

WSR 14-20-014
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed September 19, 2014, 11:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-16-108.

Title of Rule and Other Identifying Information: Adds a new section to chapter 181-78A WAC requiring preparation programs to assure passage of the WEST B prior to admission and WEST E prior to student teaching per chapters 181-01 and 181-02 WAC.

Hearing Location(s): Educational Service District 112, 2500 N.E. 65th Avenue, Vancouver, WA 98661, on November 13, 2014, at 8:30.

Date of Intended Adoption: November 13, 2014.

Submit Written Comments to: David Brenna, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by November 6, 2014.

Assistance for Persons with Disabilities: Contact David Brenna by November 6, 2014, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Requires preparation programs to assure and document that teacher candidates have successfully completed the requirements for the WEST B per chapter 181-01 WAC prior to entering a program. Requires preparation programs to assure and document that teacher candidates have successfully completed the requirements for WEST E per chapter 181-02 WAC.

Reasons Supporting Proposal: Addresses candidates needing to complete assessments in a timely manner.

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

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

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

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

August 18, 2014
 David Brenna
 Senior Policy Analyst

NEW SECTION

WAC 181-78A-300 Program requirements for teacher candidates. (1) Approved programs for teachers shall assure that all candidates entering the program shall

have successfully completed the WEST B or its alternative or exemptions per chapter 181-01 WAC. The candidate must take and pass the WEST B, or provide evidence of meeting an alternative or exception at the time of admissions. The program shall collect and hold evidence of this requirement.

(2) Approved programs, when placing a teacher candidate in the student teaching role with a school district, shall assure that the candidate has successfully passed at least one WEST E or equivalent content assessment test per chapter 181-02 WAC. The program shall collect and hold evidence of this requirement.

(3) This section shall be in effect beginning in the 2015-16 school year.

WSR 14-20-016
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed September 19, 2014, 12:44 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-16-006.

Title of Rule and Other Identifying Information: Amends WAC 181-78A-264 to clarify requirements for effective recruitment and focus on shortage content areas.

Hearing Location(s): Educational Service District 112, 2500 N.E. 65th Avenue, Vancouver, WA 98661, on November 13, 2014, at 8:30.

Date of Intended Adoption: November 13, 2014.

Submit Written Comments to: David Brenna, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by November 6, 2014.

Assistance for Persons with Disabilities: Contact David Brenna by November 6, 2014, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarifies and requires preparation programs to recruit certain candidates and focus completers of programs in certain content shortage areas. Also requires collecting and reporting data for these requirements.

Reasons Supporting Proposal: Improves response to school district needs.

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

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

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by

contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

September 19, 2014
David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 14-07-067, filed 3/17/14, effective 4/17/14)

WAC 181-78A-264 Approval standard—Program design. ~~((Building on the mission to prepare educators who demonstrate a positive impact on student learning, evidence shall be evaluated to determine whether each preparation program is in compliance with the program design standard of WAC 181-78A-220(4):))~~

(1) Conceptual framework.

~~((a))~~ (a) The conceptual framework establishes the shared vision for the unit's efforts in preparing educators to work effectively in P-12 schools.

~~((b))~~ (b) The conceptual framework:

~~((i))~~ (i) Provides coherence among curriculum, instruction, field experiences, clinical practice, candidate assessment, and program evaluation;

~~((ii))~~ (ii) Establishes the philosophy, purpose, goals, and standards of the program or unit;

~~((iii))~~ (iii) Reflects renewing commitment to current research and best practices; and

~~((iv))~~ (iv) Supports the state's goals for P-12 student learning and program approval Standard V.

(2) ~~((Recruitment, admission, retention, and transition to the field))~~ Transition elements.

(a) Programs recruit, admit, retain, and transition candidates to the field who:

~~((i))~~ (i) ~~Demonstrate the content and pedagogical knowledge and skills for success as educators in schools;~~

~~((ii))~~ (ii) ~~Demonstrate the dispositions of a professional educator;~~

~~((iii))~~ (iii) ~~Address the program, state and partner districts' goals for increasing underrepresented populations in the workplace;~~

~~((iv))~~ (iv) ~~Address the content areas identified by work force data of the state and region))~~ meet program goals and state standards.

(b) Learner expectations for program requirements, progression, and completion are identified, published, and accessible.

(c) Faculty regularly review recruitment and retention data for effectiveness of program.

(i) Programs create, implement and communicate a recruitment and retention plan in response to data.

(ii) Programs annually report the data, the plan, and proposed modifications to the professional educator advisory board and other stakeholder groups supporting the program's efforts.

(iii) Program completers meet the state and partner districts' goals for increasing underrepresented populations in the workplace.

(iv) Program completers hold endorsements in shortage content areas identified by workforce data of the state and region.

(3) Field experiences and clinical practice.

(a) The program(s) and its school partners design, implement, and evaluate field experiences and clinical practices.

(b) Field experiences are integrated throughout the preparation program.

(i) Field experiences provide opportunity to plan, practice and reflect on methods of instruction and differentiation;

(ii) Field experiences provide ~~((opportunity))~~ opportunities to work ((in communities with populations dissimilar to the background of the candidate)) with diverse communities and populations, e.g., racial and ethnic, low socioeconomic, and English language learners;

(iii) Faculty supervision, including on-site visits, will be provided on an on-going basis.

(c) Mentors are instructional leaders identified collaboratively with the partner school of district.

(i) Mentors and principals are provided with a set of internship expectations;

(ii) Mentors receive or provide evidence of training on mentoring of adult learners;

(iii) Mentors must be fully certificated school personnel and have a minimum of three years of professional experience in the role they are supervising;

(iv) Effectiveness of mentor preparation and communication are reviewed annually by faculty.

(d) All Washington educator preparation programs operating field experiences in Washington state shall establish and maintain field placement agreements with all Washington school districts in which candidates are placed for field experiences leading to certification or endorsement under WAC 181-78A-125.

(e) Entry and exit criteria and a process for mitigating concerns during clinical practice are provided for candidates and the mentor.

(f) Requirements for specific educator preparation programs.

(i) Teacher programs.

(A) Programs shall administer the teacher performance assessment adopted by the professional educator standards board to all candidates in a residency certificate program.

(B) Clinical practice (defined as supervised planning, instruction, and reflection) for teacher candidates should consist of no less than four hundred fifty hours in classroom settings.

(ii) School counselor programs.

(A) Candidates complete a supervised internship in the schools that includes a minimum of four hundred hours of on the job professional service and one hour per week of individual supervision provided by the mentor.

(B) Prior to the internship, the candidate will complete a faculty supervised practicum (a distinctly defined clinical experience intended to enable the candidate to develop basic counseling skills and integrate professional knowledge).

(iii) School psychology programs.

(A) Candidates complete a supervised internship in the schools that includes a minimum of one thousand two hun-

dred hours of on the job professional service and one hour per week of individual supervision provided by the mentor.

(B) Prior to the internship, the candidate will complete a faculty supervised practicum (a distinctly defined clinical experience intended to enable the candidate to develop basic school psychology skills and integrate professional knowledge).

(iv) Administrator programs.

(A) The internship for administrators shall take place in an education setting serving under the general supervision of a certificated practitioner who is performing in the role for which certification is sought.

(B) Components of the required internship shall include demonstration by the candidate that he or she has the appropriate, specific relevant skills pursuant to WAC 181-78A-270.

(C) An approved preparation program for superintendents shall require an internship of at least three hundred sixty hours.

(D) An approved preparation program for principals shall require for those persons beginning their internship August 1, 2009, and after, an internship which requires practice as an intern during the full school year. A "full school year" shall mean five hundred forty hours of which at least one-half shall be during school hours, when students and/or staff are present: Provided further, That an approved preparation program for principals shall require an internship that shall include demonstration by the candidate that she or he has the appropriate, specific skills pursuant to the standards identified in WAC 181-78A-270(2) and meets, at minimum, the standards-based benchmarks approved and published by the professional educator standards board. The benchmarks may not be changed without prior professional educator standards board approval.

(4) (~~(Program and faculty))~~ Collaboration.

(a) Faculty within the program and unit collaborate for continuous program improvement.

(b) Faculty collaborate with content area specialists.

(c) Programs collaborate with P-12 schools to assess and respond to work force, student learning, and professional development needs.

(d) Faculty collaborate with members of the broader professional community.

(e) Faculty collaborate with members of under-represented populations for program improvement.

(5) Diversity in learning experiences.

(a) Candidates have significant interaction with diverse populations including colleagues, faculty, P-12 practitioners, and P-12 students and families.

(i) Candidates reflect on interactions with diverse populations in order to integrate professional growth in cultural competency as a habit of practice.

(ii) Candidates integrate their cultural and linguistic backgrounds into classroom activities in order to build the multicultural capacity of the preparation program cohort.

(b) Faculty model equity pedagogy through:

(i) Interaction with diverse populations;

(ii) Reflective practice on their own professional growth in cultural competency;

(iii) Culturally relevant communication and problem solving; and

(iv) Personalized instruction that addresses cultural and linguistic backgrounds.

WSR 14-20-017

PROPOSED RULES

PROFESSIONAL EDUCATOR

STANDARDS BOARD

[Filed September 19, 2014, 1:03 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-09-005.

Title of Rule and Other Identifying Information: Amends WAC 181-78A-270 to require programs to prepare candidates for science endorsements to have both science and a designated science.

Hearing Location(s): Educational Service District 112, 2500 N.E. 65th Avenue, Vancouver, WA 98661, on November 13, 2014, at 8:30.

Date of Intended Adoption: November 13, 2014.

Submit Written Comments to: David Brenna, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by November 6, 2014.

Assistance for Persons with Disabilities: Contact David Brenna by November 6, 2014, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Beginning in 2016, new issued certifications with science endorsements will be required to have an additional designated biology, chemistry, physics or Earth/space endorsement.

Reasons Supporting Proposal: Improves qualifications to teach science.

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

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

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

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

September 19, 2014

David Brenna

Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 14-07-067, filed 3/17/14, effective 4/17/14)

WAC 181-78A-270 Approval standard—Knowledge and skills. Each preparation program must be in compliance with the program approval standards of WAC 181-78A-220(5):

(1) **TEACHER RESIDENCY CERTIFICATION.**

(a) **EFFECTIVE TEACHING.**

(i) Using multiple instructional strategies, including the principles of second language acquisition, to address student academic language ability levels and cultural and linguistic backgrounds;

(ii) Applying principles of differentiated instruction, including theories of language acquisition, stages of language, and academic language development, in the integration of subject matter across the content areas of reading, mathematical, scientific, and aesthetic reasoning;

(iii) Using standards-based assessment that is systematically analyzed using multiple formative, summative, and self-assessment strategies to monitor and improve instruction;

(iv) Implementing classroom/school centered instruction, including sheltered instruction that is connected to communities within the classroom and the school, and includes knowledge and skills for working with other;

(v) Planning and/or adapting standards-based curricula that are personalized to the diverse needs of each student;

(vi) Aligning instruction to the learning standards and outcomes so all students know the learning targets and their progress toward meeting them;

(vii) Planning and/or adapting curricula that are standards driven so students develop understanding and problem-solving expertise in the content area(s) using reading, written and oral communication, and technology;

(viii) Preparing students to be responsible citizens for an environmentally sustainable, globally interconnected, and diverse society;

(ix) Planning and/or adapting learner centered curricula that engage students in a variety of culturally responsive, developmentally, and age appropriate strategies;

(x) Using technology that is effectively integrated to create technologically proficient learners; and

(xi) Informing, involving, and collaborating with families/neighborhoods, and communities in each student's educational process, including using information about student cultural identity, achievement and performance.

