ~~((medicaid-provider))~~ billing guides and provider ~~((notices))~~ alerts.

(4) ~~((Persons))~~ People under the Involuntary Treatment Act (ITA) are not eligible for ambulance transportation coverage outside the state of Washington. This exclusion from coverage applies to ~~((individuals))~~ people who are being detained involuntarily for mental health treatment and being transported to or from bordering cities. See also WAC 182-546-4000.

(5) See WAC 182-546-0800 and 182-546-2500 for additional limitations on out-of-state coverage and coverage for ~~((persons))~~ people with other insurance.

(6) The agency does not pay for ambulance services for jail inmates and ~~((persons))~~ people living in a correctional facility, including ~~((persons))~~ people in work-release status. See WAC 182-503-0505(5).

AMENDATORY SECTION (Amending WSR 13-16-006, filed 7/25/13, effective 8/25/13)

**WAC 182-546-0400 General limitations on payment for ambulance services.** (1) In accordance with WAC 182-502-0100(8), the agency pays providers the lesser of the provider's usual and customary charges or the maximum allowable rate established by the agency. The agency's fee schedule payment for ambulance services includes a base rate or lift-off fee plus mileage.

(2) The agency:

(a) ~~((Does not))~~ Pays providers under fee-for-service for ground ambulance services provided to a client who is enrolled in an agency-contracted managed care organization (MCO). ~~((Payment in such cases is the responsibility of the client's agency-contracted MCO.))~~

(b) Pays providers under fee-for-service for air ambulance services provided to a client who is enrolled in an agency-contracted MCO.

(3) The agency does not pay providers for mileage incurred traveling to the point of pickup or any other distances traveled when the client is not on board the ambulance. The agency pays for loaded mileage only as follows:

(a) The agency pays ground ambulance providers for the actual mileage incurred for covered trips by paying from the client's point of pickup to the point of destination.

(b) The agency pays air ambulance providers for the statute miles incurred for covered trips by paying from the client's point of pickup to the point of destination.

(4) The agency does not pay for ambulance services if:

(a) The client is not transported;

(b) The client is transported but not to an appropriate treatment facility; or

(c) The client dies before the ambulance trip begins (see the single exception for ground ambulance providers at WAC 182-546-0500(2)).

(5) For clients in the categorically needy/qualified medicare beneficiary (CN/QMB) and medically needy/qualified medicare beneficiary (MN/QMB) programs, the agency's payment is as follows:

(a) If medicare covers the service, the agency ~~((will))~~ pays the lesser of:

(i) The full coinsurance and deductible amounts due, based upon medicaid's allowed amount; or

(ii) The agency's maximum allowable for that service minus the amount paid by medicare.

(b) If medicare does not cover or denies ambulance services that the agency covers according to this chapter, the agency pays its maximum allowable fee; except the agency does not pay for clients on the qualified medicare beneficiaries (QMB) only program.

## WSR 18-09-115

### PROPOSED RULES

### DEPARTMENT OF AGRICULTURE

[Filed April 18, 2018, 10:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-05-100.

Title of Rule and Other Identifying Information: Chapter 16-305 WAC, Industrial hemp research program, the department is proposing to adopt rules to impose monetary penalties, license suspension or forfeiture, or other sanctions for violations of chapter 15.120 RCW and the industrial hemp rules at chapter 16-305 WAC.

The department is also proposing adding rule language to clarify and define industrial hemp program regulations applicable to industrial hemp after processing as a publicly marketable hemp product.

Hearing Location(s): On May 24, 2018, at 11:00 a.m., at the Washington State Department of Agriculture (WSDA), Conference Room 238, 21 North 1st Avenue, Yakima, WA 98902; and on May 25, 2018, at 11:00 a.m., at WSDA, Natural Resources Building, Conference Room 172, 1111 Washington Street S.E., Olympia, WA 98504.

Date of Intended Adoption: June 7, 2018.

Submit Written Comments to: Henri Gonzales, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, email [wsdarulescomments@agr.wa.gov](mailto:wsdarulescomments@agr.wa.gov), fax 360-902-2092, by May 24, 2018, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Jessica Allenton, phone 360-902-1828, fax 360-902-2085, TTY 800-833-6388, email [jallenton@agr.wa.gov](mailto:jallenton@agr.wa.gov), by May 16, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal:

- Adds language to address activities that are outside the scope of enforcement under chapter 16-305 WAC.
- Adds language to WAC 16-305-030 to include definitions for civil penalty, end use product, notice of correction, notice of intent, publicly marketable hemp product, unprocessed industrial hemp, and violation.
- Adds language to WAC 16-305-240 regarding scope of enforcement, to include monetary penalties for licensees

and unlicensed persons for violations of chapters 15.120 RCW or 16-305 WAC.

- Adds language regarding enforcement actions being subject to availability of sufficient resources and funds.
- Adds language regarding the determination of civil penalties and license enforcement penalties.
- Adds a penalty matrix to address multiple categories of violations with aggravating and mitigating factors, including consideration of the status of a respondent as a small business as a potential mitigating factor.
- Adds penalty language for failure to follow industrial hemp destruction order.
- Adds language regarding other dispositions of alleged violations.

Reasons Supporting Proposal: RCW 15.120.035 grants the department rule-making authority necessary to implement and enforce the provisions of chapter 15.120 RCW. Imposing monetary penalties, license suspension or forfeiture, or other sanctions for violations of statutory and regulatory requirements allows for violators of chapters 15.120 RCW or 16-305 WAC to be appropriately penalized, whereas those businesses abiding by these laws and rules will benefit by not being forced to compete with businesses who are not in compliance.

Additionally, clarifying the difference between unprocessed industrial hemp that requires WSDA oversight and licensure and "publicly marketable hemp product" that does not require licensure will provide clarity for program applicants to understand and apply program requirements.

Statutory Authority for Adoption: RCW 15.120.030, 15.120.035, and chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.120 RCW.

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

Name of Proponent: WSDA, governmental.

Name of Agency Personnel Responsible for Drafting: Jessica Allenton, 1111 Washington Street S.E., Olympia, WA 98504, 360-902-1828; Implementation and Enforcement: Victor Shaul, 21 North 1st Avenue, Suite 203, Yakima, WA 98902, 509-249-6950.

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

A cost-benefit analysis is not required under RCW 34.05.328. WSDA is not a listed agency under RCW 34.05.-328 (5)(a)(i).

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

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

Explanation of exemptions: The provision of the proposed amendment regarding the department's Interpretive Statement Number CI-18-0001 will provide clarifying lan-

guage regarding unprocessed industrial hemp that requires WSDA oversight and licensure and "publicly marketable hemp product" that does not require licensure. This addition will provide clarity for program applicants to understand and apply program requirements.

The department is proposing to add a penalty matrix for the purpose of fair, uniform, and transparent determination of penalties for violations of chapter 16-305 WAC and the underlying statute (chapter 15.120 RCW). The proposed penalties promote program compliance with federal regulations (7 U.S.C. § 5940). The program is only aware of small businesses as entities that would be impacted by the proposal. If the department determines an alleged violator is a small business under chapter 19.85 RCW, the department will consider mitigating factors and any circumstances that justify decreasing a listed penalty based on that status (WAC 16-305-245 (6)(c)). The processes for issuing a notice of correction and a notice of intent are consistent with the department's current rules, including chapters 16-08 and 10-08 WAC, 34.05 RCW and RCW 43.05.100 and [43.05].110.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. All components of the proposed rule were analyzed, and there is an increase in cost only on businesses not in compliance.

A copy of the detailed cost calculations may be obtained by contacting Henri Gonzales, Agency Rules Coordinator, P.O. Box 42560, Olympia, WA 98504-2560, phone 360-902-1802, fax 360-902-2092, TTY 800-833-6388, email [wdsarule\\_scomments@agr.wa.gov](mailto:wdsarule_scomments@agr.wa.gov).

April 18, 2018

Jason Ferrante

Assistant Director

#### NEW SECTION

**WAC 16-305-015 Activities outside the scope of enforcement.** The following activities are not subject to regulatory sanctions or penalties under this chapter, except as provided under WAC 16-305-180, and except for the limitation of THC content under RCW 15.120.010:

(1) Possessing, further processing, transporting, marketing and exchanging legally obtained publicly marketable hemp product;

(2) Producing, possessing, further processing, transporting, marketing and exchanging end use products legally made with publicly marketable hemp product; and

(3) Growing, producing, possessing, processing, marketing and exchanging marijuana as defined in RCW 69.50.101. Marijuana activities are regulated by the Washington state liquor and cannabis board under chapters 69.50 RCW and 314-55 WAC.

AMENDATORY SECTION (Amending WSR 17-09-034, filed 4/13/17, effective 5/14/17)

**WAC 16-305-030 Definitions.** "Applicant" means a person who submits an application for a license to participate in the industrial hemp research program as required under this chapter.

"Approved seed" means a variety of industrial hemp seed that is approved by the department for growing industrial hemp.

"Authorized representative" means any person identified in writing by a licensee who may act as agent on behalf of the licensee for purposes of the license subject to any limitations stated in writing by the licensee. The licensee remains responsible for compliance with the license requirements irrespective of the acts or omissions of an authorized representative.

"Certified seed" means an industrial hemp seed variety that has been bred to comprise satisfactory genetic purity and varietal identity and has been accepted by Association of Seed Certifying Agencies (AOSCA), Organization for Economic Cooperation and Development (OECD) or other certifying entity as determined by the department.

"Civil penalty" under this chapter means a monetary penalty imposed by the department for violations of the industrial hemp laws, chapters 15.120 RCW and 16-305 WAC, and applicable sections of chapters 16-302 and 16-303 WAC.

"Contiguous land area" means a specific field with designated boundaries that is planted with industrial hemp. Separate parcels connected only by thin or narrow plantings of industrial hemp or separated by physical barriers such as ditches or roads are not considered contiguous for the purposes of this rule.

"Continuous licensing" means annual licenses renewed in such a way that the licensee is continuously operating under a valid license.

"DEA" means the federal Drug Enforcement Administration.

"Department" means the Washington state department of agriculture.

"Destroyed" means incinerated, tilled under the soil, made into compost, or another manner approved by the department.

"Deviatization" means the process of sterilizing viable industrial hemp seed in such a way that the seed is unable to grow into new plants. Deviatization may happen through steam sterilization, dehulling, pressing, or another method approved by the department. If using steam sterilization, the seeds must be steamed to one hundred eighty degrees Fahrenheit for at least fifteen minutes.

"End use product" means a product that contains publicly marketable hemp product and requires no further processing to be sold to a consumer. End use products include animal bedding, animal feed, beverages, biofuel, bioplastics, clothing, compost, construction materials, cosmetics, food, grain and grain products, insulation, seed oil, soil amendments and other products containing publicly marketable hemp products. End use products are subject to the limitations on the uses of industrial hemp under RCW 15.120.020.

"Field" means a contiguous land area, registered with the department, on which a licensee plans to grow industrial hemp.

"Grain" means any deviatized industrial hemp seeds that are not intended for replanting, but will be used for food, feed, fiber, oil or other products.

"Industrial hemp" means all parts and varieties of the genera *Cannabis*, cultivated or possessed by a grower, whether growing or not, containing a THC concentration of 0.3 percent or less by dry weight. Industrial hemp does not include plants of the genera *Cannabis* that meet the definition of "marijuana" as defined in RCW 69.50.101.

"Industrial hemp research program" means the department's "agricultural pilot program" established under chapter 15.120 RCW, this chapter, and the industrial hemp seed rules under chapters 16-302 and 16-303 WAC.

"Leadership position" means any board member, manager, or leader in a business or organization who will provide oversight and monitoring of subordinates.

"Licensee" means any person who holds a license from the department to grow, produce, possess, process, or exchange or sell industrial hemp. A licensee may be a person who is authorized to carry out department supervised research on the feasibility and desirability of industrial hemp production in Washington state.

"Notice of correction" means a document issued by the department to a licensee, consistent with RCW 43.05.100, that describes a condition or conduct that is not in compliance with chapter 15.120 RCW or the rules adopted thereunder and is not subject to civil penalties as provided for in RCW 43.05.110. A notice of correction is not a formal enforcement action, is not subject to appeal and is a public record. Violations of THC content are not subject to a notice of correction and will result in a notice of intent.

"Notice of intent" means a document issued by the department to an alleged violator that identifies specific violations of chapter 15.120 RCW or the rules adopted thereunder. A notice of intent states any proposed civil penalty or any intent to suspend, deny or revoke the alleged violator's industrial hemp license.

"Processing area" means any area, building, plant or facility registered with and approved by the department in which a licensee will make industrial hemp into a marketable product. For the purposes of this definition, a person's domicile, home or residence is not considered a processing area.

