

As required by
The Washington State Administrative Procedure Act
Chapter 34.05 RCW

A CONCISE EXPLANATORY STATEMENT

Relating to adoption of new
Chapter 200-380 WAC, Managed Print
May 11, 2015

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1. Reason for Rule Adoption

Background

RCW 43.19.742 requires the Department of Enterprise Services (DES) to put in place rules and guidelines for use by state agencies in managing their printing operations. Print operations include agency-based printing and print jobs that require the services of a print shop.

These rules are needed to assist state agencies when implementing managed print strategies to track, manage, and reduce agency-based printing.

Consideration and Response Summary

On August 6, 2014, DES filed [proposed rules](#) under [WSR 14-16-122](#). Consistent with the requirements of RCW 34.05, we received public comments from August 20, 2014 through September 17, 2014. Comments were received via: letter, the agency rule-making web site, written submissions sent by email. No oral comments were received at the public hearing. All written comments opposed the proposed rule and [draft guidelines](#).

After considering the comments, the department determined that changes were needed to the proposed rule. Further, it was anticipated that these changes would result in substantial variance from the proposed rule. Because of this, DES scheduled a series of work sessions in order to revise the proposed rules together with interested stakeholders.

Throughout the work sessions, representatives of the small business community, state agencies (including DES), print service providers, and print equipment manufacturers all worked together and collectively rewrote the proposed rules and the associated guidelines. The [associated guidelines](#) were adopted on December 5, 2014.

On December 3, 2014, DES filed a [supplemental notice](#) along with the [revised proposed rules](#).

The public comment period was reopened and an additional public hearing was held on January 6, 2015. The public comment period closed on January 9, 2015. Comments were received via: letter, the agency rule-making web site, written submissions sent by email and [oral testimony](#) at the public hearing. No opposing comments were received.

DES's effort and thoughtful incorporation of input from a diverse group of stakeholders are reflected in the adopted rules. We would like to thank our many stakeholders who contributed to this process and without whose help this undertaking would not have been possible.

2. Summary of Comments Received on the Proposed Rule Filed on August 6, 2014 as WSR 14-16-122

The following table lists the stakeholders that submitted comments and their stated position on the [proposed rules](#) filed on August 6, 2014 as [WSR 14-16-122](#).

Stakeholder	Stated Position
Bean, Gentry, Wheeler & Peternell, PLLC on behalf of Capital Business Machines	Oppose
Charles D. Grass, CPA EA ATA ATP	Oppose
Gary Smith Executive Director Independent Business Association	Oppose
Don Hartman Capital Business Machines Government Accounts	Oppose
James L. King, Jr. on behalf of clients including the Washington State HVACR Association	Oppose
Patrick Conner Washington State Director National Federation of Independent Business	Oppose

General Comments

DES received a number of comments:

- That did not cite a specific section or provision of the proposed rules;
- Opposing the rule yet providing no specific reason for opposition.

These comments are listed under this section.

Stakeholder	General Comments	Response
Don Hartman Capital Business Machines Government Accounts	<p>1. On the frequently asked questions section of Print Management on the DES website dated 20-June-2014 question 4 states;</p> <p>4. Is an agency required to achieve savings with an MPS work Contract?</p> <p>Answer: No. However, transition from an MFD work contract to the MPS work contract should result in savings compared to the agency's prior MFD work contract. See Print</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p><i>Regarding Question 4 of the FAQ:</i></p> <p>FAQ Question 4 speaks to statutory requirements under RCW 43.19.733 and is not within the scope of rulemaking requirements under RCW 43.19.742.</p> <p>Any concerns regarding legislation need to be addressed through the legislative</p>

Stakeholder	General Comments	Response
	<p>Management Guidelines #5.</p> <p>The No answer is somewhat confusing since MPS was sold to the legislature using Performance Audit # 1004989 stating that if MPS was implemented in the state it would save Millions. If DES doesn't feel it needs to save money for the taxpayers then why are they going to force agencies to do it? Why have the Print Management Guidelines not been released to the public prior to attempting to get the rules adopted? If you look at DES's Strategic Framework under Values (see attached strategic framework document) in the section on Openness DES states "We listen and communicate to promote understanding, transparency, and trust." Perhaps there is a little work needed to get this section implemented.</p>	<p>process.</p> <p><i>Regarding release of the Print Management Guidelines before rule adoption:</i></p> <p>DES restarted the rule making guideline development process and substantially revised both the rules and the guidelines.</p> <p>The revised guidelines were adopted and distributed to all stakeholders, including CBM on December 5, 2014. This was done in advance of rule adoption.</p>
<p>Don Hartman Capital Business Machines Government Accounts</p>	<p>3. The following statement was taken from a settlement agreement between Capital Business Machines and DES</p> <p>SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS</p> <p>Capital Business Machines, Inc. v. State of Washington, et al.</p> <p>Thurston County Superior Court, Cause No. 13-2-01209-7</p> <p>Further, DES will not make statements discouraging state agencies from doing business with CBM.</p> <p>How can it be right for a cabinet level agency to go after a small business in the State of Washington. Just because the small business wants said agency to make rules,</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>Under RCW 43.19.742, DES is required to establish rules and guidelines for all agencies to use in managing their printing operations.</p> <p>No relationship exists between the rulemaking scope as laid out in RCW 43.19.742 and the referenced settlement agreement.</p> <p>No changes were made based on these comments.</p>

Stakeholder	General Comments	Response
	<p>and thorough rules, not after the fact guidelines that cannot be challenged before approving the expenditure of taxpayers money?</p> <p>There used to be a give and take between the vendor community and DES or GA staff, a mutual respect if you will, but those days are passed. I have no animosity against DES staff, and I do not want all the business as I could not handle it. Capital Business Machines has been around for 62 plus years for a reason because we take care of the customer and we want the best for them, they will be with us for decades. So as taxpayers we want the best for our customers in the private sector as well as state agencies.</p>	

Determining Savings relative to WAC 200-380-030(2)

Stakeholder	Comments	
<p>Don Hartman</p> <p>Capital Business Machines</p> <p>Government Accounts</p>	<p>1. WAC 200-380-030(2)states;</p> <p>(2) Agencies shall implement such strategies based on the successes of implementation of existing print management programs in state agencies.</p> <p>The entire MPS push within state government in the State of Washington was brought about by the State Printer as a way to generate revenue for an agency that was in financial trouble. The Printer's office implemented the first MPS program at the Department of Ecology (the Success referred to in (2) above) The savings from Ecology were used as an example of what could be accomplished if MPS as</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>The proposed WAC 200-380-030(2) mirrors and is consistent with the requirements of state agencies as laid out under RCW 43.19.742.</p> <p>Any changes to legislation need to be addressed through the legislative process.</p> <p><i>Regarding WAC 200-380-030(2):</i></p> <p>It was determined that WAC 200-380-030 was redundant to RCW 43.19.733 and was removed when the rulemaking was restarted under WSR 14-16-124.</p> <p>No other changes were made based on</p>