(b) **PROFESSIONAL DEVELOPMENT.** Developing reflective, collaborative, professional growth-centered practices through regularly evaluating the effects of his/her teaching through feedback and reflection.

Teacher evaluation. After August 31, 2013, an approved preparation program for teachers shall require candidates for a residency certificate to demonstrate knowledge of teacher evaluation research and Washington's evaluation requirements. At a minimum, teacher preparation programs must address the following knowledge and skills related to evaluations:

(i) Examination of Washington's evaluation requirements, criteria, four-tiered performance rating system, and

the preferred instructional frameworks used to describe the evaluation criteria;

(ii) Self-assessment, goal setting, and reflective practices;

(iii) Evidence gathering over time;

(iv) Use of student growth data and multiple measures of performance;

(v) Evaluation conferencing; and

(vi) Use of an online tool to review observation notes and submit materials to be included in evaluation.

(c) **TEACHING AS A PROFESSION.**

(i) Participating collaboratively and professionally in school activities and using appropriate and respectful verbal and written communication.

(ii) Demonstrating knowledge of professional, legal, and ethical responsibilities and policies.

(d) **PERFORMANCE ASSESSMENT.** An approved preparation program for teachers shall require that each candidate engage in an assessment process approved by the professional educator standards board. The assessment will verify that the candidate for a residency teacher certificate can meet the teacher standards in (a), (b) and (c) of this subsection and understands teacher impact on student learning. Beginning January 1, 2014, all candidates will complete and pass the teacher performance assessment per WAC 181-78A-264 as authorized by the professional educator standards board: Provided, that candidates who participated in the teacher performance assessment field trials or took the pedagogy assessment prior to January 1, 2014, may be recommended for certification by the preparation program. All candidates shall exit the residency certificate program with a draft professional growth plan oriented toward the expectations for the professional certificate.

(e) SCIENCE ENDORSEMENT. Beginning September 1, 2016, programs offering the science endorsement must also require candidates to earn a designated science endorsement (biology, chemistry, Earth and space science, or physics).

(2) **PRINCIPAL AND PROGRAM ADMINISTRATOR.**

(a) Principal and program administrator candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

Successful demonstration of standards.

(i) A school or program administrator is an educational leader who has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by leading the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by school/program and community stakeholders;

(ii) A school or program administrator is an educational leader who has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by leading through advocating, nurturing, and sustaining district/school/program cultures and coherent instructional programs that are conducive to student learning and staff professional growth;

(iii) A school or program administrator is an educational leader who has the knowledge, skills, and cultural compe-

tence to improve learning and achievement to ensure the success of each student by ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment;

(iv) A school or program administrator is an educational leader who has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources;

(v) A school or program administrator is an educational leader who has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by acting with integrity, fairness, and in an ethical manner; and

(vi) A school or program administrator is an educational leader who has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by understanding, responding to, and influencing the larger political, social, economic, legal and cultural context.

(b) Performance assessment. An approved preparation program for principals shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan oriented toward the expectations for the professional certificate.

(c) Teacher and principal evaluation. After August 31, 2013, an approved preparation program for principals shall require candidates for a residency principal certificate to demonstrate knowledge of teacher evaluation research, Washington's evaluation requirements, and successfully complete opportunities to practice teacher evaluation skills. At a minimum, principal preparation programs must address the following knowledge and skills related to evaluations:

(i) Examination of Washington teacher and principal evaluation criteria, four-tiered performance rating system, and the preferred instructional and leadership frameworks used to describe the evaluation criteria;

(ii) Self-assessment, goal setting, and reflective practices;

(iii) Evidence gathering over time;

(iv) Classroom observation skills;

(v) Bias training;

(vi) Rater agreement on the four-tiered system;

(vii) Use of student growth data and multiple measures of performance;

(viii) Evaluation conferencing;

(ix) Development of classroom teacher and principal support plans resulting from an evaluation; and

(x) Use of an online tool to manage the collection of observation notes, teacher- and principal-submitted materials, and other information related to the conduct of the evaluation.

(3) **SUPERINTENDENT.** An approved preparation program for superintendents shall require the candidate to

demonstrate in course work and the internship the following standards:

(a) A superintendent is the community's educational leader who has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by leading the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by district and community stakeholders;

(b) A superintendent is the community's educational leader who has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by leading through advocating, nurturing, and sustaining district culture and coherent instructional programs that are conducive to student learning and staff professional growth;

(c) A superintendent is the community's educational leader who has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment;

(d) A superintendent is the community's educational leader who has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources;

(e) A superintendent is the community's educational leader who has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by acting with integrity, fairness, and in an ethical manner;

(f) A superintendent is the community's educational leader who has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by understanding, responding to, and influencing the larger political, social, economic, legal, and cultural context; and

(g) Principal evaluation. After August 31, 2013, an approved preparation program for superintendents shall require candidates for an initial superintendent certificate to demonstrate knowledge of principal evaluation research, Washington's evaluation requirements, and successfully complete opportunities to practice principal evaluation skills. At a minimum, superintendent preparation programs must address the following knowledge and skills related to evaluations:

(i) Examination of Washington principal evaluation criteria, four-tiered performance rating system, and the preferred leadership frameworks used to describe the evaluation criteria;

(ii) Self-assessment, goal setting, and reflective practices;

(iii) Evidence gathering over time;

(iv) Observation skills;

(v) Bias training;

(vi) Rater agreement on the four-tiered system;

(vii) Use of student growth data and multiple measures of performance;

(viii) Evaluation conferencing;

(ix) Development of principal support plans resulting from an evaluation; and

(x) Use of an online tool to manage the collection of observation notes, superintendent- and principal-submitted materials, and other information related to the conduct of the evaluation.

(4) **SCHOOL COUNSELOR.** School counselor candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

(a) **Successful demonstration of standards:**

(i) **School counseling program:** Certified school counselors develop, lead, and evaluate a data-driven school counseling program that is comprehensive, utilizes best practices, and advances the mission of the school.

(ii) **Student learning and assessments:** Certified school counselors use their knowledge of pedagogy, child development, individual differences, learning barriers, and Washington state learning requirements to support student learning. They work effectively with other educators to monitor and improve student success.

(iii) **Counseling theories and technique:** Certified school counselors use a variety of research-based counseling approaches to provide prevention, intervention, and responsive services to meet the academic, personal/social and career needs of all students.

(iv) **Equity, fairness, and diversity:** Certified school counselors understand cultural contexts in a multicultural society, demonstrate fairness, equity, and sensitivity to every student, and advocate for equitable access to instructional programs and activities.

(v) **School climate and collaboration:** Certified school counselors collaborate with colleagues, families, and community members to establish and foster a safe, inclusive, and nurturing learning environment for students, staff, and families.

(vi) **Professional identity and ethical practice:** Certified school counselors engage in continuous professional growth and development and advocate for appropriate school counselor identity and roles. They adhere to ethical practices and to the Washington state and federal policies, laws, and legislation relevant to school counseling.

(b) **Performance assessment.** An approved preparation program for school counselors shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan oriented to the expectations for the professional certificate.

(5) **SCHOOL PSYCHOLOGIST.** School psychologist candidates will complete formalized learning opportunities, including an internship, in an approved program that includes:

(a) **Successful demonstration of standards:**

(i) **Data-based decision making and accountability:** Certified school psychologists have knowledge of varied

models and methods of assessment as part of a systematic process of data-based decision making that permeates every aspect of professional practice.

(ii) **Consultation and collaboration:** Certified school psychologists have knowledge of behavioral, mental health, collaborative, and other consultation models and methods and of their application to individual and contextual situations; collaborate effectively with others in planning and decision-making processes at the individual, group, and system levels.

(iii) **Interventions and instructional support to develop academic skills:** Certified school psychologists have knowledge of the influence of biological, cultural, linguistic, and early life experiences on academic development and collaborate with others to access, implement, and evaluate services at universal, targeted, and intensive levels using a variety of culturally and developmentally appropriate assessments.

(iv) **Interventions and mental health services to develop social and life skills:** Certified school psychologists have knowledge of biological, cultural, developmental, and social influences on behavior and mental health; collaborate with others, to develop, implement, and evaluate services that support socialization, cultural competence, learning, and mental health for positive impact on student learning.

(v) **Schoolwide practices to promote learning:** Certified school psychologists have knowledge of general and special education, evidence-based practices, and equity pedagogy that responds to the needs of the learners; demonstrate skills to manage time effectively, respond to the learning needs of the individual students, and plan and measure positive impact on student learning.

(vi) **Prevention and responsive services:** Certified school psychologists have knowledge of principles of resilience and risk factors and demonstrate skills in multitiered delivery of services that respond to crisis and promote learning and mental health across cultures.

(vii) **School collaboration services:** Certified school psychologists have knowledge of family systems, including family strengths and influences on student development, learning, and behavior, and of methods to involve families in education and service delivery; facilitate family and school partnerships and interactions with community agencies for enhancement of academic and social-behavior outcomes for children.

(viii) **Diversity in development and learning:** Certified school psychologists have knowledge of the principles and research related to culture, linguistic development, context, individual and role differences; work collaboratively to provide professional services that respond to the diverse needs of individuals and families; advocate for social justice and equity pedagogy.

(ix) **Research and program evaluation:** Certified school psychologists have knowledge of research, statistics, and evaluation methods; evaluate research, translate research into practice, and understand research design and statistics in sufficient depth to plan and conduct investigations and program evaluations for improvement of services at individual, group, and systems levels.

(x) **Legal, ethical, and professional practice:** Certified school psychologists have knowledge of the history and foundations of their profession; of multiple service models and methods; of ethical, professional, and legal standards, including the Washington Administrative Code and federal and state accountability legislation; practice in ways that are consistent with applicable standards; engage in responsive ethical and professional decision-making; and apply professional work characteristics.

(xi) **Emerging and assistive technologies:** Certified school psychologists have knowledge of and access, implement, and evaluate technology relevant to their work and to the instructional needs of individuals with disabilities.

(b) **Performance assessment.** An approved preparation program for school psychologists shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan oriented to the expectations for the professional certificate.

WSR 14-20-020
PROPOSED RULES
DEPARTMENT OF REVENUE

[Filed September 19, 2014, 1:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-17-103.

Title of Rule and Other Identifying Information: WAC 458-20-185 Tax on tobacco products and 458-20-186 Tax on cigarettes. WAC 458-20-185 ("Rule 185") explains the tax liabilities of persons engaged in business as retailers or distributors of tobacco products other than cigarettes. WAC 458-20-186 ("Rule 186") explains the tax liabilities of persons who sell, use, consume, handle, possess, or distribute cigarettes in Washington.

Hearing Location(s): Capital Plaza Building, 4th Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA, on November 6, 2014, at 10:00 a.m. *Call-in option can be provided upon request no later than three days before the hearing date.* Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Date of Intended Adoption: November 13, 2014.

Submit Written Comments to: David Hesford, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail DavidH@dor.wa.gov, by November 13, 2014.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499, or Renee Cosare, (360) 725-7514, no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department last filed amendments to Rules 185 and 186 on April 26, 2010. Shortly after that time, ESHB 2493, which provided a change in the tax rates for cigarette and tobacco products,

became effective on May 1, 2010 (except for rates on moist snuff which became effective on October 1, 2010). Then, on July 1, 2012, 3ESSHB [3E2SHB] 2565, which amended the cigarette tax provisions in chapter 82.24 RCW to address roll-your-own cigarettes, became effective. The department is proposing amending Rules 185 and 186 to reflect those legislative changes. Further, the department is proposing amendments reflecting comments received on its preproposal draft filed with Form CR-101.

