

WSR 20-12-018
PROPOSED RULES
BUILDING CODE COUNCIL

[Filed May 26, 2020, 4:28 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-04-038.

Title of Rule and Other Identifying Information: Chapter 51-04 WAC, Policies and procedures for consideration of statewide and local amendments to the state building code.

Hearing Location(s): On October 9, 2020, at 10:00 a.m., at the Department of Enterprise Services, Room 2208, Olympia, WA 98501.

Date of Intended Adoption: November 6, 2020.

Submit Written Comments to: Diane Glenn, P.O. Box 41449, Olympia, WA 98504-1449, email sbcc@des.wa.gov, by October 14, 2020.

Assistance for Persons with Disabilities: Contact Shannon Pitts, phone 360-407-9255, email Shannon.pitts@des.wa.gov, by September 25, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule seeks to modify and clarify the process of submitting proposals for amendment of the state building code and also modifies the procedure for requesting reconsideration of statewide and local amendments.

WAC 51-04-020 is reorganized for clarity and to provide a clearer timeline of action. It also adds language allowing the council to modify the timeline for the two code groups as the need arises, and to clarify when action will be taken outside of the standard timeline.

WAC 51-04-040 is revised to limit reconsideration to petitions for local amendments. Petitions for reconsideration of other code actions would need to follow the procedures outlined in chapter 34.05 RCW.

Reasons Supporting Proposal: RCW 19.27.035.

Statutory Authority for Adoption: RCW 19.27.035.

Statute Being Implemented: RCW 19.27.035.

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: The council is seeking comments on the proposed changes to the process for submitting statewide amendment proposals and reconsiderations.

Name of Proponent: Washington state building code council, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Richard Brown, 1500 Jefferson Street S.E., Olympia, 360-407-9277.

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 Richard Brown, P.O. Box 41449, phone 360-407-9277, email Richard.brown@des.wa.gov.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. This rule establishes and clarifies administrative actions and procedures of

the state building code council and does not have any fiscal impact to small business.

May 26, 2020
 Diane Glenn
 Council Chair

AMENDATORY SECTION (Amending WSR 19-24-078, filed 12/2/19, effective 1/2/20)

WAC 51-04-020 ((Policies)) Rules for the consideration of proposed statewide amendments. (1) All petitions for statewide amendments to the building code must be compliant with the requirements set forth in WAC 51-04-025.

(2) The council will accept and consider compliant petitions for emergency statewide amendments to the building code at any time, in accordance with RCW 19.27.074 and chapter 34.05 RCW.

(3) The council will accept and consider ~~((all))~~ compliant petitions for statewide amendments that ~~((meet the complete application requirements as set by the council))~~ are submitted within the time periods the council posts for petitions relating to Group 1 and Group 2 amendments to be made in conjunction with the state building code update cycle~~((, in accordance with RCW 19.27.074 and chapter 34.05 RCW, and WAC 51-04-015 and 51-04-020 as follows:))~~.

(a) For the purpose of review and adoption of new model code editions and statewide amendment submission, the state building code shall be divided into two groups as follows, unless otherwise directed by the council:

(i) Group 1: International Building Code (IBC); International Existing Building Code (IEBC); International Fire Code (IFC) Washington state energy code-commercial (WSEC-C) and Wildland Urban Interface Code (WUI).

(ii) Group 2: International Residential Code (IRC); International Mechanical Code (IMC); International Fuel Gas Code (IFGC); standards liquefied petroleum gas are National Fire Protection Association (NFPA) standards 58 and 54; Uniform Plumbing Code (UPC); Washington state energy code-residential (WSEC-R).

~~((The adoption period of new model codes commences when new editions of the model codes are available to the public. Within sixty days, the council shall publish a timeline to include a report of significant model code amendments and applicability of existing state amendments, followed by a submission period for new proposed statewide amendments.~~

~~((i) The council shall review Group 1 model codes and approve a report on significant changes and applicability of existing state amendments. The Group 1 report shall be posted on the council website and a submission period of at least sixty calendar days shall be allowed for new proposed statewide amendments.~~

~~((ii) Upon completion of the Group 1, public meetings, council actions and posting of the actions on the state building code council's website and provided new editions of Group 2 model codes are available to the public, the council shall review the Group 2 codes and approve a report on significant changes and applicability of existing state amendments. The Group 2 report shall be posted on the state building code council's website and a submission period of at least~~

sixty calendar days shall be allowed for new proposed statewide amendments

~~(2))~~ During August of the year before the year of the model code edition, the council will post a timeline for Group 1 and Group 2 code update processes, including providing separate periods of at least sixty days for the submission of petitions for statewide amendments for each group the council reserves the right to modify its timeline as it determines necessary and appropriate.

(c) The timeline shall include deadlines for committee transmittal to council of separate reports for Group 1 and Group 2 that identify:

(i) The significant changes contained in the new model codes from the prior model codes;

(ii) The existing state amendments to prior model codes that are proposed to be modified or eliminated; and

(iii) All committee proposed amendments to the new model codes. The reports shall be posted on the council website.

(d) The council shall direct council staff to submit a CR-102 to the code reviser's office containing any proposed rules that the council has approved and shall conduct at least two public hearings for each group (one in western Washington and one in eastern Washington) following the filing of the proposed rules with the code reviser's office.

(e) Upon completion of the council's review of Group 1 amendments (not including Group 1 amendments the council directs be kept open for consideration during the Group 2 period), the council will commence review of Group 2 amendments following the timeline.

(4) The council will accept and consider compliant petitions for all other statewide amendments to the state building code if one or more of the following criteria are met:

(a) The amendment is directed by the legislature;

(b) The amendment is necessary for code correlation, correction of errors, language clarification, or section update; or

(c) The council determines that the amendment would serve a critical public interest and requires immediate/accelerated action.

(5) The council shall review proposed new statewide amendments, and approve those meeting the appropriate criteria to file as proposed rules in accordance with chapter 34.05 RCW. The proposed rules filing shall include a small business economic impact statement in accordance with chapter 19.85 RCW.

~~((3))~~ The council shall conduct at least two public hearings for each group (one in western Washington and one in eastern Washington) following the filing of the proposed rules with the code reviser's office.

~~(4) Amendments to Group 1 codes during the Group 2 adoption shall be limited to legislative direction, code correlation, correction of errors, language clarification and updated section references.~~

~~(5))~~ (6) The code development period shall conclude with formal adoption of the state building code as amended by the council. As required by RCW 19.27.074, all decisions to adopt or amend the state building code shall be made prior to December 1st and shall not take effect before the end of the

regular legislative session in the next year. ~~((Group 1 and 2 codes shall be filed with the code reviser at the same time.~~

~~(6))~~ Provided, the December 1st deadline shall not apply to emergency rules or expedited adoption of rules under the Administrative Procedure Act, chapter 34.05 RCW.

(7) State amendments as approved by the council shall be submitted to the appropriate model code organization, at the direction of the council, except those adopted for consistency with state statutes or regulation and held for further review during the adoption period of those model codes by the council. ~~((The effective date of any statewide amendments shall be the same as the effective date of the new edition of the model codes, except for emergency amendments adopted in accordance with chapter 34.05 RCW and deemed appropriate by the council.))~~

AMENDATORY SECTION (Amending WSR 19-24-078, filed 12/2/19, effective 1/2/20)

WAC 51-04-040 Reconsideration. (1) When the council approves, denies or modifies a ~~((statewide or))~~ local amendment to the building code, any party with written or oral testimony to the council related to the amendment on the record may file a petition for reconsideration. The petition must be received by the Washington State Building Code Council, 1500 Jefferson Avenue S.E., P.O. Box 41449, Olympia, Washington 98504-1449, within twenty calendar days ~~((of the date of notification))~~ of the council action on the amendment. The petition must give specific reasons for why the council should reconsider the amendment for approval or denial.

(2) Within sixty calendar days of receipt of a timely petition for reconsideration, the council shall in writing:

(a) Grant the petition for reconsideration ~~((and enter rule making to revise the amendment))~~;

(b) Deny the petition for reconsideration, giving reasons for the denial; or

(c) Request additional information and extend the time period for not more than thirty calendar days to either grant or deny the petition for reconsideration.

(3) The council's denial of a ~~((proposed statewide or))~~ local government amendment, or the council denial of a petition for reconsideration under this section, is subject to judicial review under chapter 34.05 RCW.

**WSR 20-12-024
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD**

[Filed May 27, 2020, 10:56 a.m.]

Supplemental Notice to WSR 19-23-046.

Preproposal statement of inquiry was filed as WSR 19-03-060.

Title of Rule and Other Identifying Information: Chapter 314-50 WAC, Special occasion licenses, the Washington state liquor and cannabis board (WSLCB) proposes to amend and revise current special occasion license rules by updating,

modernizing and clarifying existing language. This proposal is a supplement to WSR 19-23-046.

Hearing Location(s): On July 8, 2020, at 10:00 a.m., at 1025 Union Avenue, Olympia, WA 98501.

Date of Intended Adoption: On or after July 22, 2020.

Submit Written Comments to: Katherine Hoffman, P.O. Box 43080, Olympia, WA 98504, email rules@lcb.wa.gov, fax 360-664-9689, by July 8, 2020.

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, by July 1, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule revisions amend, reorganize, clarify, and modernize existing requirements related to special occasion licenses. Specifically, the proposal clarifies that a special occasion license is a retail license; updates application requirements and adds information from the current online application; provides clarifying updates for special occasion events; and adds statutory references that clarify requirements for alcohol and monetary donations, advertising, ticket and alcohol sales, and payment information. These proposed revisions more clearly describe existing processes, and are anticipated to result in increased access to and use of online licensing resources by applicants and licensees, as well as consistent rule application, interpretation, and guidance designed to support applicant and licensee success.

Reasons Supporting Proposal: The proposed rules are needed to support WSLCB applicants and licensees by confirming existing standards through language clarification and modernization describing those standards. This proposal is the result of a WSLCB rules review process conducted to make sure applicants and licensees have clear and relevant guidelines in place regarding special occasion licenses and events, and assure access to licensing resources and guidance. Revisions also include additional technical and clarifying updates.

The original CR-102 regarding special occasion licenses was filed on November 13, 2019, as WSR 19-23-046, and set a hearing for January 8, 2020. A number of comments were offered before and during that hearing that resulted in WSLCB reconsidering the original rule proposal. Some suggested substantive changes were made to the original proposal. RCW 34.05.340 provides that an agency may not adopt a rule that is substantially different from the rule proposed in the published notice of proposed rule adoption or a supplemental notice in the proceeding. If an agency contemplates making a substantial variance from a proposed rule described in a published notice, it may file a supplemental notice with the code reviser meeting the requirements of RCW 34.05.320 and reopen the proceedings for public comment on the proposed variance.

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: RCW 66.24.010, 66.24.375, 66.24.380, 66.28.040, 66.28.070, 66.28.285, 66.28.290, 66.28.295, 66.28.300, 66.28.305, 66.28.310, 66.28.315, 66.28.320.

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

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Katherine Hoffman, Policy and Rules Manager, 1025 Union Avenue, Olympia, WA 98501, 360-664-1622; Implementation: Becky Smith, Director of Licensing, 1025 Union Avenue, Olympia, WA 98501, 360-664-1615; and Enforcement: Justin Nordhorn, Chief of Enforcement, 1025 Union Avenue, Olympia, WA 98501, 360-664-1726.

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

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is not required 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). The proposed rules clarify existing rule language, and amendments include appropriate references to existing statutory language where necessary and appropriate.

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.

Is exempt under: WAC 314-05-020, 314-05-025, 314-05-030, and 314-05-035 are exempt under RCW 34.05.310 (4)(c) and (d).

Explanation of exemptions: The proposed rules incorporate by reference or explicitly restate statute where appropriate consistent with RCW 34.05.310 (4)(c). The proposed rules also provide corrections and clarifying language designed to modernize the chapter and increase ease of use consistent with RCW 34.05.310 (4)(d).

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 associated with this rule. The rule does not impose any additional regulatory burden on applicants or licensees, nor does it change, modify, add cost or otherwise alter the special occasion license application process, but actually increases applicant and licensee ease of use by assuring that the application process flows more efficiently. Any perceived or real administrative burden, including gathering publicly available data and other material may require applicants to extend efforts beyond but this does not add any new requirements to the special occasion license application process. Both applicants and licensees have been or are aware of required documentation to be submitted since this requirement was established in rule prior to this proposal, and applicants and licens-

ees should appropriately prepare to provide required documentation. The nominal additional costs that may be voluntarily incurred by applicants and licensees is far outweighed by the public benefit of increased public safety, even though the effect of that benefit may not be apparent through numeric measures.

May 27, 2020

Jane Rushford

Chair

AMENDATORY SECTION (Amending WSR 17-08-099, filed 4/5/17, effective 5/6/17)

WAC 314-05-020 ~~((What is a))~~ Special occasion license~~((?))~~. (1) ~~((Per))~~ Consistent with RCW 66.24.380, a special occasion license allows a nonprofit organization to sell, at a specified date, time, and place:

(a) Spirits, beer, and wine by the individual serving and wine by the bottle for on-premises consumption; and

(b) Spirits, beer, and wine in original, unopened containers for off-premises consumption~~((; and~~

~~((e) Wine in original, unopened containers for on-premises consumption if permission is obtained from the WSLCB prior to the event)).~~

(2) ~~Special occasion licensees~~ ~~((are limited to))~~ may have no more than twelve days of events per calendar year (see RCW 66.24.380(1) for an exception for agricultural fairs).

(3) The fee for ~~((this))~~ the special occasion license is ~~(((\$60))~~ sixty dollars per day, per event. Multiple alcohol service locations at an event are an additional sixty dollars per location.

(4) ~~((Per RCW 66.24.375, all proceeds from the sale of alcohol at a special occasion event must go directly back into the nonprofit organization, except for reasonable operating costs for actual services performed at compensation levels comparable to like services within the state.~~

~~((5) A charitable nonprofit organization or a local winery industry association is not disqualified from obtaining a special occasion license even if its board members are also officers, directors, owners, or employees of either a licensed domestic winery or a winery certificate of approval holder. The charitable nonprofit organization must be registered under section 501 (c)(3) of the Internal Revenue Code, and the local wine industry association must be registered under section 501 (c)(6) of the Internal Revenue Code.~~

~~((6) If a winery is taking orders and accepting payment for product of its own production from consumers at a special occasion event to be delivered at a later date from one of its authorized locations, the special occasion shall include the name of the winery on the special occasion license application.))~~ A special occasion license is a retail liquor license. Nonprofit organizations must comply with applicable retail liquor license requirements when operating under the special occasion license.