	<p>Ecology had implemented was effected statewide. However if you look at the second attachment from Performance Audit #1004989 the State Auditor's office states "we did not verify the accuracy of the information provided." If the data is not verified it does not qualify as conforming to the Yellow Book of Accounting and in turn does not qualify as a Performance Audit. I contacted Chuck Pfeil and Larisa Benson at the Auditor's Office concerning the following:</p> <p>Chapter 7 is entitled Reporting Standards for Performance Audits</p> <p>Introduction</p> <p>7.01 This chapter contains reporting requirements and guidance for performance audits conducted in accordance with generally accepted government auditing standards (GAGAS). The purpose of reporting requirements is to establish the overall approach for auditors to apply in communicating the results of the performance audit. The reporting requirements for performance audits relate to the form of the report, the report contents, and report issuance and distribution.161</p> <p>7.02 For performance audits conducted in accordance with GAGAS, the requirements and guidance in chapters 1 through 3, 6, and 7 apply.</p> <p>This comes from Chapter 6 (with my highlights):</p> <p>6.57 The concept of sufficient, appropriate evidence is integral to an audit. Appropriateness is the measure of the quality of evidence that encompasses its relevance, validity, and reliability in providing</p>	<p>these comments.</p>
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support for findings and conclusions related to the audit objectives.¹⁴⁸ In assessing the overall appropriateness of evidence, auditors should assess whether the evidence is relevant, **valid, and reliable**. Sufficiency is a measure of the quantity of evidence used to support the findings and conclusions related to the audit objectives. In assessing the sufficiency of evidence, auditors should determine whether enough evidence has been obtained to persuade a knowledgeable person that the findings are reasonable.

6.58 In assessing evidence, auditors should evaluate whether the evidence taken as a whole is sufficient and appropriate for addressing the audit objectives and supporting findings and conclusions. Audit objectives may vary widely, as may the level of work necessary to **assess the sufficiency and appropriateness of evidence to address the objectives**. For example, in establishing the appropriateness of evidence, auditors may test its **reliability by obtaining supporting evidence, using statistical testing, or obtaining corroborating evidence**.

The concepts of audit risk and significance assist auditors with evaluating the audit evidence.¹⁴⁹

b. Validity refers to the extent to which evidence is a meaningful or reasonable basis for measuring what is being evaluated. In other words, validity refers to the extent to which evidence represents what it is purported to represent.

This is interesting ... This is what SAO needs to do once they realize the Managed Print Performance Audit did not meet Yellow Book

Standards

7.07 If, after the report is issued, the auditors discover that they did not have sufficient, appropriate evidence to support the reported findings or conclusions, they should communicate in the same manner as that used to originally distribute the report to those charged with governance, the appropriate officials of the audited entity, the appropriate officials of the organizations requiring or arranging for the audits, and other known users, so that they do not continue to rely on the findings or conclusions that were not supported. If the report was previously posted to the auditors' publicly accessible website, the auditors should remove the report and post a public notification that the report was removed. The auditors should then determine whether to conduct additional audit work necessary to reissue the report, including any revised findings or conclusions or repost the original report if the additional audit work does not result in a change in findings or conclusions. Are the citizens able to hold anyone accountable within State government? Nothing happened.

I also contacted the Department of Ecology and the state Printer's office through a Public Records request asking for how it was determined that money was saved at Ecology. A before and after financial comparison, neither agency could provide that information.

MPS Providers have a tool in their proposal maker that **ESTIMATES** what the savings will be. The **ESTIMATE** can be adjusted up or down at the vendors discretion. The

	<p>only way to determine real savings is if a thorough (time consuming task for the agencies) assessment with real agency data is compiled. Without that step being accomplished all there are for savings is a guess.</p>	
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Adopting Guidelines in lieu of Rules circumvents the APA

Stakeholder	Comments	
<p>Charles D. Grass, CPA EA ATA ATP</p>	<p>Guidelines are not rules and are not required to be adopted or cataloged in accordance with the state's Administrative Procedures Act. As an accountant and tax preparer I know the extreme importance of having the regulations for federal income taxes adopted via the Federal Administrative Procedures Act and accessible via the code of federal regulations.</p> <p>I most adamantly object to the adoption of WSR 14-16-122 as proposed for the reasons stated above and as stated by the Independent Business Association.</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>State law under RCW 43.19.742 requires DES to "establish rules and guidelines for all agencies to use in managing their printing operations."</p> <p>RCW 43.19.742 makes no distinction between required rule content and required guideline content.</p> <p>No changes were made based on these comments.</p>
<p>Charles D. Grass, CPA EA ATA ATP</p>	<p>I am opposing WSR 14-16-122 that proposes to adopt WAC 380-200-010 through 030 which calls for the policies and procedures of implementing "print management" by state agencies in accordance with guidelines adopted by the Department of Enterprise Services.</p> <p>I fully support the comments provided by the Independent Business Association with respect to opposing the adoption of WSR 14-16-122.</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>State law under RCW 43.19.742 requires DES to "establish rules and guidelines for all agencies to use in managing their printing operations."</p> <p>RCW 43.19.742 makes no distinction between required rule content and required guideline content.</p> <p>No changes were made based on these comments.</p>
<p>Gary Smith, Executive</p>	<p>The Independent Business Association (IBA) strongly opposes</p>	<p>The department appreciates the time taken to provide these comments and</p>

<p>Director Independent Business Association</p>	<p>WSR 14-16-122 and WAC 200-380 010-030 proposed by the Department of Enterprise Services (DES). The IBA totally opposes DES adopting a rule to authorize the DES to adopt guidelines to implement state legislation, agency policies, and procedures in lieu of adopting rules in accordance with the state’s Administrative Procedures Act (APA). The Administrative Procedures Act was established to insure complete public notice of new or amended agency policy or procedures, ensure a public comment period, ensure compliance with the state Regulatory Fairness Act, ensure a responsiveness summary by an agency with respect to proposed rules and comments from the public, and to ensure the authority of the courts and the Legislature to review the policies and procedures adopted by an agency. The proposed DES rule circumvents all of these citizen, stakeholder, and public protection contained in the APA as it is now in law.</p> <p>We oppose WSR 14-16-122 as it sets a new precedent in Washington State that circumvents the intent of the Governor, the Legislature, and the Administrative Procedures Act.</p> <p>In 1995 the Legislature and the Governor, in readopting the APA, adopted the following, “1) The legislature finds that:</p> <p>(1)(a) One of its fundamental responsibilities, to the benefit of all the citizens of the state, is the protection of public health and safety, including health and safety in the workplace, and the preservation of the extraordinary natural environment with which Washington</p>	<p>recognizes the concerns and opinions presented.</p> <p><i>Regarding IBA’s statement that DES is authorizing by rule its authority to adopt guidelines in lieu of adopting rules:</i></p> <p>State law under RCW 43.19.742 authorizes DES to “establish rules and guidelines for all agencies to use in managing their printing operations.”</p> <p>As intended by the legislation and the clear language of the statute, DES has statutory authority to adopt guidelines and agencies are required to use those guidelines.</p> <p>WAC 200-380 010-030 is consistent with RCW 43.19.742 which authorizes DES to “establish rules and guidelines for all agencies to use in managing their printing operations.”</p> <p>No changes were made based on these comments.</p> <p><i>Regarding the following statement by the IBA:</i> “The guidelines the Department of Enterprise Services is proposing for print management are likely to establish, alter, or revoke any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law and are thus illegal rules and are a violation of the state’s Administrative Procedures Act.”</p> <p>The Administrative Procedures Act under RCW 34.05.010 states in part: “The definitions set forth in this section shall apply throughout this chapter, unless the context clearly requires otherwise”.</p> <p>Farther in the section, “Rule” is defined. The definition contains a list of what is not included in the term “Rule”.</p> <p>The definition states that the term “does not include (i) statements concerning only the internal management of an agency and not affecting private rights or</p>
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is endowed;

(b) Essential to this mission is the delegation of authority to state agencies to implement the policies established by the legislature; and that the adoption of administrative rules by these agencies helps assure that these policies are clearly understood, fair-ly applied, and uniformly enforced;

(c) Despite its importance, Washington’s regulatory system must not impose excessive, unreasonable, or unnecessary obligations; to do so serves only to discredit government, makes enforcement of essential regulations more difficult, and detrimental-ly affects the economy of the state and the well-being of our citizens.