In addition to changes to Rule 185 reflecting the statutory amendments to chapter 82.26 RCW in ESHB 2493, the department is proposing the following amendments to Rule 185:

- Providing language throughout the rule that is more consistent with chapter 82.26 RCW;
- Adding a section on wholesale and retail tobacco products vendor licensing requirements and responsibilities;
- Providing guidance on transactions involving Indian distributors, Indian retailers, and Indian tribal organizations; and
- Clarifying the reporting requirements for retailers and distributors of tobacco products and credits available to distributors.

In addition to changes to Rule 186 reflecting the statutory amendments to chapter 82.24 RCW in ESHB 2493 and 3ESSHB [3E2SHB] 2565, the department is proposing the following amendments to Rule 186:

- Providing language throughout the rule that is more consistent with chapter 82.24 RCW;
- Formatting the rule in the same manner as Rule 185;
- Deleting provisions that appear redundant or are no longer required by law;
- Adding a section on wholesale and retail cigarette vendor licensing requirements and responsibilities;
- Adding a section explaining the requirements and responsibilities related to making sales or purchases of cigarettes in Indian country;
- Providing additional guidance on the manner in which the cigarette stamp must be affixed;
- Clarifying the refund procedure;
- Providing guidance on how long a person may possess cigarettes in this state as a purchaser or consignee of unstamped cigarettes; and
- Updating the information on current reports and returns required by law.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), 82.24.550(2), 82.26.220(2).

Statute Being Implemented: Chapters 82.24 and 82.26 RCW.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: David Hesford, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1586; Implementation: Dylan Waits,

1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1583; and Enforcement: Alan Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impose any new performance requirement or administrative burden on any small business not required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. This is not a significant legislative rule as defined in RCW 34.05.328.

September 19, 2014
Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-10-032, filed 4/26/10, effective 5/27/10)

WAC 458-20-185 Tax on tobacco products. (1) **Introduction.** This rule explains the tax liabilities of persons engaged in business as retailers or distributors of tobacco products other than cigarettes. The tax on tobacco products (also called "other tobacco products tax," "tobacco tax," or "OTP tax") is in addition to all other taxes owed, such as retailing or wholesaling business and occupation tax, sales tax, and litter tax. See WAC 458-20-186 for tax liabilities associated with taxes that apply exclusively to cigarettes.

~~(2) ((Licensing requirements and responsibilities. The Washington state liquor control board assumed the licensing responsibilities for cigarettes on July 1, 2009. Please see chapters 314-33 and 314-34 WAC.~~

~~(3))~~ **Organization of rule.** The information provided in this rule is divided into five parts:

(a) Part I provides definitions and explains the tax liabilities of persons engaged in the business of selling or distributing tobacco products (excluding cigarettes) in this state.

(b) Part II explains wholesale and retail tobacco products vendor licensing requirements and responsibilities.

~~(c)~~ ~~((H))~~ **III** explains the requirements and responsibilities for persons transporting tobacco products in Washington.

~~((e))~~ ~~(d)~~ ~~((H))~~ **IV** explains the recordkeeping requirements and enforcement of the tobacco tax.

~~((f))~~ ~~(e)~~ ~~((IV))~~ **V** describes the credits for tax paid and the procedures that must be followed to qualify for credit.

Part I - Tax on Tobacco Products (excluding Cigarettes)

~~(101) ((In general. The Washington state tobacco products tax is due and payable by the first distributor who possesses tobacco products in this state. The measure of the tax in most instances is based on the actual price paid by the distributor for the tobacco product, unless the distributor is affiliated with the seller.~~

~~(102))~~ **Definitions.** For the purposes of this rule, the following definitions apply:

(a) **"Actual price"** means the total amount of consideration for which tobacco products are sold, valued in money, whether received in money or otherwise, including any charges by the seller necessary to complete the sale such as charges for delivery, freight, transportation, or handling.

(b) **"Affiliated"** means related in any way by virtue of any form or amount of common ownership, control, operation, or management.

(c) **"Board"** means the liquor control board.

(d) **"Business"** means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state.

(e) **"Cigar"** means a roll for smoking that is of any size or shape and that is made wholly or in part of tobacco, irrespective of whether the tobacco is pure or flavored, adulterated or mixed with any other ingredient, if the roll has a wrapper made wholly or in greater part of tobacco. "Cigar" does not include a cigarette.

(f) **"Cigarette"** has the same meaning as in RCW 82.24.010.

(g) **"Department"** means the department of revenue.

(h) **"Distributor"** means:

(i) Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale;

(ii) Any person who makes, manufactures, fabricates, or stores tobacco products in this state for sale in this state;

(iii) Any person engaged in the business of selling tobacco products from outside this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers;

(iv) Any person engaged in the business of selling tobacco products in this state who handles for sale any tobacco products that are within this state but upon which tax has not been imposed. RCW 82.26.010 (3)(a) through (d). (For example, Sunshine Tobacco Shop ("Sunshine") buys cigars from an out-of-state manufacturer for resale to consumers in this state. The cigars are shipped to Sunshine via common carrier. In this instance, Sunshine is a distributor, must have both a ~~((retailer's and a distributor's))~~ tobacco distributor license and a tobacco products retailer license, and must pay the tobacco products tax on the products it brings into the state. However, if Sunshine bought its merchandise exclusively from in-state distributors that have paid the tobacco products tax on that merchandise, Sunshine would not be considered a distributor, and would need only a ~~((retailer's))~~ tobacco products retailer license.)

(i) **"Indian," "Indian country," and "Indian tribe"** have the same meaning as defined in chapter 82.24 RCW and WAC 458-20-192.

(j) **"Indian distributor"** means a federally recognized Indian tribe or tribal entity that would otherwise meet the definition of distributor under RCW 82.26.010, if federally recognized Indian tribes and tribal entities were not excluded from the definition of "person" in RCW 82.26.010.

(k) **"Indian retailer"** means a federally recognized Indian tribe or tribal entity that would otherwise meet the definition of retailer under RCW 82.26.010, if federally recognized Indian tribes and tribal entities were not excluded from the definition of "person" in RCW 82.26.010.

(l) **"Indian tribal organization"** means a federally recognized Indian tribe, or tribal entity, and includes an Indian distributor or retailer that is owned by an Indian who is an enrolled tribal member conducting business under tribal license or similar tribal approval within Indian country.

(m) "Little cigar" means a cigar that has a cellulose acetate integrated filter.

(n) "Manufacture" means the production, assembly, or creation of new tobacco products. For the purposes of this rule, "manufacture" does not necessarily have the same meaning as provided in RCW 82.04.120.

~~((+))~~ (o) "Manufacturer" means a person who manufactures and sells tobacco products.

~~((+))~~ (p) "Manufacturer's representative" means a person hired by a manufacturer to sell or distribute the manufacturer's tobacco products, and includes employees and independent contractors.

~~((+))~~ (q) "Moist snuff" means tobacco that is finely cut, ground, or powdered; is not for smoking; and is intended to be placed in the oral, but not the nasal, cavity.

(r) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the state and its departments and institutions, political subdivision of the state of Washington, corporation, limited liability company, association, society, any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise. The term excludes any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

~~((+))~~ (s) "Place of business" means any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale, including any vessel, vehicle, airplane, train, or vending machine.

~~((+))~~ (t) "Retailer" means any person engaged in the business of selling tobacco products to ultimate consumers.

~~((+))~~ (u) "Retail outlet" means each place of business from which tobacco products are sold to consumers.

~~((+))~~ (v) "Sale" means:

(i) Any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person.

(ii) The term "sale" includes a gift by a person engaged in the business of selling tobacco products, for advertising, promoting, or as a means of evading the provisions of this chapter.

~~((+))~~ "Sample" and "sampling" have the same meaning as in RCW 70.155.010.

~~((+))~~ (w) "Store," "stores," or "storing" means the holding of tobacco products for later sale or delivery inside or outside this state. For example:

(i) Wilderness Enterprises ships products from out-of-state to its Kent warehouse. All products are intended for future sale to Alaska. Wilderness Enterprises is a distributor that stores tobacco products in this state. Wilderness Enterprises is liable for tobacco products tax on the products stored in this state. (However, see subsection (501)(a) of this ~~(section)~~ rule for credits that may be available to Wilderness Enterprises for out-of-state sales.)

(ii) Cooper Enterprises brings tobacco products into this state for sale. It rents storage space from a third party, Easy Storage. Cooper Enterprises (the distributor), not Easy Stor-

age, is responsible for the tax and reporting requirements on the stored tobacco products.

~~((+))~~ (x) "Taxable sales price" means:

(i) In the case of a taxpayer that is not affiliated with the manufacturer, distributor, or other person from whom the taxpayer purchased tobacco products, the actual price for which the taxpayer purchased the tobacco products. For purposes of this subsection, "person" includes both persons as defined in ~~((+))~~ (r) of this subsection and any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country;

(ii) In the case of a taxpayer that purchases tobacco products from an affiliated manufacturer, affiliated distributor, or other affiliated person, and that sells those tobacco products to unaffiliated distributors, unaffiliated retailers, or ultimate consumers, the actual price for which that taxpayer sells those tobacco products to unaffiliated distributors, unaffiliated retailers, or ultimate consumers~~((-~~

~~For purposes of this subsection, "person" includes both persons as defined in (m) of this subsection and any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country);~~

(iii) In the case of a taxpayer that sells tobacco products only to affiliated distributors or affiliated retailers, the price, determined as nearly as possible according to the actual price for which other distributors sell similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers;

(iv) In the case of a taxpayer that is a manufacturer selling tobacco products directly to ultimate consumers, the actual price for which the taxpayer sells those tobacco products to ultimate consumers;

(v) In the case of a taxpayer that has acquired tobacco products under a sale as defined in ~~((+))~~ (v)(ii) of this subsection, the price, determined as nearly as possible according to the actual price for which the taxpayer or other distributors sell the same tobacco products or similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers; or

(vi) In any case where ~~((+))~~ (x)(i) through (v) of this subsection do not apply, the price, determined as nearly as possible according to the actual price for which the taxpayer or other distributors sell the same tobacco products or similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers.

~~((+))~~ (y) "Taxpayer" means a person liable for the tax imposed by chapter 82.26 RCW.

~~((+))~~ (z) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, caven-dish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, ~~((including wrapping papers or tubes that contain any amount of tobacco (such as "blunts"));~~) prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or

both for chewing and smoking, and any other product, regardless of form, that contains tobacco and is intended for human consumption or placement in the oral or nasal cavity or absorption into the human body by any other means, but ~~((shall))~~ does not include cigarettes as defined in RCW 82.24.010.

~~((w))~~ **(aa) "Unaffiliated distributor"** means a distributor that is not affiliated with the manufacturer, distributor, or other person from whom the distributor has purchased tobacco products.

~~((x))~~ **(bb) "Unaffiliated retailer"** means a retailer that is not affiliated with the manufacturer, distributor, or other person from whom the retailer has purchased tobacco products.

~~((103))~~ **(102) Imposition of tax.** ~~((RCW 82.26.030 as amended effective July 1, 2005, states: "It is the further intent and purpose of this chapter that the distributor who first possesses the tobacco product in this state shall be the distributor liable for the tax and that in most instances the tax will be based on the actual price that the distributor paid for the tobacco product, unless the distributor is affiliated with the seller."))~~ The tobacco tax is imposed ~~((at the time the first distributor possesses the product in this state for sale. RCW 82.26.020(2))~~ upon the sale, handling, or distribution of all tobacco products in this state. Taxes are imposed at the time the distributor (a) brings, or causes to be brought, into this state from without the state tobacco products for sale; (b) makes, manufactures, fabricates, or stores tobacco products in this state for sale in this state; (c) ships or transports tobacco products to retailers in this state, to be sold by those retailers; or (d) handles for sale any tobacco products that are within this state but upon which tax has not been imposed. RCW 82.26.020(2). The distributor who first possesses the tobacco product for sale in this state is the distributor liable for the tax. RCW 82.26.030.