AMENDATORY SECTION (Amending WSR 16-01-102, filed 12/16/15, effective 1/16/16)

WAC 314-05-025 Application process for a special occasion license. (1) Special occasion applications ~~((normally take))~~ should:

~~((a) Be submitted at least forty-five days~~ ~~((to process. The liquor and cannabis board may not be able to process your application in time for your event if you do not apply at least forty five days before the event.~~

~~((2) Per))~~ prior to an event where no minors will attend;

(b) Be submitted with an application addendum at least sixty days prior to an event where the applicant requests minors in attendance; or

(c) Applications submitted less than the required forty-five or sixty days prior to the event might not be approved.

(2) Special occasion applications must include:

(a) Documentation verifying that the organization is a registered nonprofit with the Washington secretary of state or with the Internal Revenue Service;

(b) The name of any winery that will be taking orders at the event and accepting payment for wine of its own production to be delivered at a later date; and

(c) Any additional relevant information requested by the board.

(3) Consistent with RCW 66.24.010(8), ~~((when the liquor and cannabis board receives a special occasion application, it))~~ the board must send a notice to the local authority for each application received. The local authority has twenty days to respond ~~((with any input, and they may))~~ or request an extension for good cause.

~~((3) The liquor and cannabis))~~ (4) The board may ~~((run))~~ conduct a criminal history check on the organization's officers and/or managers.

~~((4) The liquor and cannabis board requires documentation to verify the organization is a bona fide nonprofit, who the true party(ies) of interest are in the organization, and that the organization meets the guidelines outlined in WAC 314-05-020 and 314-05-025.~~

~~((5) See chapter 314-07 WAC regarding possible reasons for denial of a special occasion license.))~~ (5) Special occasion licenses may be denied for reasons including, but not limited to, those outlined in chapter 314-07 WAC. Denials are subject to the provisions of the Administrative Procedure Act, chapter 34.05 RCW.

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

WAC 314-05-030 ~~((Guidelines))~~ Requirements for special occasion license events. (1) The special occasion license must be posted at each alcohol service area at the event.

(2) ~~((Special occasion licensees may get alcohol for the event only from the following sources:~~

~~((a)))~~ Consistent with RCW 66.28.070, all spirits, beer, and wine ~~((must be purchased at retail from))~~ purchased for the event by the special occasion licensee may only be purchased in the manufacturer's approved container or package from the following:

~~(a) A licensed off-premises retailer; ((from a spirits, beer, or wine))~~

~~(b) A distributor; ((from a distiller, a craft distiller,))~~

~~(c) A distillery or craft distillery;~~

~~(d) A domestic brewery(;) or microbrewery(;-or);~~

~~(e) A winery ((acting as a distributor of its own product)); or ((from))~~

~~(f) A certificate of approval holder with a direct shipping to Washington retailer endorsement.~~

~~(3) Consistent with RCW 66.28.310, special occasion licensees are allowed to pay for beer ((or)), wine, and spirits used for the special occasion event immediately following the end of the ((special occasion)) event(;-and~~

~~(b) Per)).~~

~~(4) Consistent with RCW 66.28.040, alcohol may be donated to special occasion licensees registered as 501(c)(3) and 501(c)(6) for the event as follows:~~

~~(a) In state breweries ((and wineries, out-of-state breweries and wineries holding a certificate of approval license, domestic distillers or an accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor may donate beer, wine, and spirits to special occasion licensees that are nonprofit 501 (c)(3) charitable organizations or nonprofit 501 (c)(6) organizations.~~

~~(3) Special occasion licensees may not advertise or sell alcohol below cost. If donated product is sold by the special occasion licensee, it may not be advertised or sold below the manufacturers' cost.~~

~~(4) Per RCW 66.28.310, alcohol manufacturers, importers and distributors may provide advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event, but may not provide money, goods, or services to special occasion licensees.~~

~~(a) Wineries and distilleries may pour at any special occasion event)) and beer certificate of approval holders may donate beer;~~

~~(b) In state wineries and wine certificate of approval holders may donate wine;~~

~~(c) An accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor may donate spirits.~~

~~(5) Alcohol may not be provided, or advertised as being provided, to the public free of charge at the special occasion event.~~

~~(6) Alcohol may not be sold, or advertised as being sold, below the manufacturer's cost at the special occasion event.~~

~~(7) If alcohol is auctioned at the event, the final sale price may not be below the manufacturer's cost.~~

~~(8) If tickets are sold for the special occasion event and the ticket fee includes alcohol for event attendees, the ticket must be sold directly by the nonprofit organization and may not be sold by a third party. In order to ensure alcohol is not being given away or sold below the manufacturer's cost, if the ticket fee includes alcohol the total ticket fee must be above the manufacturer's cost of the included alcohol.~~

~~(9) Consistent with RCW 66.24.375, no portion of the profits from special occasion events may be paid directly or indirectly to members, officers, directors, or trustees of the nonprofit organization except for services performed for the organization.~~

~~((b)) (10) Wineries ((or)), breweries ((that are)), and distilleries participating in a special occasion event may pay ((reasonable)) booth fees to the special occasion licensee. Booth fees must be uniform for all participating wineries ((and)), breweries, and distilleries.~~

~~((5) Per) (11) Breweries may provide installation of draft beer dispensing equipment for a special occasion event.~~

~~(12) Pouring or dispensing may be provided at any type of special occasion event by wineries, distilleries, or spirits distributors.~~

~~(13) Pouring or dispensing may be provided by breweries at a beer tasting exhibition or judging event. A beer tasting exhibition or judging event must be sponsored by the special occasion licensee and have at least three breweries represented that are pouring samples.~~

~~(14) Consistent with RCW 66.24.380, the sale, service, and consumption of alcohol must be confined to a designated ((location(s))) area.~~

~~((6)) (15) If a special occasion ((license function)) event is held at an establishment that has a liquor license:~~

~~(a) The special occasion ((function)) event must be ((held in an)) in a designated area of the licensed premises separate from areas open to the general public ((during the time the special occasion function is occurring, and));~~

~~(b) The licensed premises' liquor cannot be sold or served in ((the same area(s) as)) the designated special occasion ((license function.~~

~~(b)) event area;~~

~~(c) The liquor licensee cannot charge for the liquor purchased and brought by the special occasion licensee for service at the ((special occasion event, but can charge for room usage, services, etc.)) event;~~

~~(d) The liquor licensee must sign the special occasion application acknowledging that they will not sell or serve their liquor at the event and giving permission for the special occasion licensee to bring and sell their ((alcohol)) liquor at the liquor licensed premises((-~~

~~(e)); and~~

~~(e) The special occasion ((license will not be issued for use)) event cannot be held at a premises ((whose)) where the liquor license will be suspended by the board on the date(s) of the scheduled event.~~

AMENDATORY SECTION (Amending WSR 16-01-102, filed 12/16/15, effective 1/16/16)

WAC 314-05-035 Advertising and branded promotional items for special occasion events. (1) ~~((Nothing in RCW 66.28.305 prohibits a licensed domestic brewery or microbrewery from providing branded promotional items which are of nominal value, singly or in the aggregate, to a nonprofit charitable corporation or association, exempt from taxation under 26 U.S.C. Sec. 501 (c)(3) of the Internal Revenue Code as it existed on the effective date of this section for use consistent with the purpose entitling it to such exemptions. Branded promotional items may not be targeted to or be especially appealing to youth.~~

~~(2) If the nonprofit charitable corporation or association applies for and receives a special occasion license, they are~~

considered a liquor retailer and are required to comply with RCW 66.28.305. Branded promotional items:

(a) Must be used exclusively by the retailer in a manner consistent with its license;

(b) Must bear imprinted advertising matter of the industry member only, except imprinted advertising matter of the industry member can include the logo of a professional sports team which the industry member is licensed to use;

(c) May be provided by industry members only to retailers and their employees and may not be provided by or through retailers or their employees to retail customers; and

(d) May not be targeted to or be especially appealing to youth.

~~(3))~~ Special occasion licensees and industry members must comply with RCW 66.28.285 through 66.28.310, regarding the three-tier system, direct and indirect interests between industry members and retailers, undue influence, exclusive agreements, and money advances.

(2) Manufacturers, distributors, or their licensed representatives may use websites and social media to post, repost, or share promotional information or images about events or provide other advertising services per the requirements outlined in RCW 66.28.310. Manufacturers, distributors, or their licensed representatives may also provide programs or flyers to be disseminated at the event, or may have media coverage of the event.

(3) Industry members may not provide money for advertising or promoting (sponsoring) an event directly to:

(a) The special occasion licensee;

(b) Employees of the special occasion licensee; or

(c) Promoters, event coordinators, or third parties hired by the special occasion licensee.

(4) If a third-party organization is holding an event in which a special occasion licensee participates, industry members may provide money for advertising or promoting (sponsoring) the event directly to the third-party organization only when:

(a) The third-party organization does not hold a special occasion license for the event;

(b) The third-party organization has not been hired by the participating special occasion licensee;

(c) Any advertising money may not be shared with the special occasion licensee; and

(d) The third-party organization has not expressly or implicitly promised, contracted, or otherwise agreed that the industry member's brand will be or will be more likely to be sold by the special occasion licensee, that the industry member's brand will be sold to the total or partial exclusion of any other brand, or that the industry member will be allowed access to the special occasion licensed area for advertising purposes without direct approval from the special occasion licensee and payment of reasonable booth fees to the special occasion licensee.

(5) Industry members may not give alcohol-related promotional items to event attendees in the special occasion licensed area.

(6) Industry members may also provide signage with the industry member's name or brand name of the product. Signage that may be visible to the general public from the public right of way must not:

(a) Exceed a total of four signs affixed to or hanging in a window, or on the outside of the licensed event area, referring to alcoholic beverages, brand names, or manufacturers; and

(b) Exceed sixteen hundred square inches.

(7) Inflatables are not allowed inside the event area unless the area is completely enclosed with no view to the inside from the public right of way.

(8) Industry members must comply with RCW 66.28.310 regarding the provision of and/or the receipt of branded promotional items directly or indirectly to a special occasion licensee.

(9) An industry member is not obligated to provide ~~((such))~~ branded promotional items as a condition for selling alcohol to the ~~((retailer))~~ special occasion licensee.

~~((4) Any industry member or retailer or any other person))~~ (10) Anyone asserting the provision of branded promotional items as allowed in this section has resulted or is more likely than not to result in undue influence or an adverse impact on public health and safety, or is otherwise inconsistent with the criteria of this section, may file a complaint with the ~~((liquor and cannabis))~~ board. Upon receipt of a complaint, the ~~((liquor and cannabis))~~ board may conduct ~~((such))~~ an investigation ~~((as it deems appropriate))~~.

(a) The ~~((liquor and cannabis))~~ board may issue an administrative violation notice to the industry member, the ~~((retailer))~~ special occasion licensee, or both.

(b) The recipient of the administrative violation notice may request a hearing under chapter 34.05 RCW.

WSR 20-12-026
PROPOSED RULES
LIQUOR AND CANNABIS
BOARD

[Filed May 27, 2020, 11:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 18-17-041.

Title of Rule and Other Identifying Information: WAC 314-55-101 Quality assurance sampling protocols, 314-55-102 Quality assurance testing (effective until February 28, 2021), new 314-55-1021 Quality assurance and quality control (effective March 1, 2021, until August 31, 2021), new 314-55-1022 Quality assurance and quality control (effective September 1, 2021), and 314-55-1025 Proficiency testing. The Washington state liquor and cannabis board (board) (WSLCB) proposes amendments and new sections to current marijuana product testing standards that would require the addition of pesticide and heavy metal testing for all marijuana products produced, processed, and sold in Washington state.

Hearing Location(s): On July 8, 2020, at 10:00 a.m., at 1025 Union Avenue, Olympia, WA 98501.

Date of Intended Adoption: August 5, 2020.

Submit Written Comments to: Katherine Hoffman, 1025 Union Avenue, Olympia, WA 98501, email rules@lcb.wa.gov, fax 360-664-9689, by July 8, 2020.

Assistance for Persons with Disabilities: Contact Claris Nhanabu, ADA coordinator, human resources, phone 360-664-1642, fax 360-664-9689, TTY 711 or 1-800-833-6388, email Claris.Nhanabu@lcb.wa.gov, by June 24, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule amendments revise and update current marijuana quality assurance sampling protocols described in WAC 314-55-101, and marijuana proficiency testing described in WAC 314-55-1025.

This proposal also provides that as of September 2021, in addition to the currently required suite of tests, all marijuana products produced, processed, and sold in Washington state be tested for pesticides and heavy metals. This is accomplished by revising and updating existing WAC 314-55-102 by way of a phase-in plan, as follows:

- The first proposed revisions, if adopted, would be effective until February 28, 2021.
- On March 1, 2021, WAC 314-55-102 would be repealed, and WAC 314-55-1021 would become effective until August 31, 2021, adding pesticide testing to the current suite of required product testing for all marijuana products produced and sold in Washington state.
- Finally, on September 1, 2021, WAC 314-55-1021 would be repealed, and WAC 314-55-1022 would become effective, requiring both pesticides *and* heavy metals to the current suite of required product testing for all marijuana products produced and sold in Washington state.

As a technical matter, this proposal renames and more appropriately refers to marijuana *quality control* sampling protocols and marijuana *quality control* and assurance testing standards. While quality control is a set of activities designed to evaluate a product, quality assurance pertains to activities that are designed to ensure that a process is adequate and the system meets its objectives. In contrast, quality control focuses on finding defects or anomalies in a product or deliverable, and checks whether defined requirements are the right requirements. Testing is one example of a quality control activity, but there are many more such activities that make up quality control. For these reasons, this proposal renames these sections.

Other proposed revisions include streamlined, clarified language; section reorganization to increase readability, along with reduction and removal of passive language where appropriate.

Reasons Supporting Proposal: Current testing requirements for recreational marijuana are intended to ensure that products for sale are safe and have accurate potency levels. However, Washington state recreational marijuana products are not required to be tested for pesticides and heavy metals, and although not precluded from doing so, many producers and processors do not test for either. Based on a number of elements, including consumer concern and national best practices, it has become evident that standardized testing for *all* marijuana products produced, processed, and sold in Washington state is necessary. Washington state is the only state with both recreational and medical programs that does not require such testing for all products.