(2) The legislature therefore enacts chapter . . . , Laws of 1995 (this act), to be known as the regulatory reform act of 1995, to ensure that the citizens and environment of this state receive the highest level of protection, in an effective and efficient manner, without stifling legitimate activities and responsible economic growth. To that end, it is the intent of the legislature, in the adoption of this act, that:

(a) Unless otherwise authorized, substantial policy decisions affecting the public be made by those directly accountable to the public, namely the legislature, and that state agencies not use their administrative authority to create or amend regulatory programs;

(b) When an agency is authorized to adopt rules imposing obligations on the public, that it do so responsibly: The rules it adopts should be justified and reasonable, with the

procedures available to the public,”
[emphasis added jz]

RCW 43.19.742, titled as Agency management of print operations – Department rules and guidelines, states in part: “the department shall establish rules and guidelines for all agencies to use in managing their printing operations”.

The plain language of the statute, including its title, makes it clear the rules and guidelines shall relate only to internal governmental operations. Because the rules and guideline relate to internal governmental operations, they are not subject to violation by a nongovernmental party.

Based on the preceding, the guidelines established by the Department of Enterprise Services for use by agencies:

- Are not likely to establish, alter, or revoke any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law;
- Are not illegal rules; and
- Are not a violation of the state’s Administrative Procedures Act.

State law under RCW 43.19.742 requires DES to “establish rules and guidelines for all agencies to use in managing their printing operations.”

No changes were made based on these comments.

agency having determined, based on common sense criteria established by the legislature, that the obligations imposed are truly in the public interest;

(c) Governments at all levels better coordinate their regulatory efforts to avoid confusing and frustrating the public with overlap-ping or contradictory requirements;

(d) The public respect the process whereby administrative rules are adopted, whether or not they agree with the result: Members of the public affected by administrative rules must have the opportunity for a meaningful role in their development; the bases for agency action must be legitimate and clearly articulated;

(e) Members of the public have adequate opportunity to challenge administrative rules with which they have legitimate concerns through meaningful review of the rule by the executive, the legislature, and the judiciary. While it is the intent of the legislature that upon judicial review of a rule, a court should not substitute its judgment for that of an administrative agency, the court should determine whether the agency decision making was rigorous and deliberative; whether the agency reached its result through a process of reason; and whether the agency took a hard look at the rule before its adoption;

(f) In order to achieve greater compliance with administrative rules at less cost, that a cooperative partnership exist between agencies and regulated parties that emphasizes education and assistance before the imposition of

penalties; and

(g) Workplace safety and health in this state not be diminished, whether provided by constitution, by statute, or by rule.

WSR 14-16-122 fails to comply with items 1(b), 1(c), 2(a), 2(b), 2(d), and 2(e) of the clearly stated intent by the Legislature and the Governor of the intent of the state's Administrative Procedure Act.

The state's Administrative Procedures Act defines a rule as: "Rule" means any agency order, directive, or regulation of general applicability (a) the violation of which subjects a person to a penalty or administrative sanction; (b) which establishes, alters, or revokes any procedure, practice, or requirement relating to agency hearings; (c) which establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law; (d) which establishes, alters, or revokes any qualifications or standards for the issuance, suspension, or revocation of licenses to pursue any commercial activity, trade, or profession; or (e) which establishes, alters, or revokes any mandatory standards for any product or material which must be met before distribution or sale. The term includes the amendment or repeal of a prior rule, but does not include (i) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public, (ii) declaratory rulings issued pursuant to RCW 34.05.240, (iii) traffic restrictions for motor vehicles, bicyclists, and pedestrians established by the secretary of

	<p>transportation or his or her designee where notice of such restrictions is given by official traffic control devices, (iv) rules of institutions of higher education involving standards of admission, academic advancement, academic credit, graduation and the granting of degrees, employment relationships, or fiscal processes, or (v) the determination and publication of updated nexus thresholds by the department of revenue in accordance with RCW 82.04.067.</p> <p>The guidelines the Department of Enterprise Services is proposing for print management are likely to establish, alter, or revoke any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law and are thus illegal rules and are a violation of the state's Administrative Procedures Act.</p>	
<p>James L. King, Jr. on behalf of clients including the Washington State HVACR Association</p>	<p>I am writing on behalf of my clients, including the Washington State HVACR Association, to strongly oppose WSR 14-16-122 and WAC 200-380 010-030 proposed by the Department of Enterprise Services (DES). We totally opposes DES adopting a rule to authorize the DES to adopt guidelines to implement state legislation, agency policies, and procedures in lieu of adopting rules in accordance with the state's Administrative Procedures Act (APA). The Administrative Procedures Act was established to insure complete public notice of new or amended agency policy or procedures, ensure a public comment period, ensure compliance with the state Regulatory Fairness Act, ensure a responsiveness summary by an agency with respect</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>WAC 200-380 010-030 is consistent with RCW 43.19.742 which authorizes DES to "establish rules and guidelines for all agencies to use in managing their printing operations."</p> <p>No changes were made based on these comments.</p>

	<p>to proposed rules and comments from the public, and to ensure the authority of the courts and the Legislature to review the policies and procedures adopted by an agency. The proposed DES rule circumvents all of these citizen, stakeholder, and public protection contained in the APA as it is now in law.</p> <p>We oppose WSR 14-16-122 as it sets a new precedent in Washington State that circumvents the intent of the Governor, the Legislature, and the Administrative Procedures Act.</p>	
<p>Bean, Gentry, Wheeler, Peternell on behalf of Capital Business Machine</p>	<p>Finally, even if DES remedied the absence of Print Management Guidelines, addressed above, many of the matters likely to be addressed by the prospective guidelines would, in fact, constitute rules under the APA and, therefore, need to be subjected to the APA's process for promulgating rules. This makes DES's reliance on the guidelines all the more problematic, because a cure of the lack of guidelines after the fact would likely result in a new violation of the APA.</p> <p>The Washington Administrative Procedures Act defines "rule" at 35.04.010(16), as follows: "any agency order, directive, or regulation of general applicability[...] (c) which establishes, alters, or revokes any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law."</p> <p>The guidelines the Department of Enterprise Services is proposing for print management are likely to establish, alter, or revoke any qualification or requirement relating to the enjoyment of benefits or</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>Under RCW 43.19.742, DES is required to establish guidelines for use by state agencies. The guidelines relate to internal governmental operations and are not subject to violation by a nongovernmental party.</p> <p>As such, the guidelines impose neither obligations nor regulations on the public.</p> <p>Because of the preceding, guidelines established by the Department of Enterprise Services for use by agencies:</p> <ul style="list-style-type: none"> • Are <u>not</u> likely to establish, alter, or revoke any qualification or requirement relating to the enjoyment of benefits or privileges conferred by law; • Are <u>not</u> illegal rules; and • Are not a violation of the state's Administrative Procedures Act. <p>No changes were made based on these comments.</p>

privileges conferred by law and are thus illegal rules and are a violation of the state's Administrative Procedures Act.