Examples. The following examples, while not exhaustive, illustrate some of the circumstances in which the tax is imposed. These examples should be used only as a general guide. The status of each situation must be determined after a review of all of the facts and circumstances.

(a) BET ~~((Wholesalers))~~ Distributors sells and ships tobacco products from Kentucky via common carrier to Surprise Enterprises in Washington. The tax is due from Surprise Enterprises, a licensed distributor, because it is the first possessor in Washington that holds the product for sale. However, BET Distributors must give the ~~((liquor control))~~ board ~~((LCB))~~ notice of its intent to ship tobacco products into this state.

(b) BET ~~((Wholesalers))~~ Distributors sells and ships tobacco products in its own trucks from Kentucky to Jamie's Enterprises, a licensed distributor in Washington. The tax is due from BET ~~((Wholesalers))~~ Distributors, because it is the first possessor in Washington that holds the product for sale.

(c) Garden State Cigars is located in New Jersey. It ships its products to Washington retailers via ~~((National))~~ common carrier. The retailers must be licensed as distributors and are liable for the tax. However, Garden State Cigars must give the ~~((liquor control))~~ board ~~((LCB))~~ notice of its intent to ship tobacco products into this state.

~~((104))~~ (d) An Indian retailer located in Indian Country in Washington State sells tobacco products to Washington retailers who pick up the products in Indian Country and take it back to their retail outlets. The Washington retailers must be licensed as distributors and are liable for the tax. The Indian retailer is not required to hold a state tobacco products retailer or distributor license. State-licensed distributors making retail sales to Indian retailers may claim a credit against the tax under RCW 82.26.110.

(103) Rates. The rate of the Washington state tobacco tax ~~((is an excise tax levied on the taxable sales price as defined in RCW 82.26.010. The rate is a combination of statutory rates))~~ depends upon the tobacco product sold (cigars, other tobacco products, moist snuff, or little cigars) and is found in RCW 82.26.020.

~~((105))~~ **(104) Promotions.** ~~((a))~~ Tobacco products sold, provided at a reduced cost, or given away for advertising or any other purpose are taxed in the same manner as if they were sold, used, consumed, handled, possessed, or distributed in this state. RCW 82.26.010 ~~((5))~~ **(18)(b).** ~~((The taxable sales price for the tobacco products is the actual price for which the taxpayer or other distributors sell the same tobacco products, or a maximum of 67 cents each for cigars. RCW 82.26.010(18).))~~

For example, Etta's (an out-of-state manufacturer) gives Joe's Distributing 500 cigars and 200 cans of snuff as a promotion. Etta's and Joe's Distributing are unaffiliated. Joe's Distributing normally sells this brand of cigars for \$1.00 each and the snuff for \$2.50 each to unaffiliated distributors and/or retailers. Joe's Distributing owes tobacco products tax on this merchandise. Because Joe's Distributing normally sells each cigar for more than 67 cents, the tobacco products tax is calculated on the cigars at 50 cents each (500 x 0.50 = \$250). The tobacco products tax on the snuff is calculated at 75% of Joe's normal selling price to unaffiliated buyers (200 x \$2.50 = \$500 x 75% = \$375) for a total tobacco products tax of \$625.

(b) If a product is purchased or sold at a discount in a promotion characterized as a "2 for 1" or similar sale, the tax is calculated on the actual prorated consideration the buyer paid to the unaffiliated distributor, or a maximum of 67 cents a cigar.

For example:

(i) Duke Distributing (an out-of-state wholesaler) ships tobacco products via common carrier to Lem's Tobacco Shop (an unaffiliated Washington retailer). Duke invoices Lem's for \$1,500. The sale includes 200 cigars priced "buy one for \$2 and get one free"; the balance of the sale is chewing tobacco priced at \$1,300. Lem's Tobacco Shop is liable for the tax. The tax on the chewing tobacco is \$975 (\$1,300 x 75%). Each cigar costs Lem's Tobacco Shop \$1 (\$200/200 cigars = \$1 per cigar). Because each cigar costs more than 67 cents, the tax on the cigars is capped at \$0.50 each. The tax on the cigars is \$100 (200 cigars x \$0.50 = \$100). Total tobacco tax due on the invoice is \$1,075.

(ii) Shasta Distributing (an out-of-state wholesaler) ships OTP in its own trucks to Lem's Tobacco Shop (an unaffiliated Washington retailer). Shasta invoices Lem's for \$1,500. The sale includes 200 cigars priced "buy one for \$2 and get one free"; the balance of the sale is chewing tobacco priced at

\$1,300. Shasta Distributing owes the tax. Shasta originally purchased the products from an unaffiliated manufacturer for \$300 (\$100 for the cigars and \$200 for the chewing tobacco). The tax on the chewing tobacco is \$150 (\$200 x 75%). The tax on the cigars is \$75 (\$100 x 75% = \$75), because the cigars cost less than 67 cents each (\$100/200 cigars = 50 cents per cigar). Total tobacco tax due on the invoice is \$225.

(iii) Wind Blown Distributing (an out-of-state wholesaler) ships tobacco products in its own trucks to Lem's Tobacco Shop (an unaffiliated retailer located in this state). Wind Blown invoices Lem's for \$1,500. The sale includes 200 cigars priced "buy one for \$2 and get one free"; the balance of the sale is chewing tobacco priced at \$1,300. Wind Blown Distributing owes the tax. Wind Blown originally purchased the products from an affiliated manufacturer for \$100 (\$25 for the cigars and \$75 for the chewing tobacco). The measure of the tax is the actual price for which Wind Blown sells these products to unaffiliated buyers, i.e., Lem's. The tax due on the chewing tobacco is \$975 (\$1,300 x 75%). The tax on the cigars is \$100 (200 cigars x 50 cents). The tax on the cigars is capped at \$0.50 each, because each cigar costs more than 67 cents (\$200/200 cigars = \$1 per cigar). Total tobacco tax due on the invoice is \$1,075.)

Part II - Wholesale and Retail Tobacco Products Vendor Licensing Requirements and Responsibilities

(201) License required. No person may engage in the retail or wholesale distribution of tobacco products in this state without a license, except for any person immune from state taxation, including federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country, and the United States or its instrumentalities.

(202) Tobacco distributor license. Prior to selling or distributing tobacco products from a stock of goods in Washington or to retailers in Washington, each distributor must first obtain a tobacco distributor license from the department through its business licensing service.

(a) Background check. Each distributor must undergo a criminal background check by the board before a license will be issued. RCW 82.26.150(3). See chapter 314-33 WAC for board standards. Failure to provide information sufficient to complete the background check may result in denial of the license.

(b) Application. Application for a license or renewal of a license is made on forms supplied by the department and must be accompanied by the annual license fee as provided in chapter 82.26 RCW. A tobacco distributor license is valid for one year from the date it is issued. The annual license fee is waived if the licensee has applied for or already has a cigarette wholesaler license.

(c) Multiple locations. If the distributor sells, intends to sell, or stores tobacco products at more than one place of business, whether temporary or permanent, a separate license with a license fee as provided in chapter 82.26 RCW is required for each additional place of business. Each license must be exhibited in the place of business for which it is issued.

(203) Duties and responsibilities of licensed distributors.

(a) Sales restricted. Distributors selling tobacco products in this state may sell tobacco products only to Washington retailers or distributors who have a current tobacco license, to other licensed distributors, the federal government or its instrumentalities, or to Indian tribal organizations.

(b) Manufacturer's representatives. Manufacturers selling tobacco products through manufacturer's representatives must provide the board a current list of the names and addresses of all such representatives and must ensure that the list provided to the board is kept current. RCW 82.26.210.

(204) Tobacco products retailer license. Prior to the retail sale or distribution of tobacco products, each retailer must first be issued a tobacco products retailer license from the department through its business licensing service.

(a) Background check. Each retailer must undergo a criminal background check by the board before a license will be issued. RCW 82.26.150(3). See chapter 314-33 WAC for board standards. Failure to provide information sufficient to complete the background check may result in denial of the license.

(b) Application. Application for a license or renewal of a license is made on forms supplied by the department and must be accompanied by the annual license fee as provided in chapter 82.26 RCW. A tobacco products retailer license is valid for one year from the date it is issued. The annual license fee is waived if the licensee has already applied for or already has a cigarette retailer license at the same business location.

(c) Multiple locations. If the retailer sells tobacco products at more than one place of business, whether temporary or permanent, a separate license with a license fee as provided in chapter 82.26 RCW is required for each additional place of business. Each license must be exhibited in the place of business for which it is issued.

(205) Duties and responsibilities of retailers. A retailer that obtains tobacco products from an unlicensed distributor or any other person that is not licensed under this chapter must be licensed both as a retailer and a distributor and is liable for the tax imposed under RCW 82.26.020 with respect to the tobacco products acquired from the unlicensed person that are held for sale, handling, or distribution in this state. For example, if a retailer buys tobacco products from an Indian retailer or an out-of-state wholesaler who does not have a tobacco distributor license, the retailer must obtain a distributor license and pay the tobacco tax due. An Indian retailer in Indian country is not required to hold a state tobacco products retailer or distributor license.

(206) Licensing enforcement. The board assumed the licensing enforcement responsibilities for tobacco products on July 1, 2009. See chapters 314-33 and 314-34 WAC for the board's enforcement provisions on tobacco products.

Part III - Transporting Tobacco Products in Washington

~~((204))~~ **(301) Transportation of tobacco products restricted.**

(a) Other than as provided in (b) of this subsection, only licensed distributors or retailers in their own vehicles, or manufacturer's representatives authorized to sell or distribute

tobacco products in this state, can transport tobacco products in this state. Individuals transporting the product must have a copy of a valid retailer's or distributor's license in their possession and evidence that they are representatives of the licensees. Individuals transporting tobacco products for sale must also have in their possession invoices or delivery tickets for the tobacco products that show the name and address of the consignor or seller, the name and address of the consignee or purchaser, and the quantity and brands of the tobacco products being transported. It is the duty of the distributor, retailer, or manufacturer responsible for the delivery or transportation of the tobacco products to ensure that all drivers, agents, representatives, or employees have the delivery tickets or invoices in their possession for all such shipments.

(b) All other persons must give notice to the board in advance of transporting or causing tobacco products to be transported in this state for sale. This includes those transporting tobacco products in this state via common carrier. For example: Peg's Primo Cigars (PPC), a small out-of-state distributor, sells tobacco products to retailers in Washington. PPC ships the products via ~~((National))~~ common carrier. Before placing the product in shipment to Washington, PPC must give notice to the board of the pending shipment. The notice must include the name and address of the consignor or seller, the name and address of the consignee or purchaser, the quantity and brands of the tobacco products being transported, and the shipment date.

Part ~~((H))~~ IV - Recordkeeping and Enforcement

~~((301))~~ (401) **Books and records.** An accurate set of records showing all transactions related to the purchase, sale, or distribution of tobacco products must be retained. RCW 82.26.060, 82.26.070 and 82.26.080. All records must be preserved for five years from the date of the transaction.

(a) **Distributors.** Distributors must keep at each place of business complete and accurate records for that place of business. The records to be kept by distributors include itemized invoices of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state or shipped or transported to retailers in this state, and of all sales of tobacco products. The itemized invoice for each purchase or sale must be legible and must show the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. Itemized invoices must be preserved for five years from the date of sale.