There is no guidance available to the WSLCB or any other state agency regulating marijuana from federal agencies who set standards for agriculture, food, and other products because marijuana remains classified as a Schedule I drug, and federally illegal. This presents regulatory challenges to the WSLCB, regulators throughout the country, and the industry since there is limited funding to support research on how marijuana tainted with potential toxins affects humans. However, while the possible health impact of consuming marijuana products with unapproved pesticides is an emerging area of research, the overarching goal of the WSLCB is to protect public health and safety, and to assure that all products sold within the I-502 market are safe for *all* consumers.

Need for Withdrawal of Original CR-102 Proposal:

Recently, concern around the composition and safety of marijuana concentrates for inhalation has highlighted the need to assure that all marijuana products are tested for the presence of harmful compounds and other contaminants. The proposed rule amendments and phase-in plan offer a reasonable time frame that provides both licensees and accredited labs the opportunity to adjust business models where necessary, and offers options to prepare for additional fields of testing either immediately or over an extended, but finite period of time.

On March 23, 2020, Governor Inslee issued the first Stay Home, Stay Healthy proclamation. Because there were no viable options for the board to hold a public hearing that complied with the Stay Home, Stay Healthy proclamation and subsequent updates, the board was unable to hold a public hearing on the proposed rules on April 1, 2020. On March 27, 2020, and consistent with RCW 34.05.335 and WAC 1-21-060, the board withdrew its proposed rule making filed on March 11, 2020, as WSR 20-07-052 as a continuance of proposed rule making filed on January 22, 2020, as WSR 20-03-076 [20-03-176].

The board's intention in taking this action was to refile a new CR-102 regarding proposed marijuana quality control rules as soon as reasonably possible, and once virtual stakeholder engagement options became available. It was clearly articulated at the March 27 meeting that the board was *not* redrafting rules for this project. The only change to the refiled CR-102 rule package would be the hearing date, potentially the forum for the public hearing, and timelines regarding phase in. The purpose of the withdrawal was to merely place the project on pause until venue and method for holding a public hearing were solidified and available. The substance of the rule proposal would not change, and has not changed.

Statutory Authority for Adoption: RCW 69.50.345 and 69.50.348.

Statute Being Implemented: RCW 69.50.345 and 69.50.348.

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

Name of Proponent: WSLCB, governmental.

Name of Agency Personnel Responsible for Drafting: Katherine Hoffman, Policy and Rules Manager, 1025 Union Avenue, Olympia, WA 98501, 360-664-1622; Implementation: Kendra Hodgson, Marijuana Examiners Unit Manager, 1025 Union Avenue, Olympia, WA 98501, 360-664-4555; and Enforcement: Justin Nordhorn, Chief of Enforcement, 1025 Union Avenue, Olympia, WA 98501, 360-664-1726.

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

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Katherine Hoffman, 1025 Union Avenue, Olympia, WA 98502 [98501], phone 360-664-1622, fax 360-664-9689, email rules@lcb.wa.gov.

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

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.025 (4)(d): WAC 314-55-101, 314-55-1025.

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement (SBEIS)

What is the scope of the rule package? Compliance with the proposed, specific requirements described [in] WAC 314-55-102, 314-55-1021, and 314-55-1022 will likely result in additional compliance costs. This includes the incremental, phased-in requirement to test all marijuana products for pesticides and heavy metals. The remainder of the rule revisions are exempt.

Which businesses are impacted by the proposed rule package? What was their North American Industry Classification (NAICS) code or codes? What are their minor cost thresholds? The NAICS code, business description, and minor cost thresholds are described and calculated below:

Type of Business	# of Businesses In Washington	Percentage of Businesses Considered Small ³	Average Annual Revenues ^{4,5}	Minor Cost Threshold (0.3% Average Annual Revenues)
Marijuana Producer, Processor	341 ¹	98%	\$1,418,224	\$4,255
Cannabis Testing Laboratory	14 ²	100%	\$1997000 [\$1,997,000]	\$5,990

Notes:
¹Represents the number of Marijuana producer/processors that reported revenue, lab tests, and employment between 2018-05 and 2019-04.
²Represents the number of labs certified to conduct testing on cannabis products in Washington state.
³Defined as having fifty or fewer employees. Producer/processor employment information provided by the employment security department for the 3rd quarter of 2018. Laboratory businesses employment determined through interviews with labs and LinkedIn business profiles accessed 2019-04 and 2020-01.
⁴Average annual revenues for producer/processors based on total sales divided by the number of business[es] that reported sales, lab tests, and employment.
⁵For testing laboratories, minor cost threshold based on average annual revenues from the 2010 Economic census of the United States for businesses in the "Testing Laboratories" category (NAICS 541380) (WA State Auditor's Office 2019).

Does the rule have a disproportionate impact on small businesses? In particular, in order to calculate annual costs, we require information on a per entity basis describing the number of samples being tested per year. While we have some limited anecdotal information on the numbers of samples tested per year by individual producer/processors, we lack information on the myriad business models that could lead to a wide range in the number of samples tested per year, and thus a wide range of per entity compliance costs per year. Developing reliable estimates would require a comprehensive survey with a *reasonable* response rate, and even then, given the wide variability of business models and documented inconsistency in responses from licensees, per entity costs is [are] difficult to determine.

Did the agency make an effort to reduce the impact of the rule? The proposed rule changes include provisions that are intended to reduce the compliance costs for small businesses. These include:

- An incremental phase-in period that contemplates full compliance by March, 2021; and
- Allowing labs to subcontract pesticide and heavy metals testing for a period of time.

It is difficult to accurately assess if small businesses will be disproportionately impacted by this rule proposal when there is both significant overlap and variance between the groups evaluated. As noted above, and throughout this SBEIS, most of the businesses impacted are small as defined by RCW 19.85.030.

Did the agency involve small businesses in the rule development process? Throughout the rule development process, the WSLCB has engaged with businesses likely to be affected by the rule, and who volunteered to participate in the process. To support development of the SBEIS, a subset of six producer/processors spanning a range of both tiers and types of producers was contacted; interviews were conducted with two producers, one processor, and one producer/processor. In addition, interviews were conducted with three testing laboratories. Additional opportunity for public comment will be available when the proposed rule is published. Indoor and outdoor farmers, including sun growers, were included in the interviews.

During the rule development process, the WSLCB hosted two "Listen and Learn" sessions, one in April 2019 and the second in August 2019, inviting industry discussion

and feedback on the proposed rules, and [to] discuss potential mitigation strategies. The WSLCB's stakeholder process encouraged interested parties and industry partners to:

- Identify burdensome areas of existing and proposed rules;
- Proposed initial or draft rule changes; and
- Refine those changes.

Although the WSLCB broadly messaged these sessions (messaging went directly to *all* licensees, as well as over ten thousand GovDelivery subscribers), few processors and producers attended the sessions. This rule project was the first employing the "Listen and Learn" model, and attendees were initially unfamiliar with not only the model, but the process, although detailed agendas were provided well in advance of each meeting.

These heavily facilitated sessions followed two thought streams: the first asked attendees to review draft conceptual rules offered well in advance of the meeting and provide feedback or specific rule language, specifically indicating what they liked, didn't like, and what they proposed in the way of a solution. No rule language revisions were offered by attendees at either session. Solutions ranged from suggesting that figures and language be more concise in general without offering example, to unsupported assertions that adding pesticides and heavy metals to the suite of required tests would put certain producers out of business.

All comments received during these sessions were curated to the extent possible, although developing themes from sessions was difficult based on the broad range of comments. The proposed rules went through several stages of edits, review, discussion, and then further refinement before arriving at the initial proposal. The end result of this process are proposed rules that are offered as a framework and guidance for testing marijuana products that supports the overarching WSLCB goal of public health and safety.

A summary of the description of issues related to the proposed rule set and how the agency collaborated with stakeholders and industry partners to mitigate potential burden associated with rule compliance is more fully described in the significant analysis prepared consistent with RCW 34.05.328, including a phase-in plan, and offered as part of this initial rule proposal.

Will businesses have to hire or fire employees because of the requirements in the rule? While the impacts to individual producer[er]/processors may depend on their ability to pass on increased testing costs (in the form of higher prices to retailers), the proposed rule is not expected to affect the amount of marijuana produced. Thus, the proposed rule is unlikely to affect the overall number of employees of producer/processors or retailers. For example, if increased testing costs lead some smaller entities to cease production, other entities may produce larger volumes.

While it would be an indirect effect, the proposed rule may result in some limited additional employment in the labs conducting testing. In order to conduct the testing, a lab adding this testing capability may need to hire one or two additional scientists or technicians to operate equipment and conduct tests. The extent of potential employment gains are uncertain, but given the small number of labs in the industry

(currently fifteen certified labs) any employment gains would likely be limited.

A copy of the statement may be obtained by contacting Katherine Hoffman, 1025 Union Avenue, Olympia, WA 98501, phone 360-664-1622, fax 360-664-9689, email rules@lcb.wa.gov.

May 27, 2020

Jane Rushford
Chair

AMENDATORY SECTION (Amending WSR 17-12-032, filed 5/31/17, effective 8/31/17)

WAC 314-55-101 Quality (~~assurance sampling protocols~~) control sampling. (1) (~~To ensure quality assurance samples submitted to certified third-party laboratories (certified labs) are representative from the lot or batch from which they were sampled as required in RCW 69.50.348, licensed producers, licensed processors, certified labs, and their employees must adhere to the minimum sampling protocols as provided in this section.~~

(2) Sampling protocols for all marijuana product lots and batches:

(a) ~~Samples must be deducted in a way that is most representative of the lot or batch and maintains the structure of the marijuana sample. Licensees, certified labs, and their employees may not adulterate or change in any way the representative sample from a lot or batch before submitting the sample to certified labs. This includes adulterating or changing the sample in any way as to inflate the level of potency, or to hide any microbiological contaminants from the required microbiological screening such as, but not limited to:~~

(i) ~~Adulterating the sample with kief, concentrates, or other extracts;~~

(ii) ~~Treating a sample with solvents to hide the microbial count of the lot or batch from which it was deducted. This subsection does not prohibit the treatment of failed lots or batches with methods approved by the WSLCB; or~~

(iii) ~~Pregrinding a flower lot sample.~~

(b) ~~All samples must be taken in a sanitary environment using sanitary practices and ensure facilities are constructed, kept, and maintained in a clean and sanitary condition in accordance with rules and as prescribed by the Washington state department of agriculture under chapters 16-165 and 16-167 WAC.~~

(c) ~~Persons collecting samples must wash their hands prior to collecting a sample from a lot or batch, wear appropriate gloves while preparing or deducting the lot or batch for sample collection, and must use sanitary utensils and storage devices when collecting samples.~~

(d) ~~Samples must be placed in a sanitary plastic or glass container, and stored in a location that prevents the propagation of pathogens and other contaminants, such as a secure, low-light, cool and dry location.~~

(e) ~~The licensee must maintain the lot or batch from which the sample was deducted in a secure, low-light, cool, and dry location to prevent the marijuana from becoming contaminated or losing its efficacy.~~

~~(f) Each quality assurance sample must be clearly marked "quality assurance sample" and be labeled with the following information:~~

~~(i) The sixteen digit)) All licensed marijuana processors, producers, certified labs, and certified lab employees must comply with the sampling procedures described in this section, consistent with RCW 69.50.348. Noncompliance may result in enforcement action as described in this chapter and applicable law.~~

(2) Sample collection. All samples of marijuana, usable marijuana, or marijuana-infused products submitted to an accredited lab for testing consistent with this chapter must be collected or deducted in a way that is most representative of the lot or batch, and maintains the structure of the marijuana sample.

(a) Facilities must be constructed and maintained consistent with applicable rules and as prescribed by the Washington state department of agriculture under chapters 16-165 and 16-167 WAC.

(b) To ensure the sample integrity, samples must be placed in a sanitary plastic or glass container, and stored in a location that prevents contamination and degradation, such as a secure, low-light, cool and dry location.

(c) The licensee must maintain the lot or batch from which the sample was deducted in a secure, low-light, cool, and dry location to prevent the marijuana from becoming contaminated or losing its efficacy.

(d) Each quality control sample must be clearly marked "quality control sample" and labeled with the following information:

(i) The identification number generated by the traceability system;

(ii) The license number and name of the certified lab receiving the sample;

(iii) The license number and trade name of the licensee sending the sample;

(iv) The date the sample was collected; and

(v) The weight of the sample.

(3) ~~((Additional sampling protocols))~~ **Sample collection for flower lots:**

(a) Licensees or certified labs must collect a minimum of four separate ~~((samples))~~ subsamples from each marijuana flower lot up to five pounds. Licensees or certified labs may collect more samples or subsamples than this minimum, but must not collect less. The ~~((samples))~~ subsamples must be of roughly equal weight not less than one gram each.

(b) The four separate ~~((samples))~~ subsamples must be taken from different quadrants of the flower lot. A quadrant is the division of a lot into four equal parts. Dividing a lot into quadrants prior to collecting samples must be done in a manner that ensures the ~~((samples))~~ subsamples are collected from four evenly distributed areas of the flower lot and may be done visually or physically.

(c) The ~~((four samples))~~ subsamples may be placed together in one container conforming to the packaging and labeling requirements in subsection (2) of this section for storage and transfer to a certified lab.

(4) **Sample retrieval and transportation.** Certified labs may retrieve samples from a marijuana licensee's licensed premises and transport the samples directly to the lab. Certi-

fied labs may also return or destroy any unused portion of the samples.

(5) **Adulterated or altered samples.** All licensees, certified labs, or agents of a licensee or certified labs will not adulterate or alter, or attempt to adulterate or alter any marijuana samples for the purpose of circumventing contaminant testing detection limits or potency testing requirements such as, but not limited to:

(a) Adulterating the sample with kief, concentrates, or other extracts;

(b) Treating a sample with solvents to hide the microbial count of the lot or batch from which it was deducted. This subsection does not prohibit the treatment of failed lots or batches with methods approved by the board; or

(c) Pregrinding a flower lot sample.

(6) **Sample rejection or failure.** Certified labs ~~((may))~~ must reject or fail a sample if the lab ~~((has reason to))~~ believes the sample was not collected in the manner required by this section, adulterated ~~((in any way))~~, contaminated with known or unknown solvents, or manipulated in a manner that violates the sampling protocols, limit tests, or action levels.