"Publicly marketable hemp product" means industrial hemp that has been processed in compliance with department regulations, or under an equivalent regulatory program recognized by the department, for which a processor or marketer license is not required. Publicly marketable hemp products include bare stalks that have been pressed or decorticated, bast fiber, hurd fiber, nonviable roots, nonviable seeds, seed oils and seed coats separated from the seed, and hemp plant extracts. Under RCW 15.120.020, only industrial hemp seed may be processed as "food, extract, oil, cake, concentrate, resin, or other preparation for topical use, oral consumption, or inhalation by humans."

"Registered land area" means a contiguous land area, including greenhouses, processing areas and storage areas registered with the department as a condition of licensing, on which a licensee will conduct licensed activities. A registered land area may include more than one field, greenhouse, processing area or storage area so long as those fields, greenhouses, processing areas or storage areas are at the same physical address.

"Report" means any data, statistics or information required to be provided to the department by a licensee under an industrial hemp license.

"Seed distributor" means any person licensed by the department to distribute or sell viable industrial hemp seed.

"Storage area" means any area, building, plant or facility registered with the department in which a licensee plans to store industrial hemp.

"THC concentration" means the percent of total tetrahydrocannabinol, which is the combined percent of delta-9 tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the genera *Cannabis*.

"Unprocessed industrial hemp" means any raw, unprocessed part of the industrial hemp plant, including viable seed, that has been harvested but has not been sufficiently processed to be transferred to an unlicensed person. Unprocessed industrial hemp includes industrial hemp that is green, dried, baled or pelletized, that is in the form of living hemp plants, viable seed, leaf materials, floral materials, and raw stalks.

"Violation" means any act or omission prohibited under chapter 15.120 RCW or the rules adopted thereunder.

"Volunteer plant" means an industrial hemp plant that results from a previous crop.

AMENDATORY SECTION (Amending WSR 17-09-034, filed 4/13/17, effective 5/14/17)

**WAC 16-305-240 (~~Noncompliance conditions~~)**  
**Scope of enforcement.** Licensees may be subject to monetary penalties and license suspension or revocation for ~~((any))~~ violations of chapter 15.120 RCW or ~~((this chapter))~~ the rules adopted thereunder. Unlicensed persons may be subject to monetary penalties and denial of a license application for violations of chapter 15.120 RCW or the rules adopted thereunder.

#### NEW SECTION

**WAC 16-305-242 Enforcement actions subject to availability of funds.** Any enforcement action considered by the department under this chapter is subject to the department's determination as to the availability of sufficient resources and funds.

#### NEW SECTION

**WAC 16-305-245 Determination of civil penalties and license enforcement penalties.** (1) Penalty selection. The department will use the penalty assessment schedule tables listed in WAC 16-305-251 through 16-305-255 to determine appropriate monetary penalties and license enforcement penalties. The department will determine any penalty based on the type of violation at the time of the incident(s) giving rise to any violation. An applicable listed penalty will be used unless the department identifies aggravating or mitigating factors and how those factors change the assessed penalty. For violations not expressly included in any of the penalty category tables, the department will identify any penalty that it determines most closely approximates the

seriousness of the violation in comparison with penalties expressly identified in the penalty tables.

(2) In addition to any penalties provided for under WAC 16-305-250 through 16-305-256, any industrial hemp crop or material, processed or unprocessed, containing a THC concentration greater than 0.3 percent by dry weight is subject to a destruction order, regardless of whether any other penalty is assessed.

(3) Adjustment of penalty.

(a) The department may increase or decrease any penalties for identified aggravating or mitigating circumstances, including circumstances where licensing action(s) as a deterrent are ineffective. Factors for increasing or decreasing penalties include the following:

(i) Violations by persons who are not licensed; and

(ii) Situations where a listed civil penalty assessed is not substantially equivalent to the violator's estimated economic benefit derived from the violation.

(b) The department may decrease the civil penalty and increase the licensing enforcement penalty when the department determines that the civil penalty is an inadequate enforcement option to respond to a violation, including to serve as a deterrent.

(4) Aggravating factors. The department may consider circumstances for increasing a penalty based on the seriousness of the violation. Aggravating factors include the following:

(a) The number of separate alleged violations contained within a single notice of intent;

(b) The similarity of the current alleged violation to previous violations committed within the last three years;

(c) The extent to which the alleged violation is part of a pattern of the same or substantially similar conduct;

(d) Violations benefiting the violator or license applicant economically that are expressly prohibited under chapter 15.120 RCW and the rules adopted thereunder. Such violations include conducting grower, processor, or distributor operations without a license; processing and marketing industrial hemp products in violation of the limitation under RCW 15.120.020; or importing viable industrial hemp seed or propagules without department authorization.

(5) When the department determines that one or more aggravating factors are present, the department may assess the penalty as listed within the type of violation or may, in its discretion, increase the penalty to a level greater than the listed penalty, including suspension, revocation or denial of a license.

(6) Mitigating factors. The department may consider circumstances for decreasing a penalty based upon the seriousness of the violation. Mitigating factors include the following:

(a) Voluntary disclosure of a violation;

(b) Voluntary taking of remedial measures that will result in a decreased likelihood that the violation will be repeated;

(c) The status of the alleged violator as a small business under chapter 19.85 RCW and any circumstances that justify decreasing a listed penalty based on the status as a small business.

(7) When the department determines that one or more mitigating factors are present, and that those factors outweigh any aggravating factors, the department may decrease the listed penalty.

(8) The department considers each violation to be a separate and distinct event. When a person has committed multiple violations, the violations are cumulative for purposes of calculating the appropriate penalty. Each notice of intent will identify all applicable alleged violations and penalties to be imposed.

(9) Violation(s) committed during a period when a licensee's license is suspended or revoked may be subject to the maximum civil penalty of fifteen thousand dollars for each violation and revocation or denial of a license for a period of up to three years.

**AMENDATORY SECTION** (Amending WSR 17-09-034, filed 4/13/17, effective 5/14/17)

**WAC 16-305-250 Monetary penalties, license denial, suspension or revocation, and right to adjudicative proceeding.** Upon notice of intent by the department to an applicant to deny a license (~~(or)~~); notice of intent to a licensee to suspend or revoke a license (~~(or upon receipt of a)~~); notice of intent to impose a monetary penalty; or notice of intent for destruction of a hemp material or crop ((destruction order)), a person may request an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act, and chapter 16-08 WAC.

**NEW SECTION**

**WAC 16-305-251 Category 1 violations.** Category 1 violations are considered the most serious because they compromise required conformance of the industrial hemp research program with the program's federal enabling authority, 7 U.S.C. Sec. 5940.

Violation Type	Penalty
Conducting activities outside the scope of chapter 15.120 RCW and this chapter	Destruction of crop or hemp material AND \$15,000
Licensee's industrial hemp tests higher than 0.3% THC concentration by dry weight (RCW 15.120.010(3))	Destruction of crop AND \$15,000
Operating as an industrial hemp seed distributor without a license	Destruction of industrial hemp seed AND \$15,000
Planting or growing industrial hemp without a grower license or combination license	Destruction of crop AND \$15,000

Violation Type	Penalty
Processing any part of industrial hemp other than seed for human consumption	Destruction of hemp material or unlawful end use product AND \$15,000
Processing industrial hemp without a processor or combination license	Destruction of hemp material AND \$15,000

**NEW SECTION**

**WAC 16-305-252 Category 2 seed distributor violations.** Category 2 violations are violations involving the manufacture, supply, processing, or distribution of viable industrial hemp seed by industrial hemp seed distributor licensees and prohibited practices between an industrial hemp seed distributor and grower or processor. Any industrial hemp seed in the possession of a licensed distributor that is not certified seed is subject to a destruction order, regardless of whether any other penalty is assessed. The department will not issue a notice of correction prior to issuing a destruction order.

Violation Type	Penalty
Interstate transfer of viable hemp seed or propagules	Destruction of seed or propagules AND \$15,000
Distributing noncertified seed	\$5,000
Importing noncertified seed	Destruction of noncertified seed AND \$1,000
Importing industrial hemp seed or propagules without a valid importer certificate	\$500

**NEW SECTION**

**WAC 16-305-253 Category 3 grower or processor violations.** Category 3 violations are violations involving the growing, manufacture, supply, processing, or distribution of industrial hemp or hemp seed by industrial hemp grower, processor, or combination licensees.

Violation Type	Penalty
Failure to comply with chapter 16-302 WAC when growing industrial hemp for seed certification	\$1,000
Growing industrial hemp within 4 miles of any field or facility being used to grow marijuana	\$1,000
Failure to devitalize seed under a combination license	\$500
Using domicile, home or residence to process industrial hemp	Destruction of hemp material

Violation Type	Penalty
Licensee's industrial hemp tests higher than 0.3% THC concentration by dry weight (RCW 15.120.010(3))	Destruction of crop
Plant material found not harvested during license period	Destruction of unharvested crop
Processing industrial hemp without a fit for commerce certificate or bill of lading or not otherwise obtained through legal means	Destruction of publicly marketable hemp product or end use product
Transporting industrial hemp without a fit for commerce certificate or bill of lading	Destruction of publicly marketable hemp product or end use product
Industrial hemp seed not planted within 24 hours of receipt	Return of seed to DEA approved storage facility

NEW SECTION

**WAC 16-305-254 Category 4 license violations.** Category 4 violations are violations involving licensing requirements, license classification, and terms and conditions of industrial hemp licenses.

Violation Type	Penalty
Failure to collect, retain, or transmit research data to the department	\$500
Failure to maintain required records, data and reports for 3 years from expiration date of license, including records regarding the sale of any industrial hemp grown under a grower or combination license	\$500
Failure to make research data available under the license conditions	\$500
Failure to post department-provided signs on at least every side of every field	\$500

NEW SECTION

**WAC 16-305-255 Category 5 regulatory violations.** Category 5 violations are violations involving general regulation and administration of industrial hemp licenses. Category 5 penalties imposed on a grower, processor, distributor, or

combination licensee may include license suspension. Any industrial hemp crop may be subject to a destruction order during a license suspension.

Violation Type	Penalty
Failure to comply with a child support order	Suspension of license until licensee complies with child support order
Failure to pay fees or penalties adopted under this chapter	Suspension of license until fees or penalties are paid
Refusal to allow the department to inspect and sample any industrial hemp or inspect any registered lands, facilities, and records required of the licensee	Suspension of license until the department is allowed to inspect and sample any industrial hemp or inspect any registered land, facilities, and records required of the licensee

NEW SECTION

**WAC 16-305-256 Penalty for failure to follow industrial hemp destruction order.** The penalty for a licensee or unlicensed person who fails to follow a crop or hemp product destruction order issued by the department within five business days is five hundred dollars per day for each day the destruction is delayed beyond five business days from the date of the destruction order.

NEW SECTION

**WAC 16-305-257 Other dispositions of alleged violations that the department may choose.** Nothing herein shall prevent the department from:

- (1) Choosing not to pursue a civil penalty, license suspension or license revocation.
- (2) Issuing a notice of correction in lieu of pursuing a civil penalty, license suspension or license revocation.
- (3) Negotiating settlement(s) of cases on such terms and for such reasons as it deems appropriate. Prior violation(s) covered by a prior settlement agreement may be used by the department for the purpose of determining the appropriate penalty for subsequent violation(s).
- (4) Referring violations or alleged violations to any federal, state or local government agency with jurisdiction over the activities in question including, but not limited to, the federal Drug Enforcement Administration (DEA) and the Washington state patrol (WSP).

**WSR 18-09-118**  
**PROPOSED RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

[Filed April 18, 2018, 10:40 a.m.]

**Original Notice.**

Preproposal statement of inquiry was filed as WSR 17-15-121 on July 19, 2017, and WSR 16-15-035 on July 13, 2016.

**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—Money advances—Contracts—Gifts—Rebates, discounts, and exceptions, etc., 314-55-020 Marijuana license qualifications and application process, 314-55-035 Persons or entities that must qualify for a marijuana license, 314-55-050 Reasons the WSLCB may seek denial, suspension, or cancellation of a marijuana license application or license, 314-55-073 Marijuana research license, 314-55-075 Marijuana producer license—Privileges, requirements, and fees, 314-55-077 Marijuana processor license—Privileges, requirements, and fees, 314-55-079 Marijuana retailer license—Privileges, requirements, and fees, 314-55-080 Medical marijuana endorsement, 314-55-082 Insurance requirements, 314-55-083 Security and traceability requirements for marijuana licensees, 314-55-084 Marijuana plant production, 314-55-087 What are the recordkeeping requirements for marijuana licensees?, 314-55-089 Tax and reporting requirements for marijuana licensees, 314-55-092 Failure to pay excise taxes and late payment of excise taxes, 314-55-095 Marijuana servings and transaction limitations, 314-55-096 Vendor, educational, and internal quality control samples, 314-55-097 Marijuana waste disposal—Liquids and solids, 314-55-102 Quality assurance testing, 314-55-104 Marijuana processor license extraction requirements, 314-55-117 Use of payment services by retailers (new section), 314-55-120 Ownership changes, 314-55-125 Change of location, 314-55-137 Receiverships (new section), 314-55-140 Death or incapacity of a marijuana licensee, 314-55-185 WSLCB right to inspect premises or vehicles associated with a license to produce, process, sell, research, or transport marijuana, 314-55-410 Cooperatives, 314-55-417 Sales of immature plants or clones and seeds from licensed producers to members of cooperatives, qualifying patients, and designated providers (new section), 314-55-525 Group 2 regulatory violations and 314-55-530 Group 3 license violations; and repealing WAC 314-55-081 Who can apply for a marijuana retailer license?