(b) **Retailers.** Retailers must secure itemized invoices of all tobacco products purchased. The itemized invoice for each purchase must be legible and must show the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. Itemized invoices must be preserved for five years from the date of sale. Retailers are responsible for the tax on any tobacco products for which they do not have invoices.

~~((302))~~ (402) **Reports and returns.** The department may require any person dealing in tobacco products in this state to complete and return forms, as furnished by the department, setting forth sales, inventory, shipments, and other data required by the department to maintain control over trade in tobacco.

(a) **Tax returns.** The tax is reported on the combined excise tax return that must be filed according to the reporting frequency assigned by the department. Detailed instructions for preparation of these returns may be obtained from the department.

(b) Reports.

(i) Retailers and distributors of tobacco products may be required to file a report with the department in compliance with the provisions of the National Uniform Tobacco Settlement when purchasing tobacco products (e.g., "roll your own tobacco") from certain manufacturers. ~~((Please))~~ See WAC 458-20-264 and chapter 70.157 RCW.

(ii) A person who sells, transfers, or ships for profit smokeless tobacco (as such term is defined in 15 U.S.C. Sec. 375) in interstate commerce, whereby such smokeless tobacco is shipped into Washington, or who advertises or offers such smokeless tobacco for sale, transfer, or shipment in this state, must file a report as required under 15 U.S.C. Sec. 376. This report is due no later than the tenth day of each calendar month and must include a memorandum or invoice covering all transactions and shipments of smokeless tobacco made into Washington during the previous calendar month.

(c) **Access to premises and records.** Retailers and distributors must allow department personnel free access to their premises to inspect the tobacco products on the premises and to examine the books and records for the business. For further details, ~~((please))~~ see subsection ~~((305))~~ (405) of this section.

~~((303))~~ (403) **Criminal provisions.** Chapter 82.26 RCW prohibits certain activities with respect to tobacco products. Persons handling tobacco within this state must refer to these statutes.

~~((304))~~ (404) **Search, seizure, and forfeiture.** Any tobacco products in the possession of a person selling tobacco in this state without a license or transporting tobacco products without the proper invoices or delivery tickets may be seized without a warrant by any agent of the department, agent of the board, or law enforcement officer of this state. In addition, all conveyances, including aircraft, vehicles, or vessels used to transport the illegal tobacco product may be seized and forfeited.

~~((305))~~ (405) **Enforcement.** Pursuant to RCW 82.26.-121 and 66.44.010, enforcement officers of the ~~((liquor control))~~ board may enforce all provisions of the law with respect to the tax on tobacco products. Retailers and distributors must allow department personnel and enforcement officers of the ~~((liquor control))~~ board free access to their premises to inspect the tobacco products on the premises and to examine the books and records of the business. If a retailer fails to allow free access, or hinders, or interferes with department personnel and/or enforcement officers of the ~~((liquor control))~~ board, that retailer's registration certificate issued under RCW 82.32.030 is subject to revocation. Additionally, any licenses issued under chapter 82.26 or 82.24 RCW are subject to suspension or revocation by the department or board.

~~((306))~~ (406) **Penalties.** Penalties and interest may be assessed in accordance with chapter 82.32 RCW for nonpayment of tobacco tax.

Part ((IV)) V - Credits

((401)) (501) Credits.

(a) Interstate and foreign sales. A credit is available to distributors for tobacco products sold to retailers and wholesalers outside the state for resale. This credit may be taken only for the amount of tobacco products tax reported and previously paid on such products. RCW 82.26.110. No credit may be taken for a sale of tobacco products from a stock of goods in this state to a consumer outside the state.

(b) Returned or destroyed goods. A credit may be taken for tax previously paid when tobacco products are destroyed or returned to the manufacturer. Credits claimed against tax owed or as a refund of tax paid, must be supported by documentation.

(c) Sales to the United States. A credit is available to distributors for tobacco products sold to the United States or any of its agencies or instrumentalities.

(d) Sales to Indian tribal organizations. A credit is available to distributors for tobacco products sold to any Indian tribal organization.

(e) Documentation. Credits claimed against tax owed or as a refund of tax paid, must be supported by documentation. ((Affidavits or certificates are required, and must substantially conform to those illustrated below. The affidavits or certificates must be completed by the taxpayer prior to claiming the credit, and must be retained with the taxpayer's records as set forth in Part VI of this rule)) The department provides two documents to assist taxpayers in determining the amount of credits available – The Tobacco Products Tax Credit Worksheet and Claim for Credit of Tobacco Product Tax. See the department's web site (dor.wa.gov) for more information.

((Claim for Credit on Tobacco Products Sold for Resale Outside Washington

The undersigned distributor under penalty of perjury under the laws of the state of Washington certifies that the following is true and correct to the best of his/her knowledge:

—(Business name), (tax reporting number),— purchased the tobacco products specified below for resale outside this state. Tobacco products tax has been paid on such tobacco products as set forth below:

Products were purchased from: —(name of business)—

.....
Date

Products were sold to: —(name of out-of-state buyer)—

.....
Address

.....
Date

Table with 4 columns: Product, Taxable sales price, Quantity, Tax paid. Rows include Cigars exceeding \$0.67 per cigar, Cigars not exceeding \$0.67 per cigar, and All tobacco products that are not cigars.

Signature of Taxpayer or Authorized Representative:

.....

Name:

Title:

Claim for Credit on Tobacco Products Destroyed Merchandise

(i) Certificate of taxpayer.

Table with 4 columns: Product, Taxable sales price, Quantity, Tax paid. Rows include Cigars exceeding \$0.67 per cigar, Cigars not exceeding \$0.67 per cigar, and All tobacco products that are not cigars.

The undersigned certifies under penalty of perjury under the laws of the state of Washington that the following is true and correct to the best of his/her knowledge:

—(Business name), —(tax reporting number),— a dealer in tobacco products, has destroyed tobacco products unfit for sale. Tobacco tax has been paid on such tobacco products as set forth above. The tobacco products were destroyed in the manner set forth below. The destruction occurred either:

(A) In the presence of an authorized agent of the department of revenue; or

(B) With prior authorization from the department to destroy the product without an agent of the department present.

Date, manner, and place of destruction:

Signature of Taxpayer or Authorized Representative:

.....

Name:

Title:

Witnessed or approved:

Authorized Agent, Department of Revenue

Claim for Credit on Tobacco Products Returned Merchandise

(ii) Certificate of manufacturer:

Product	Taxable sales price	Quantity	Tax paid
Cigars exceeding \$0.67 per cigar	N/A		
Cigars not exceeding \$0.67 per cigar		N/A	
All tobacco products that are not cigars		N/A	

The undersigned certifies under penalty of perjury under the laws of the state of Washington that the following is true and correct to the best of his/her knowledge:

~~_____(Business name)_____, _____(tax reporting number)_____, a dealer in tobacco products, has returned merchandise unfit for sale. Tobacco tax has been paid on such tobacco products as set forth above.~~

Returned to: _____

Date: _____

Method of transport: _____

Manufacturer's credit issued on: _____

Credit memo number: _____

Signature of Taxpayer or Authorized Representative: _____

Name: _____

Title: _____))

AMENDATORY SECTION (Amending WSR 10-10-033, filed 4/26/10, effective 5/27/10)

WAC 458-20-186 Tax on cigarettes. (1) Introduction.

~~This rule ((addresses those taxes activities that apply exclusively to)) explains the tax liabilities of persons who sell, use, consume, handle, possess, or distribute cigarettes ((as defined by RCW 82.24.010)) in Washington. The tax on cigarettes (also called the "cigarette tax") is in addition to all other taxes owed, such as retailing or wholesaling business and occupation tax, retail sales tax, use tax, and litter tax. See WAC 458-20-185 for tax liabilities associated with taxes that apply to tobacco products other than cigarettes. ((The tax on cigarettes is in addition to all other taxes owed. For example, retailers and wholesalers are liable for business and occupation tax on their retailing or wholesaling activities, and must collect and remit sales tax on retail sales of cigarettes. Consumers pay the cigarette tax in addition to sales or use tax on purchases of cigarettes for consumption within this state. (Wholesalers not licensed in the state of Washington who are making sales of cigarettes to Indians in accordance with a cigarette tax contract authorized by RCW 43.06.455 must comply with the~~

~~specific terms of their individual contracts. See also WAC 458-20-192 regarding sales in Indian country.))~~

~~(2) ((Licensing requirements and responsibilities. The Washington state liquor control board assumed the licensing responsibilities for cigarettes on July 1, 2009. Please see chapters 314-33 and 314-34 WAC.~~

~~(3)) Organization of rule. The information provided in this rule is divided into ((six)) eight parts:~~

~~(a) Part I explains the tax liabilities of persons who sell, use, consume, handle, possess, or distribute cigarettes in this state.~~

~~(b) Part II explains wholesale and retail cigarette vendor licensing requirements and responsibilities.~~

~~(c) Part III explains ((the)) stamping requirements ((and how the cigarette tax rates are calculated)), cigarette tax rates, and refunds.~~

~~((e)) (d) Part IV describes the roll-your-own cigarette provisions.~~

~~(e) Part ((H)) V describes the exemptions from the tax and the procedures that must be followed to qualify for exemption.~~

~~((d)) (f) Part ((IV)) VI explains the requirements and responsibilities for persons transporting cigarettes in Washington.~~

~~((e) Part V explains the requirements and responsibilities for persons engaged in making delivery sales of cigarettes into this state.~~

~~(f)) (g) Part ((VI)) VII explains the enforcement and administration of the cigarette tax.~~

~~(h) Part VIII explains requirements and responsibilities related to making sales or purchases of cigarettes in Indian country.~~

Part I - Tax on Cigarettes

~~(101) In general. Except as otherwise provided in chapter 82.24 RCW and this rule, the Washington state cigarette tax is due and payable by the first person who sells, uses, consumes, handles, possesses, or distributes the cigarettes in this state.~~

~~((a) Possession. For the purpose of this rule, a "possessor" of cigarettes is anyone who personally or through an agent, employee, or designee, has possession of cigarettes in this state.~~

~~(b) Payment. Payment of the cigarette tax is made through the purchase of stamps from banks authorized by the department of revenue (department) to sell the stamps. Only licensed wholesalers may purchase or obtain cigarette stamps. Except as specifically provided in Part III of this rule, it is unlawful for any person other than a licensed wholesaler to possess unstamped cigarettes in this state. However, as explained in subsection (102)(b) of this rule, certain consumers may possess unstamped cigarettes for personal consumption if they pay the tax as provided in this rule.~~

~~(c) Imposition of tax. Ordinarily, the tax obligation is imposed on and collected from the first possessor of unstamped cigarettes. However, failure of an exempt entity with an obligation to collect and remit the tax does not relieve a subsequent nonexempt possessor of unstamped cigarettes from liability for the tax.~~

(d) **Promotions.** Cigarettes given away for advertising or any other purpose are taxed in the same manner as if they were sold, used, consumed, handled, possessed, or distributed in this state, but are not required to have the stamp affixed. Instead, the manufacturer of the cigarettes must pay the tax on a monthly return filed with the department. See subsection (602) of this rule.)

(102) **Definitions.** For the purposes of this rule, the following definitions apply:

(a) "Board" means the liquor control board.

(b) "Business" includes all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly, including any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing cigarettes in this state.

(c) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state. Cigarette includes a roll-your-own cigarette.

(d) "Cigarette paper" means any paper or any other material except tobacco, prepared for use as a cigarette wrapper.

(e) "Cigarette tube" means cigarette paper made into a hollow cylinder for use in making cigarettes.