~~((6) The WSLCB or its designee will take immediate disciplinary action against any licensee or certified lab that fails to comply with the provisions of this section or falsifies records related to this section including, without limitation, revoking the license the licensed producer or processor, or certification of the certified lab.))~~

AMENDATORY SECTION (Amending WSR 17-12-032, filed 5/31/17, effective 8/31/17)

WAC 314-55-102 Quality assurance ~~((testing))~~ and quality control.

(Effective until August 31, 2020)

(1) **Lab certification and accreditation for quality control testing.** To become certified, 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))~~ meet the board's certification and accreditation requirements as described in WAC 314-55-0995 and this chapter before conducting quality ~~((assurance))~~ control 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) Certified labs must be certified to the following fields of testing:

(i) Moisture analysis;

(ii) Potency analysis;

(iii) Foreign matter inspection;

(iv) Microbiological screening;

(v) Mycotoxin screening; and

(vi) Residual solvents.

(b) Certified labs may be certified for heavy metal, pesticide, or terpene testing. Certified labs must comply with the guidelines for each quality control field of testing described in this chapter if they offer that testing service.

(c) Certified labs may reference samples for heavy metal, pesticide, or terpene testing by subcontracting for those fields of testing.

(2) General quality control testing requirements for certified labs.

(a) Certified labs must record an acknowledgment of the receipt of samples from producers or processors in the board seed to sale traceability system. Certified labs must also verify when any unused portion of the sample is destroyed or returned to the licensee after the completion of required testing.

(b) When applicable, certified labs must report quality control test results directly to the board traceability system when quality control tests for the field of testing are required.

(c) Product must not be converted, transferred or sold until the required tests are reported to the board and the licensee.

(d) 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 chapter.

(e) Certified labs must test samples on an "as is" or "as received" basis.

(3) Quality control fields of testing. The following fields of testing are only required for samples of marijuana flower that have not been previously tested, or that have failed quality control testing.

(a) Potency analysis.

(i) Certified labs must test and report the following cannabinoids to the ((WSLCB)) board 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) Any psychoactive cannabinoids intentionally added to the formula of a product must be tested for potency including, but not limited to, delta-8-THC.

(iv) 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.~~)) must test each flower lot identified in WAC 314-55-101(3) for the following:

(i) Moisture analysis. The sample and related lot or batch fails quality ((assurance)) control testing for moisture analysis if the results exceed the following limits:

- (A) Water activity rate of more than 0.65 a_w ; ((and)) or
- (B) Moisture content more than fifteen percent.

(ii) Foreign matter screening. The sample and related lot or batch fail quality ((assurance)) control testing for foreign matter screening if the results exceed the following limits:

- (A) Five percent of stems 3 mm or more in diameter; ((and)) or
- (B) Two percent of seeds or other foreign matter; or
- (C) One insect fragment, one hair, or one mammalian excreta sample.

(iii) Microbiological screening. The sample and related lot or batch fail quality ((assurance)) control 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 ⁴	Not detected in 1g
Extracted or processed Botanical Product	10 ³	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.)) For purposes of mycotoxin screening, a sample shall be deemed to have passed if it meets the following standards:

Test	Specification
The total of aflatoxin B1, aflatoxin B2, aflatoxin G1 and aflatoxin G2	<20 µg/kg of substance
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~~)) control 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~~)) control 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~~)) control 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.~~)

<u>Metal</u>	<u>µg/g</u>
<u>Arsenic</u>	<u>2.0</u>
<u>Cadmium</u>	<u>0.82</u>
<u>Lead</u>	<u>1.2</u>
<u>Mercury</u>	<u>0.40</u>

(f) **Pesticide screening.** For purposes of the pesticide screening, a sample shall be deemed to have passed if it meets the standards described in WAC 314-55-108 and applicable department of agriculture rules.

(g) **Terpenes.** Testing for terpene presence and concentration is required if:

- (i) The producer or processor states terpene content on any product packaging, labeling, or both; or
- (ii) The producer or processor adds terpenes to their product.

(4) **Required quality control tests.** The following quality ((~~assurance~~)) control tests are ((~~the minimum~~)) required ((~~tests~~)) for each of the ((~~following~~)) marijuana products((~~;~~ respectively)) described below. Licensees and certified labs may ((~~elect to do multiple~~)) opt to perform additional quality ((~~assurance~~)) control tests on the same lot ((~~or testing for~~ mycotoxin, pesticides, or heavy metals pursuant to chapter 246-70 WAC)).

(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~~)) control tests:

Product	Test(s) Required
Lots of marijuana flowers or other material that will not be extracted	1. Moisture ((content)) <u>analysis</u> 2. Potency analysis 3. Foreign matter inspection 4. Microbiological screening 5. Mycotoxin screening

((~~e~~)) **(b) Intermediate products.** Intermediate products must meet the following requirements related to quality ((~~assurance~~)) control testing:

- (i) All intermediate products must be homogenized prior to quality ((~~assurance~~)) control 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~~)) control tests:

Product	Test(s) Required Intermediate Products
Marijuana mix	1. Moisture ((content *) <u>analysis</u> 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((*))- <u>Field of testing is only required if using lots of marijuana flower that have not passed QA testing</u> 3. Residual solvent test
Concentrate or extract made with a CO ₂ extractor like hash oil	1. Potency analysis 2. Mycotoxin screening((*))- <u>Field of testing is only required if using lots of marijuana flower that have not passed QA testing</u> 3. Residual solvent test
Concentrate or extract made with ethanol	1. Potency analysis 2. Mycotoxin screening((*))- <u>Field of testing is only required if using lots of marijuana flower that have not passed QA testing</u> 3. Residual solvent test
Concentrate or extract made with approved food grade solvent	1. Potency analysis 2. Microbiological screening((*))- <u>Field of testing is only required if using lots of marijuana flower that have not passed QA testing</u> 3. Mycotoxin screening((*))- <u>Field of testing is only required if using lots of marijuana flower that have not passed QA testing</u> 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((*))- <u>Field of testing is only required if using lots of marijuana flower that have not passed QA testing</u>

Product	Test(s) Required Intermediate Products
	3. Mycotoxin screening((*))- <u>Field of testing is only required if using lots of marijuana flower that have not passed QA testing</u>

(*) Field of testing is only required if using lots of marijuana flower and other plant material that has not passed QA testing.

~~(d))~~ **(c) 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))~~ control 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
Other	<u>Potency analysis</u>

~~((e))~~ **(d) 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)~~ **(5) Usable flower**, batch of marijuana concentrate, or batch of marijuana-infused product may not be sold or transported until the completion and successful passage of required quality (~~(assurance))~~ control 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))~~ control testing. Licensees may wholesale and transfer failed lots or batches to be extracted pursuant to subsection (5) of this section, unless failed for tests that require immediate destruction.

~~((4) Samples, lots, or batches that fail quality assurance testing.)~~ **(6) Failed test samples.**

(a) Upon approval by the (~~(WSLCB))~~ board, failed lots or batches may be used to create extracts. After processing, the extract must pass all quality (~~(assurance))~~ control tests required in this section before it may be sold, unless failed for tests that require immediate destruction.

(b) **Retesting.** ~~((At the request of the))~~ A producer or processor~~(, the WSLCB))~~ must request retesting. The board may authorize ~~((a))~~ the requested 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)~~ must pay for the cost of all retesting.

(c) **Remediation.** Remediation is a process or technique applied to marijuana harvests, lots, or batches. Remediation may occur after the first failure of the lot, batch, or both depending on the failure, or if a retest process results in a second failure. Pesticide failures may not be remediated.

(i) Producers and processors may remediate failed ~~((harvests,))~~ lots, ~~((or))~~ batches, or both so long as the remediation method does not impart any toxic or ~~((deleterious))~~ harmful 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) A licensed processor;

(B) The producer or producer/processor who transfers the marijuana products ~~((to))~~;

(C) A licensed retailer carrying marijuana products derived from the remediated ~~((harvest,))~~ lot(~~(s))~~ or batch; or

(D) A consumer upon request.

(ii) The entire ~~((harvest,))~~ lot(~~(s))~~ or batch from which the failed sample(s) were deducted ~~((from))~~ must be remediated ~~((using the same remediation technique)).~~

(iii) No remediated ~~((harvest,))~~ lots ~~((or))~~, batches, or both may be sold or transported until ~~((the completion and successful passage of quality assurance testing as required in this section))~~ quality control testing consistent with the requirements of this section is completed.

(iv) If a failed lot or batch is not remediated or reprocessed in any way, it cannot be retested. Any subsequent COAs produced without remediation or reprocessing of the failed batch will not supersede the initial regulatory compliance testing COA.

~~((5))~~ (7) Referencing. Certified labs may reference samples for ~~((mycotoxin))~~ terpenes, 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))~~ (8) 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 testing purposes described in this ~~((section))~~ chapter.

~~((7))~~ Upon the request of the WSLCB) (9) The board or its designee(~~(s))~~ may request that a licensee or a certified lab ~~((must))~~ provide an employee of the ~~((WSLCB))~~ board 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 randomly for pesticides, and chemical residues, unsafe levels of heavy

metals, and used for other quality ~~((assurance))~~ control tests deemed necessary by the ~~((WSLCB))~~ board.

NEW SECTION

WAC 314-55-1021 Quality assurance and quality control.

(Effective September 1, 2020, until February 28, 2021)

(1) **Lab certification and accreditation for quality control testing.** To become certified, a third-party lab must meet the board's certification and accreditation requirements as described in WAC 314-55-0995 and this chapter before conducting quality control tests required under this section.

(a) Certified labs must be certified to the following fields of testing:

(i) Moisture analysis;

(ii) Potency analysis;

(iii) Foreign matter inspection;

(iv) Microbiological screening;

(v) Mycotoxin screening; and

(vi) Residual solvents.

(b) Certified labs may be certified for heavy metal, pesticide, or terpene testing. Certified labs must comply with the guidelines for each quality control field of testing described in this section if they offer that testing service.

(c) Certified labs may reference samples for heavy metal, pesticide, or terpene testing by subcontracting for those fields of testing.

(2) **General quality control testing requirements for certified labs.**

(a) Certified labs must record an acknowledgment of the receipt of samples from producers or processors in the board seed to sale traceability system. Certified labs must also verify when any unused portion of the sample is destroyed or returned to the licensee after the completion of required testing.

(b) When applicable, certified labs must report quality control test results directly to the board traceability system when quality control tests for the field of testing are required.

(c) Product must not be converted, transferred, or sold until the required tests are reported to the board and the licensee.

(d) 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 chapter.

(e) Certified labs must test samples on an "as is" or "as received" basis.

(3) **Quality control fields of testing.** The following fields of testing are only required for samples of marijuana flower that have not been previously tested, or that have failed quality control testing.

(a) **Potency analysis.**

(i) Certified labs must test and report the following cannabinoids to the board 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) Any psychoactive cannabinoids intentionally added to the formula of a product must be tested for potency including, but not limited to, delta-8-THC.

(iv) 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 must test each flower lot identified in WAC 314-55-101(3) for the following:

(i) **Moisture analysis.** The sample and related lot or batch fails quality control testing for moisture analysis if the results exceed the following limits:

- (A) Water activity rate of more than 0.65 a_w ; or
- (B) Moisture content more than fifteen percent.

(ii) **Foreign matter screening.** The sample and related lot or batch fail quality control testing for foreign matter screening if the results exceed the following limits:

- (A) Five percent of stems 3 mm or more in diameter; or
- (B) Two percent of seeds or other foreign matter; or
- (C) One insect fragment, one hair, or one mammalian excreta per sample.

(iii) **Microbiological screening.** The sample and related lot or batch fail quality control 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 ⁴	Not detected in 1g
Extracted or Processed Botanical Product	10 ³	Not detected in 1g

(iv) **Mycotoxin screening.** For purposes of mycotoxin screening, a sample shall be deemed to have passed if it meets the following standards:

Test	Specification
The total of aflatoxin B1, aflatoxin B2, aflatoxin G1 and aflatoxin G2	≤20 µg/kg of substance
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 control 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 control 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 control testing for heavy metals if the results exceed the limits provided in the table below.

Metal	µg/g
Arsenic	2.0
Cadmium	0.82
Lead	1.2
Mercury	0.40

(f) **Pesticide screening.** For purposes of the pesticide screening, a sample shall be deemed to have passed if it meets the standards described in WAC 314-55-108 and applicable department of agriculture rules.

(g) **Terpenes.** Testing for terpene presence and concentration is required if:

(i) The producer or processor states terpene content on any product packaging, labeling, or both; or

(ii) The producer or processor adds terpenes to their product.

(4) **Required quality control tests.** The following quality control tests are required for each of the marijuana products described below. Licensees and certified labs may opt to perform additional quality control tests on the same lot.

(a) **Marijuana flower lots.** Marijuana flower lots require the following quality control tests:

Product	Test(s) Required
Lots of marijuana flowers or other material that will not be extracted	1. Moisture analysis 2. Potency analysis 3. Foreign matter inspection 4. Microbiological screening 5. Mycotoxin screening 6. Pesticide screening

(b) **Intermediate products.** Intermediate products must meet the following requirements related to quality control testing:

(i) All intermediate products must be homogenized prior to quality control 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 control tests:

Product	Test(s) Required Intermediate Products
Marijuana mix	1. Moisture analysis 2. Potency analysis 3. Foreign matter inspection 4. Microbiological screening 5. Mycotoxin screening 6. Pesticide 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 - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Residual solvent test 4. Pesticide screening

Product	Test(s) Required Intermediate Products
Concentrate or extract made with a CO ₂ extractor like hash oil	1. Potency analysis 2. Mycotoxin screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Residual solvent test 4. Pesticide screening
Concentrate or extract made with ethanol	1. Potency analysis 2. Mycotoxin screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Residual solvent test 4. Pesticide screening
Concentrate or extract made with approved food grade solvent	1. Potency analysis 2. Microbiological screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Mycotoxin screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 4. Residual solvent test 5. Pesticide screening
Concentrate or extract (nonsolvent) such as kief, hash, rosin, or bubble hash	1. Potency analysis 2. Microbiological screening 3. Mycotoxin screening 4. Pesticide screening
Infused cooking oil or fat in solid form	1. Potency analysis 2. Microbiological screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Mycotoxin screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 4. Pesticide screening

(c) **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 control 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
Other	Potency analysis

(d) End products consisting of only one intermediate product that has not been changed in any way are not subject to potency analysis.

(5) Usable flower, batch of marijuana concentrate, or batch of marijuana-infused product may not be sold or transported until the completion and successful passage of required quality control testing, except:

(a) Business entities with multiple locations licensed under the same UBI number may transfer marijuana products between the licensed locations; 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 control testing. Licensees may wholesale and transfer failed lots or batches to be extracted pursuant to this subsection, unless failed for tests that require immediate destruction.