Rules are invalid unless adopted in substantial compliance with the APA. RCW 34.04.025(5).

Paramount among the requirements are notice and the opportunity to submit pertinent information (RCW 34.04.025(1)(a), (b)). The existence of—and required adherence to—these requirements is fundamental to the constitutional validity of legislative delegations to administrative agencies.

Ocosta Sch. Dist. No. 172 v. Brouillet, 38 Wn. App. 785, 791 (1984) (citing Barry & Barry, Inc. v. Department of Motor Vehicles, 81 Wn.2d 155 (1972)).

The rule in *Ocosta* was a determination by the State Superintendent of Public Instruction that sales proceeds from timber sales on county tax title land would be deducted from State funds allocated to a school district.

In this case, the implementing of print management service in state agencies establishes qualifications or requirements relating to the enjoyment of benefits or privileges conferred by law; *i.e.*, it determines print management contractors' ability to continue competing for agency contracts and the public funds allocated to those contracts. Such competition is a benefit or privilege conferred by law. How managed print services and strategies are implemented among state agencies will impact all printing contractors as a class and, therefore, such matters are rules of

	<p>general applicability that must be implemented under the APA. See <i>Failor's Pharmacy v. Dep't of Soc. & Health Servs.</i>, 125 Wn. 2d 488, 497, 886 P.2d 147, 152 (1994).</p> <p>Accordingly, additional rules are needed in order to satisfy RCW 43.19.742. Although RCW 43.19.742 refers to rules and guidelines, it does not authorize guidelines in place of rules.</p> <p>Adoption of guidelines outside the APA process would not be a lawful substitute for adequate rules.</p>	
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Incorporation of the Print Management Guidelines by reference contrary to state law

Stakeholder	Comments	
<p>Patrick Conner, Washington State Director</p> <p>National Federation of Independent Business</p>	<p>... it is contrary to both the intent and plain language of the state's Administrative Procedures Act. Specifically, the June 20, 2014, draft of the Department's <i>Print Management Guidelines</i>, the most recent version we found online, fails to meet the standard set forth in RCW 34.05.365. The draft:</p> <p>Does not identify any state or federal agency, political subdivision of this state, or generally recognized organization or association that has adopted these guidelines, and is a mere four pages, certainly falling far short of being "unduly cumbersome, expensive, or otherwise inexpedient" to publish in its entirety.</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>The department has determined that the reference to Print Management Guidelines found within the proposed rules filed under WSR 14-16-122 does not meet the APA requirements for incorporation by reference.</p> <p>Upon consideration of this comment, the department determined that significant changes to the proposed rule and guidelines are needed.</p> <p>Because of this, the department revised the proposed rules and guidelines and filed a supplemental notice under WSR 14-24-124 extending the public comment period.</p>

<p>James L. King, Jr. on behalf of clients including the Washington State HVACR Association</p>	<p>We would note that as of today, there does not exist anywhere to be found <i>Print Management Guidelines</i>, and yet RCW 34.05.365 contains very specific requirements regarding the inclusion of material by reference in a rule-</p> <p>“An agency may incorporate by reference and without publishing the incorporated matter in full, all or any part of a code, standard, rule, or regulation that has been adopted by an agency of the United States, of this state, or of another state, by a political subdivision of this state, or by a generally recognized organization or association if incorporation of the full text in the agency rules would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in agency rules shall fully identify the incorporated matter. An agency may incorporate by reference such matter in its rules only if the agency, organization, or association originally issuing that matter makes copies readily available to the public. The incorporating agency shall have, maintain, and make available for public inspection a copy of the incorporated matter. The rule must state where copies of the incorporated matter are available.”</p> <p>-and this proposal clearly falls short of those legal requirements.</p> <p>Although RCW 43.19.742 does refer to rules and guidelines, it does not authorize guidelines in place of rules, nor guidelines with the power of rules. Guidelines are suggestive, voluntary- even</p> <p>wise- but they are not mandatory. Inclusion by reference in a rule</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>The department has determined that the reference to Print Management Guidelines found within the proposed rules filed under WSR 14-16-122 does not meet the APA requirements for incorporation by reference.</p> <p>Upon consideration of this comment, the department determined that significant changes to the proposed rule and guidelines are needed.</p> <p>Because of this, the department revised the proposed rules and guidelines and filed a supplemental notice under WSR 14-24-124 extending the public comment period.</p>
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	<p>should not be allowed to make them so.</p>	
<p>Bean, Gentry, Wheeler, Peternell on behalf of Capital Business Machine</p>	<p>The proposed rules are remarkably brief; there are only three sections and the substantive section, WAC 200-380-030, is only 101 words in length. That section reads as follows:</p> <p>(1) In managing their printing operations, all agencies shall implement cost and resource savings strategies to improve efficiencies and minimize the cost of printing jobs, including optimization and reduction of both agency-based printing, and those jobs that require services of a private sector print shop or another state agency's print shop.</p> <p>(2) Agencies shall implement such strategies based on the successes of implementation of existing print management programs in state agencies.</p> <p>(3) Agencies must implement managed print strategies to track, manage, and reduce agency-based printing, to include implementation of managed print services where applicable, pursuant to RCW <u>43.19.733</u> and the department's <i>Print Management Guidelines</i>.</p> <p>This section is essentially a paraphrase of RCW 43.19.742, requiring the establishment of rules and guidelines:</p> <p>To improve the efficiency and minimize the costs of agency-based printing, the department <i>shall establish rules and guidelines</i> for all agencies to use in managing their printing operations, including both agency-based printing and those jobs that require the services of a</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>The department revised the proposed rules and guidelines and filed a supplemental notice under WSR 14-24-124 extending the public comment period.</p> <p>In addition, guidelines were developed, adopted, distributed to all stakeholders and made available online prior to the public comment period on the proposed rules.</p> <p>No other changes were made based on these comments.</p>

print shop, as based on the successes of implementation of existing print management programs in state agencies. At a minimum, *the rules and guidelines must implement* managed print strategies to track, manage, and reduce agency-based printing.

[italics added].

The reason for parroting back the statute can be surmised from the final clause of proposed Chapter 200-380 WAC; that is, DES intends to flesh out the details of print management and managed print services with *Print Management Guidelines*. However, to implement this approach and adopt the WAC as written at this time would be erroneous.