(f) "Commercial cigarette-making machine" means a machine that is operated in a retail establishment and that is capable of being loaded with loose tobacco, cigarette paper or tubes, and any other components related to the production of roll-your-own cigarettes, including filters.

(g) "Department" means the department of revenue.

(h) "Governmental entity" means:

(i) The United States;

(ii) The state of Washington (state) including, its departments and institutions, as distinct from its corporate agencies or instrumentalities; and

(iii) Any municipal corporation or political subdivision of the state of Washington.

(i) "Indian tribal organization" means a federally recognized Indian tribe, or tribal entity, and includes an Indian wholesaler or retailer that is owned by an Indian who is an enrolled tribal member conducting business under tribal license or similar tribal approval within Indian country. For purposes of this rule, the terms "Indian," "Indian country," and "Indian tribe" have the same meaning as defined in WAC 458-20-192.

(j) "Manufacture" means the production, assembly, or creation of new cigarettes. For the purposes of this rule, "manufacture" does not necessarily have the same meaning as provided in RCW 82.04.120.

(k) "Manufacturer" means a person who manufactures and sells cigarettes.

(l) "Municipal corporation or political subdivision of the state of Washington" means any county, city, town, school district, fire protection district, or other authority identified as a municipal corporation or political subdivision of the state of Washington by statute and that qualifies for the property tax

exemption provided by Article VII of the Washington state Constitution.

(m) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof.

(n) "Place of business" means any location where business is transacted with, or sales are made to, customers. The term includes, but is not limited to, any vending machine and any vehicle, truck, vessel or the like at which sales are made.

(o) "Possession" means both:

(i) Physical possession by the purchaser; and

(ii) When cigarettes are being transported to or held for the purchaser or his or her designee by a person other than the purchaser, constructive possession by the purchaser or his or her designee, which constructive possession is deemed to occur at the location of the cigarettes being so transported or held.

(p) "Retailer" means every person, other than a wholesaler, who purchases, sells, offers for sale or distributes any one or more of the articles taxed herein, irrespective of quantity or amount, or the number of sales, and all persons operating under a retailer's registration certificate.

(q) "Roll-your-own cigarettes" means cigarettes produced by a commercial cigarette-making machine.

(r) "Sale" means any transfer of the ownership of, title to, or possession of property for a valuable consideration.

(s) "Stamp" means any stamp authorized by the state of Washington, including the stamp or stamps by use of which the cigarette tax is paid or identification is made of those cigarettes with respect to which no tax is imposed.

(t) "United States" means:

(i) The federal government, including the executive, legislative, and judicial branches, its departments, and federal entities exempt from state or local taxation by reason of specific federal statutory exemption.

The mere fact that an entity is a federal entity, such as an instrumentality of the federal government or a federal corporation, does not mean that the entity is immune from tax. The taxability of a federal entity depends on the benefits and immunities conferred upon it by Congress. Thus, to determine the current taxable status of federal entities, the relevant portion of the federal law should be examined.

(ii) "United States" does not include entities associated with, but not a part of the United States, such as the National Guard (an instrumentality of the state of Washington). Nor does it include entities contracting with the United States government to administer its programs.

(u) "Wholesaler" means every person who purchases, sells, or distributes cigarettes to retailers for the purpose of resale only.

(103) **Imposition of tax.** The cigarette tax is imposed on the first person to sell, use, consume, handle, possess, or distribute cigarettes in Washington. Please refer to subsection

(302) of this rule for an explanation of the measure and rate of the tax.

(a) **Payment.** Payment of the cigarette tax is made through the purchase of stamps from banks authorized by the department to sell the stamps. Please refer to subsection (301) of this rule for an explanation of stamping requirements.

(b) Possession of cigarettes in Washington state.

~~((a))~~ (i) Every person ~~((who is (i)))~~ (A) in possession of unstamped cigarettes in this state, and ~~((is))~~ (B) not specifically exempt by law, is liable for payment of the cigarette tax as provided in chapter 82.24 RCW and this rule.

~~((b) Consumers who buy unstamped cigarettes or who purchase cigarettes from sources other than licensed retailers in this state must pay the cigarette tax as provided in subsection (602) of this rule when they first bring the cigarettes into this state or first possess them in this state. This requirement includes, but is not limited to, delivery sales as described in Part VI of this rule.~~

~~(c) Cigarettes purchased from Indian retailers. Special rules apply to cigarettes purchased from Indian retailers.~~

~~(i) Indians purchasing cigarettes in Indian country are exempt from the state cigarette tax; however, these sales must comply with WAC 458-20-192.~~

~~Other consumers may purchase cigarettes for their personal consumption from "qualified Indian retailers" without incurring liability for state cigarette tax. A "qualified Indian retailer" is one who is subject to the terms of a valid cigarette tax contract with the state pursuant to RCW 43.06.455.~~

~~(ii) Consumers who purchase cigarettes from Indian retailers who are not subject to a cigarette tax contract with the state must comply with the reporting requirements and remit the cigarette tax as explained in subsection (602) of this rule. These consumers are also liable for the use tax on their purchases. See WAC 458-20-178.~~

~~(iii) It is the duty of the consumer in each instance to ascertain his or her responsibilities with respect to such purchases.~~

~~(d) Cigarettes purchased on military reservations.)~~

~~(i) Active duty or retired military personnel, and their ~~((dependants))~~ dependents, may purchase cigarettes for their own consumption on military reservations without paying the state tax (see Part ~~((H))~~ V). However, such persons are not permitted to give or resell those cigarettes to others.~~

~~((e) Counterfeit cigarettes. It is unlawful for any person to manufacture, sell, or possess counterfeit cigarettes. A cigarette is counterfeit if (i) it or its packaging bears any logo or marking used by a manufacturer to identify its own cigarettes, and (ii) the cigarette was not manufactured by the owner of that logo or trademark or by any authorized licensee of the manufacturer. RCW 82.24.570.~~

~~((f)) (iii) Possession of unstamped and untaxed cigarettes, and possession of counterfeit cigarettes, are criminal offenses in this state. See Part ~~((V))~~ VII.~~

Part II - Wholesale and Retail Cigarette Vendor Licensing Requirements and Responsibilities

(201) License required. No person, other than a governmental entity or an Indian tribal organization, may engage in the retail or wholesale distribution of cigarettes in this state without a license. Failure to obtain the required license prior

to selling cigarettes at wholesale or retail is a criminal act. RCW 82.24.500.

(202) Cigarette wholesaler license. Prior to the sale or distribution of cigarettes at wholesale, each wholesaler must first obtain a cigarette wholesaler license from the department through its business licensing service.

(a) Background check. Each wholesaler must undergo a criminal background check by the board before a license will be issued. RCW 82.24.510. See chapter 314-33 WAC for board standards. Failure to provide information sufficient to complete the background check may result in denial of the license by the department.

(b) Application. Application for a license or renewal of a license is made on forms supplied by the department and must be accompanied by the annual license fee as provided in chapter 82.24 RCW. A cigarette wholesaler license is valid for one year from the date it is issued.

(c) Multiple locations. If the wholesaler sells, stores, or intends to sell, cigarettes at more than one place of business, whether temporary or permanent, a separate license with a license fee as provided in chapter 82.24 RCW is required for each additional place of business. Each license must be exhibited in the place of business for which it is issued.

(d) Bond required. Each licensed wholesaler must file a bond with the department in an amount determined by the department, but not less than five thousand dollars. The bond must be executed by the wholesaler as principal, and by a corporation approved by the department and authorized to engage in business as a surety company in this state, as surety. The bond must run concurrently with the cigarette wholesaler license.

(203) Duties and responsibilities of licensed wholesalers.

(a) Stamps. Except as provided in Parts IV and VIII of this rule, only licensed wholesalers may purchase or obtain cigarette stamps. Wholesalers are prohibited by law from selling or providing stamps to any other wholesaler or person.

(b) Numbering. Each roll of stamps, or group of sheets, has a separate serial number. The department keeps records of which wholesaler purchases each roll or group of sheets. Wholesalers and retailers of roll-your-own cigarettes are prohibited from possessing stamps other than those specifically issued to them.

(c) Sales restricted. Wholesalers selling cigarettes in this state may sell:

(i) Stamped or unstamped cigarettes to other Washington licensed cigarette wholesalers;

(ii) State tax stamped cigarettes only to Washington retailers who have a current cigarette retailer license or to an Indian tribal organization;

(iii) Tribal tax stamped cigarettes to Indian tribal organizations if the Indian tribal organization is subject to a cigarette compact between the state of Washington and the Indian tribe; or

(iv) Tax-exempt stamped cigarettes to an Indian tribal organization if the Indian tribe does not have a cigarette compact and is subject to the cigarette allocation per WAC 458-20-192.

(d) Unstamped cigarettes. Except as provided in Parts IV, V, and VIII of this rule, no person other than a licensed

wholesaler may possess unstamped cigarettes in this state. Cigarettes are "unstamped" if they do not have a "stamp" as the term is defined in subsection (102)(s). Licensed wholesalers may possess unstamped cigarettes in this state only in the following circumstances:

(i) Licensed wholesalers may possess unstamped cigarettes for up to seventy-two hours after receipt; however, the cigarettes must be stamped on or before sale or transfer to any other party other than another licensed wholesaler. Licensed wholesalers may possess unstamped cigarettes for more than seventy-two hours after receipt if they receive prior written permission from the department to do so.

(ii) Licensed wholesalers may set aside, without stamping, that portion of their stock reasonably necessary for conducting sales to persons outside this state or to instrumentalities of the federal government, so long as the licensed wholesalers have furnished a surety bond in a sum equal to eighty percent of the amount of tax that would be affixed to the cigarettes that are set aside for the conduct of such business without affixing the stamps. All unstamped stock must be kept separate and apart from stamped stock.

(e) Transfers. Wholesalers in possession of unstamped cigarettes under subsection (204)(d) of this rule that are transferred by the wholesaler to another facility within this state must be transferred in compliance with RCW 82.24.250.

(204) Cigarette retailer license. Prior to the retail sale or distribution of cigarettes, each retailer must first be issued a cigarette retailer license from the department through its business licensing service. A license is required for each location at which cigarettes are sold at retail. Each license must be exhibited at the place of business for which it is issued.

(a) Background check. Each retailer must undergo a criminal background check by the board before a license will be issued. RCW 82.24.510. See chapter 314-33 WAC for board standards. Failure to provide information sufficient to complete the background check may result in denial of the license by the department.

(b) Application. Applications for a license or renewal of a license are made on forms supplied by the department and must be accompanied by the annual license fee as provided in chapter 82.24 RCW. A retail cigarette license is valid for one year from the date it is issued.

(c) Multiple locations. A separate license with a license fee as provided in chapter 82.24 RCW is required for each additional place of business at which the retailer operates. Each license must be exhibited in the place of business for which it is issued.

(d) Cigarette vending machine license. Retailers who have received a cigarette retailer license and operate cigarette vending machines must obtain a cigarette vending machine license from the department and are required to pay an additional annual fee as set forth in chapter 82.24 RCW for each vending machine.

(e) Commercial cigarette making machine license. Retailers who have received a cigarette retailer license and tobacco products retailer license (see WAC 458-20-185) and operate commercial cigarette making machines must obtain a commercial cigarette making machine license from the department and are required to pay an additional annual fee

as set forth in chapter 82.24 RCW for each location with a machine. Each license must be exhibited in the place of business for which it is issued.

Persons operating a commercial cigarette making machine are also subject to federal licensing requirements as a cigarette manufacturer. Please contact the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of the Treasury.

(205) Duties and responsibilities of retailers.

(a) No retailer in this state may possess unstamped cigarettes unless he or she is also a licensed wholesaler.

(b) Retailers may obtain cigarettes only from cigarette wholesalers licensed by this state.