(6) Failed test samples.

(a) Upon approval by the board, failed lots or batches may be used to create extracts. After processing, the extract must pass all quality control tests required in this section before it may be sold, unless failed for tests that require immediate destruction.

(b) **Retesting.** A producer or processor must request retesting. The board may authorize retest to validate a failed test result on a case-by-case basis. The producer or the processor requesting the retest must pay for the cost of all retesting.

(c) **Remediation.** Remediation is a process or technique applied to marijuana harvests, lots, or batches. Remediation may occur after the first failure of the lot, batch, or both depending on the failure, or if a retest process results in a second failure. Pesticide failures may not be remediated.

(i) Producers and processors may remediate failed lots, batches, or both so long as the remediation method does not impart any toxic or harmful 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) A licensed processor;

(B) The producer or producer/processor who transfers the marijuana products;

(C) A licensed retailer carrying marijuana products derived from the remediated lot or batch; or

(D) A consumer upon request.

(ii) The entire lot or batch from which the failed sample(s) were deducted must be remediated.

(iii) No remediated lots, batches, or both may be sold or transported until quality control testing consistent with the requirements of this section is completed.

(iv) If a failed lot or batch is not remediated or reprocessed in any way, it cannot be retested. Any subsequent COAs produced without remediation or reprocessing of the failed batch will not supersede the initial regulatory compliance testing COA.

(7) **Referencing.** Certified labs may reference samples for terpenes, 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.

(8) 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 testing purposes described in this chapter.

(9) The board or its designee may request that a licensee or a certified lab provide an employee of the board 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 randomly for pesticides, chemical residues, unsafe levels of heavy metals, and used for other quality control tests deemed necessary by the board.

NEW SECTION

WAC 314-55-1022 Quality assurance and quality control.

(Effective March 1, 2021)

(1) **Lab certification and accreditation for quality control testing.** To become certified, a third-party lab must meet the board's certification and accreditation requirements as described in WAC 314-55-0995 and this chapter before conducting quality control tests required under this section.

(a) Certified labs must be certified to the following fields of testing:

(i) Moisture analysis;

(ii) Potency analysis;

(iii) Foreign matter inspection;

(iv) Microbiological screening;

(v) Mycotoxin screening; and

(vi) Residual solvents.

(b) Certified labs may be certified for heavy metal, pesticide, or terpene testing. Certified labs must comply with the guidelines for each quality control field of testing described in this section if they offer that testing service.

(c) Certified labs may reference samples for heavy metal, pesticide, or terpene testing by subcontracting for those fields of testing.

(2) General quality control testing requirements for certified labs.

(a) Certified labs must record an acknowledgment of the receipt of samples from producers or processors in the board seed to sale traceability system. Certified labs must also verify when any unused portion of the sample is destroyed or returned to the licensee after the completion of required testing.

(b) When applicable, certified labs must report quality control test results directly to the board traceability system when quality control tests for the field of testing are required.

(c) Product must not be converted, transferred, or sold until the required tests are reported to the board and the licensee.

(d) 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 chapter.

(e) Certified labs must test samples on an "as is" or "as received" basis.

(3) **Quality control fields of testing.** The following fields of testing are only required for samples of marijuana flower that have not been previously tested, or that have failed quality control testing.

(a) Potency analysis.

(i) Certified labs must test and report the following cannabinoids to the board 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) Any psychoactive cannabinoids intentionally added to the formula of a product must be tested for potency including, but not limited to, delta-8-THC.

(iv) 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 must test each flower lot identified in WAC 314-55-101(3) for the following:

(i) **Moisture analysis.** The sample and related lot or batch fails quality control testing for moisture analysis if the results exceed the following limits:

- (A) Water activity rate of more than 0.65 a_w ; or
- (B) Moisture content more than fifteen percent.

(ii) **Foreign matter screening.** The sample and related lot or batch fail quality control testing for foreign matter screening if the results exceed the following limits:

- (A) Five percent of stems 3 mm or more in diameter; or
- (B) Two percent of seeds or other foreign matter; or
- (C) One insect fragment, one hair, or one mammalian excreta per sample.

(iii) **Microbiological screening.** The sample and related lot or batch fail quality control 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</i> spp.
Unprocessed Plant Material	10 ⁴	Not detected in 1g
Extracted or Processed Botanical Product	10 ³	Not detected in 1g

(iv) **Mycotoxin screening.** For purposes of mycotoxin screening, a sample shall be deemed to have passed if it meets the following standards:

Test	Specification
The total of aflatoxin B1, aflatoxin B2, aflatoxin G1 and aflatoxin G2	≤20 µg/kg of substance
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 control 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 control 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

Solvent*	ppm
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 control testing for heavy metals if the results exceed the limits provided in the table below.

Metal	µg/g
Arsenic	2.0
Cadmium	0.82
Lead	1.2
Mercury	0.40

(f) **Pesticide screening.** For purposes of the pesticide screening, a sample shall be deemed to have passed if it meets the standards described in WAC 314-55-108 and applicable department of agriculture rules.

(g) **Terpenes.** Testing for terpene presence and concentration is required if:

(i) The producer or processor states terpene content on any product packaging, labeling, or both; or

(ii) The producer or processor adds terpenes to their product.

(4) **Required quality control tests.** The following quality control tests are required for each of the marijuana products described below. Licensees and certified labs may opt to perform additional quality control tests on the same lot.

(a) **Marijuana flower lots.** Marijuana flower lots require the following quality control tests:

Product	Test(s) Required
Lots of marijuana flowers or other material that will not be extracted	1. Moisture analysis 2. Potency analysis 3. Foreign matter inspection 4. Microbiological screening 5. Mycotoxin screening 6. Pesticide screening 7. Heavy metals screening

(b) **Intermediate products.** Intermediate products must meet the following requirements related to quality control testing:

(i) All intermediate products must be homogenized prior to quality control 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 control tests:

Product	Test(s) Required Intermediate Products
Marijuana mix	1. Moisture analysis 2. Potency analysis 3. Foreign matter inspection 4. Microbiological screening 5. Mycotoxin screening 6. Pesticide screening 7. Heavy metals 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 - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Residual solvent test 4. Pesticide screening 5. Heavy metals screening
Concentrate or extract made with a CO ₂ extractor like hash oil	1. Potency analysis 2. Mycotoxin screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Residual solvent test 4. Pesticide screening 5. Heavy metals screening
Concentrate or extract made with ethanol	1. Potency analysis 2. Mycotoxin screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Residual solvent test 4. Pesticide screening 5. Heavy metals screening
Concentrate or extract made with approved food grade solvent	1. Potency analysis 2. Microbiological screening - Field of testing is only required if using lots of marijuana flower that have not

Product	Test(s) Required Intermediate Products
	passed QA testing 3. Mycotoxin screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 4. Residual solvent test 5. Pesticide screening 6. Heavy metals screening
Concentrate or extract (nonsolvent) such as kief, hash, rosin, or bubble hash	1. Potency analysis 2. Microbiological screening 3. Mycotoxin screening 4. Pesticide screening 5. Heavy metals screening
Infused cooking oil or fat in solid form	1. Potency analysis 2. Microbiological screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 3. Mycotoxin screening - Field of testing is only required if using lots of marijuana flower that have not passed QA testing 4. Pesticide screening 5. Heavy metals screening

(c) **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 control 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
Other	Potency analysis

(d) End products consisting of only one intermediate product that has not been changed in any way are not subject to potency analysis.

(5) Usable flower, batch of marijuana concentrate, or batch of marijuana-infused product may not be sold or transported until the completion and successful passage of required quality control testing, except:

(a) Business entities with multiple locations licensed under the same UBI number may transfer marijuana products between the licensed locations; 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 control testing. Licensees may wholesale and transfer failed lots or batches to be extracted pursuant to this subsection, unless failed for tests that require immediate destruction.

(6) Failed test samples.

(a) Upon approval by the board, failed lots or batches may be used to create extracts. After processing, the extract must pass all quality control tests required in this section before it may be sold, unless failed for tests that require immediate destruction.

(b) **Retesting.** A producer or processor must request retesting. The board may authorize the requested retest to validate a failed test result on a case-by-case basis. The producer or the processor requesting the retest must pay for the cost of all retesting.

(c) **Remediation.** Remediation is a process or technique applied to marijuana harvests, lots, or batches. Remediation may occur after the first failure of the lot, batch, or both depending on the failure, or if a retest process results in a second failure. Pesticide failure may not be remediated.

(i) Producers and processors may remediate failed lots, batches, or both so long as the remediation method does not impart any toxic or harmful 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) A licensed processor;

(B) The producer or producer/processor who transfers the marijuana products;

(C) A licensed retailer carrying marijuana products derived from the remediated lot or batch; or

(D) A consumer upon request.

(ii) The entire lot or batch from which the failed sample(s) were deducted must be remediated.

(iii) No remediated lots, batches, or both may be sold or transported until quality control testing consistent with the requirements of this section is completed.

(iv) If a failed lot or batch is not remediated or reprocessed in any way, it cannot be retested. Any subsequent COAs produced without remediation or reprocessing of the failed batch will not supersede the initial regulatory compliance testing COA.

(7) **Referencing.** Certified labs may reference samples for terpenes, 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, and receiving personnel.

(8) 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 prod-

ucts in the certified lab's possession are held only for the testing purposes described in this chapter.

(9) The board or its designee may request that a licensee or a certified lab provide an employee of the board 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 randomly for pesticides, chemical residues, unsafe levels of heavy metals, and used for other quality control tests deemed necessary by the board.

AMENDATORY SECTION (Amending WSR 17-12-032, filed 5/31/17, effective 8/31/17)

WAC 314-55-1025 Proficiency testing. (1) For the purposes of this section, the following definitions apply:

(a) "Field of testing" means the categories of subject matter the laboratory tests, such as pesticide, microbial, potency, residual solvent, heavy metal, mycotoxin, foreign matter, and moisture content detection.

(b) "Proficiency testing (PT)" means the analysis of samples by a laboratory obtained from providers where the composition of the sample is unknown to the laboratory performing the analysis and the results of the analysis are used in part to evaluate the laboratory's ability to produce precise and accurate results.

(c) "Proficiency testing (PT) program" means an operation offered by a provider to detect a laboratory's ability to produce valid results for a given field of testing.

(d) "Provider" means a third-party company, organization, or entity not associated with certified laboratories or a laboratory seeking certification that operates an approved PT program and provides samples for use in PT testing.

(e) "Vendor" means an organization(s) approved by the ((~~WSLCB~~)) board to certify laboratories for marijuana testing, approve PT programs, and perform on-site assessments of laboratories.

(2) The ((~~WSLCB~~)) board or its vendor determines the sufficiency of PTs and maintains a list of approved PT programs. Laboratories may request authorization to conduct PT through other PT programs but must obtain approval for the PT program from ((~~WSLCB or WSLCB's~~)) the board or board's vendor prior to conducting PT. The ((~~WSLCB~~)) board may add the newly approved PT program to the list of approved PT programs as appropriate.

(3) As a condition of certification, laboratories must participate in PT and achieve a passing score for each field of testing for which the lab will be or is certified.

(4) A laboratory must successfully complete a minimum of one round of PT for each field of testing the lab seeks to be certified for and provide proof of the successful PT results prior to initial certification.

(5)(a) A certified laboratory must participate in a minimum of two rounds of PT per year for each field of testing to maintain its certification.

(b) To maintain certification, the laboratory must achieve a passing score, on an ongoing basis, in a minimum of two out of three successive rounds of PT. At least one of

the scores must be from a round of PT that occurs within six months prior to the laboratory's certification renewal date.

(6) If the laboratory fails to achieve a passing score on at least eighty percent of the analytes in any proficiency test, the test is considered a failure. If the PT provider provides a pass/fail on a per analyte basis but not on the overall round of PT the lab participates in, the pass/fail evaluation for each analyte will be used to evaluate whether the lab passed eighty percent of the analytes. If the PT provider does not provide individual acceptance criteria for each analyte, the following criteria will be applied to determine whether the lab achieves a passing score for the round of PT:

(a) +/- 30% recovery from the reference value for residual solvent testing; or

(b) +/- 3 z or 3 standard deviations from the reference value for all other fields of testing.

(7) If a laboratory fails a round of PT or reports a false negative on a micro PT, the laboratory must investigate the root cause of the laboratory's performance and establish a corrective action report for each unsatisfactory analytical result. The corrective action report must be kept and maintained by the laboratory for a period of three years, available for review during an on-site assessment or inspection, and provided to the ((~~WSLCB or WSLCB's~~)) board or board's vendor upon request.

(8) Laboratories are responsible for obtaining PT samples from vendors approved by ((~~WSLCB or WSLCB's~~)) the board or board's vendor. Laboratories are responsible for all costs associated with obtaining PT samples and rounds of PT.

(9) The laboratory must manage, analyze and report all PT samples in the same manner as customer samples including, but not limited to, adhering to the same sample tracking, sample preparation, analysis methods, standard operating procedures, calibrations, quality control, and acceptance criteria used in testing customer samples.

(10) The laboratory must authorize the PT provider to release all results used for certification and/or remediation of failed studies to ((~~WSLCB or WSLCB's~~)) the board or board's vendor.

(11) The ((~~WSLCB~~)) board may require the laboratory to submit raw data and all photographs of plated materials along with the report of analysis of PT samples. The laboratory must keep and maintain all raw data and all photographs of plated materials from PT for a period of three years.

(12) The ((~~WSLCB~~)) board may waive proficiency tests for certain fields of testing if PT samples or PT programs are not readily available or for other valid reasons as determined by ((~~WSLCB~~)) the board.

(13)(a) The ((~~WSLCB~~)) board will suspend a laboratory's certification if the laboratory fails to maintain a passing score on an ongoing basis in two out of three successive PT studies. The ((~~WSLCB~~)) board may reinstate a laboratory's suspended certification if the laboratory successfully analyzes PT samples from a ((~~WSLCB or WSLCB's~~)) board or board's vendor approved PT provider, so long as the supplemental PT studies are performed at least fifteen days apart from the analysis date of one PT study to the analysis date of another PT study.