**Hearing Location(s):** On May 30, 2018, at 10:00 a.m., at the Washington State Liquor and Cannabis Board (WSLCB) Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504.

**Date of Intended Adoption:** On or after June 13, 2018.

**Submit Written Comments to:** Joanna Eide, Policy and Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, email [rules@lcb.wa.gov](mailto:rules@lcb.wa.gov), fax 360-664-9689, by May 30, 2018.

**Assistance for Persons with Disabilities:** Contact Claris Nnanabu, ADA Coordinator, Human Resources, phone 360-664-1642, fax 360-664-9689, TTY 711 or 1-800-833-6388, email [Claris.Nnanabu@lcb.wa.gov](mailto:Claris.Nnanabu@lcb.wa.gov), by May 23, 2018.

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** Changes to cannabis rules in chapter 314-55 WAC as a result of legislation passed during the 2017 legislative session, as well as a number of clarifying, technical, and other needed changes identified by stakeholders and WSLCB staff.

**Reasons Supporting Proposal:** Rule making is necessary to ensure rules are consistent with changes to laws made by the legislature during the 2017 legislative session in ESSB 5131, SB 5130, and HB 1250. Other technical, clarifying, and needed changes to rules identified by staff and stakeholders are addressed, incorporating the CR-101 filed as WSR 16-15-035 into this rule making. Other changes to cannabis rules needed as a result of changes to laws made in the 2017 legislative session (retail license forfeitures) is underway under a separate CR-102, and changes to advertising rules due to 2017 legislative changes to RCW 69.50.369 have already been completed under a separate rule making.

**Statutory Authority for Adoption:** RCW 69.50.325, 69.50.342, 69.50.345, and 69.50.369.

**Statute Being Implemented:** RCW 69.50.325, 69.50.331, 69.50.357, 69.50.369, 69.50.395, and 69.50.372.

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

**Name of Proponent:** WSLCB, governmental.

**Name of Agency Personnel Responsible for Drafting:** Joanna Eide, Policy and Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, 360-664-1622; **Implementation:** Rebecca Smith, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, 360-664-1615; and **Enforcement:** Chief Justin Nordhorn, 30000 [3000] Pacific Avenue S.E., Olympia, WA 98504, 360-664-1726.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis was not required under RCW 34.05.325 because the subject of proposed rule making does not qualify as a significant legislative rule or other rule requiring a cost-benefit analysis under RCW 34.05.328(5).

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; rules set or adjust fees under the authority of RCW 19.02.075 or that set or adjust fees or rates pursuant to legislative standards, including fees set or adjusted under the authority of RCW 19.80.045; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

**Explanation of exemptions:** This rule proposal incorporates changes needed as a result of 2017 cannabis legislation. Other clarifying, technical, and recommended changes from stakeholders and WSLCB staff are also included. Many changes were specifically directed by statute changes or

requested by the regulated industry. Changes to fees are set by statute and all other costs for compliance of any changes to recordkeeping, reporting, and other compliance requirements were determined to be minimal and do not disproportionately impact small businesses. Further, these changes are needed to ensure proper regulation of a controlled substance under state and federal law and costs have been mitigated or reduced as much as possible under the circumstances.

April 18, 2018  
Jane Rushford  
Chair

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

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

(1) "Applicant" or "marijuana license applicant" means any person or business entity who is considered by the 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 with a physical location for early education that provides the first four to eight years of basic education and recognized by the Washington state superintendent of public instruction.

(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.

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

~~((11))~~ (11) "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 ~~((;))~~ or loans money to the applicant/business and expects to be paid back the amount of the loan with or without reasonable interest ~~((; or expects any percentage of the profits from the business in exchange for a loan or expertise)).~~

~~((12))~~ (12) "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.

~~((13))~~ (13) "Harvest" means the marijuana plant material derived from plants of the same strain that were cultivated at the same licensed location and gathered at the same time.

(14) "Immature plant or clone" means a marijuana plant or clone that has no flowers, is less than twelve inches in height, and is less than twelve inches in diameter.

(15) "Intermediate product" means marijuana flower lots or other material lots that have been converted by a marijuana processor to a marijuana mix lot, marijuana concentrate or marijuana-infused product that must be or are intended to be converted further ~~((processed prior to retail sale))~~ to an end product.

~~((16))~~ (16) "Library" means an organized collection of resources made accessible to the public for reference or borrowing supported with money derived from taxation.

~~((17))~~ (17) "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.

~~((18))~~ (18) "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.

~~((19))~~ (19) "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.

~~((20))~~ (20) "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.

~~((21))~~ (21) "Marijuana mix" means an intermediate lot that contains multiple strains of usable marijuana and is chopped or ground so no particles are greater than 3 mm.

(22) "Marijuana mix infused" or "mix infused" means an end product that contains marijuana mix and may contain other intermediate products or usable marijuana.

(23) "Marijuana mix packaged" or "mix packaged" means an end product containing only marijuana mix and no other product types.

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

~~((19))~~ (25) "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."

~~((20))~~ (26) "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.

~~((21))~~ (27) "Perimeter" means a property line that encloses an area.

~~((22))~~ (28) "Plant" means a marijuana plant.

~~((23))~~ (29) "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.

~~((24))~~ (30) "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, or metropolitan park district.

~~((25))~~ (31) "Product(s) otherwise taken into the body" means a marijuana-infused product for human consumption or ingestion intended for uses other than inhalation, oral ingestion, or external application to the skin.

(32) "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.

~~((26))~~ (33) "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.

~~((27))~~ (34) "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, or metropolitan park district.

~~((28))~~ (35) "Residence" means a person's address where he or she physically resides and maintains his or her abode.

~~((29))~~ (36) "Secondary school" means a high and/or middle school with a physical location: A school for students who have completed their primary education, usually attended by children in grades seven to twelve and recognized by the Washington state superintendent of public instruction.

~~((30))~~ (37) "Selling price" means the same meaning as in RCW 82.08.010, except that when the product is sold under circumstances where the total amount of consideration paid for the product is not indicative of its true value. Selling price means the true value of the product sold as determined or agreed to by the WSLCB. For purposes of this subsection:

(a) "Product" means marijuana, marijuana concentrates, usable marijuana, ~~(and)~~ or 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.

~~((31))~~ (38) "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))~~ (39) "WSLCB" means the Washington state liquor and cannabis board.

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

**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))~~ required 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 WSLCB approves the license application.

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

(7) The WSLCB will not approve any marijuana license within the exterior boundaries of the reservation of a federally recognized tribe without the express written consent of the tribe. If a tribe receives written notice from the WSLCB of a license application or change request under RCW 69.50.331 and the tribe does not respond to the WSLCB within thirty days of the date of that notice, the WSLCB will assume the tribe does not consent to the location of the applicant or licensee and the applicant or licensee must find a different location.

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

~~((8))~~ (9) Every marijuana licensee must post and keep posted its license, or licenses, and any additional correspondence containing conditions and restrictions imposed by the WSLCB in a conspicuous place on the premises.

~~((9))~~ (10) In approving a marijuana license, the WSLCB reserves the right to impose special conditions as to the involvement in the operations of the licensed business of any former licensees, their former employees, or any person who does not qualify for a marijuana license.

~~((10))~~ (11) A marijuana producer, processor or retailer licensed by the WSLCB must conduct the production, processing, storage, and sale of marijuana-infused products using sanitary practices.

~~((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 or within the licensed premises.

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

**WAC 314-55-018 Prohibited practices—Money advances—Contracts—Gifts—Rebates, discounts, and exceptions, etc.** (1) No industry member or ~~((marijuana retailer))~~ licensee shall enter into any agreement which causes undue influence over another ~~((retailer))~~ licensee 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))~~ chapter 69.50 RCW and this chapter.

(2) No marijuana producer or processor shall advance and no marijuana 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, except for volume discounts as provided in this section;

(c) Loans of money;

(d) Premiums;

(e) Rebates;

(f) Free product of any kind except as allowed by WAC ~~((314-55-083))~~ 314-55-096 and RCW 69.50.585; or

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

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

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

(5) Volume discounts. Licensed marijuana producers or processors may provide volume discounts to marijuana licensees under the following conditions:

(a) Volume discounts must be solely based on the volume of the product purchased by a retailer from a producer or processor, or on the volume of product purchased by a processor from a producer. The limitations on interactions between the levels of licenses remains in effect, including the prohibition on undue influence, sales below cost of acquisition, or as otherwise prohibited under this section and this chapter.

(b) Any volume discount must be made available to all licensees.

(c) Volume discounts must be made in a single purchase. Volume discounts may not be offered to multiple licensees for a "group" or "co-op" purchase except where the purchase is being made by a business that holds multiple licenses so long as the UBI is the same for each licensed business.

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

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

**WAC 314-55-020 Marijuana license qualifications and application process.** Each marijuana license application is unique and investigated individually. The 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))~~ Consistent with RCW 69.50.331 (7) and (10), the WSLCB shall send a notice to cities and counties, (and may send a notice to) tribal governments ((or)), and port authorities regarding the marijuana license application within said jurisdiction. The local authority, tribal government, or port authority has twenty days to respond with a recommendation to approve the application or an objection to the applicant, location, or both.

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

(3) Applicants for a new marijuana producer, processor, ~~((or))~~ retailer, transportation, or research license and those who apply to change their location must display a sign provided by the WSLCB on the outside of the premises to be licensed notifying the public that the premises are subject to an application for a marijuana license. 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 applicant must provide the WSLCB with a copy of the master business 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))~~ license applicants must meet the qualifications required by the WSLCB before they will be granted a license ~~((regardless of priority)).~~

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

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

(a) The criminal history background check will consist of completion of a personal/criminal history form provided by the WSLCB and submission of fingerprints to a vendor approved by the WSLCB. The applicant will be responsible for paying all fees required by the vendor for fingerprinting. These fingerprints will be submitted to the Washington state patrol and the Federal Bureau of Investigation for comparison to their criminal records. The applicant will be responsible for paying all fees required by the Washington state patrol and the Federal Bureau of Investigation.

(b) Financiers will also be subject to criminal history investigations equivalent to that of the license applicant. Financiers will also be responsible for paying all fees required for the criminal history check.

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

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

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

(10) ~~((Per))~~ Under RCW 69.50.331 (1)(c), all applicants applying for a marijuana license must have resided in the state of Washington for at least six months prior to application for a marijuana license. All business entities including, but not limited to, partnerships, employee cooperatives, associations, nonprofit corporations, corporations and limited liability companies, applying for a marijuana license must be

formed in Washington. All members, governors, or agents of business entities must also meet the six month residency requirement. Managers or agents who manage a licensee's place of business must also meet the six month residency requirement.

~~((11))~~ ~~((Submission of an operating plan that demonstrates the applicant is qualified to hold the marijuana license applied for to the satisfaction of the WSLCB. The operating plan shall include the following elements in accordance with the applicable standards in the Washington Administrative Code (WAC):~~

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

<b>Producer</b>	<b>Processor</b>	<b>Retailer</b>
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	
Employee compensation and benefits data (see subsection (13) of this section)	Employee compensation and benefits data (see subsection (13) of this section)	Employee compensation and benefits data (see subsection (13) of this section)
	Description of the types of products to be processed at this location together with a complete description of processing of marijuana infused products	
	Description of packaging and labeling of products to be processed	
		What array of products are to be sold and how are the products to be displayed to consumers))

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

~~((13))~~ (12)(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))~~ (13) 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.

~~((15))~~ (14) 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.

~~((16))~~ (15) Upon failure to respond to the WSLCB licensing and regulation division's requests for information and/or documentation within the timeline provided, the application may be administratively closed or denial of the application will be sought.

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

**WAC 314-55-035 ~~(What)~~ Persons or entities ~~(have to)~~ that must qualify for a marijuana license~~(2)~~.** A marijuana license must be issued in the name(s) of ~~((the))~~ all true party(ies) of interest for the license.

(1) **True parties of interest~~((--))~~.** For purposes of this title, "true party of interest" means a person or business entity that holds an ownership interest in the marijuana license, has management or control of marijuana business activities under the license, or receives a share of the net profits of the marijuana business. The following true parties of interest must be qualified to be listed on the license, including residency requirements:

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	<p>All corporate officers (or persons with equivalent title) and their spouses.</p> <p>All stockholders and their spouses.</p>
Multilevel ownership structures	All persons and entities that make up the ownership structure (and their spouses).
Any entity or person <del>((inclusive of financiers that are))</del> expecting a percentage of the profits in exchange for a monetary loan or expertise. Financial institutions are not considered true parties of interest.	<p>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.</p> <p>Any entity or person who exercises control over the licensed business in exchange for money or expertise.</p> <p>For the purposes of this chapter:</p> <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>
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) An employee of a licensee receiving commission-based compensation consistent with this subsection.