The Administrative Procedures Act (“APA”) allows for incorporation of certain items by reference as follows:

An agency may incorporate by reference and without publishing the incorporated matter in full, all or any part of a code, standard, rule, or regulation *that has been adopted* by an agency of the United States, of this state, or of another state, by a political subdivision of this state, or by a generally recognized organization or association if incorporation of the full text in the agency rules would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in agency rules shall fully identify the incorporated matter. An agency may incorporate by reference such matter in its rules only if the agency, organization, or association originally issuing that matter makes copies readily

	<p>available to the public. The incorporating agency shall have, maintain, and make available for public inspection a copy of the incorporated matter.</p> <p>The rule must state where copies of the incorporated matter are available. [<i>italics added</i>].</p> <p>If DES adopts proposed WAC 200-380-030, DES will exceed its authority under the APA because the Print Management Guidelines have not yet been created and, therefore, DES cannot meet the requirements that 1) the incorporated matter has been adopted, 2) the incorporated matter be readily available to the public, 3) the incorporating agency make copies available to the public, and 4) the rule states where copies are available. Accordingly, the attempt to incorporate non-existent Print Management Guidelines is impermissible and, under the circumstances, amounts to an end-run around the rulemaking requirement in RCW 43.19.742 1</p> <p>1 Under the principle of <i>expressio unius est exclusio alterius</i>, any argument that the right to incorporate non-existent guidelines is implied or inherent is erroneous. The APA sets forth requirements for incorporation by reference and Chapter 43.19 RCW does not relax or supersede those requirements.</p>	
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Future changes to Print Management Guidelines not open for public review or comment

Stakeholder	Comments	
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<p>Patrick Conner, Washington State Director</p> <p>National Federation of Independent Business</p>	<p>These guidelines appear to be the cornerstone for determining whether an agency must use a public or private supplier for its printing needs. As such, future version of these guidelines could easily make small businesses ineligible or place them at a considerable disadvantage for providing these services – again with no opportunity for public review or comment.</p> <p>This simply is not an acceptable approach.</p> <p>We urge the Department to make its guideline drafting and approval processes open and accessible to stakeholders and the general public, in accordance with the principles and plain language of the state’s Administrative Procedures Act.</p> <p>At a minimum, WSR 14-16-122 should be amended to include the full text of the most recent <i>Print Management Guidelines</i>.</p> <p>Alternatively, the reference to those guidelines in the proposed new section WAC 200-380-030(3) should be deleted and separate, formal rule making should be initiated to adopt these guidelines.</p> <p>Absent an open, public process for adopting and modifying the Department’s <i>Print Management Guidelines</i>, NFIB will be forced to oppose the proposed rule and, if necessary, seek legislative or legal remedy should they be adopted as currently drafted.</p> <p>Thank you for the opportunity to submit these comments for the record.</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>The department revised the proposed rules and guidelines and filed a supplemental notice under WSR 14-24-124 extending the public comment period.</p> <p>In addition, guidelines were developed, adopted, distributed to all stakeholders and made available online prior to the public comment period on the proposed rules.</p> <p>No other changes were made based on these comments.</p>
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Rules attempt to give force of law to Print Management Guidelines

Stakeholder	Comments	
<p>Patrick Conner Washington State Director National Federation of Independent Business</p>	<p>On behalf of the nearly 8,250 small business owners who are members of the National Federation of Independent Business in Washington state, I am writing to express our strong concerns with the Department's draft Print Management Rule, WSR 14-16-122, and in particular its proposed new section WAC 200-380-030(3):</p> <p>(3) Agencies must implement managed print strategies to track, manage, and reduce agency-based printing, to include implementation of managed print services where applicable, pursuant to RCW 43.19.733 and the department's <i>Print Management Guidelines</i>.</p> <p>It appears this subsection attempts to give force of law to the Department's <i>Print Management Guidelines</i> by incorporating that document into rule by reference alone – with no opportunity for public review or comment on those guidelines. We believe this is a dangerous precedent.</p> <p>Absent an open, public process for adopting and modifying the Department's <i>Print Management Guidelines</i>, NFIB will be forced to oppose the proposed rule and, if necessary, seek legislative or legal remedy should they be adopted as currently drafted.</p> <p>Thank you for the opportunity to submit these comments for the record.</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>The department revised the proposed rules and guidelines and filed a supplemental notice under WSR 14-24-124 extending the public comment period.</p> <p>In addition, guidelines were developed, adopted, distributed to all stakeholders and made available online prior to the public comment period on the proposed rules.</p> <p>No other changes were made based on these comments.</p>
<p>James L. King, Jr. on behalf of clients including</p>	<p>Comparing this proposed rule to the draft rule developed through the stakeholder process last fall, and to</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions</p>

<p>the Washington State HVACR Association</p>	<p>the draft guidelines shared with stakeholders in June of this year, it is clear that this rules proposal is like the ten percent of the iceberg that is visible- leaving the ninety percent relegated to guidelines invisible to the public. In fact, absent the attempt to give guidelines the force of rule, there is no content in the proposed rule requiring the adoption of the proposed rule.</p> <p>The consensus work product of state agency and private sector stakeholders as agreed to last December is attached for comparison. It is easy to see much more than is included in the current proposed rule. Why this consensus of stakeholders was rejected in favor of an arbitrary and capricious guidelines process leaves the department's motivation in question.</p> <p>Throughout the discussions on this issue over the past several years, every time there has been a stakeholder consensus, it has been rejected by the department in favor of an approach repeatedly rejected by the stakeholders but still; insisted upon by department personnel. This guidelines approach simply reinforces the belief that department personnel are determined to have their way, regardless of stakeholder views, and believe they have found a means of evading public and legislative scrutiny in doing so.</p>	<p>presented.</p> <p>The department revised the proposed rules and guidelines and filed a supplemental notice under WSR 14-24-124 extending the public comment period.</p> <p>In addition, guidelines were developed, adopted, distributed to all stakeholders and made available online prior to the public comment period on the proposed rules.</p> <p>No other changes were made based on these comments.</p>
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Proposed rules do not meet the requirements of the enabling statute

Stakeholder	Comments	
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<p>Bean, Gentry, Wheeler, Peternell on behalf of Capital Business Machine</p>	<p>With no guidelines to adopt by reference, WAC 200-380-010 through 030 do not meet the requirements of RCW 43.19.742. That statute requires that DES adopt rules and guidelines that</p> <p>“implement managed print strategies to track, manage, and reduce agency-based printing.” The proposed rules do not implement managed print strategies, but instead direct agencies to implement them. Accordingly, DES will not have fulfilled its duty under RCW 43.19.742 by promulgating Chapter 200-380 WAC.</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>The department revised the proposed rules and guidelines and filed a supplemental notice under WSR 14-24-124 extending the public comment period.</p> <p>In addition, guidelines were developed, adopted, distributed to all stakeholders and made available online prior to the public comment period on the proposed rules.</p> <p>No other changes were made based on these comments.</p>
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Authority to delegate rules and guidelines cannot be delegated

Stakeholder	Comments	
<p>Bean, Gentry, Wheeler, Peternell on behalf of Capital Business Machine</p>	<p>Further, other agencies lack the authority to adopt rules and guidelines to implement managed print strategies, and DES lacks the power to delegate such authority. The Supreme Court has held that “an agency created by statute has only those powers expressly granted or necessarily implied from the statute.” <i>Anderson, Leech & Morse, Inc. v. Washington State Liquor Control Bd.</i>, 89 Wn.2d 688, 694, 575 P.2d 221 (1978); see, also, <i>Orthead v. State</i>, 85 Wn.2d 109, 530 P.2d 635 (1975); <i>King County WaterDist. No. 90 v. City of Renton</i>, 88 Wn. App. 214, 944 P.2d 1067 (Wa. App. Div. 1, 1997). Further, the <i>Court in Orthead v. State</i> held that “where a PCfSOfl or board is charged by law with a specific duty, and the means for its performance are appointed by law,</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>Under the proposed rules filed as WSR 14-16-122, the department neither delegates its rulemaking authority to state agencies nor directs state agencies to put in place rules and guidelines.</p> <p>No changes were made based on these comments.</p>

	<p>there is no room for implied powers.” 85 Wn.2d 109, 118, 530 P.2d 635 (citing <i>State ex rel. State Bd. of Medical Examiners v. Clausen</i>, 84 Wash. 279, 282, 146 P. 630 (1915)).</p> <p>By proposing Chapter 200-380 WAC, DES has failed to fulfill its duties under RCW 43.19.742. It may not remedy its failure by delegating its duties to other state agencies. By doing so, it would put both DES and those agencies in a precarious legal position.</p>	
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3. Differences Between the Initial Proposed Rules, the Revised Proposed Rules and the Adopted Rule Text

Review of the Comments

[Proposed rules](#) were filed on August 6, 2014 under [WSR 14-16-122](#). Upon consideration of the comments received, the department determined that changes to the rules were needed. Further, the changes will result in a substantial variance from the proposed rule.