(206) Additional requirements for manufacturers, wholesalers, and retailers. Persons making wholesale or retail sales of cigarettes or manufacturing cigarettes must comply with all the provisions of chapters 70.155 and 70.158 RCW.

(207) Licensing enforcement. The board has the licensing enforcement responsibilities for cigarettes. See chapters 314-33 and 314-34 WAC for rules related to the board's enforcement of cigarette licensing.

Part III - Stamping ((and)), Rates, and Refunds

((201)) (301) Cigarette stamps.

(a) Stamps indicating payment of the cigarette tax must be affixed prior to any sale, use, consumption, handling, possession, or distribution of all cigarettes other than those specifically exempted as explained in Part ((H)) V of this rule. The stamp must be ((applied)) affixed securely and applied one time (not to be reused) to the smallest container or package (such as a pack of cigarettes rather than a carton of cigarettes), unless the department, in its sole discretion, determines that it is impractical to do so. Stamps must be of the type authorized by the department and affixed in such a manner that they cannot be removed from the package or container without being mutilated or destroyed. Further, the stamps must be affixed in such manner as to permit the department to readily ascertain by inspection whether or not such tax has been paid. RCW 82.24.030(1). To that end, any package that is missing more than fifty percent of the stamp will be considered unstamped and untaxed.

(b) Licensed wholesalers may purchase state-approved cigarette stamps from authorized banks. Payment for stamps must be made at the time of purchase unless the wholesaler has prior approval of the department to defer payment and furnishes a surety bond equal to the proposed monthly credit limit. Payments under a deferred plan are due within thirty days following purchase. Licensed wholesalers are compensated for affixing the stamps at the rate of \$6.00 per thousand stamps affixed (the "stamping allowance").

((202)) (302) Rates.

(a) The Washington state cigarette tax is imposed on a per cigarette basis. The rate of the tax is a combination of statutory rates found in ((RCW 82.24.020, 82.24.027, and 82.24.028)) chapter 82.24 RCW.

(b) When the rate of tax increases, the first person who sells, uses, consumes, handles, possesses, or distributes previously taxed cigarettes after the rate increase is liable for the additional tax.

~~((203))~~ **(303) Refunds.** Any person may request a refund of the face value of the stamps when the tax is not applicable and the stamps are returned to the department. ~~(Documentation supporting the claim must be provided at the time the claim for refund is made.)~~

~~(a) Refunds for stamped untaxed cigarettes sold to Indian tribal members or tribal entities in the full value of the stamps affixed will be approved by an agent of the department.)~~ **(a) Forms.** The claim for refund must be filed on a form provided by the department. Documentation supporting the claim must be provided at the time the claim for refund is made as specified on the form. The department has the following forms for cigarette tax refund claims:

(i) Cigarette Tax Claim for Refund form. The form is for wholesalers who have returned stamped cigarettes to the manufacturer or are returning damaged or unused stamps to the department. An affidavit or certificate from the manufacturer for stamped cigarettes returned to the manufacturer for destruction or by an agent of the department verifying the voiding of stamps and authorizing the refund must accompany the claim for refund.

(ii) Tribal Member Claim for Refund form. This refund form is for Indian tribal members who purchase state stamped cigarettes as consumers within their own Indian country.

~~(b) Refunds (for stamped cigarettes will not include the stamping allowance))~~ may be claimed for stamped cigarettes if the stamps are:

(i) Damaged, or unfit for sale, and as a result are destroyed or returned to the manufacturer or distributor; or

(ii) Improperly or partially affixed through burns, jams, double stamps, stamped on carton flaps, or improperly removed from the stamp roll.

~~((e) The claim for refund must be filed on a form provided by the department. An affidavit or a certificate from the manufacturer for stamped cigarettes returned to the manufacturer for destruction or by an agent of the department verifying the voiding of stamps and authorizing the refund must accompany the claim for refund.)~~ **Refunds for stamped cigarettes will not include the stamping allowance.**

Part ~~(H)~~ IV - Roll-Your-Own Cigarettes

(401) Retailers.

(a) Licenses required. Only retailers licensed to sell cigarettes in Washington may provide consumers with access to a commercial cigarette making machine to make roll-your-own cigarettes. Retailers must also be licensed to sell tobacco products in Washington in order to sell the tobacco to make roll-your-own cigarettes.

(b) Stamped containers. A retailer may not allow consumers to use a commercial cigarette making machine unless the retailer provides the consumer with a box or similar container to transport the roll-your-own cigarettes affixed with cigarette stamps, and the consumer transports the cigarettes from the retailer only in such box or similar container. A retailer must provide cigarette tubes to a consumer in one or more twenty unit denominations. For purposes of this rule, a "similar container" to a box is any package used to transport roll-your-own cigarettes.

(402) Stamps. Retailers of roll-your-own cigarettes must purchase and affix roll-your-own cigarette tax stamps for the cigarettes produced through the cigarette making machine. Retailers must contact the department's special programs division to purchase the stamps. Stamps affixed must be for an amount equaling the cigarette tax due. Each cigarette tube or paper provided to the consumer is deemed a cigarette for purposes of imposing and collecting the cigarette tax. Stamps must be of the type authorized by the department and affixed in the manner provided for wholesalers in subsection (301)(a) of this rule. Retailers purchasing stamps for roll-your-own cigarettes are compensated for affixing the stamps with the stamping allowance provided under subsection (301)(b) of this rule, as well as an additional amount of five cents per cigarette to offset the cost of the tobacco products tax under chapter 82.26 RCW and WAC 458-20-185. See RCW 82.24.030(6) for additional rules relating to the affixing of stamps for roll-your-own cigarettes.

Part V - Exemptions

~~((304))~~ **(501) In general.** There are limited exemptions from the cigarette tax provided by law. This part discusses exemptions and the procedures that must be followed to qualify for an exemption for certain government sales and sales in interstate commerce. For exemptions for sales in Indian country, please see Part VIII of this rule.

~~((302))~~ **(502) Government sales.** The cigarette tax does not apply to the sale of cigarettes to:

(a) The United States Army, Navy, Air Force, Marine Corps, or Coast Guard exchanges and commissaries and Navy or Coast Guard ships' stores;

(b) The United States Veteran's Administration; or

(c) Any person authorized to purchase from the federal instrumentalities named in (a) or (b) above, if the cigarettes are purchased from the instrumentality for personal consumption.

~~((303))~~ **Sales in Indian country:**

(a) The definitions of "Indian," "Indian country," and "Indian tribe," in WAC 458-20-192 apply to this rule. "Cigarette contract" means an agreement under RCW 43.06.450 through 43.06.460.

(b) The cigarette tax does not apply to cigarettes taxed by an Indian tribe in accordance with a cigarette contract under RCW 43.06.450 through 43.06.460.

(c) The cigarette tax does not apply to cigarettes sold to an Indian in Indian country for personal consumption; however, those sales must comply with the allocation provisions of WAC 458-20-192. Sales made by an Indian cigarette outlet to nontribal members are subject to the tax, except as provided in (b) above.

(d) See WAC 458-20-192 for information on making wholesale sales of cigarettes to Indians and Indian tribes.

~~(304))~~ **(503) Interstate commerce.** The cigarette tax does not apply to cigarettes sold to persons licensed as cigarette ~~((distributors))~~ wholesalers in other states when, as a condition of the sale, the seller either delivers the cigarettes to the buyer at a point outside this state, or delivers the same to a common carrier with the shipment consigned by the seller to the buyer at a location outside this state. ~~((Any person engaged in making sales to licensed distributors in other~~

states or making export sales or in making sales to the federal government must furnish a surety bond in a sum equal to twice the amount of tax that would be affixed to the cigarettes that are set aside for the conduct of such business without affixing cigarette stamps. The unstamped stock must be kept separate and apart from any stamped stock.)

Part ~~((IV))~~ VI - Transporting Cigarettes in Washington

~~((401))~~ (601) **Transportation of cigarettes restricted.**

No person other than a licensed wholesaler may transport unstamped cigarettes in this state except as specifically set forth in RCW 82.24.250 and this rule, or as may be allowed under a cigarette ~~((tax contract subject to the provisions of RCW 43.06.455)) compact under RCW 43.06.450 through 43.06.466.~~ Licensed wholesalers transporting unstamped cigarettes in this state must do so only in their own vehicles unless they have given prior notice to the ~~((liquor control))~~ board of their intent to transport unstamped cigarettes in a vehicle belonging to another person.

~~((402))~~ (602) **Notice required.** Persons other than licensed wholesalers using their own vehicles intending to transport unstamped cigarettes in this state must first give notice to the ~~((liquor control))~~ board of their intent to do so, except as provided under RCW 82.24.250(5), or other applicable law.

~~((403))~~ (603) **Transportation of unstamped cigarettes.** All persons transporting unstamped cigarettes must have in their actual possession invoices or delivery tickets for such cigarettes. The invoices or delivery tickets must show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes transported. It is the duty of the person responsible for the delivery or transport of the cigarettes to ensure that all drivers, agents, or employees have the delivery tickets or invoices in their actual possession for all such shipments.

~~((404))~~ (604) **Purchase or consignment.** If the unstamped cigarettes transported pursuant to subsection ~~((401), (402), or (403))~~ (601), (602), or (603) of this rule are consigned to or purchased by any person in this state, that purchaser or consignee must be a person who is authorized by chapter 82.24 RCW to possess unstamped cigarettes in this state. As provided in RCW 82.24.250, the following persons are "authorized by chapter 82.24 RCW to possess unstamped cigarettes in this state":

(a) A wholesaler, licensed under Washington state law;

(b) The United States or an agency thereof;

(c) Any person, including an Indian tribal organization, who, after notice has been given to the board as provided in subsection (602) of this rule, brings or causes to be brought in the state unstamped cigarettes, if within seventy-two hours after receipt of the cigarettes the person has caused stamps to be affixed in accordance with subsection (301) of this rule;

(d) Any purchaser or consignee of unstamped cigarettes, including an Indian tribal organization, who has given notice to the board in advance of receiving unstamped cigarettes and who within seventy-two hours after receipt of the cigarettes has caused the stamps to be affixed in accordance with subsection (301) of this rule.

~~((405))~~ **Out of state shipments.** Licensed wholesalers shipping cigarettes to a point outside Washington or to a federal instrumentality must, at the time of shipping or delivery, report the transaction to the department. The report must show both (a) complete details of the sale or delivery, and (b) whether stamps have been affixed to the cigarettes.

The report may be made either by submitting a duplicate invoice or by completing a form provided by the department, and must be filed with the department as set forth in subsection (602) of this rule.

~~(406))~~ (605) **Compliance required.** No person may possess or transport cigarettes in this state unless the cigarettes have been properly stamped or that person has fully complied with the requirements of RCW 82.24.250 and this rule. Failure to comply with the requirements of RCW 82.24.250 is a criminal act. Cigarettes in the possession of persons who have failed to comply are deemed contraband and are subject to seizure and forfeiture under RCW 82.24.130.

~~((Part V))~~ Delivery Sales of Cigarettes

(501) **Definitions.** The definitions in this subsection apply throughout this rule.

(a) **"Delivery sale"** means any sale of cigarettes to a consumer in the state where either: (i) The purchaser submits an order for a sale by means of a telephonic or other method of voice transmission, mail delivery, any other delivery service, or the internet or other online service; or (ii) the cigarettes are delivered by use of mail delivery or any other delivery service. A sale of cigarettes made in this manner is a delivery sale regardless of whether the seller is located within or outside the state. (For example, "Royal Tax-free Smokes," located in the state of Vermont, offers sales via the internet and a toll-free telephone number, and ships its products to consumers in this state. These transactions are delivery sales.) A sale of cigarettes not for personal consumption to a person who is a wholesaler licensed under chapter 82.24 RCW or a retailer licensed under chapter 82.24 RCW is not a delivery sale.