(i) Commission-based compensation based on an individual employee's product sales performance is permissible for employees of producers and processors only and will not make the employee receiving commission-based compensation a true party of interest so long as the commission-based compensation arrangement does not create a default true party of interest relationship.

(ii) Commission-based compensation arrangements between a licensee and its employee must be in writing.

(iii) No more than five percent of the gross profits of the business may be given to any one employee under a commission-based compensation arrangement.

(iv) An employee of a licensee that operates under a commission-based compensation arrangement must be listed as an employee of the licensee with the Washington state employment security department.

(d) 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.

(e) A consultant receiving flat or hourly rate compensation under a written contractual agreement so long as the consultant does not receive any percentage of profits or interest in the licensed business or management or control of the licensed business such that would indicate or create a true party of interest relationship.

(3) Financiers(---). A financier is a person or entity other than a financial institution that supplies capital or financial support to a marijuana licensee. Such financial relationships are limited to loans with reasonable interest or gifts of funds.

(a) A financier may not receive an ownership interest, control of the business, or a profit-sharing interest or percentage of the profits in exchange for financial support.

(b) Washington state residency requirements do not apply to financiers, but all financiers must be United States residents.

(c) The WSLCB will conduct a financial investigation as well as a criminal background of financiers and all funds must be approved by the WSLCB prior to transfer to the marijuana licensee.

(4) Persons who exercise control of business(---). The 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, or both. Any changes to ownership after licensure must follow the requirements set forth in WAC 314-55-120.

(5) After licensure, ~~((a true party of interest, including financiers,))~~ licensees must continue to disclose the source of funds for all moneys invested in the licensed business. The WSLCB must approve ~~((these))~~ all funds prior to investing them into the business. Licensees are also responsible for notifying the WSLCB and receiving approval of any changes in ownership prior to the changes being made as provided in WAC 314-55-120.

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

**WAC 314-55-050 Reasons the WSLCB may seek denial, suspension, or cancellation of a marijuana license application or license.** Following is a list of reasons the WSLCB may deny, suspend, or cancel a marijuana license application or license. Per RCW 69.50.331, the WSLCB has broad discretionary authority to approve or deny a marijuana license application for reasons including, but not limited to, the following:

(1) Failure to meet qualifications or requirements 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 WSLCB during the evaluation process.

(3) The applicant makes a misrepresentation of fact, or fails to disclose a material fact to the 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 WSLCB to be gained in a manner which is in violation by law.

(7) Denies the 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 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 (10).

(10) Except as provided in subsection (11) of this section, the 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:

- (a) Elementary or secondary school;
- (b) Playground;
- (c) Recreation center or facility;
- (d) Child care center;
- (e) Public park;

- (f) Public transit center;
- (g) Library; or
- (h) Any game arcade (where admission is not restricted to persons age twenty-one or older).

(11)(a) 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.

(b) 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.

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

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

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

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

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

**AMENDATORY SECTION** (Amending WSR 17-04-038, filed 1/25/17, effective 2/25/17)

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

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

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

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

(i) Licensed producers with a research license and approved research project may grow marijuana plants or pos-

sess marijuana for research purposes at the producer's licensed premises. However, all marijuana grown or possessed for research purposes or purposes other than those related to the research project must be kept wholly separated and distinct from commercial operations and must not be comingled with or diverted to marijuana grown for commercial purposes or purposes other than those related to the research project; and

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

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

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

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

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

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

**(2) Initial applications.**

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

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

(ii) Upon submitting an application for a research license through BLS, the applicant will receive an application letter from the WSLCB directing the applicant to submit the additional application materials directly to the WSLCB's designated scientific reviewer (reviewer).

(A) The applicant must submit complete and accurate additional application materials directly to the reviewer within thirty days of the date of the application letter from the WSLCB or by the date indicated on the application letter. It

is the responsibility of the research license applicant to comply with the application requirements in this section and ensure the application is complete, accurate, and successfully submitted to the reviewer.

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

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

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

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

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

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

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

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

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

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

(III) Background and preliminary studies;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Ensure confidentiality; ~~((and))~~

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

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

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

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

the recommendation of the reviewer regarding the sufficiency of the research project.

(iv) If at any time during the process of review the reviewer finds that the additional application materials are not complete, the reviewer will notify the WSLCB in writing and the WSLCB will withdraw the application.

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

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

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

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

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

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

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

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

(a) The WSLCB will withdraw an application if:

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

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

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

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

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

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

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

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

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

**(4) Reporting required.**

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

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

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

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

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

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

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

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

**(6) Research license renewals.**

(a) Research license renewals operate on an annual basis, based on the license issuance date. A licensee must have an ongoing approved research project or an application for a new research project to be eligible for license renewal. The WSLCB will notify the licensee and reviewer ninety days prior to the license renewal date. The licensee must provide a status report to the reviewer or an application for a new research project if the licensee's ongoing approved research

project will end within thirty days prior to or after the renewal date. The status report or application must be received by the reviewer within thirty days of the ninety-day renewal notice from the WSLCB or the license will not be renewed.

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

(c) If the reviewer determines that the research project does not meet requirements for renewal due to lack of an ongoing project or for failure to meet the requirements of RCW 69.50.372 or this section for a proposed new project, the reviewer will recommend the WSLCB not renew the license.

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

**(7) License revocation.**

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

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

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

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

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

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

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

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

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

**(8) Marijuana disposal requirements.**

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

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

(9) An applicant or licensee may request an administrative hearing to contest the withdrawal, denial, nonrenewal, or revocation of a research license pursuant to chapter 34.05 RCW. A request for a hearing must be made in writing and received by the WSLCB no later than twenty days after the date the notification of withdrawal, denial, nonrenewal, or revocation was mailed to the applicant or licensee. Appeal

requests submitted in paper form may be delivered to the WSLCB in person during normal business hours at 3000 Pacific Avenue S.E., Olympia, WA 98501, or mailed to the WSLCB. Mailed appeal requests must be addressed to: WSLCB, ATTN: Adjudicative Proceedings Coordinator, P.O. Box 43076, Olympia, WA 98504-3076 or, for certified mail, WSLCB, ATTN: Adjudicative Proceedings Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98501.

AMENDATORY SECTION (Amending WSR 16-19-102, filed 9/21/16, effective 10/22/16)

**WAC 314-55-075 (~~What is a~~) Marijuana producer license (~~and what are the~~) Privileges, requirements, and fees (~~related to a marijuana producer license?~~).**

(1)(a) 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~~) may also produce and sell:

(i) Marijuana plants, seed, and plant tissue culture to other marijuana producer licensees; (~~and~~)

(ii) Immature marijuana plants or clones and marijuana seeds to members of a registered cooperative, qualifying patients, or designated providers under the conditions provided in (~~WAC 314-55-410~~) this chapter; and

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

(b) 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. In addition, 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. Effective July 1, 2018, the annual fee for issuance and renewal of a marijuana producer license is one thousand three hundred dollars. The 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~~) is responsible for all fees required for (~~the~~) criminal history checks.

(4) (~~The 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 WSLCB.)) The~~

application window for marijuana producer licenses is closed. The WSLCB may reopen the marijuana producer application window ~~((after the initial evaluation of the applications received and))~~ at subsequent times when the WSLCB deems necessary.

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

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

(a) Tier 1 - Less than two thousand square feet;

(b) Tier 2 - Two thousand square feet up to ten thousand square feet; and

(c) Tier 3 - Ten thousand square feet up to thirty thousand square feet.

(7) The 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 square feet the 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 WSLCB may reduce the tier of licensure.

(8) If the total amount of square feet of marijuana production exceeds the maximum square feet, the 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.

(10) A producer 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.

(11) 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.

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

**WAC 314-55-077 ~~((What is a))~~ Marijuana processor license ~~((and what are the))~~—Privileges, 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) Application and license fees.**

(a) 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.

(b) The annual fee for issuance and renewal of a marijuana processor license is one thousand dollars. Effective July 1, 2018, the annual fee for issuance and renewal of a marijuana processor license is one thousand three hundred dollars. The 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 is responsible for all fees required for the criminal history checks.

(c) The application window for marijuana processor licenses is closed. The WSLCB may reopen the marijuana processor application window at subsequent times when the WSLCB deems necessary.

(3) Any entity and/or principals within any entity are limited to no more than three marijuana processor licenses.

(4)(a) A marijuana processor that makes marijuana-infused solid or liquid product meant to be ingested orally (marijuana edibles) must obtain a marijuana-infused edible endorsement from the department of agriculture as required under chapter 15.125 RCW and rules adopted by the department to implement that chapter (chapter 16-131 WAC). A licensee must allow the WSLCB or their designee to conduct physical visits and inspect the processing facility, recipes, and records required under WAC 314-55-087 during normal business hours or at any time of apparent operation without advance notice.

(b) A 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 chapter 15.125 RCW and rules promulgated to implement chapters 16-131, 16-165 and 16-167 WAC.

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

~~((3))~~ (b) A 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.

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

(a) A marijuana processor licensee must obtain label and packaging approval from the WSLCB for all marijuana-infused products meant for oral 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 WSLCB for approval. More information on the product, packaging, and label review pro-

cess is available on the WLSLCB's web site at [www.lcb.wa.gov](http://www.lcb.wa.gov).

(b) All recipes for marijuana-infused products meant for oral ingestion (marijuana edible products) must be approved by the department of agriculture under chapter 16-131 WAC. Licensees must obtain recipe approval from the department of agriculture prior to submitting any marijuana edible products, packages, and labels for review and approval by the WSLCB. 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 WSLCB or its designee.

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

((4)) (7) 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)) (8) Marijuana-infused edible products in solid or liquid 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):

(a) Be homogenized to ensure uniform disbursement of cannabinoids throughout the product((-

(d) All marijuana-infused solid edibles must)); and

(b) Prominently display on the label "This product contains marijuana."

((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."

(7)) If the WSLCB adopts a universal symbol required on labels of marijuana or marijuana products to identify the product is or contains marijuana, this subsection will not be required upon the effective date of rules requiring the universal symbol to be included on labels so long as it is required on marijuana-infused solid and liquid edibles.

(9) 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, lol-

lipops, 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)) include:

(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 WSLCB may designate other food items that may not be infused with marijuana.

((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 WSLCB or its designee.

(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.

(10) The annual fee for issuance and renewal of a marijuana processor license is one thousand dollars. The 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.

(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 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 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 WSLCB to suspend or revoke a marijuana license.

(12) The 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 WSLCB. The 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 WSLCB deems necessary.

(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.

(15)) (10) 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.

((16)) (11) **Processing service arrangements.** A processing service arrangement is when one processor (processor B) processes usable marijuana or an altered form of usable marijuana (marijuana product) for another licensed processor (processor A) for a fee.

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

(b) Processing service arrangements must be made on a cash basis only as provided in WAC 314-55-115. No "splits" of product are permissible and payment with any marijuana products, barter, trade, or compensation in any form other than cash as defined in this chapter for processing service arrangements is prohibited.

(c) A processor must meet and maintain their qualifications as a processor outside of processing service arrangements. Processing service arrangement activities cannot exceed fifty percent of a processor's overall business.

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

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

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

(b) Marijuana may be returned by a retail licensee in the event a retailer goes out of the business of selling marijuana at retail and a cash refund may be made upon the return of the marijuana or marijuana products, so long as WSLCB approval is acquired prior to returns and refunds under this subsection.

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

(d) A marijuana processor (~~must~~) may 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 16-19-102, filed 9/21/16, effective 10/22/16)

**WAC 314-55-079 (~~What is a~~) Marijuana retailer license (~~and what are the~~)—Privileges, 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, and lockable boxes to store marijuana at retail in licensed retail outlets to persons twenty-one years of age and older, except as allowed for persons under twenty-one years of age consistent with RCW 69.50.357 and WAC 314-55-080.

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

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

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

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

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

~~((5))~~ (a) 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))~~ (b) The annual fee for issuance and renewal of a marijuana ~~((retailer's))~~ retailer license is one thousand dollars. Effective July 1, 2018, the annual fee for issuance and renewal of a marijuana retailer license is one thousand three hundred dollars. The 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))~~ is responsible for all fees required for the criminal history checks.

~~((6))~~ (5) Internet sales and delivery of product to customers are prohibited.

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

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

~~((7))~~ (8) All marijuana products must be stored behind a counter or other barrier to ensure a customer does not have direct access to the product.

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

~~((10))~~ (10) 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))~~ (11) 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))~~ (12) A marijuana retailer may accept returns of open marijuana products. Products must be returned in their original packaging with the lot, batch, or inventory ID number fully legible.