(b) The ((~~WSLCB~~)) board will suspend a laboratory's certification if the laboratory fails two consecutive rounds of

PT. ((~~WSLCB~~)) The board may reinstate a laboratory's suspended certification once the laboratory conducts an investigation, provides the ((~~WSLCB~~)) board a deficiency report identifying the root cause of the failed PT, and successfully analyzes PT samples from a ((~~WSLCB or WSLCB's~~)) board or board's vendor approved PT provider. The supplemental PT studies must be performed at least fifteen days apart from the analysis date of one PT study to the analysis date of another PT study.

(14) If a laboratory fails to remediate and have its certification reinstated under subsection (13)(a) or (b) of this section within six months of the suspension, the laboratory must reapply for certification as if the laboratory was never certified previously.

(15) A laboratory that has its certification suspended or revoked under this section may request an administrative hearing to contest the suspension as provided in chapter 34.05 RCW.

WSR 20-12-038

WITHDRAWAL OF PROPOSED RULES UTILITIES AND TRANSPORTATION COMMISSION

[Filed May 27, 2020, 12:01 p.m.]

On March 27, 2020, the Washington utilities and transportation commission (commission) filed a Proposed rule making (CR-102) to consider additions and modifications to certain sections in chapter 480-109 WAC, Electric companies—Acquisition of minimum quantities of conservation and renewable energy as required by the Energy Independence Act, at WSR 20-08-081 (Docket UE-190652). The commission intends to file a new CR-102 on this subject with revised proposed rules, and will provide stakeholders with an additional comment period prior to holding an adoption hearing. The commission, therefore, requests that the CR-102 published in WSR 20-08-081 be withdrawn.

The commission will notify stakeholders in this rule-making docket of the withdrawal of this CR-102.

Mark L. Johnson
Executive Director

WSR 20-12-040

PROPOSED RULES DEPARTMENT OF SOCIAL AND HEALTH SERVICES (Economic Services Administration)

[Filed May 27, 2020, 2:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-05-060.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-280-0010 What is the United States Repatriation Program?, 388-280-0020 How do I apply for repatriation assistance?, 388-280-

0030 Do I have to repay the repatriation assistance?, 388-280-0040 Are there limits to my income and resources?, 388-280-0050 How long can I receive repatriation assistance?, and 388-280-0060 What services are available to me under the repatriation program?

Hearing Location(s): On July 7, 2020, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington Street S.E., Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see DSHS website for most up-to-date information.

Date of Intended Adoption: Not earlier than July 8, 2020.

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., July 7, 2020.

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 June 23, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed amendments to chapter 388-280 WAC will clarify the role and functions of the United States Department of Health and Human Services (HHS) in eligibility for repatriation services, align repatriation rules with the Washington state Emergency Repatriation Plan, distinguish between emergency and none-emergency repatriation assistance, fix incorrect cross-references, and spell out abbreviations for clarity.

Reasons Supporting Proposal: Amendments proposed under this filing align rule with the current Washington state Emergency Repatriation Plan and support accurate administration of the Repatriation program.

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

Statute Being Implemented: None.

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: Olga Walker, P.O. Box 45470, Olympia, WA 98504-5470, 360-725-4641.

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

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

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.

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

Explanation of exemptions: The proposed rules do not affect small businesses. They only affect DSHS clients.

May 27, 2020
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 00-19-077, filed 9/19/00, effective 11/1/00)

WAC 388-280-0010 What is the United States Repatriation Program? The United States Repatriation Program ~~((assists a))~~ provides temporary assistance to U.S. ((citizen or dependent)) citizens and dependents who ~~((is: (1) Without))~~ are brought from a foreign country to the United States because of lack of financial resources((; and (2) Returned or brought back to the U.S. from a foreign country because of:

~~((a) Mental illness; or (b) Destitution, physical illness, or a)), illness, war, threat of war, natural disaster, or similar crisis ((such as war)).~~

"Assistance" means non-emergency benefits and services. "Emergency" means an activation of the state emergency repatriation plan. During an emergency, you may get emergency assistance at an emergency repatriation center when you arrive at a port of entry. Benefits and services available during an emergency depend on what is available at the time of incident. You may apply for non-emergency assistance in your state of final destination after receiving assistance at an emergency repatriation center.

For the purposes of this chapter, "we" and "us" means the department of social and health services.

AMENDATORY SECTION (Amending WSR 00-19-077, filed 9/19/00, effective 11/1/00)

WAC 388-280-0020 How do I apply for repatriation assistance? You apply for repatriation assistance by contacting the U.S. ~~((State))~~ department of health and human services (HHS) or us.

(1) If you contact ~~((the U.S. State Department))~~ HHS, we consider a referral from them as an approved application.

(2) If you contact us directly, we apply for you to ~~((the U.S. Department of Health and Human Services (HHS)))~~ HHS.

(3) During an emergency, repatriation assistance is provided to you at an emergency repatriation center at a port of entry in Washington state.

AMENDATORY SECTION (Amending WSR 00-19-077, filed 9/19/00, effective 11/1/00)

WAC 388-280-0030 Do I have to repay the repatriation assistance? Repatriation assistance is a loan. You, or your representative if you are ~~((mentally ill))~~ incapacitated, must:

- (1) Sign a statement recognizing repatriation assistance as a loan; and
- (2) Agree to repay the funds.

Repayment goes to the U.S. department of health and human services (HHS), and HHS is responsible for collecting repayment of this loan.

AMENDATORY SECTION (Amending WSR 00-19-077, filed 9/19/00, effective 11/1/00)

WAC 388-280-0040 Are there limits to my income and resources? (1) You are ~~((ineligible))~~ not eligible to receive ~~((repatriate))~~ repatriation assistance if ~~((you have nonexempt))~~ your:

(a) Income, as defined by temporary assistance for needy families (TANF) equal to or greater than the TANF need standards as described in WAC ~~((388-450-0005))~~ 388-478-0015; or

(b) Resources, as defined by TANF under WAC 388-470-0005 that are available to meet your resettlement needs.

(2) We consider a resource available to you when:

(a) The value can be determined;

(b) It is controlled by you; and

(c) You can use the resource to meet your needs.

(3) Income limits do not apply during emergency repatriation incidents as defined in the Washington state Emergency Repatriation Plan.

AMENDATORY SECTION (Amending WSR 00-19-077, filed 9/19/00, effective 11/1/00)

WAC 388-280-0050 How long can I receive repatriation assistance? (1) If you are ~~((mentally ill))~~ incapacitated, you receive temporary care until you:

(a) Can be released to the care of a relative or state agency; or

(b) Are discharged or granted release from hospitalization.

(2) If you are not ~~((mentally ill))~~ incapacitated, you may receive repatriation assistance up to twelve months as follows:

(a) "Temporary assistance" meaning repatriation assistance provided during the first ninety days after you return to the United States.

(b) "Extended assistance" meaning repatriation assistance provided for up to nine months after the end of your temporary assistance. We must have approval in advance from ~~((HHS))~~ the U.S. department of health and human services (HHS), so you must ask us to apply for extended assistance while receiving temporary assistance and be:

(i) Ineligible for any other assistance program; and

(ii) Unable to support or care for yourself due to age, illness, or lack of job skills.

(3) During an emergency, you may only receive repatriation assistance as long as you remain in the emergency repatriation center. Once you leave the emergency repatriation center, you may apply for non-emergency repatriation assistance.

AMENDATORY SECTION (Amending WSR 00-19-077, filed 9/19/00, effective 11/1/00)

WAC 388-280-0060 What services are available to me under the repatriation program? (1) The ~~((HHS))~~ U.S.

department of health and human services (HHS) sets limits on how much we pay for repatriation assistance. ~~((The limits are:~~

~~(a) The temporary assistance for needy families (TANF) payment standards under WAC 388-478-0015 for goods and services to meet basic needs;~~

~~(b) Up to five hundred sixty dollars per person to meet resettlement costs, if necessary, and for only one month while you receive temporary assistance.))~~

(2) Within payment limits, repatriation assistance includes:

(a) Travel to your place of residence, limited to:

(i) One domestic trip at the lowest fare and using the most direct means;

(ii) Meals and lodging while you are traveling;

(iii) Money for incidentals; and

(iv) If you are ~~((ill or disabled))~~ incapacitated, travel expenses for an escort.

(b) Goods and services necessary for your health and welfare, including:

(i) Transportation for medical treatment, hospitalization or social services;

(ii) Temporary shelter;

(iii) Meals;

(iv) Clothing;

(v) Hospitalization to treat mental or acute illness or other medical care; and

(vi) Guidance, counseling and other social services.

~~((e) Resettlement costs, including:~~

~~(i) Utility or housing deposits; and~~

~~(ii) Basic household goods, such as cookware or blankets.))~~

(3) Benefits, services, and assistance available during an emergency at an emergency repatriation center are described in the Washington state Emergency Repatriation Plan.

WSR 20-12-047

PROPOSED RULES

GAMBLING COMMISSION

[Filed May 28, 2020, 1:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-03-158.

Title of Rule and Other Identifying Information: WAC 230-21-016 Costs of providing public records.

Hearing Location(s): On July 17, 2020, at 9:00 a.m., at Washington State Gambling Commission, 4565 7th Avenue S.E., Lacey, WA 98503. Public hearing will take place at the July commission meeting. The meeting date and time is tentative. Visit our website at www.wsgc.wa.gov about seven days prior to the meeting, select "The Commission," and then select "Public Meetings," to confirm hearing date, location, start time, and agenda items.

Date of Intended Adoption: July 17, 2020.

Submit Written Comments to: Ashlie Laydon, P.O. Box 42400, Olympia, WA 98504-2400, email rules.coordinator@wsgc.wa.gov, fax 360-486-3632, by July 6, 2020.

Assistance for Persons with Disabilities: Contact Julie Anderson, phone 360-486-3453, TTY 360-486-3637, email Julie.anderson@wsgc.wa.gov, by July 6, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 42.56.120 authorizes agencies to charge for certain costs related to public records requests. This statute allows agencies to undergo their own cost-analysis determination or to choose the default rates established in the statute if calculating actual costs would be unduly burdensome. The gambling commission does not have the resources to conduct a study to determine actual costs and doing so would interfere with other essential functions of the agency, and therefore chooses to adopt the default rates established in statute.

Reasons Supporting Proposal: The gambling commission received over one hundred sixty public records requests in 2019 and rule making is needed to address the growing costs associated with requests consistent with the default rates established by the legislature in RCW 42.56.120.

Statutory Authority for Adoption: RCW 9.46.070, 42.56.120.

Statute Being Implemented: RCW 9.46.070.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Brian Considine, Attorney, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3469; Implementation: David Trujillo, Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3512; and Enforcement: Tina Griffin, Assistant Director, 4565 7th Avenue S.E., Lacey, WA 98503, 360-486-3546.

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 per 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 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 state-wide 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; 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.

May 18, 2020
Ashlie Laydon
Rules Coordinator

NEW SECTION**WAC 230-21-016 Costs of providing public records.**

- (1) There is no fee for the inspection of public records.
- (2) Pursuant to RCW 42.56.120(2), we are not calculating all actual costs for copying records because to do so would be unduly burdensome for the following reasons:
- (a) We do not have the resources to conduct a study to determine actual copying costs for all of our records; and
- (b) To conduct such a study would interfere with other essential agency functions; and
- (c) 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) We may charge fees for the production of copies of public records consistent with the fee schedule established in RCW 42.56.120. The fee schedule also is published on our website at www.wsgc.wa.gov and a copy of the fee schedule will be made available at agency headquarters listed in WAC 230-01-005.
- (4) Before copying requested public records, we may require a deposit of up to ten percent of the estimated costs of copying all of the records. We may also require payment of the remainder of the copying costs before providing all of the records, or the payment of the costs of copying an installment before providing the installment.
- (5) We may provide customized electronic access to public records if we estimate 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 us for any other agency purposes. We will charge the actual costs, including staff time, necessary to reimburse our agency for providing customized electronic access services.
- (6) We will not release any requested copies of public records unless and until the requestor has paid all copying and other charges set forth in this section.
- (7) Payment may be made by cash, check, or money order to the Washington state gambling commission. Cash payments must be in the exact amount and delivered to the physical address listed in WAC 230-01-005.
- (8) We may waive fees for providing public records at the discretion of the director or director's designee. This determination will be made on a case-by-case basis.

WSR 20-12-053
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed May 29, 2020, 1:45 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-08-015.

Title of Rule and Other Identifying Information: WAC 181-79A-118 Extension of certificate expiration dates.

Hearing Location(s): On July 16, 2020, at 8 a.m., at Marriott Seattle Airport, SeaTac, 3201 South 176th Street, Seattle, WA 98188.

Date of Intended Adoption: July 16, 2020.

Submit Written Comments to: Professional Educator Standards Board, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, email pesb@k12.wa.us, by 8:00 a.m., July 16, 2020.

Assistance for Persons with Disabilities: Contact Professional Educator Standards Board (PESB), phone 360-725-6275, email pesb@k12.wa.us, by May 29 [June 26], 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This new section would allow for the extension of the expiration date of certain educator certificates expiring June 30, 2020. The certificates would now expire June 30, 2021. Holders of many one year permits would be granted an additional one year permit.

Reasons Supporting Proposal: Because of school closures relating to the current public health situation, it is very challenging for educators to meet the clock hour and assessment requirements for their certificates.

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

Statute Being Implemented: Chapter 28A.410 RCW.

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

Name of Proponent: PESB, governmental.

Name of Agency Personnel Responsible for Drafting: Maren Johnson, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, 360-725-6264; Implementation and Enforcement: PESB, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236.

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

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

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

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

May 22, 2020
Maren Johnson
Rules Coordinator

NEW SECTION

WAC 181-79A-118 Expiration and lapse dates of certificates. (1) Certificates scheduled to expire June 30, 2020, under WAC 181-79A-117, or scheduled to lapse June 30, 2020, under WAC 181-85-100, excluding residency certificates that are subject to reissuance, are scheduled to expire or lapse June 30, 2021.

(2) Certificates scheduled to expire June 30, 2020, under WAC 181-79A-117, or scheduled to lapse June 30, 2020, under WAC 181-85-100, may have already been renewed. For these renewed certificates, the expiration or lapse date will be calculated as if the certificate expiring June 30, 2020, had an expiration or lapse date of June 30, 2021.

(3) Applications for renewal of certificates scheduled to expire June 30, 2021, which were previously scheduled to expire June 30, 2020, may be submitted at any point prior to the June 30, 2021, expiration date.

(4) Limited certificates under WAC 181-79A-231, 181-77-014, and 181-77-081 expire as described in those sections.