The department made changes to the proposed rule filed under WSR 14-16-122 and filed [revised proposed rules](#) on December 3, 2015 under [WSR 14-24-124](#).

The revised proposed rules substantially differ from the proposed rules filed under WSR 14-16-122 in the following respects:

- A. Guidelines are no longer incorporated into the rule by reference
- B. Additional definitions were added to WAC 200-380-020 in order to provide clarity and establish a common language used by the department, state agencies and the business community.
- C. State agencies are required to:
 - Establish agency internal print management governance;
 - Determine baseline print costs; and
 - Report to the department on their print management activities

A thorough review of the final adopted rule, consistent with requirements under the Administrative Procedure Act 34.05.340 (2) (a) through (c), did not reveal any substantial differences from the revised proposed rules as filed under WSR 14-24-124.

The revised proposed rules filed on December 3, 2015 under WSR 14-24-124 comply with the legislative intent and authority granted DES in Chapter 43.19 Revised Code of Washington.

.Note to reader: DES received comments in several formats, including email, oral testimony, letters, and via our website. We have tried to present comments as closely as possible to their original formats.

The comments are listed verbatim and no changes were made to typos, grammatical or other similar errors.

4. Summary of Comments Received on the Revised Proposed Rule Filed December 3, 2014 as WSR 14-24-124

The following table lists the stakeholders that submitted comments and their position if stated.

Stakeholder	Stated Position
Don Hartman, Capital Business Machines Government Accounts	Position not stated
James L. King, Jr. on behalf of the Independent Business Association	Support with concerns
Spotswood Bowyer, Department of Labor and Industries	Support

General Comments

DES received a number of comments that did not cite a specific section or provision of the proposed rules. Those comments are listed under this section.

Stakeholder	General Comments	DES Response
Spotswood Bowyer, Washington State Department of Labor and Industries	I just wanted to go on record in support of the current rules and guidelines as this current version is. I wanted to thank the committee for going back and reviewing -- listening to the public comments and going back and reviewing and actually listening to the comments from before and taking the time to go back and read this and come up with this new set of rules.	The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented. No changes were made based on these comments
James L. King, Jr. on behalf of the Independent Business Association	A couple of main points I would like to make: First of all, with regards to the role of the guidelines in this process, we're very supportive of the different approach the agency took after the last comment period. The effort to sort of embody the guidelines within rule that was done previously unglued the business community, as you saw in the comments you received. That situation no longer exists. I tried to get written comment in that I don't think that came in during the holidays, unfortunately, in support of the new approach, but the fact that nobody else is here to object and I'm here to say thank	The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented. No changes were made based on these comments.

Stakeholder	General Comments	DES Response
	<p>you, I think, sends a message that the business community is satisfied there's not a bad precedent being set that applied to the underlying issue.</p> <p>Another point I wanted to touch base on is the lack of a Small Business Economic Impact Statement. We understand that, you know, the rule itself is not having an impact on small business. There is no need for -- we accept there's no need for SBEIS given, you know, the rule itself.</p> <p>We remain very concerned about implementation. The way things had been done to implement management have had a deleterious effect on small business. We are especially concerned that we continue, as a state, to go through WSCA. We're apparently the only state using the contracts, and WSCA's even had doubts about continuing its involvement.</p> <p>Where things were done at home, you would have more ability of small business to be involved. When things are taking place in other states or when small businesses are even excluded by other states and only the manufacturers are invited, it creates a problem for small business and remains a concern that it's not a concern of the rule. It's a concern of the implementation of the rule. It's an area we would consider very carefully as things move forward.</p> <p>All in all, Jack, I especially want to extend thanks to you. I think the process you went through this fall to get everybody to the table and develop the consensus, I wish it occurred five, six, or seven years ago. There's more discussion here about what's gone into the rule and guidelines than ever occurred as it went into legislation.</p> <p>We're still trying to implement severely flawed legislation that a lot of us are interested in trying to correct this session</p>	

Stakeholder	General Comments	DES Response
	<p>and work on.</p> <p>So I think that, you know, all in all, you, in your role, have done as good of a job you can do, given the boundaries set by what's in statute and what needs to be corrected in statute.</p> <p>With that, nothing further.</p>	
<p>Don Hartman, Capital Business Machines</p>	<p>Small business guy here in town.</p> <p>On November 20th my office made a request to the state of New Mexico, a public disclosure request, to ask about usage for the MPS contract. And I got back a response on December 5th that the state of New Mexico, the records for people there, that they had no record of any use of the MPS contract. So I thought, well, where to go from here?</p> <p>So I went from there. I contacted the, as much as I knew, the WSCA-NASPO people that oversee all of the WSCA. I contacted them and they said, We don't have that information. You need to go back to the state that was overseeing the contract.</p> <p>So I'm in the process of going back to New Mexico to try to get it. The issue is, though, that -- the concern is that it gets so far away you don't know what's going on. And when you guys are actually touching it, it is much easier to communicate back and forth when it's done here locally and to get that kind of information and to communicate. When it starts with getting put off, it's almost as if it's out of sight, out of mind. It really makes it tough for the little guy because they won't even let us participate on those WSCA things.</p> <p>One other thing is, I'm going to be -- I'm going to be sending this in. I have a letter from DES from April 30th on the managed print service recommendation for the state, but from what it looks like, it looks like the WSCA sourcing team was planning on</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>No changes were made based on these comments.</p>

Stakeholder	General Comments	DES Response
	<p>letting the MPS contract expire without rebidding it. The state of Washington needed it because we have a law. Maybe it's best to bring it home.</p>	
<p>Don Hartman, Capital Business Machines</p>	<p>Jack,</p> <p>Here are some new comments.</p> <p>How did the State of Washington get to where they are concerning Managed Print?</p> <ul style="list-style-type: none"> • 2009 State Printer's empire shrinking losing \$120,000.00 per month (see State Government Performance Report # 1002726 page 34) • Printer looking for new sources of revenue Printer decides to offer MPS and charge an administrative fee to generate needed revenue (also mandated agencies do assessments) • Printer uses Ecology as an example; page 39 from above mentioned report claimed \$160,000.00 per year savings in 2006-07 biennium (information request to verify claimed savings—no data available) • CBM questions if Printer has statutory authority to authorize other agencies to acquire equipment • Printer puts out bid for equipment using GA's statutes • Lawsuit filed in Thurston County to find out if Printer did have statutory authority to authorize other agencies to acquire equipment GA partnered with Printer • Case settled by Printer acknowledging he did not have statutory authority to do MPS • Legislation sponsored to authorize Printer to do MPS • Legislation sponsored to create DES 	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>Any changes to legislation need to be addressed through the legislative process.</p> <p>No changes were made based on these comments.</p>