~~((10))~~ (13) A marijuana retailer may dispose of marijuana products as provided in WAC 314-55-097. ~~((Marijuana retailers must give seventy-two hours' notice to WSLCB enforcement prior to disposing of marijuana products.))~~

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

**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) Qualifying patients between eighteen and twenty-one years of age with a recognition card may enter and remain on the premises of a retail outlet holding a medical marijuana endorsement and may purchase products for their personal medical use. Qualifying patients who are under the age of

eighteen with a recognition card and who accompany their designated providers may enter and remain on the premises of a retail outlet holding a medical marijuana endorsement, but may not purchase products for their personal medical use.

**(3) 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 database established by the department of health;

(g) Issue recognition cards and agree to enter qualifying patients and designated providers into the database in compliance with the department of health standards;

~~((h))~~ (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))~~ records to document the validity of tax exempt sales as prescribed by the department of revenue for a minimum of five years. For the documentation requirements in RCW 69.50.375 (3)(e), licensees are not required to separately keep copies of the qualifying patient's or designated provider's recognition card because this information is stored in the medical marijuana authorization database;

(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 database;

(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))~~ (4) **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))~~ (5) **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))~~ ~~(6)~~ Failure to comply with subsections (3) and ~~((4))~~ ~~(5)~~ of this section may result in suspension or revocation of the medical marijuana endorsement.

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

**WAC 314-55-083** ~~((What are the))~~ **Security and traceability requirements for ~~((a))~~ marijuana licensees~~(2)~~**. 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 WSLCB employee or law enforcement officer, and must be copied and provided to the 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))~~ used.

(3) **Surveillance system.** At a minimum, a licensed premises must have a complete video surveillance system with minimum camera resolution of 640 x 470 pixels or pixel equivalent for analog. The surveillance system storage device and/or the cameras must be internet protocol (IP) compatible. All cameras must be fixed and placement ~~((shall))~~ must allow for the clear and certain identification of any person and activities in controlled areas of the licensed premises. All entrances and exits to an indoor facility ~~((shall))~~ must 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 tam-

pering 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 WSLCB employee or law enforcement officer, and must be copied and provided to the 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))~~ ~~(a)~~ 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))~~ ~~(b)~~ All point-of-sale (POS) areas.

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

~~((iv))~~ ~~(d)~~ 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 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 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 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)) All marijuana plants eight or more inches in height or width must be physically tagged and tracked individually;~~

~~((j)) (g) 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)) (h) 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)) unique identifier generated by the traceability system and tracked;~~

~~((l)) (i) All point-of-sale records;~~

~~((m)) (j) Marijuana excise tax records;~~

~~((n)) (k) All samples sent to an independent testing lab, any sample of unused portion of a sample returned to a licensee, and the quality assurance test results;~~

~~((o)) (l) All ((free)) vendor samples provided to another licensee for purposes of education or negotiating a sale;~~

~~((p)) (m) All samples used for testing for quality by the producer or processor;~~

~~((q)) (n) Samples containing usable marijuana provided to retailers;~~

~~((r)) (o) Samples provided to the WSLCB or their designee for quality assurance compliance checks; and~~

~~((s)) (p) 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.))~~

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

**WAC 314-55-084 ((Production of)) Marijuana plant production.** (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:

((\*) (i) Ancyimidol;

((\*) (ii) Chlormequat chloride;

((\*) (iii) Clofencet;

((\*) (iv) Colchicine;

((\*) (v) Colloidal silver;

((\*) (vi) Daminozide;

((\*) (vii) Dikegulac-sodium;

((\*) (viii) Flumetralin;

((\*) (ix) Flurprimidol; and

((\*) (x) Paclobutrazol;

(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 as provided in WAC 314-55-108.

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

**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)) five-year period and must be made available for inspection if requested by an employee of the 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 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 16-19-002, filed 9/7/16, effective 10/8/16)

**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 WSLCB. The required monthly reports must be:

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

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

(c) Submitted, with payment due, to the 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 WSLCB. The act of keeping data completely up-to-date in the state traceability system fulfills the monthly reporting requirement.

(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 WSLCB. The act of keeping data completely up-to-date in the state traceability system fulfills the monthly reporting requirement.

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

(a) 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 WSLCB.

(b) A marijuana retailer licensee must collect from the buyer and remit to the WSLCB a marijuana excise tax of thirty-seven percent of the selling price on each retail sale of usable marijuana, marijuana concentrates, and marijuana-infused products.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**WAC 314-55-092 (~~What if a marijuana licensee fails to report or pay, or reports or pays late?~~) Failure to pay excise taxes and late payment of excise taxes.** (1) If a marijuana licensee does not submit its (~~monthly reports and/or~~) payment(s) to the 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 the outstanding balance for any payments post-marked 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 WSLCB or authorized designee, will be used to assess the penalty of two percent per month on (~~payments received~~) the outstanding balance 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 WSLCB to suspend or revoke a marijuana license.

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

**WAC 314-55-095 Marijuana servings and transaction limitations.** (1) For persons age twenty-one and older and qualifying patients or designated providers who are not entered into the medical marijuana authorization database, 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 or otherwise taken into the body 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~~) limits.**

(i) A single transaction is limited to:

(A) One ounce of usable marijuana;(B) Sixteen ounces of marijuana-infused product meant to be eaten or swallowed in solid form;(C) Seven grams of marijuana-infused extract or marijuana concentrate for inhalation; and(D) Seventy-two ounces of marijuana-infused product in liquid form (~~meant to be eaten or swallowed~~) for oral ingestion or applied topically to the skin; and(E) Ten units of a marijuana-infused product otherwise taken into the body.(ii) A licensee or employee of a licensee is prohibited from conducting a sale that facilitates an individual in obtaining more than the personal possession amount.

(2) For qualifying patients and designated providers who are entered into the medical marijuana authorization database, 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 database 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.AMENDATORY SECTION (Amending WSR 16-11-110, filed 5/18/16, effective 6/18/16)**WAC 314-55-096 Vendor, educational, and internal quality control 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 on product the retail licensee has not previously purchased. All vendor sample limits are based on calendar months. The producer or processor must record the amount of each vendor sample and the processor or retailer receiving the sample in the traceability system. The outgoing sample must be clearly labeled as a "vendor sample" to negotiate a sale and recorded on a transport manifest. The receiving licensee must receive the vendor sample in the traceability system prior to sampling.(a) Vendor samples may only be given to and used by licensees or employees of licensees who have product ordering authority.

(b) 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))~~ (c) 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))~~ (d) Processors may not provide any one licensed retailer more than eight units of marijuana-infused products in solid form meant to be ingested orally or otherwise taken into the body per month free of charge for the purpose of negotiating a sale. No single ~~((sample))~~ unit may exceed 10 mg of THC.~~((d))~~ (e) Processors may not provide any one licensed retailer more than eight units of marijuana-infused product in liquid form meant to be eaten, swallowed, or otherwise taken into the body per month free of charge for the purpose of negotiating a sale. No single ~~((sample))~~ unit may exceed 10 mg of THC.~~((e))~~ (f) Processors may not provide any one licensed retailer more than eight units of marijuana-infused products meant to be applied topically per month free of charge for the purpose of negotiating a sale.(g) 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))~~ unit may exceed 0.5 g.~~((f))~~ (h) 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))~~ (i) 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.~~((h))~~ (j) **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)~~ (i) The unique identifier number generated by the traceability system;~~((b))~~ (ii) The UBI number of the licensed entity providing the sample; and~~((c))~~ (iii) Weight of the product in ounces and grams or volume as applicable.~~((d))~~ (2) **Education sampling.** Processors may provide free samples of usable marijuana, marijuana-infused products, and marijuana concentrates to retail licensees to give to ~~((their budtender))~~ the licensee's employees for educational purposes. Products being sampled must be carried by the licensed retailer. 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))~~ education sample" and recorded on a transport manifest. Once the retailer receives the sample, the retailer must accept the sample in the traceability system prior to distributing samples to the retailer's employees. All

~~((budtender))~~ employees at a licensed retail location who receive educational samples 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 education samples ~~((for education))~~ are:

(i) Usable marijuana, marijuana mix, and infused marijuana mix - One unit not to exceed ~~((.5 g))~~ 0.5 g.

(ii) Marijuana infused solid or liquid product meant to be ~~((eaten or swallowed))~~ ingested orally or otherwise taken into the body - One unit not to exceed 10 mg THC.

(iii) Marijuana-infused extract for inhalation - One unit not to exceed ~~((.25 g))~~ 0.25 g.

(iv) Marijuana-infused products for topical application - One unit not to exceed sixteen ounces.

~~((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.

~~((d))~~ Marijuana retail licensees are prohibited from providing educational samples to their budtender employees as a form of compensation.

(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))~~ "education sample" and include the following information on the label:

(i) ~~((Sixteen digit identification))~~ The unique identifier 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 in ounces and grams or volume as applicable; and

(v) Potency labeled as required under WAC 314-55-105.

~~((4))~~ (3) 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))~~ (4) Internal quality control sampling: Producers and processors may conduct limited self-sampling for quality

control. All sample limits are based on calendar months. ~~((Sampling))~~ Consuming samples 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))~~ ingested orally or otherwise taken into the body 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))~~ (5) Retailers may not provide free samples to customers.

~~((8))~~ (6) Sample jars:

~~((a))~~ 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))~~ (b) Sample jar labeling: All ~~((vendor samples and))~~ sample jars must be labeled with the following:

~~((a))~~ (i) The unique identifier number ~~((given))~~ generated by the traceability system;

~~((b))~~ (ii) Information identifying whether it is a vendor sample or sample jar;

~~((c))~~ (iii) The UBI number of the licensed entity providing the sample; and

~~((d))~~ (iv) Weight of the product in ounces and grams or volume as applicable.

~~((10))~~ (c) 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.

~~((d))~~ 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.

~~((H))~~ **(7) Transportation.** Outgoing and return vendor samples and sample jars must adhere to the transportation requirements in WAC 314-55-085.

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

**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 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:

~~((B))~~ (a) Waste evaluated per subsection (3) of this section and determined to not designate as "Dangerous Waste."

~~((C))~~ (b) Marijuana plant waste, including roots, stalks, leaves, and stems that have not been processed with solvent.

~~((D))~~ (c) Solid marijuana sample plant waste possessed by third-party laboratories accredited by the WSLCB to test for quality assurance that must be disposed of.

~~((E))~~ (d) Other wastes as determined by the WSLCB.

~~((F))~~ (b) A producer or processor must provide the 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 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 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 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 16-11-110, filed 5/18/16, effective 6/18/16)

**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 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 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).~~

~~(6) The certification document must contain the signature and stamp of a professional engineer and the serial number of the extraction unit being certified.~~

~~(7)) Professional grade closed loop systems, other equipment used must be approved for use by the state building code council (SBCC) prior to use per WAC 51-54A-3800.~~

(6) Professional closed loop systems, other equipment used, the extraction operation, and facilities must be approved for their use by the local fire code official and meet any required fire, safety, and building code requirements specified in:

(a) Title 296 WAC;

(b) Chapters 51-51 and 51-54A WAC;

(c) National Fire Protection Association (NFPA) standards;

(d) International Building Code (IBC);

(e) International Fire Code (IFC); and

(f) Other applicable standards including following all applicable fire, safety, and building codes in processing and the handling and storage of the solvent or gas.

~~((8)) (7) 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.~~

~~((9)) (8) 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.~~

~~((10)) (9) 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.~~

~~((11)) (10) 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.

~~((12)) (11) 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)) levels provided in WAC 314-55-102.~~

NEW SECTION

**WAC 314-55-117 Use of payment services by retailers.** Retail licensees may use payment services to facilitate retail sales transactions under the following conditions:

(1) The payment service provider must:

(a) If applicable, be licensed and in good standing with the Washington state department of financial institutions; and

(b) Not have any interest, as a true party of interest or financier, in a marijuana licensee.

(2) The payment service provider may charge a convenience fee to customers provided that the customer has the option of canceling the transaction when informed of the convenience fee.

(3) The retail purchase price must be calculated in U.S. dollars.

(4) The marijuana excise tax required under RCW 69.50.535 must be collected from the customer based on the U.S. dollar purchase price.

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

**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

Type of change	Type of application	Fee
Change in the qualifying persons in a limited liability company.	Application for change of limited liability company member and/or manager.	\$75
Accepting additional funds from a new or previously approved financier.	Added financier.	\$75

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

(3) The 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 314-55-125 Change of location.** (1) Changing ((~~you~~)) a marijuana license to a new location requires ((~~an~~)) a change request application to the WSLCB, per the process outlined in WAC 314-55-020. WSLCB approval for change request applications must be obtained prior to any change of location of the licensed business.

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

NEW SECTION

**WAC 314-55-137 Receiverships.** (1) The WSLCB must receive original service of any motion to place a licensee into receivership.