(5) Permits under WAC 181-01-001, 181-02-001, 181-79A-128, and 181-79A-224 expire as described in those sections. Permits for candidates eligible under those sections which expired beginning July 1, 2019, and before December 31, 2020, may be reissued once for one additional year.

WSR 20-12-054
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed May 29, 2020, 1:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-08-009.

Title of Rule and Other Identifying Information: WAC 181-78A-100 Existing approved programs.

Hearing Location(s): On July 16, 2020, at 8 a.m., at Marriott Seattle Airport, SeaTac, 3201 South 176th Street, Seattle, WA 98188.

Date of Intended Adoption: July 16, 2020.

Submit Written Comments to: Professional Educator Standards Board, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, email pesb@k12.wa.us, by 8:00 a.m., July 13, 2020.

Assistance for Persons with Disabilities: Contact Professional Educator Standards Board (PESB), phone 360-725-6275, email pesb@k12.wa.us, by May 29 [June 26], 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarifies language and adds program review model for career and technical education (CTE) B&I and CTE administrator programs.

Reasons Supporting Proposal: Currently no model is written in rule for reviewing these programs.

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

Statute Being Implemented: Chapter 28A.410 RCW.

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

Name of Proponent: PESB, governmental.

Name of Agency Personnel Responsible for Drafting: Maren Johnson, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, 360-725-6264; Implementation and Enforcement: PESB, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236.

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

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

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

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

May 22, 2020
Maren Johnson
Rules Coordinator

AMENDATORY SECTION (Amending WSR 18-17-089, filed 8/14/18, effective 9/14/18)

WAC 181-78A-100 Existing approved programs.

Providers of programs approved by the board shall comply with the review process established in this chapter and published by the board.

(1) Teacher and principal preparation programs: The board will annually review performance data of all educator preparation programs based on components and indicators established in this chapter and published by the board. The professional educator standards board will provide annual updated written guidance to providers regarding the submission of annual program data.

(a) Notification: If annual preparation program data analysis indicates that program performance falls below thresholds during any given review period, the board staff will provide written notification to the educator preparation program provider. The educator preparation program provider may choose to submit a response to the board staff. The response must be received by board staff within four weeks following receipt of the notification by the provider. The response should offer evidence of factors and circumstances that explain why program performance is below board approved thresholds on the indicators identified in the notice. The board staff will offer providers guidance on content and timelines for submission of this optional response. The board will review responses concurrently with annual data analysis reports.

(b) Interventions: Providers with program performance below indicator thresholds are subject to graduated levels of intervention as follows:

(i) Intervention 1 - Required self-study report: If a provider that received written notification of performance below threshold on one or more indicators during the previous review period has performance below thresholds on the same indicator(s) during the subsequent review period, the board will send the provider a second notification. The provider must complete a self-study report related to the components and domain(s) identified in both notifications and submit it to the board. The board will give providers written timelines and guidance for the submission of these materials. In the self-study report, the provider may also submit evidence and a description of the provider's performance related to the indicator(s), components, and domains identified in the notifications. If the board is satisfied with the self-study report, the board will approve it (~~(on the consent agenda of the)~~) at a board meeting (~~(following submission)~~). If the board is not satisfied with the self-study report, staff will give providers additional written timelines and guidance to address the board's concerns.

(ii) Intervention 2 - Formal review: If a provider demonstrates performance below thresholds for a third successive

review period or more, the professional educator standards board will provide a third notification. Based on its discretion and authorized by a vote, the board also may require a formal review related to the provider's performance in the domains of practice identified in the notifications. Prior to commencing a formal review, the board will consider the notifications, responses, and self-study report to determine whether to proceed with or postpone a formal review.

(A) The formal review will incorporate the following elements:

(I) The board shall determine the schedule for formal reviews and whether an on-site visit or other forms of documentation and validation will be used to evaluate programs under program approval standards.

(II) The provider will submit requested evidence to the board staff.

(III) A review team, including at least one member of the board, will review the evidence. The review team may request additional information including information provided through interviews with provider staff or affiliates as needed.

(IV) The review team will provide a report to the board identifying areas of practice associated with the previous notifications where the provider is out of compliance with educator preparation program requirements established in WAC 181-78A-300 and the educator preparation program expectations and outcomes established in WAC 181-78A-220. The review team may also identify areas of practice where the provider is out of compliance with educator preparation program requirements that were not associated with previous notifications but were noticed by the review team during the process of review. The report may also identify whether the approved indicators or thresholds are functioning as intended.

(V) Board staff serving on the review team will provide assistance to the review team during the review process but will not serve in an evaluative role.

(VI) The review team will submit its report and other appropriate documentation to the provider and the board within one year of the board designating the program for formal review.

(VII) The board may extend the length of the one-year period for submission of the review team's report up to two years at its discretion.

(B) Providers may submit a reply to the review team report within two weeks following receipt of the report. The reply is to focus on the evidence, conclusions, and recommendations in the report but also may include additional evidence of factors and circumstances that explain why program performance is persistently below board approved thresholds on the indicators identified in the notice and self-study report. The board shall publish the process for submitting and reviewing the reply.

(C) In considering the review team's report, the board may request additional information or review, or take action to extend, or change the program's approval status per the provisions of WAC 181-78A-110.

(c) A provider may request a hearing in instances where it disagrees with the board's decision to extend or change the program's approval status. (~~This request must be made~~

~~within twenty days from the decision date.~~) The hearing will be conducted through the office of administrative hearings by an administrative law judge per chapter 34.05 RCW and will adhere to the process of brief adjudicated hearings. The provider seeking a hearing will provide a written request to the professional educator standards board in accordance with WAC 10-08-035 no more than thirty calendar days from the decision date.

(d) The board will publish a schedule for its review of the domains, components, indicators and thresholds. This review will occur at least every five years and not more frequently than every two years.

(2) Superintendent programs: The board will annually review data related to the performance of all superintendent programs according to data reporting guidance published by the board.

(a) Annual data analysis: After each annual review period, the board will give superintendent program providers written analysis of the program's annual data submission.

(b) Superintendent program review: The professional educator standards board shall determine the schedule for formal reviews and whether an on-site visit or other forms of documentation and validation shall be used for evaluation.

(i) Superintendent program reviews will be conducted at least every five years and not more frequently than every three years.

(ii) Superintendent program providers will submit requested evidence to the staff of the professional educator standards board.

(iii) A review team, including at least one member of the professional educator standards board, will review the evidence and request additional information including information provided through interviews with provider staff or affiliates as needed. One board staff member will serve on the review team to provide assistance to the review team during the review process but will not serve in an evaluative role. Additional members of the review team shall include at least one (~~K-12~~) P-12 practitioner with expertise related to the program scheduled for review and two individuals with expertise related to the domains of practice identified in annual written analyses.

(iv) One of the two providers with peer representatives on the review team will be scheduled for annual review during the subsequent review period.

(v) At least three months in advance of scheduled review, superintendent program providers must complete a self-study report related to the components and domain(s) identified in the written analyses of annual data submissions. The board will give providers written timelines and guidance for the submission of these materials. In the self-study report, the provider may also provide evidence and a description of the provider's performance related to the indicator(s), components, and domains identified in the notifications. Evidence shall include such data and information from the annual data submissions required per WAC 181-78A-255(2) as have been designated by the board as evidence pertinent to the program approval process.

(c) Following the review, the review team will provide a report identifying any areas where the program is out of compliance with requirements established in WAC 181-78A-300

and the program expectations and outcomes established in WAC 181-78A-220.

(i) The report may also verify or contradict that the approved indicators or thresholds are functioning as intended.

(ii) The board may extend the length of the one-year report period up to two years at its discretion. The review team's report and other appropriate documentation will be submitted to the provider and the board within one year of the board designating the program for formal review.

(iii) Providers may submit a reply to the review team report within two weeks following receipt of the report. The reply is limited to evidence that the review disregarded state standards, failed to follow state procedures for review, or failed to consider evidence that was available at the time of the review. The board shall publish the process for submitting and reviewing the reply.

(iv) In considering the review team's report, the board may request additional information or review, or take action to extend or change the educator preparation program's approval status per the provisions of WAC 181-78A-110.

(d) A provider may request a hearing in instances where it disagrees with the professional educator standards board's decision ~~(- This request must be made within twenty days from the decision date)~~ to extend or change the program's approval status. The hearing will be conducted through the office of administrative hearings by an administrative law judge per chapter 34.05 RCW and will adhere to the process of brief, adjudicated hearings. The provider seeking a hearing will provide a written request to the board in accordance with WAC 10-08-035 no more than thirty calendar days from the decision date.

(3) Program administrator programs: The board will annually review data related to the performance of all program administrator programs according to data and reporting guidelines published by the board.

(a) Program administrator programs implemented in conjunction with principal preparation programs will be reviewed concurrently with that provider's principal preparation program.

(b) Program administrator programs implemented in conjunction with superintendent preparation programs will be reviewed concurrently with that provider's superintendent preparation program.

(4) School counseling programs. ~~((The board will approve school counseling programs upon receiving notification of the program's approval from the council for the accreditation for counseling and related education programs.))~~ School counseling program providers shall comply with accrediting procedures for council for the accreditation for counseling and related education programs, unless the program has been specifically approved to operate under alternative national standards per WAC 181-78A-225.

(a) A provider of residency school counseling programs without approval from council for the accreditation for counseling and related education programs shall provide proof to the professional educator standards board ~~((before November 1, 2018.))~~ that it will seek such accreditation ~~((The board will place any existing school counseling program that does not receive council for the accreditation for counseling and~~

~~related education programs accreditation before November 1, 2022, into disapproval status)), unless the program has been specifically approved to operate under alternative national standards per WAC 181-78A-225.~~

(b) The board will place any existing approved residency school counseling program not accredited from the council for the accreditation for counseling and related education programs into disapproval status on November 1, 2022, unless the program provider produces evidence of seeking such accreditation, or unless that program has been specifically approved to operate under alternative national standards per WAC 181-78A-225.

~~((e) Providers of existing residency school counseling programs without accreditation from the council for the accreditation for counseling and related education programs may continue providing courses and field experience that lead to the residency school counselor certificate if the candidates in their programs pass a licensure exam and complete a Master's degree in any area of counseling from a CACREP-accredited program with at least forty-eight semester or seventy-two quarter hours of graduate-level academic credit covering at the minimum the following six content areas:-~~

~~(i) Appraisal of individuals;~~

~~(ii) Group counseling;~~

~~(iii) Cultural diversity in counseling;~~

~~(iv) Career development;~~

~~(v) Fundamentals of school counseling;~~

~~(vi) Practicum/internship: Candidates complete a supervised internship in a school-based setting that includes a minimum of four hundred hours of on-the-job professional service and one hour per week of individual supervision provided by a mentor.))~~

(5) School psychology programs. Providers of school psychology programs shall comply with accrediting procedures for the National Association for School Psychology. ~~((Approval from the professional educator standards board will be based upon the program receiving approval from))~~ School psychology program providers shall comply with accrediting procedures for the National Association for School Psychology, unless the program has been specifically approved to operate under alternative national standards per WAC 181-78A-225.

(a) A provider of school psychology programs without approval from the National Association for School Psychology shall provide proof to the professional educator standards board that it will seek such accreditation, unless the program has been specifically approved to operate under alternative national standards per WAC 181-78A-225.

(b) The board will place any existing approved school psychology program not accredited from the National Association of School Psychology into disapproval status on November 1, 2022, unless the program provider produces evidence of seeking such accreditation, or unless that program has been specifically approved to operate under alternative national standards per WAC 181-78A-225.

(6) Career and technical education administrator and business and industry route educator preparation programs: The board will annually review data related to the performance of all such programs according to data reporting guidance published by the board.

(a) Annual data analysis: After each annual review period, the board will give career and technical education administrator and business and industry route educator preparation program providers written analysis of the program's annual data submission.

(b) Career and technical education administrator and business and industry route educator preparation program review: The board shall determine the schedule, format, and which forms of documentation and validation shall be used to evaluate programs.

(i) Career and technical education administrator and business and industry route educator preparation program reviews will be conducted at least every five years and not more frequently than every three years.

(ii) At least three months in advance of their scheduled review, career and technical education administrator and business and industry route educator preparation program providers must complete a self-study report related to the components and domain(s) identified in the written analyses of annual data submissions. The board will give providers written timelines and guidance for the submission of these materials.

(iii) Career and technical education administrator and business and industry route educator preparation program providers will submit requested evidence to the staff of the professional educator standards board. Evidence shall include such data and information from the annual data submissions required per WAC 181-78A-235(3) as have been designated by the board as evidence pertinent to the program approval and review processes.

(iv) A review team will review the evidence and request additional information including information provided through documents and interviews with program provider staff or affiliates as needed. One board staff member will serve as chair on the review team during the review process but will not serve in an evaluative role. Additional members of the review team shall include one member of the program's professional educator advisory board, one P-12 practitioner with expertise in career and technical education related to the program scheduled for review, and two representatives of peer programs. Any two of these review team members, or two additional members, must be identified individuals with expertise related to the domains of practice and standard components identified in annual written program feedback analyses or in the program's self-study report. One of the two providers with peer representatives on the review team will be scheduled for the subsequent program review.

(v) The review team will use multiple data sources to address the specific goals listed in this section.

(A) The review team and the preparation program provider will use the self-study report to identify program provider's goals and strategies for improvement.

(B) The review team and the preparation program provider will use preparation program data available at the time of review.

(C) The review team and the preparation program provider will use evidence compiled by the provider that demonstrates performance aligned with all program standards and requirements. Staff of the board will offer program providers

guidance regarding the evidence required, how it may be gathered and used, and how it must be submitted.

(vi) The review team will use available evidence to write the review report that will be used by the board in consideration of continued approval status.

(c) Following the review, the review team will provide a report identifying any areas of practice in which program performance is out of alignment with standards and requirements.

(i) The review team's report and other appropriate documentation will be submitted to the provider and the board within six months of the formal review.

(ii) Providers may submit a reply to the review team report within three weeks following receipt of the report. The board shall publish the process for submitting and reviewing the reply.

(iii) In considering the review team's report, the board may request additional information for review, or take action to extend or change the educator preparation program's approval status.

(iv) Based upon the review team's report, the program provider's response, and any subsequent requests for information, as applicable, the board shall take one of the following actions:

(A) The board shall give full approval as described in WAC 181-78A-110 (1)(a).

(B) Limited approval as described in WAC 181-78A-110 (1)(b).

(C) Disapproval as described in WAC 181-78A-110 (1)(c).