Stakeholder	General Comments	DES Response
	<ul style="list-style-type: none"> • Legislation passed mandating MPS (only State to have such a law) • Legislation passed to create DES (Printer and GA now one) <p>How Capital Business Machines got to where they are concerning Managed Print.</p> <ul style="list-style-type: none"> • Small Business started in Olympia in 1952 3rd generation family owned • Started selling copy machines in 1976 • 1990 Sharp got on a State of Washington convenience contract for production copiers, been on a state contract ever since • Capital Business Machines involved in all contracts with State for copiers/Faxes/MFD's/MPS since 1990 • CBM has from the beginning been involved in making sure business with the state is in the taxpayer's best interest. • Assisted Sharp in bid responses and attended all meetings with GA/DES • Don Hartman was the alternate contact for Sharp on multiple contracts for over 15 years until DES requested he be removed • Early 2000's as MPS began being mentioned within the industry CBM began evolving it's services to match customer's needs • DOC had been a customer of CBM's for over a decade in 2002 • Fay Foster at DOC saw how MPS could save her agency Money, make them more efficient and productive and reduce the support workload • Early 2000's DOC makes the decision to standardize on Sharps agency wide • DOC was required to have an assessment done (Okidata 	

Stakeholder	General Comments	DES Response
	<p>10/2006) Oki stated that DOC had one of the best MPS programs they had seen</p> <ul style="list-style-type: none"> • Printer rejected DOC MPS success story now DES doing the same • The MPS program at DOC started when contracts 05899 and 07903 were in effect • Neva Peckham stated at a MPS Training session at the DES annual trade show that DOC was doing MPS • Every time there is a refresh it cost DOC less • All this has been done using hardware contracts <p>What are the benefits of allowing the hardware contract to be used for MPS?</p> <ul style="list-style-type: none"> • As was discussed at many of the stakeholders meeting MPS is not a one size fits all proposition there are many ways to successfully implement MPS strategies • The hardware contract allows Small Business to provide MPS. How? • All the vendors on both the hardware and the MPS contract state that they partner with Small Business which is true. However there is the problem of recourse. All vendors except Sharp expect their dealers to take recourse or be responsible for the debt on equipment if the state were to change their mind. If small businesses where to do this and get the equipment back early they could be financially damaged. • Example the Liquor Board order over 160 machines through CBM for all their retail stores 20 months later the citizens voted to privatize the Liquor business and the equipment was returned with 40 months left owing. Sharp did not make Capital 	

Stakeholder	General Comments	DES Response
	<p>responsible for the remaining balance the manufacture stepped up. This approach allows the flexibility of a small business to be partnered with the financial stability of a large manufacture. Other vendors expect the small business to be on the hook for the entire deal in this instance it would have been over a half million dollars.</p> <ul style="list-style-type: none"> • The lead state for the WSCA MPS contract New Mexico when asked (it was Gerry Becker at the time) stated only manufactures could participate on the MPS contract. • In Washington DES recognizes manufactures only MPS services Ecology, Revenue, LNI, Employment Security, and DNR are some examples. However the successful implementation of MPS using the hardware contract lead by a small business is rejected. • This last summer during fire season CBM received a call from DNR asking for help getting equipment out to multiple locations around the state where the fire crews had set up command centers. When ask why DNR's MPS provider was not providing this service DNR responded that when they ask their provider for help they were told "we do not provide that kind of service". So CBM worked with other small businesses that are Sharp dealers to assist DNR. This is an example of the type of services that are needed but cannot be provided without small Business participation. • MPS services can be provided using the hardware contract and small business can be allowed to participate; Basic NASPO T's & C's "Participating Addendum" means a bilateral agreement executed by a 	

Stakeholder	General Comments	DES Response
	<p>contractor and a Participating State (or a political subdivision with the consent of its state’s chief procurement officer) that clarifies the operation of the master price agreement for the State concerned, e.g. ordering procedures specific to a State, and may add other state-specific language or other requirements.</p> <ul style="list-style-type: none"> • Neva also mentioned in a stakeholders meeting when asked why in the State of Washington copies were not included on the hardware contract like it was bid on the WSCA Nevada contract she state because it would conflict with the MPS contract 02012. This statement indicates that the hardware contract could be used for both hardware and MPS • At a stakeholders meeting when explained that MPS services were being provided years before the law mandating MPS was passed DES stated they would check with council to see if there could be any flexibility. Council said no, Small Business thrives on flexibility. With Big Business and Big Government agencies and taxpayers lose flexibility, customers need flexibility and Small Business can provide that flexibility. • DES had a great relationship with our small business until 2004, and then things began to deteriorate. Up to that point CBM had been included in all forms of communication between DES and the vendor community. Then as CBM began to ask questions that made the state uncomfortable we were gradually froze out. Even to the point where we were told we could not attend certain meetings. 	

Stakeholder	General Comments	DES Response
	<ul style="list-style-type: none"> After RCW 43.19.742 became law DES brokered several MPS contracts, when asked why contracts were bid and awarded before there were any rules and guidelines Neva stated that DES did not have time to establish rules first. Subsequently a lawsuit was filed and afterwards a settlement agreement was signed. The lack of Flexibility caused much time and money to be spent unnecessarily. <p>See attached</p> <p>SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS</p> <p>Capital Business Machines, Inc. v. State of Washington, et al.</p> <p>Thurston County Superior Court, Cause No. 13-2-01209-7</p> <ul style="list-style-type: none"> CR2A Agreement signed June 15th 2012; DES demonstrates a tremendous amount of flexibility when they settle for only \$4,000,000.00 when the vendor was willing to return \$9.5 million of the taxpayer's money. <p>See Attached</p> <p>CR2A Settlement Agreement</p> <p>Between State of Washington, Ricoh, and Ikon</p> <p>CONCLUSION</p> <ul style="list-style-type: none"> The law creating mandatory MPS was poorly written and needs to be fixed Because of a lack of flexibility in the rule making small business and specifically our small business CBM is going to be excluded from participating in providing a service that we have been providing prior to the law 	

Stakeholder	General Comments	DES Response
	<p>mandating MPS</p> <ul style="list-style-type: none"> • Small Businesses within the State of Washington have a vested interest in what decisions DES makes because we pay for the direction DES choses to go. Small Businesses are owned by citizens of the State of Washington and we have a responsibility to the families who work for us to make sure that if they pay (taxes) they get to play (provide services to the state). When DES's decisions become motivated by self-interest what options are left to small businesses but to fight those decisions? • It may not be DES's intent to eliminate Small Business Participation in the MPS process but by not allowing the flexibility to use the hardware contract for MPS DES has established a process that punishes small businesses and specifically CBM. 	
<p>Don Hartman, Capital Business Machines</p>	<p>Jack,</p> <p>On page two of the attachment it states "The implementation of these rules have minimal or no cost to small business." Why would CBM not be so intensely involved if the exact opposite were not true?</p> <p>See Attached</p> <p>WSR 14-24-124</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>These rules relate to the internal operations of state agencies and impose no new requirements on businesses. Existing requirements on all businesses, including small businesses are not changed by these rules.</p> <p>No changes were made based on these comments.</p>
<p>Don Hartman, Capital Business Machines</p>	<p>COMMENTS ON THE APRIL 30, 2014 LETTER TO THE WSCA-NASPO MANAGEMENT BOARD</p> <p>There will be some assumptions made concerning this letter but only because the discussions and decisions discussed in this</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>No changes were made based on these comments.</p>