(a) Any person who files any receivership or trustee action involving any marijuana licensee must serve WSLCB with original notice of the action. Service is accomplished by delivery of the original notice of action to WSLCB at: 3000 Pacific Avenue S.E., Olympia, WA 98501, or mailed to the WSLCB. Mailed notice must be addressed to: WSLCB, ATTN: Licensing - Receiverships, P.O. Box 43076, Olympia, WA 98504-3076 or, for certified mail, WSLCB, ATTN: Licensing - Receiverships, 3000 Pacific Avenue S.E., Olympia, WA 98501.

(b) Only if WSLCB receives original notice of the action and the receiver is selected in accordance with WSLCB's requirements will WSLCB treat the licensee as compliant with all applicable WSLCB rules.

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

(a) Upon compliance with the requirements set forth below, the receiver may operate the licensee's business during the receivership period;

(b) The receiver assumes all licensee reporting responsibilities including, but not limited to, full responsibility for

maintaining records and entries into the traceability system maintained by the WSLCB; and

(c) The receiver is required to comply with all applicable laws and rules in this chapter including, but not limited to, the responsibilities of marijuana licensees set forth in WAC 314-55-110.

(3) **Who may serve as a receiver.** Any person who meets the requirements of chapter 7.60 RCW and the following additional requirements may serve as a receiver:

(a) Is currently in active status on the preapproved receiver list maintained by the WSLCB; or

(b) Complies with the requirements of subsection (5) of this section and is approved by the WSLCB to serve as a receiver of a marijuana licensee.

(4) **Qualifying for the WSLCB's preapproved receiver list.** A person will qualify for the WSLCB's preapproved receiver list if they meet all of the following requirements:

(a) File a receiver application with the WSLCB;

(b) Be a Washington resident for six months prior to the application for preapproval as a receiver;

(c) Submit to and pass a criminal background check; and

(d) Meet all other qualifications for a licensee under chapter 69.50 RCW and this chapter including, but not limited to:

(i) Providing financial disclosures required by the WSLCB;

(ii) Disclosing any interests the applicant has in any marijuana licensees;

(iii) Meeting any and all other requirements established for true parties of interest in marijuana licensees under this chapter; and

(iv) File a yearly update of all information required by the WSLCB.

(e) For business entities that will serve as receivers for licensees, all members of the business entity will be subject to review and qualification requirements for true parties of interest, as defined in WAC 314-55-035.

(5) **Procedures for appointing a receiver who is not preapproved.** A person who is not on the preapproved receiver list may be appointed in accordance with the following requirements:

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

(i) File an application with the WSLCB to serve as receiver for the licensee;

(ii) Provide all financial disclosures required by the WSLCB for licensees under this chapter; and

(iii) Disclose any interest the proposed receiver has in any marijuana licensees.

(b) A person may qualify to be appointed as a receiver if they meet all of the following requirements:

(i) Be a Washington resident for six months prior to appointment as a receiver;

(ii) Submit to and pass a criminal background check; and

(iii) Meet any and all other standards established for true parties of interest for marijuana licensees under this chapter.

(c) For business entities that will serve as receivers for licensees, all members of the business entity will be subject to the same review and qualification requirements.

(d) If the proposed receiver is denied approval by WSLCB at any time, a substitute receiver may be proposed for WSLCB approval. The substitute receiver must provide all information required by this subsection.

(e) If the proposed receiver is not approved by WSLCB at the time the receiver is appointed by the court, the receiver will not be considered compliant with all applicable WSLCB rules and statutes, and may be subject to penalty under chapter 69.50 RCW, or as otherwise set forth in this chapter.

(6) **Limitations on a person's ability to serve as a receiver.** As operators and controllers of licensed marijuana establishments, receivers are subject to the same limits as licensees or any other person. Those limits include, but are not limited to:

(a) No person serving as a receiver of a licensed marijuana producer or licensed marijuana processor shall have a financial interest in, or simultaneously serve as a receiver for, a licensed marijuana retailer; and

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

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

**WAC 314-55-140 Death or incapacity of a marijuana licensee.** (1) The appointed guardian, executor, administrator, (~~receiver,~~) trustee, or assignee must notify the 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 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 16-11-110, filed 5/18/16, effective 6/18/16)

**WAC 314-55-185 (~~Does the~~) WSLCB (~~have the~~) right to inspect (~~my~~) premises or vehicles (~~licensed~~) associated with a license to produce, process, sell, research, 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, research, 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 mar-

ijuana-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~~) this chapter; 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~~) within 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 16-19-102, filed 9/21/16, effective 10/22/16)

**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 cooperative 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 cooperative members must hold valid recognition cards as defined by RCW 69.51A.010;

(c) No more than four qualifying patients or designated providers may become members of a cooperative;

(d) Qualifying patients or designated providers may only participate in one cooperative;

(e) A cooperative member may only grow plants in the cooperative and may not grow plants elsewhere;

(f) Cooperative members must participate in growing plants. Cooperative members must provide nonmonetary resources and assistance in order to participate. A monetary contribution or donation is not considered assistance;

(g) Cooperative members may grow up to the total amount of plants for which each cooperative member is authorized on his or her recognition card. At the location, the qualifying patients or designated providers may possess the amount of usable marijuana that can be produced with the number of plants permitted, but no more than seventy-two ounces;

(h) Cooperative 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~~) at the domicile of one of the cooperative members. Only one cooperative may be located per property tax parcel; and

(k) To obscure public view of the premises, outdoor 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. The following is required to register a cooperative:

(a) Submit a completed Marijuana Cooperative Registration Form;

(b) Submit copies of each person's recognition card who is seeking to be part of the registered cooperative;

(c) Submit a deed, lease, rental agreement, or other document establishing ownership or control to the property where the cooperative is to be located. If the property is leased or rented, a sworn statement from the property owner granting permission to engage in a cooperative must also be submitted that includes a telephone number and address where the owner can be contacted for verification;

(d) Submit a sketch outlining the location where the marijuana is planned to be grown.

(3) WSLCB will contact the primary contact listed for each registered cooperative on an annual basis to ensure validity of recognition cards and to confirm the status, whether active or inactive, of the cooperative. If the WSLCB finds that the cooperative no longer meets the criteria required under this section, the WSLCB may not renew the cooperative registration.

(4) 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 and WSLCB staff.

~~((4))~~ (5) If a person or persons seeking to register the cooperative fails to meet the requirements of a registered cooperative as provided in this section, the WSLCB will deny the cooperative registration.

~~((5))~~ (6) If the WSLCB finds a registered cooperative violated the requirements of this section, the WSLCB will revoke the cooperative's registration.

~~((6))~~ (7) A person may request an administrative hearing to contest a denial of registration, nonrenewal, or a revocation of a cooperative's registration under ~~((subsections (4) and (5) of))~~ this section as provided in chapter 34.05 RCW.

~~((7) Cooperative members purchasing plants from licensed producers:~~

~~(a) Members of a cooperative registered by the WSLCB may purchase marijuana plants to be grown in the cooperative from a licensed marijuana producer.~~

~~(b) Members of a cooperative who wish to purchase plants from a licensed producer must:~~

~~(i) Provide proof of identification in the form of a state-issued identification card or other valid government-issued identification, a valid recognition card, and a copy of the letter from the WSLCB confirming the person is a member of a registered cooperative;~~

~~(ii) Contact a licensed producer they wish to purchase from at least twenty-four hours in advance of arriving at the licensed producer's place of business to ensure the producer has plants available for sale and to allow for the required waiting period under WAC 314-55-083 to pass prior to physically taking possession of marijuana plants; and~~

~~(iii) Personally go to the licensed producer to complete the purchase and transfer of any marijuana plants purchased.~~

~~(e) The physical transfer of marijuana plants between licensed producers and members of a cooperative must take place on the premises of the licensed producer. Deliveries of marijuana plants by a licensed producer to members of a cooperative are prohibited.)~~

#### NEW SECTION

**WAC 314-55-417 Sales of immature plants or clones and seeds from licensed producers to members of cooperatives, qualifying patients, and designated providers.** This section details the requirements for sales of immature plants or clones and seeds by licensed producers to members of a registered cooperative, qualifying patients, and designated providers.

(1) Medical marijuana patients who enter into the medical marijuana authorization database established and maintained by the department of health, receive a recognition card, and are members of a cooperative that has been granted a registration by the Washington state liquor and cannabis board (WSLCB) may purchase immature plants or clones and seeds to be grown in the cooperative from a licensed marijuana producer.

(2) Qualifying patients and designated providers who hold a valid unexpired recognition card and have been entered into the medical marijuana authorization database established and maintained by the department of health, may purchase immature plants or clones and seeds from a licensed marijuana producer.

(3) Members of a registered cooperative, qualifying patients, and designated providers who wish to purchase immature plants or clones and seeds from a licensed producer must:

(a) Personally go to the licensed producer to complete the purchase and transfer of any marijuana plants purchased; and

(b) Provide the following information to a licensed producer:

(i) Proof of identification in the form of a state-issued identification card or other valid government-issued identification;

(ii) A valid recognition card; and

(iii) If the person purchasing immature plants or clones or seeds is a member of a registered cooperative, a copy of the letter from the WSLCB confirming the person is a member of a registered cooperative.

(4) The physical transfer of marijuana plants between licensed producers and members of a cooperative, qualifying patients, or designated providers must take place on the premises of the licensed producer. Deliveries of marijuana plants by a licensed producer to members of a cooperative, qualifying patients, or designated providers are prohibited.

(5) Members of registered cooperatives, qualifying patients, and designated providers are limited to purchasing no more than the maximum amount that the medical marijuana patient's authorization form allows of any combination of immature plants or clones and seeds in a single sale or cumulative sales within a calendar month from a licensed

producer. It is the responsibility of the member of the registered cooperative, qualifying patient, or designated provider to ensure that they possess no more than the maximum number of plants allowed under their authorization forms and as provided in chapter 69.51A RCW.

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

**WAC 314-55-525 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.

<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>Hours of service:</b> Sales of marijuana between 12:00 a.m. and 8:00 a.m. Chapter 314-55 WAC	5-day suspension or \$1,000 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license
<b>General advertising:</b> Violations Chapter 314-55 WAC	Retailer/transporter: 5-day suspension or \$1,000 monetary option  Producer/processor: \$1,000 monetary fine	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	Retailer/transporter: 30-day suspension  Producer/processor: Tier 1: \$15,000 Tier 2: \$30,000 Tier 3: \$60,000 monetary fine	Cancellation of license
<del>(Advertising violations – 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</del>	<del>\$1,000 monetary fine</del>	<del>\$1,000 monetary fine</del>	<del>\$1,000 monetary fine</del>	<del>\$1,000 monetary fine</del>
<b>Engaging in conditional retail sales.</b> Chapter 314-55 WAC Chapter 69.50 RCW	5-day suspension or \$1,000 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> 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: 30-day suspension  Producer/processor: All tiers: \$5,000 monetary fine	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>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 Producer/processor: \$2,500 monetary fine</p>	<p>Retailer/transporter: 10-day suspension or \$5,000 monetary fine Producer/processor: Tier 1: \$5,000 Tier 2: \$10,000 Tier 3: \$15,000 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>Records:</b> Improper recordkeeping. Chapter 314-55 WAC</p>	<p>Retailer/transporter: 5-day suspension or \$1,000 monetary option Producer/processor: \$1,000 monetary fine</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>Failure to submit monthly tax (sales reports and/or) payments.</b> Chapter 69.50 RCW Chapter 314-55 WAC</p>	<p>Retailer(<del>transporter</del>): 5-day suspension or \$1,000 monetary option <del>((Producer/processor: \$1,000 monetary fine))</del></p>	<p>Retailer: 10-day suspension or \$2,500 monetary option <del>((Producer/processor: Tier 1: \$2,500 Tier 2: \$5,000 Tier 3: \$7,500 monetary fine))</del></p>	<p>Retailer: 30-day suspension <del>((Producer/processor: Tier 1: \$15,000 Tier 2: \$30,000 Tier 3: \$60,000 monetary fine))</del></p>	<p>Cancellation of license</p>
<p><b>Signs:</b> Failure to post required signs. Chapter 69.50 RCW Chapter 314-55 WAC</p>	<p>Retailer/transporter: 5-day suspension or \$500 monetary option Producer/processor: \$500 monetary fine</p>	<p>Retailer/transporter: 10-day suspension or \$1,500 monetary option Producer/processor: All tiers: \$1,500 monetary fine</p>	<p>Retailer/transporter: 15-day suspension or \$5,000 monetary option Producer/processor: All tiers: \$5,000 monetary fine</p>	<p>Cancellation of license</p>
<p><b>Failure to utilize and/or maintain traceability.</b> Chapter 314-55 WAC</p>	<p>5-day suspension or \$2,500 monetary option Producer/processor: \$2,500 monetary fine</p>	<p>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</p>	<p>Retailer: 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>Violation of transportation requirements.</b> Chapter 314-55 WAC</p>	<p>Retailer: 5-day suspension or \$2,500 monetary option Producer/processor: \$2,500 monetary fine</p>	<p>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</p>	<p>Retailer: 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
<b>Marijuana sold below cost of acquisition, true value, or illegally given away.</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	Cancellation of license
<b><u>Retail sales: Use of an unauthorized money transmitter.</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>
<b>Retail outlet selling unauthorized products.</b> Chapter 69.50 RCW	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine
<b>Retailer displaying products in a manner visible to the general public from a public right of way.</b> Chapter 69.50 RCW	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine	\$1,000 monetary fine
<b>Retail sales: Unauthorized marijuana-infused products, internet sales, and accepting returns.</b> Chapter 314-55 WAC	5-day suspension or \$1,000 monetary option	10-day suspension or \$2,500 monetary option	30-day suspension	Cancellation of license