(v) A provider may request a hearing in instances where it disagrees with the board's decision to extend or change the program's approval status. The hearing will be conducted through the office of administrative hearings by an administrative law judge per chapter 34.05 RCW and will adhere to the process of brief adjudicated hearings. The provider seeking a hearing will provide a written request to the professional educator standards board in accordance with WAC 10-08-035 no more than thirty calendar days from the decision date.

WSR 20-12-055

PROPOSED RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed May 29, 2020, 1:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-08-013.

Title of Rule and Other Identifying Information: WAC 181-79A-228 Emergency teacher certificates.

Hearing Location(s): On July 16, 2020, at 8 a.m., at Marriott Seattle Airport, SeaTac, 3201 South 176th Street, Seattle, WA 98188.

Date of Intended Adoption: July 16, 2020.

Submit Written Comments to: Professional Educator Standards Board, P.O. Box 47236, 600 Washington Street

S.E., Olympia, WA 98504-7236, email pesb@k12.wa.us, by 8:00 a.m., July 13, 2020.

Assistance for Persons with Disabilities: Contact Professional Educator Standards Board (PESB), phone 360-725-6275, email pesb@k12.wa.us, by May 29 [June 26], 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Washington state approved teacher preparation programs may recommend candidates for an emergency certificate if they have met all program completion requirements with the exception of one or more of the assessment requirements.

Reasons Supporting Proposal: Testing centers are now closed due to public health reasons, and it is very challenging to complete the assessments. This allows individuals to serve in the role of teacher for one year, allowing them to complete their assessment requirements.

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

Statute Being Implemented: Chapter 28A.410 RCW.

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

Name of Proponent: PESB, governmental.

Name of Agency Personnel Responsible for Drafting: Maren Johnson, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, 360-725-6264; Implementation and Enforcement: PESB, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236.

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

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

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

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

May 26, 2020
Maren Johnson
Rules Coordinator

NEW SECTION

WAC 181-79A-228 Emergency teacher certificates.

Emergency teacher certificates, valid for one year, may be issued by the superintendent of public instruction under the following conditions:

(1) A teacher preparation program approved by the professional educator standards board has recommended the candidate as having met all requirements for program completion with the exception of one or more of the following:

(a) The performance assessment as described in WAC 181-78A-232 and 181-78A-300;

(b) The content knowledge assessment as described in WAC 181-78A-300 (2)(b); and

(c) The basic skills assessment as described in WAC 181-78A-232 and 181-78A-300.

(2) During the validity period of the certificate, preparation program providers are required to inform, advise, and

support applicants on assessment requirements as described in WAC 181-78A-231(3).

(3) Teacher preparation programs may recommend candidates for an emergency certificate under this section through June 30, 2021.

(4) One additional one-year emergency certificate may be issued upon recommendation by the preparation program provider. Teacher preparation programs may recommend candidates for this additional one-year emergency certificate through December 31, 2021.

WSR 20-12-056

PROPOSED RULES

PROFESSIONAL EDUCATOR STANDARDS BOARD

[Filed May 29, 2020, 1:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-08-014.

Title of Rule and Other Identifying Information: WAC 181-78A-027 Waivers of clinical practice and coursework.

Hearing Location(s): On July 16, 2020, at 8 a.m., at Marriott Seattle Airport, SeaTac, 3201 South 176th Street, Seattle, WA 98188.

Date of Intended Adoption: July 16, 2020.

Submit Written Comments to: Professional Educator Standards Board, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, email pesb@k12.wa.us, by 8:00 a.m., July 13, 2020.

Assistance for Persons with Disabilities: Contact Professional Educator Standards Board (PESB), phone 360-725-6275, email pesb@k12.wa.us, by May 29 [June 26], 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Allows approved preparation program providers to review a candidate's learning and experience, and then waive or reduce the requisite clinical practice and coursework if they determine the candidate has the required knowledge and skills.

Reasons Supporting Proposal: Schools have closed due to public health concerns, making it very challenging to complete clinical practice and coursework.

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

Statute Being Implemented: Chapter 28A.410 RCW.

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

Name of Proponent: PESB, governmental.

Name of Agency Personnel Responsible for Drafting: Maren Johnson, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, 360-725-6264; Implementation and Enforcement: PESB, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236.

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

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

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

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

May 26, 2020
Maren Johnson
Rules Coordinator

NEW SECTION

WAC 181-78A-027 Waiver of clinical practice and course work by a preparation program provider. (1)

Based on review of current educational settings, and review of a candidate's previous course work, field experiences, work experiences, and alternative learning experiences, an educator preparation program provider may waive or reduce in length the required clinical practice, and/or waive required course work, if based on the review the provider determines that the candidate has the knowledge and skills to be otherwise gained from the required clinical practice or course work.

(2) Under this section, educator preparation program providers may waive or reduce in length the required clinical practice and/or course work through June 30, 2021.

**WSR 20-12-057
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD**

[Filed May 29, 2020, 1:57 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-08-017.

Title of Rule and Other Identifying Information: WAC 181-82-110 School district response and support for non-matched endorsements to course assignment of teachers.

Hearing Location(s): On July 16, 2020, at 8 a.m., at Marriott Seattle Airport, SeaTac, 3201 South 176th Street, Seattle, WA 98188.

Date of Intended Adoption: July 16, 2020.

Submit Written Comments to: Professional Educator Standards Board, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, email pesb@k12.wa.us, by July 13, 2020.

Assistance for Persons with Disabilities: Contact Professional Educator Standards Board (PESB), phone 360-725-6275, email pesb@k12.wa.us, by May 29 [June 26], 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Allow clock hours or credits to meet requirements for special education preendorsement waivers.

Reasons Supporting Proposal: Washington state approved endorsement programs may issue clock hours or credits, making it necessary to accept either one for preendorsement waivers.

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

Statute Being Implemented: Chapter 28A.410 RCW.

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

Name of Proponent: PESB, governmental.

Name of Agency Personnel Responsible for Drafting: Maren Johnson, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, 360-725-6264; Implementation and Enforcement: PESB, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236.

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

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

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

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

May 26, 2020
Maren Johnson
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-20-051, filed 9/25/14, effective 10/26/14)

WAC 181-82-110 School district response and support for nonmatched endorsements to course assignment of teachers. (1)

Individuals with initial, residency, endorsed continuing, ~~((or))~~ professional, or emergency teacher certificates who are employed with a school district under RCW 28A.405.210 may be assigned to classes other than in their areas of endorsement. If teachers are so assigned, the following shall apply:

~~((1))~~ (a) A designated representative of the district and any such teacher so assigned shall mutually develop a written plan which provides for necessary assistance to the teacher, and which provides for a reasonable amount of planning and study time associated specifically with the out-of-endorsement assignment;

~~((2))~~ Such teachers shall not be subject to nonrenewal or probation based on evaluations of their teaching effectiveness in the out-of-endorsement assignments;

~~((3))~~ (b) Such teaching assignments shall be approved by a formal vote of the local school board for each teacher so assigned;

~~((4))~~.

(2) Special education preendorsement waiver:

(a) A teacher who has completed ~~((twenty-four quarter credit hours (sixteen semester credit hours)))~~ two hundred forty continuing education credit hours under WAC 181-85-030 of course work applicable to a special education endorsement shall be eligible for a preendorsement waiver from the special education office per chapter 392-172A WAC which will allow that person to be employed as a special education teacher.

(b) All remaining requirements for special education endorsement shall be completed within five years.

(3) Such teachers shall not be subject to nonrenewal or probation based on evaluations of their teaching effectiveness in the out-of-endorsement assignments under this section.

WSR 20-12-059
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed May 29, 2020, 2:01 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-08-016.

Title of Rule and Other Identifying Information: WAC 181-85-045 Approved in-service education agency—Definition.

Hearing Location(s): On July 16, 2020, at 8 a.m., at Marriott Seattle Airport, SeaTac, 3201 South 176th Street, Seattle, WA 98188.

Date of Intended Adoption: July 16, 2020.

Submit Written Comments to: Professional Educator Standards Board, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, email pesb@k12.wa.us, by 8:00 a.m., July 13, 2020.

Assistance for Persons with Disabilities: Contact Professional Educator Standards Board (PESB), phone 360-725-6275, email pesb@k12.wa.us, by May 29 [June 26], 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Allows all state approved educator preparation programs to be eligible to serve as clock hour providers.

Reasons Supporting Proposal: This rule would allow approved preparation programs who are not able to issue credits to issue clock hours.

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

Statute Being Implemented: Chapter 28A.410 RCW.

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

Name of Proponent: PESB, governmental.

Name of Agency Personnel Responsible for Drafting: Maren Johnson, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, 360-725-6264; Implementation and Enforcement: PESB, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236.

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

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

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

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

May 26, 2020
Maren Johnson
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-15-143, filed 7/24/19, effective 8/24/19)

WAC 181-85-045 Approved in-service education agency—Definition. As used in this chapter, the term "approved in-service education agency" shall mean an agency approved by the professional educator standards board to provide in-service education programs and to grant continuing education credit hours to all or a selective group of educators. Such agency must demonstrate the following characteristics:

(1) The agency is one of the following entities or a department or section within such entities:

(a) A college or university referenced in WAC 181-85-025(1);

(b)(i) An organization which for the purpose of this chapter shall mean any local, state, regional, or national organization which offers in-service education programs to teachers, administrators, ~~((and/or))~~ educational staff associates, or paraeducators. These organizations must be nonprofit or not-for-profit organizations;

(ii) Organizations shall provide documentation of their nonprofit or not-for-profit status to the superintendent of public instruction as part of their annual assurances of compliance with program and recordkeeping standards under WAC 181-85-210.

(c) A school district, an educational service district, the superintendent of public instruction, or any local, state, or federal agency; ~~((or))~~

(d) An approved private school which for the purpose of this chapter shall mean the same as provided in WAC 180-90-112; or

(e) An educator preparation program provider approved under chapter 181-78A or 181-77A WAC by the professional educator standards board.

(2) The in-service education agency has either a committee or board of directors that provide prior approval to proposed in-service education programs on the basis that the proposed programs are designed to meet the program standards set forth in WAC 181-85-200, and the content standards in WAC 181-85-202.

The committee will be composed of individuals who may include teachers, educational staff associates, administrators, paraeducators, community members, or representatives from colleges and universities.

WSR 20-12-067
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed June 1, 2020, 9:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-08-012.

Title of Rule and Other Identifying Information: WAC 181-78A-340 Pilot of multiple measures for the teacher performance assessment.

Hearing Location(s): On July 16, 2020, at 8 a.m., at Marriott Seattle Airport, SeaTac, 3201 South 176th Street, Seattle, WA 98188.

Date of Intended Adoption: July 16, 2020.

Submit Written Comments to: Professional Educator Standards Board, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, email pesb@k12.wa.us.

Assistance for Persons with Disabilities: Contact Professional Educator Standards Board (PESB), phone 360-725-6275, email pesb@k12.wa.us, by May 29 [June 26], 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Create a multiple measures pilot for educator preparation program candidates to meet the teacher performance assessment requirement.

Reasons Supporting Proposal: This proposal would allow a pilot of ideas from an educator assessment stakeholder workgroup.

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

Statute Being Implemented: Chapter 28A.410 RCW.

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

Name of Proponent: PESB, governmental.

Name of Agency Personnel Responsible for Drafting: Maren Johnson, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236, 360-725-6264; Implementation and Enforcement: PESB, P.O. Box 47236, 600 Washington Street S.E., Olympia, WA 98504-7236.

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

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

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

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

May 29, 2020
Maren Johnson
Rules Coordinator

NEW SECTION

WAC 181-78A-340 Pilot of multiple measures for the teacher performance assessment. (1) Preparation program providers approved in the endorsement areas designated by the professional educator standards board must ensure that their teacher candidates achieve the multiple measures pilot passing score set by the board for the teacher performance assessment.

(2) Candidates who achieve this pilot passing score, but do not achieve the score otherwise set by the board, may be recommended for certification if upon review of one or more multiple measures, the program provider determines the candidate has demonstrated the requisite knowledge and skills.

(3) Preparation program providers may use one or more of the following multiple measures as the basis for their review:

(a) Observation of practice in the role as documented by the mentor teacher or the preparation program provider;

(b) Evidence submitted by the candidate to the program provider in the areas of planning, instruction, or student assessment;

(c) Coursework; or

(d) Other measures as determined by the program provider.

(4) Program providers may recommend a candidate for certification if they determine the candidate has the requisite knowledge and skills, and the candidate has met all other requirements for program completion. Candidates may be recommended under this section until a date as determined by the professional educator standards board.

(5) Preparation programs in the indicated endorsement areas may choose to not participate in this pilot, and require the passing score otherwise set by the board.

(6) Preparation program providers participating in this pilot must report requested data to the professional educator standards board by the dates set by the professional educator standards board.

WSR 20-12-068

PROPOSED RULES

HEALTH CARE AUTHORITY

[Filed June 1, 2020, 10:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-03-094.

Title of Rule and Other Identifying Information: WAC 182-543-3200 Covered—Positioning devices.

Hearing Location(s): On July 7, 2020, at 10:00 a.m.

As more counties move into phase 2 of the Governor's Safe Start plan, it is yet unknown whether by the date of this public hearing restrictions of meeting in public places will be eased. Therefore, this hearing is being held virtually only. This will not be an in-person hearing and there is not a physical location available.

You must register for the public hearing on July 7, 2020, 10:00 a.m. PDT at <https://attendee.gotowebinar.com/register/6524253916898902542>.

After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: Not sooner than July 8, 2020.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 42716, Olympia, WA 98504-2716, email arc@hca.wa.gov, fax 360-586-9727, by July 7, 2020.

Assistance for Persons with Disabilities: Contact Amber Lougheed, phone 360-725-1349, fax 360-586-9727, telecommunication[s] relay services 711, email amber.lougheed@hca.wa.gov, by June 26, 2020.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is repealing this section. The agency will evaluate requests for standing frames using the process found in WAC 182-501-0165, which allows for an individualized medical necessity

review. Prior authorization is required to complete this process.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, 46.61.687.

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 (HCA), governmental.

Name of Agency Personnel Responsible for Drafting: Michael Williams, P.O. Box 42716, Olympia, WA 98504-2716, 360-725-1346; Implementation and Enforcement: Erin Mayo, P.O. Box 45506, Olympia, WA 98504-2716, 360-725-1729.

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 proposed rule is a repeal and does not impose any costs on businesses.

June 1, 2020
Wendy Barcus
Rules Coordinator

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-543-3200 Covered—Positioning devices.