Stakeholder	General Comments	DES Response
	<p>letter were conducted miles away from Olympia. We were told that DES would make a request to have the WSCA MPS contract rebid to address vendor and customer concerns. This came about because of the lawsuit that was going on between DES and CBM. CBM was at odds with DES because DES wanted to implement MPS contracts without first establishing rules and guidelines. The statute creating MPS required savings and there were no tools in place for agencies to verify those savings.</p> <p>In the following section from the attached letter Christine Warnock states the following;</p> <p>We understand the sourcing team will be recommending that the contract be left to expire without rebid due to complexities, and the fact that several states may not have the need for MPS at this time. The state of Washington does not disagree with this recommendation.</p> <p>WSCA decided that MPS was not being used by the majority of states and was willing to let the contract end, but DES still used it. Perhaps vendor and customer concerns are the same as complexities. Even WSCA knew that the existing MPS contract had problems but DES continued to push state agencies into MPS.</p> <p>Agencies here in Washington were threatened by DES to have their delegated purchasing authority revoked if they did not move forward with MPS. What is very hard to understand is why DES would agree with WSCA (The state of Washington does not disagree with this recommendation.) that WSCA MPS needed to die, and still force Washington State Agencies to use a flawed contract.</p> <p>The State of Washington has a statute mandating MPS that was pushed through</p>	

Stakeholder	General Comments	DES Response
	<p>the legislature as a way to bring money into the State Printer because they were losing \$100,000.00 per month. The Printer became part of DES so DES inherited MPS.</p> <p>As a taxpayer I cannot understand why if a majority of 17 states cannot make MPS work in their state how the staff at DES feels it is still workable in Washington. Why is DES not looking out for the agencies they supposedly serve? Why not take the time to fix a problem instead of running forward with a flawed product.</p> <p>At the least DES should stop all agencies from moving ahead with MPS until they can bid their own MPS contract. It makes one wonder, whose interests is DES concerned about, their customers or their own?</p> <p>Don Hartman</p> <p>See Attachment</p> <p>Memo dated April 30, 2014 from Christine Warnock, State of Washington to WSCA-NASPO Board</p> <p>Re. Managed Print Services Contract Recommendation from State of Washington</p>	
<p>Don Hartman, Capital Business Machines Government</p>	<p>Jack,</p> <p>Attached are two documents demonstrating how difficult it is to get information from WSCA on a WSCA contract. We are still in the process of attempting to acquire the information. The lead state says we do not have the information you request, WSCA-NASPO says they do not have the information go back to the lead state. This leads to a lack of transparency, openness, and distrust.</p> <p>See Attachment</p> <p>Request for public records from Don</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>No changes were made based on these comments.</p>

Stakeholder	General Comments	DES Response
	<p>Hartman, Capital Business Machines to State of New Mexico; and</p> <p>Request for information regarding WSCA Contract W40-2011 from Don Hartman, Capital Business Machines to WSCA-NASPO</p>	
<p>Don Hartman, Capital Business Machines</p>	<p>Jack,</p> <p>Here is some additional input.</p> <p>COMMENTS ON RULES AND GUIDELINES FOR MPS</p> <p>During the stakeholders meeting DES stated that they were going to talk to their legal counsel to see if there was any flexibility to allow agencies to acquire MPS using the hardware contract as Capital Business Machines had been doing for several state agencies since the mid 2000's.</p> <p>Unfortunately the state's legal counsel came back with a decision that there was no flexibility to allow MPS using the hardware contract even though it was already being done. Our legal counsel told us that there was flexibility within the statute to allow MPS services to be available from two different contracts.</p> <p>At our company we use a program that focuses on Character called Character First and one of the 49 Character qualities that all of our employees strive to demonstrate in there interactions with others is flexibility.</p> <p>The definition of Flexibility is Willingness to change plans or ideas without getting upset. Using flexibility incorrectly manifests itself as Stubbornness.</p> <p>The Department of Enterprise Services on their Strategic Framework document has a list of Strategic Anchors, Values, and Goals. Under the Strategic Anchors section there is a quote "What you need. How you</p>	<p>The department appreciates the time taken to provide these comments and recognizes the concerns and opinions presented.</p> <p>No changes were made based on these comments.</p>

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	<p>need it. When you need it.”</p> <p>That sounds very flexible; it would make a person believe that DES was there to truly serve fellow agencies and the taxpayers. I wish I could believe that but unfortunately I am not able to.</p> <p>I am sure staff at DES has spent hours wondering why Capital Business Machines has been such a pain. Once several years ago Neva had Sharp Electronics escort me to the DES offices to have a talk. I'm not sure why Sharp was needed maybe it was to get me to toe the line; I had been called up to meet with Neva because I had been mean to her. When I ask her how I had been mean I was told that I had caused her a whole bunch of extra work by filing public records request.</p> <p>On DES Strategic Framework document under Values one of the 6 items mentioned there is Openness. Openness is expressed by DES as “We listen and communicate to promote understanding, transparency and trust. Unfortunately the opposite has been demonstrated.</p> <p>When DES is finished being inflexible a small business of 26 people who has served the Department of Corrections for nearly two and one half decades will have their customer taken away.</p> <p>Will it be because of providing poor services, you do not keep a customer for 24 years by not doing your job? It will be because we want our government to be accountable. What a foolish and outdate concept.</p> <p>When DES deals with a manufacture they deal with an employee of said company. And employees are afraid to ask serious questions or rock the boat as they might get fired.</p> <p>Capital Business Machines however is a</p>	

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	<p>Washington based business, family owned, Olympia grown (so we know about politics) that believes that small business can deliver exceptional service (also one of the goals on the DES Strategic Framework page). We believe we can do it just as well as the big boys by partnering with other Small Businesses within the State of Washington.</p> <p>Just think all this ongoing tension between DES and CBM could be removed by the state showing a little flexibility when making rules. By allowing the hardware contract to be used as well as the MPS contract for MPS many hundreds of thousands of dollars could be saved at just one agency.</p> <p>On the CR-102 dated December 03, 2014 no economic impact statement was prepared as “the implementation of these rules have minimal or no cost to small business.” I guess that is easy enough to say when you’re not the small business that will be damaged because of a lack of flexibility.</p> <p>Under Strategic Anchors on DES’s strategic Framework document is your Mission statement: We deliver innovative, responsive, cost-effective and integrated solutions and services to meet the diverse needs of our customers. In the old days there used to be pre-bid conferences where GA/DES would bring the vendor community together and present what they were thinking about putting in a bid. There was impute given and taken on how to craft a bid that would work for all involved. CBM even as a dealer would be allowed to participate and give input. It eliminated a lot of protests. It also allowed DES to receive information from Experts in a particular field for free. With all vendors allowed to be involved it made for more effective and balanced documents.</p> <p>With the contracting now being done</p>	

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	<p>through WSCA only manufactures are allowed to play. The problem is the small businesses have to pay the taxes that support WSCA contracts without being able to participate. When only DES gets to state what is best for Washington there is no way to make sure that what is being presented is best for DES or best for the citizens of the State of Washington.</p> <p>Don Hartman</p>	