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

**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
<b>True party of interest/financier violation.</b> Chapter 314-55 WAC	Cancellation of license			
<b>Failure to furnish required documents.</b> Chapter 314-55 WAC	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>Misuse or unauthorized use of marijuana license (operating outside of license class).</b> Chapter 69.50 RCW Chapter 314-55 WAC	Retailer/transporter: 10-day suspension or \$5,000 monetary fine  Producer/processor: Tier 1: \$5,000 Tier 2: \$10,000 Tier 3: \$15,000 monetary fine	Cancellation of license		
<b>Misrepresentation of fact.</b> Chapter 314-55 WAC	Cancellation of license			
<b>Unauthorized change of business name.</b> Chapter 314-55 WAC	5-day suspension or \$1,000 monetary option  Producer/processor: All tiers: \$500 monetary penalty	10-day suspension or \$1,500 monetary option  Producer/processor: All tiers: \$1,500 monetary fine	30-day suspension or \$5,000 monetary option  Producer/processor: All tiers: \$5,000 monetary fine	Cancellation of license
<b>Operating/floor plan:</b> Violations of a WSLCB approved operating plan. Chapter 314-55 WAC	5-day suspension or \$1,000 monetary option  Producer/processor: All tiers: \$1,000 monetary fine	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	Retailer/transporter: 30-day suspension  Producer/processor: Tier 1: \$15,000 Tier 2: \$30,000 Tier 3: \$60,000 monetary fine	Cancellation of license
<del><b>(Failing to gain WSLCB approval for changes in existing ownership.</b></del> Chapter 69.50 RCW Chapter 314-55 WAC	<del>30-day suspension                       Producer/processor:                      \$15,000 monetary fine and destruction of 50% of inventory)</del>			
<b>Failure to respond to administrative violation notice and/or failure to pay fines and penalties.</b> Chapter 314-55 WAC	\$1,000 monetary penalty	Cancellation of license		
<b>Failure to maintain required insurance.</b> Chapter 314-55 WAC	Retailer/transporter: 5-day suspension or \$2,500 monetary fine  Producer/processor: Tier 1: \$2,500 Tier 2: \$5,000 Tier 3: \$7,500 monetary fine	Retailer/transporter: 30-day suspension or \$15,000 monetary option  Producer/processor: Tier 1: \$15,000 Tier 2: \$30,000 Tier 3: \$60,000 monetary fine	Cancellation of license	

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 314-55-081 Who can apply for a marijuana retailer license?

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

**WAC 314-55-082 Insurance requirements.** Marijuana licensees (~~shall provide~~) must obtain 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 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,~~) or commercial umbrella insurance for bodily injury and property damage arising out of licensed activities. The limits of liability insurance shall not be less than one million dollars.

(a) 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.

(b) 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 rating of A - Class VII or better in the most recently published edition of *Best's Reports*. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with chapters 48.15 RCW and 284-15 WAC.

(3) Additional insured. The state and its employees, agents, and volunteers shall be named as an additional insured on (~~all general liability, umbrella, and excess~~) insurance policies required under this section. All policies shall be primary over any other valid and collectable insurance.

AMENDATORY SECTION (Amending WSR 17-12-032, filed 5/31/17, effective 8/31/17)

**WAC 314-55-102 Quality assurance testing.** A third-party testing lab must be certified by the WSLCB or the WSLCB's vendor as meeting the WSLCB's accreditation and other requirements prior to conducting quality assurance tests required under this section.

(1) **Quality assurance fields of testing.** Certified labs must be certified to the following fields of testing by the WSLCB or its designee and must adhere to the guidelines for each quality assurance field of testing listed below, with the exception of mycotoxin, heavy metal, or pesticide residue screening. Certification to perform mycotoxin, heavy metals and pesticides may be obtained but is not required to obtain certification as a testing lab. A lab must become certified in all fields of testing prior to conducting any testing or screening in that field of testing, regardless of whether the test is required under this section.

(a) **Potency analysis.**

(i) Certified labs must test and report the following cannabinoids to the WSLCB when testing for potency:

- (A) THCA;
- (B) THC;
- (C) Total THC;
- (D) CBDA;
- (E) CBD; and
- (F) Total CBD.

(ii) Calculating total THC and total CBD.

(A) Total THC must be calculated as follows, where M is the mass or mass fraction of delta-9 THC or delta-9 THCA:  $M \text{ total delta-9 THC} = M \text{ delta-9 THC} + (0.877 \times M \text{ delta-9 THCA})$ .

(B) Total CBD must be calculated as follows, where M is the mass or mass fraction of CBD and CBDA:  $M \text{ total CBD} = M \text{ CBD} + (0.877 \times M \text{ CBDA})$ .

(iii) Regardless of analytical equipment or methodology, certified labs must accurately measure and report the acidic (THCA and CBDA) and neutral (THC and CBD) forms of the cannabinoids.

(b) **Potency analysis for flower lots.**

(i) Certified labs must test and report the results for the required flower lot samples as described in WAC 314-55-101(3) for the following required cannabinoids:

- (A) THCA;
- (B) THC;
- (C) Total THC;
- (D) CBDA;
- (E) CBD; and
- (F) Total CBD.

(ii) Calculating total THC and total CBD.

(A) Total THC must be calculated as follows, where M is the mass or mass fraction of delta-9 THC or delta-9 THCA:  $M \text{ total delta-9 THC} = M \text{ delta-9 THC} + (0.877 \times M \text{ delta-9 THCA})$ .

(B) Total CBD must be calculated as follows, where M is the mass or mass fraction of CBD and CBDA:  $M \text{ total CBD} = M \text{ CBD} + (0.877 \times M \text{ CBDA})$ .

(c) Certified labs may combine in equal parts multiple samples from the same flower lot for the purposes of the following tests after the individual samples described in WAC 314-55-101(3) have been tested for potency analysis.

(i) **Moisture analysis.** The sample and related lot or batch fails quality assurance testing for moisture analysis if the results exceed the following limits:

- (A) Water activity rate of more than 0.65  $a_w$ ; and
- (B) Moisture content more than fifteen percent.

(ii) **Foreign matter screening.** The sample and related lot or batch fail quality assurance testing for foreign matter screening if the results exceed the following limits:

- (A) Five percent of stems 3mm or more in diameter; and
- (B) Two percent of seeds or other foreign matter.

(iii) **Microbiological screening.** The sample and related lot or batch fail quality assurance testing for microbiological screening if the results exceed the following limits:

	Enterobacteria (bile-tolerant gram-negative bacteria)	<i>E. coli</i> (pathogenic strains) and <i>Salmonella spp.</i>
Unprocessed Plant Material	10 <sup>4</sup>	Not detected in 1g
Extracted or processed Botanical Product	10 <sup>3</sup>	Not detected in 1g

(iv) **Mycotoxin screening.** The sample and related lot or batch fail quality assurance testing for mycotoxin screening if the results exceed the following limits:

- (A) Total of Aflatoxin B1, B2, G1, G2: 20 µg/kg of substance; and
- (B) Ochratoxin A: 20 µg/kg of substance.

(d) **Residual solvent screening.** Except as otherwise provided in this subsection, a sample and related lot or batch fail quality assurance testing for residual solvents if the results exceed the limits provided in the table below. Residual solvent results of more than 5,000 ppm for class three solvents, 50 ppm for class two solvents, and 2 ppm for class one solvents as defined in *United States Pharmacopoeia, USP 30 Chemical Tests / <467> - Residual Solvents (USP <467>)* not listed in the table below fail quality assurance testing. When residual solvent screening is required, certified labs must test for the solvents listed in the table below at a minimum.

Solvent*	ppm
Acetone	5,000
Benzene	2
Butanes	5,000
Cyclohexane	3,880
Chloroform	2
Dichloromethane	600
Ethyl acetate	5,000
Heptanes	5,000
Hexanes	290
Isopropanol (2-propanol)	5,000
Methanol	3,000
Pentanes	5,000
Propane	5,000
Toluene	890
Xylene**	2,170

\*And isomers thereof.

\*\*Usually 60% *m*-xylene, 14% *p*-xylene, 9% *o*-xylene with 17% ethyl benzene.

(e) **Heavy metal screening.** A sample and related lot or batch fail quality assurance testing for heavy metals if the results exceed the limits provided in the table below.

Metal	µ/daily dose (5 grams)
Inorganic arsenic	10.0
Cadmium	4.1
Lead	6.0
Mercury	2.0

(2) **Quality assurance testing required.** The following quality assurance tests are the minimum required tests for each of the following marijuana products, respectively. Licensees (~~and certified labs~~) may elect to do (~~multiple quality assurance tests on the same lot or~~) testing for (~~mycotoxin, pesticides, or heavy metals pursuant to~~) compliant products under chapter 246-70 WAC if the licensee seeks to use the compliant products logo.

(a) **General quality assurance testing requirements for certified labs.**

(i) Certified labs must record an acknowledgment of the receipt of samples from producers or processors in the WSLCB seed to sale traceability system. Certified labs must also verify if any unused portion of the sample was destroyed or returned to the licensee after the completion of required testing.

(ii) Certified labs must report quality assurance test results directly to the WSLCB traceability system when quality assurance tests for the field of testing are required within twenty-four hours of completion of the test(s).

(iii) Certified labs must fail a sample if the results for any limit test are above allowable levels regardless of whether the limit test is required in the testing tables in this section.

(b) **Marijuana flower lots and other material lots.** Marijuana flower lots or other material lots require the following quality assurance tests:

Product	Test(s) Required
Lots of marijuana flowers or other material that will not be extracted	1. Moisture content 2. Potency analysis 3. Foreign matter inspection 4. Microbiological screening 5. Mycotoxin screening

(c) **Intermediate products.** Intermediate products must meet the following requirements related to quality assurance testing:

(i) All intermediate products must be homogenized prior to quality assurance testing;

(ii) For the purposes of this section, a batch 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

(iv) All batches of intermediate products require the following quality assurance tests:

Product	Test(s) Required Intermediate Products
Marijuana mix	1. Moisture content* 2. Potency analysis 3. Foreign matter inspection* 4. Microbiological screening 5. Mycotoxin screening
Concentrate or extract made with hydrocarbons (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. Mycotoxin screening* 3. Residual solvent test
Concentrate or extract made with a CO <sub>2</sub> extractor like hash oil	1. Potency analysis 2. Mycotoxin screening* 3. Residual solvent test
Concentrate or extract made with ethanol	1. Potency analysis 2. Mycotoxin screening* 3. Residual solvent test
Concentrate or extract made with approved food grade solvent	1. Potency analysis 2. Microbiological screening* 3. Mycotoxin screening* 4. Residual solvent test
Concentrate or extract (nonsolvent) such as kief, hash, rosin, or bubble hash	1. Potency analysis 2. Microbiological screening 3. Mycotoxin screening
Infused cooking oil or fat in solid form	1. Potency analysis 2. Microbiological screening* 3. Mycotoxin screening*

\* Field of testing is only required if using lots of marijuana flower and other plant material that has not passed QA testing.

(d) **End products.** All marijuana, marijuana-infused products, 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
Infused solid edible	Potency analysis
Infused liquid (like a soda or tonic)	Potency analysis
Infused topical	Potency analysis
Marijuana mix packaged (loose or rolled)	Potency analysis
Marijuana mix infused (loose or rolled)	Potency analysis
Concentrate or marijuana-infused product for inhalation	Potency analysis

(e) End products consisting of only one intermediate product that has not been changed in any way are not subject to potency analysis.

(3) No lot of usable flower, batch of marijuana concentrate, or batch of marijuana-infused product may be sold or transported until the completion and successful passage of quality assurance testing as required in this section, except:

(a) Business entities with multiple locations licensed under the same UBI number may transfer marijuana products between the licensed locations under the same UBI number prior to quality assurance testing; and

(b) Licensees may wholesale and transfer batches or lots of flower and other material that will be extracted and marijuana mix and nonsolvent extracts for the purposes of further extraction prior to completing required quality assurance testing. Licensees may wholesale and transfer failed lots or batches to be extracted pursuant to subsection ~~((5))~~ (6) of this section.

(4) The 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.

**(5) Samples, lots, or batches that fail quality assurance testing.**

(a) Upon approval by the WSLCB, failed lots or batches may be used to create extracts. After processing, the extract must pass all quality assurance tests required in this section before it may be sold.

(b) **Retesting.** At the request of the producer or processor, the 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 requesting the retest. Potency retesting will generally not be authorized.

(c) **Remediation.** Producers and processors may remediate failed harvests, lots, or batches so long as the remediation method does not impart any toxic or deleterious substance to the usable marijuana, marijuana concentrates, or marijuana-infused product. Remediation solvents or methods used on the marijuana product must be disclosed to a licensed processor the producer or processor/processor transfers the products to; a licensed retailer carrying marijuana products derived from the remediated harvest, lot, or batch; or consumer upon request. The entire harvest, lot, or batch the failed sample(s) were deducted from must be remediated using the same remediation technique. No remediated harvest, lots or batches may be sold or transported until the completion and successful passage of quality assurance testing as required in this section.

~~((5))~~ (6) **Referencing.** Certified labs may reference samples for mycotoxin, heavy metals, and pesticides testing to other certified labs by subcontracting for those fields of testing. Labs must record all referencing to other labs on a chain-of-custody manifest that includes, but is not limited to, the following information: Lab name, certification number, transfer date, address, contact information, delivery personnel, sample ID numbers, field of testing, receiving personnel.

~~((6))~~ (7) Certified labs are not limited in the amount of usable marijuana and marijuana products they may have on their premises at any given time, but a certified lab must have records proving all marijuana and marijuana-infused products in the certified lab's possession are held only for the test-

ing purposes described in this section. ~~((7))~~ Pursuant to RCW 69.50.345, any sample material remaining after testing must be destroyed by the laboratory as provided in WAC 314-55-097 or returned to the licensee that supplied the sample for testing.

(8) Upon the request of the WSLCB or its designee, a licensee or a certified lab must provide an employee of the WSLCB or their designee samples of marijuana or marijuana products 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 heavy metals, and used for other quality assurance tests deemed necessary by the WSLCB.

**WSR 18-09-121**  
**PROPOSED RULES**  
**LIQUOR AND CANNABIS**  
**BOARD**

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Original Notice.

Preproposal statement of inquiry was filed as WSR 18-05-094.

Title of Rule and Other Identifying Information: WAC 314-02-035 What are the food service requirements for a spirits, beer, and wine restaurant license?

Hearing Location(s): On May 30, 2018, at 10:00 a.m., at 3000 Pacific Avenue S.E., Olympia, WA 98504.

Date of Intended Adoption: June 13, 2018.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, email rules@lcb.wa.gov, fax 360-664-9689, by May 30, 2018.

Assistance for Persons with Disabilities: Contact Karen McCall, phone 360-664-1631, fax 360-664-9689, email rules@lcb.wa.gov, by May 30, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule for meal requirements for spirits, beer, and wine restaurants needs to be revised to include culturally diverse meals.

Reasons Supporting Proposal: The proposed rules align meal requirements for spirits, beer, and wine restaurants with current business models and include culturally diverse meal examples and entrees not traditionally served with a side dish.

Statutory Authority for Adoption: RCW 66.24.410.

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, 360-664-1631; Implementation: Becky Smith, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, 360-664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA 98504, 360-664-1726.

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

A cost-benefit analysis is not required under RCW 34.05.328. There are no costs or reporting requirements to licensees.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. There are no costs or reporting requirements to licensees.

April 18, 2018  
Jane Rushford  
Chair

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

**WAC 314-02-035 What are the food service requirements for a spirits, beer, and wine restaurant license? (1)**

A spirits, beer, and wine restaurant licensee must serve at least eight complete meals. The board may make an exception to the eight complete meal requirement on a case-by-case basis. Establishments shall be maintained in a substantial manner as a place for preparing, cooking and serving of complete meals. For purposes of this title:

(a) "Complete meal" means an entree and at least one side dish. Side dishes are not required to be included with the entrée, however must be offered.

(b) "Entree" means the main course of a meal. Some examples of entrees are fish, steak, chicken, pork, pasta, pizza, ~~((hamburgers))~~ burgers, pho, sushi, street tacos, tikka masala, quiche, seafood salad, Cobb salad, chef's salad, sandwiches, and breakfast items (as long as they include a side dish). Entrees do not include snack items, or menu items which consist solely of precooked frozen food that is reheated, or consist solely of carry-out items obtained from another business.

(c) Examples of side dishes are soups, vegetables, salads, potatoes, ~~((french fries,))~~ rice, fruit, and bread. Garnishes such as, but not limited to, pickles, salsa, and dips do not qualify as a side dish.

(2) The restaurant must maintain the kitchen equipment necessary to prepare the complete meals required under this section.

(3) The complete meals must be prepared on the restaurant premises.

(4) A chef or cook must be on duty while complete meals are offered.

(5) A menu must be available to customers.

(6) The food items required to maintain the menu must be on the restaurant premises. These items must be edible.

(7) Restaurants that have one hundred percent dedicated dining area must maintain complete meal service any time liquor is available for sale, service, or consumption.

(8) Restaurants with less than one hundred percent dedicated dining area must maintain complete meal service for a minimum of five hours a day during the hours of 8:00 a.m. and 11:00 p.m., three days a week.

Limited food service, such as appetizers, sandwiches, salads, soups, pizza, ~~((hamburgers))~~ burgers, or fry orders, must be available outside of these hours. Snacks such as pea-

nuts, popcorn, and chips do not qualify as limited food service.

(9) The hours of complete meal service must be conspicuously posted on the premises or listed on the menu. A statement that limited food service is available outside of those hours must also be posted or listed on the menu.

**WSR 18-09-124**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed April 18, 2018, 11:28 a.m.]

Continuance of WSR 18-08-078.

Preproposal statement of inquiry was filed as WSR 17-15-087.

Title of Rule and Other Identifying Information: New WAC 308-104-0140 Marking of all nonenhanced drivers' licenses or identicards.

Hearing Location(s): On May 22, 2018, at 6:00 p.m., at the Skagit Station Community Room, 105 East Kincaid, Mount Vernon, WA 98273; and on May 23, 2018, at 6:00 p.m., at the Laborers International Union Hall, 507 South 3rd Street, Yakima, WA 98901.

Date of Intended Adoption: May 28, 2018.

Submit Written Comments to: Stephanie Sams, Department of Licensing, P.O. Box 9030, Olympia, WA 98507-9030, email DOLRealID@dol.wa.gov, fax 360-664-0116, by May 24, 2018.

Assistance for Persons with Disabilities: Contact Stephane [Stephanie] Sams, phone 360-902-0131, fax 360-664-0116, email DOLRealID@dol.wa.gov, by May 18, 2018.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This continuance is adding two locations to the public hearing schedule for WSR 18-08-078. The department will have a public hearing on the REAL ID rule making in Mount Vernon, Washington, on May 22, 2018, and Yakima, Washington, on May 23, 2018.

Reasons Supporting Proposal: This rule is required due to legislation enacted during the 2017 legislative session. The amendment creates a new section in chapter 308-104 WAC, and allows Washington state to be compliant with federal and state law (6 C.F.R. Sec. 37.71).

Statutory Authority for Adoption: RCW 46.20.192.

Statute Being Implemented: RCW 46.20.192.

Rule is necessary because of federal law, 6 C.F.R. Sec. 37.71.

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Stephanie Sams, Highway[s-]Licensing Building, Olympia, WA, 360-902-0131; Implementation and Enforcement: Greg Mukai, Highway[s-]Licensing Building, Olympia, WA, 360-902-3851.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is explicitly and specifically dictated by statute and federal law.

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

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

April 18, 2018  
Damon Monroe  
Rules Coordinator

NEW SECTION

**WAC 308-104-0140 Marking of all nonenhanced drivers' licenses or identicards.** Beginning July 1, 2018, except for enhanced drivers' licenses and identicards issued under RCW 46.20.202, the department shall mark all issuances made pursuant to chapter 46.20 RCW with the phrase "FEDERAL LIMITS APPLY."

**WSR 18-09-125**  
**PROPOSED RULES**  
**HEALTH CARE AUTHORITY**

[Filed April 18, 2018, 11:42 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-03-043.

Title of Rule and Other Identifying Information: WAC 182-531-1710 Alcohol and substance misuse counseling.

Hearing Location(s): On May 22, 2018, at 10:00 a.m., at the Health Care Authority (HCA), Cherry Street Plaza, Sue Crystal 106A, 626 8th Avenue, Olympia, WA 98504. Metered public parking is available street side around building. A map is available at <https://www.hca.wa.gov/assets/program/Driving-parking-checkin-instructions.pdf> or directions can be obtained by calling 360-725-1000.

Date of Intended Adoption: Not sooner than May 23, 2018.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax 360-586-9727.

Assistance for Persons with Disabilities: Contact Amber Loughheed, phone 360-725-1349, fax 360-586-9727, TTY 800-848-5429 or 711, email [amber.loughheed@hca.wa.gov](mailto:amber.loughheed@hca.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is updating qualification requirements for providers who deliver screening, brief intervention, and referral to treatment (SBIRT) services and expanding the settings where SBIRT services can be delivered.

Reasons Supporting Proposal: This rule making adds dental offices to the list of places where SBIRT services are offered; removes the minimum four hours of training; and updates how to submit proof of addiction specialist certification to the agency.

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: Amy Emerson, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1348; Implementation and Enforcement: Jodi Kunkel, P.O. Box 45502, Olympia, WA 98504-5502, 360-725-9805.

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

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

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The updates to WAC 182-531-1710 do not impose additional costs or requirements on providers.

April 18, 2018  
Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-03-041, filed 1/12/15, effective 2/12/15)

**WAC 182-531-1710 Alcohol and substance misuse counseling.** (1) The medicaid agency covers alcohol and substance misuse counseling through screening, brief intervention, and referral to treatment (SBIRT) services when delivered by, or under the supervision of, a qualified licensed physician or other qualified licensed health care professional within the scope of their practice.

(2) SBIRT is a comprehensive, evidence-based public health practice designed to identify, reduce and prevent problematic use, abuse, and dependence on alcohol and illicit drugs. SBIRT can be used to identify people who are at risk for or have some level of substance use disorder which can lead to illness, injury, or other long-term morbidity or mortality. SBIRT services are provided in a wide variety of medical and community health care settings such as primary care centers, hospital emergency rooms, ~~(and)~~ trauma centers, and dental offices.

(3) The following health care professionals are eligible to become qualified SBIRT providers to deliver SBIRT services or supervise qualified staff to deliver SBIRT services:

(a) Advanced registered nurse practitioners, in accordance with chapters 18.79 RCW and 246-840 WAC;

(b) Chemical dependency professionals, in accordance with chapters 18.205 RCW and 246-811 WAC;

(c) Licensed practical nurses, in accordance with chapters 18.79 RCW and 246-840 WAC;

(d) Mental health counselors, in accordance with chapters 18.225 RCW and 246-809 WAC;

(e) Marriage and family therapists, in accordance with chapters 18.225 RCW and 246-809 WAC;

(f) Independent and advanced social workers, in accordance with chapters 18.225 RCW and 246-809 WAC;

(g) Physicians, in accordance with chapters 18.71 RCW and 246-919 WAC;

(h) Physician assistants, in accordance with chapters 18.71A RCW and 246-918 WAC;

(i) Psychologists, in accordance with chapters 18.83 RCW and 246-924 WAC;

(j) Registered nurses, in accordance with chapters 18.79 RCW and 246-840 WAC;

(k) Dentists, in accordance with chapters 18.260 and 246-817; and

(l) Dental hygienists, in accordance with chapters 18.29 and 246-815 WAC.

(4) To become a qualified SBIRT provider, eligible licensed health care professionals must:

(a) Complete ~~((a minimum of four hours of))~~ agency-approved SBIRT training and ~~((b))~~ mail or fax the SBIRT training certificate or other proof of this training completion to the agency; or

(b) Have an addiction specialist certification and mail or fax proof of this certification to the agency.

(5) The agency pays for SBIRT as follows:

(a) Screenings, which are included in the reimbursement for the evaluation and management code billed;

(b) Brief interventions, limited to four sessions per client, per provider, per calendar year; and

(c) When billed by one of the following qualified SBIRT health care professionals:

(i) Advanced registered nurse practitioners;

(ii) Mental health counselors;

(iii) Marriage and family therapists;

(iv) Independent and advanced social workers;

(v) Physicians;

(vi) Psychologists;

(vii) Dentists; and

(viii) Dental hygienists.

(6) The agency evaluates a request for additional sessions in excess of the limitations or restrictions according to WAC 182-501-0169.

(7) To be paid for providing alcohol and substance misuse counseling through SBIRT, providers must bill the agency using the agency's published billing instructions.