(b) **"Delivery service"** means any private carrier engaged in the commercial delivery of letters, packages, or other containers, that requires the recipient of that letter, package, or container to sign to accept delivery.

(502) **Tax liability.** Cigarettes delivered in this state pursuant to a delivery sale are subject to tax as provided in Part I of this rule. Persons making delivery sales in this state are required to provide prospective consumers with notice that the sales are subject to tax pursuant to chapters 82.24 and 82.12 RCW, with an explanation of how the tax has been or is to be paid with respect to such sales.

(503) **Additional requirements.** Persons making delivery sales of cigarettes in this state must comply with all the provisions of chapter 70.155 RCW. All cigarettes sold, delivered, or attempted to be delivered, in violation of RCW 70.155.105 are subject to seizure and forfeiture. RCW 82.24.130.)

Part ~~((VI))~~ VII - Enforcement and Administration

~~((601))~~ (701) **Books and records.** An accurate set of records showing all transactions related to the purchase, sale,

or distribution of cigarettes must be retained. RCW 82.24.-090. These records may be combined with those required in connection with the tobacco products tax (see WAC 458-20-185), if there is a segregation therein of the amounts involved. All records must be preserved for five years from the date of the transaction.

~~((602))~~ **(702) Reports and returns.** The department may require any person dealing with cigarettes in this state to complete and return forms, as furnished by the department, setting forth sales, inventory, and other data required by the department to maintain control over trade in cigarettes.

(a) Manufacturers and wholesalers selling stamped, unstamped, or untaxed cigarettes must submit a complete record of sales of cigarettes in this state monthly. This report is due no later than the fifteenth day of the calendar month and must include all transactions occurring in the previous month.

(b) Persons making sales of tax-exempt cigarettes to Indian tribes or Indian retailers pursuant to WAC 458-20-192 (9)(a) must transmit a copy of the invoice for each such sale to the special programs division of the department prior to shipment.

(c) Wholesalers selling stamped cigarettes manufactured by nonparticipating manufacturers as defined in WAC 458-20-264 must report all such sales to the special programs division no later than the twenty-fifth day of the calendar month and must include all transactions occurring in the previous month. See WAC 458-20-264, National Uniform Tobacco Settlement, for more details on this report.

~~(d) ((Persons making sales of cigarettes into this state to other than a licensed wholesaler or retailer))~~ A person who sells, transfers, or ships for profit cigarettes (as such term is defined in 15 U.S.C. Sec. 375) in interstate commerce, whereby such cigarettes are shipped into Washington, or who advertises or offers such cigarettes for sale, transfer, or shipment in this state, must file a report as required under ((Title 15, Chapter 10A, section 376 of the U.S. Code (commonly referred to as the "Jenkins Act" report)) 15 U.S.C. Sec. 376. This report is due no later than the 10th day of each calendar month and must include a memorandum or invoice covering all ((transactions occurring in)) shipments of cigarettes made into Washington during the previous calendar month.

~~(e) ((Persons shipping or delivering any cigarettes to a point outside of this state must submit a report showing full and complete details of the interstate sale or delivery as set forth in Part V of this rule. This report is due no later than the fifteenth day of the calendar month immediately following the shipment or delivery.~~

~~(f) Persons giving away unstamped cigarettes for advertising, promotional, or any other purpose, must report and pay the tax on the number of cigarettes distributed in this state.~~

~~(g) Consumers who buy unstamped cigarettes or who purchase cigarettes from sources other than licensed retailers in this state must pay the tax when they first bring the cigarettes into this state or))~~ Washington consumers who purchase cigarettes outside Washington state, or from some other source without paying Washington taxes, must pay both the cigarette tax and the use tax directly to the department of revenue within seventy-two hours of first ((possess)) possess-

ing them in this state((-The tax is paid with)) using a "Tax Declaration for Cigarettes((-))" form, which may be obtained from the department.

~~((603))~~ **(703) Criminal provisions.** Chapter 82.24 RCW prohibits certain activities with respect to cigarettes. Persons handling cigarettes within this state must refer to these statutes. The prohibited activities include, but are not limited to, the following:

(a) **Transportation, possession, or receiving 10,000 or fewer cigarettes.** Transportation, possession, or receiving 10,000 or fewer unstamped cigarettes is prohibited unless the notice requirements set forth in RCW 82.24.250 have been met; failure to meet those notice requirements is a gross misdemeanor. RCW 82.24.110 (1)(n) and (o).

(b) **Transportation, possession, or receiving more than 10,000 cigarettes.** Transportation, possession, or receiving more than 10,000 unstamped cigarettes is prohibited unless the notice requirements set forth in RCW 82.24.-250 have been met; failure to meet those notice requirements is a felony. RCW 82.24.110(2).

(c) **Forgery or counterfeiting of stamps.** Alteration, fabrication, forgery, and counterfeiting of stamps are felonies. RCW 82.24.100.

(d) **Counterfeit cigarettes.** The manufacture, sale, or possession of counterfeit cigarettes in this state is a felony. RCW 82.24.570.

~~((604))~~ **(704) Search, seizure, and forfeiture.** Any collection agent of the department ((or)), enforcement officer of the ((liquor control)) board, or law enforcement officer of this state may search for, seize, and subsequently dispose of unstamped cigarette packages and containers, counterfeit cigarettes, conveyances of all kinds (including aircraft, vehicles, and vessels) used for the transportation of unstamped and/or counterfeit cigarettes, and vending machines used for the sale of unstamped and/or counterfeit cigarettes. See RCW 82.24.-130, et seq., for provisions relating to search, seizure, and forfeiture of property, possible redemption of property, and for treatment of such property in the absence of redemption.

~~((605))~~ **(705) Penalties.** RCW 82.24.120 provides a penalty for failure to affix the cigarette stamps or to cause the stamps to be affixed as required, or to pay any tax due under chapter 82.24 RCW. In addition to the tax deemed due, a penalty equal to the greater of \$10.00 per package of unstamped cigarettes or \$250.00 will be assessed. Interest is also assessed on the amount of the tax at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment. The department may, in its sole discretion, cancel all or part of the penalty for good cause.

Part VIII – Sales in Indian Country

(801) Definitions. The definitions of "Indian," "Indian country," and "Indian tribe" in WAC 458-20-192 apply to this rule.

(802) Cigarette compacts. The state cigarette tax does not apply to cigarettes taxed by an Indian tribe in accordance with a cigarette compact under RCW 43.06.450 through 43.06.466. Cigarette wholesalers making sales in conformance with such compact will be required to obtain and affix a unique tribal stamp prior to sale. For additional informa-

tion, wholesalers should contact the Indian tribe in question and the department.

(803) Sales to Indians in Indian country. The state cigarette tax does not apply to cigarettes sold in Indian country to tribal members of the particular tribe where the cigarettes are purchased for personal consumption. Sales of cigarettes to nonmembers are subject to the tax. Licensed wholesalers may sell exempt stamped cigarettes to tribal retailers in accordance with the requirements of WAC 458-20-192 and the instructions of the department. For reporting such sales, see subsection (702)(b) of this rule.

(804) Refunds. Indians who purchase, in their own Indian country, cigarettes to which state stamps have been affixed may apply for a refund under subsection (303) of this rule.

(805) Licenses. Indians and Indian tribes engaged in business in Indian country are not required to obtain a cigarette wholesaler or state-issued retailer license in order to purchase cigarettes from state-licensed wholesalers.

WSR 14-20-034

PROPOSED RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed September 23, 2014, 4:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-13-001.

Title of Rule and Other Identifying Information: WAC 182-550-5380 Payment method—Sole community disproportionate share hospital (SCDSH).

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Conference Room, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on November 4, 2014, at 10:00 a.m.

Date of Intended Adoption: Not sooner than November 5, 2014.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by 5:00 p.m. on November 4, 2014.

Assistance for Persons with Disabilities: Contact Kelly Richters by October 27, 2014, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To comply with ESSB 6002, section 213 (10) and (11), chapter 221, Laws of 2014, (page 109 of operating budget-supplemental), the agency is amending this section to address the changes noted in the bill which will impact state fiscal year 2015 funds.

Reasons Supporting Proposal: See Purpose statement above.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160, ESSB 6002, section 213 (10) and (11), chapter 221, Laws of 2014.

Statute Being Implemented: RCW 41.05.021, 41.05.160, ESSB 6002, section 213 (10) and (11), chapter 221, Laws of 2014.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Wendy Barcus, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1306; Implementation and Enforcement: Mary O'Hare, P.O. Box 45500, Olympia, WA 98504-5500, (360) 725-9820.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and concludes they do not impose more than minor costs for affected small businesses.

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

September 23, 2014

Kevin M. Sullivan

Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-08-038, filed 3/26/14, effective 4/26/14)

WAC 182-550-5380 Payment method—Sole community disproportionate share hospital (SCDSH). (1) The medicaid agency's sole community disproportionate share hospital (SCDSH) program is a program for in-state hospitals that:

(a) Were certified by the Centers for Medicare and Medicaid Services (CMS) as sole community hospitals as of January 1, 2013;

(b) Had less than one hundred fifty acute care licensed beds in state fiscal year (SFY) 2011;

(c) Qualify under Section 1923(d) of the Social Security Act; ~~(and)~~

(d) Are not participating in the certified public expenditure (CPE) program; and

(e) Are rural hospitals in Lewis County.

(2) The agency pays qualifying hospitals SCDSH payments from a legislatively appropriated pool. This distribution is based on the hospital's medicaid payments. To determine the hospital's SCDSH payments, the agency:

(a) Identifies the sum of the medicaid payments to the individual hospital during the SFY two years prior to the current SFY for which DSH application is being made. These medicaid payment amounts:

(i) Are based on historical data;

(ii) Include payments from the agency; and

(iii) Include payments reported on encounter data supplied by agency-contracted managed care organizations.

(b) Divides the medicaid payment amount in (a) of this subsection by the sum of the medicaid payment amounts for all qualifying hospitals during the same period to determine the hospital's percentage; and

(c) Applies this percentage to the total dollars in the pool to determine the hospital's SCDSH payment.

(3) The SCDSH payments to a hospital eligible under this program may not exceed the hospital's DSH cap calculated according to WAC 182-550-4900(10).

(4) SCDSH payments are subject to the availability of DSH funds under the statewide DSH cap. If the statewide DSH cap is exceeded, the agency will recoup DSH payments in the order specified in WAC 182-550-4900 (13) and (14).

WSR 14-20-069
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed September 26, 2014, 1:04 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-21-056.

Title of Rule and Other Identifying Information: WAC 246-815-020 Dental hygiene examination eligibility and 246-815-140 Continuing education for dental hygienists. The department of health is proposing to amend WAC 246-815-020 to streamline the application requirements for dental hygiene examination eligibility, and proposes to amend the continuing education requirements for dental hygienists in WAC 246-815-140.

Hearing Location(s): Department of Health, Town Center 2, Room 158, 111 Israel Road S.E., Tumwater, WA 98501, on November 12, 2014, at 10:00 a.m.

Date of Intended Adoption: November 19, 2014.

Submit Written Comments to: Vicki Brown, Program Manager, Health Professions and Facilities, Dental Hygiene Program, P.O. Box 47852, Olympia, WA 98504-7852, e-mail [web site] <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by November 5, 2014.

Assistance for Persons with Disabilities: Contact Vicki Brown by November 5, 2014, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 246-815-020 requires an applicant for licensure as a dental hygienist to submit a photo taken within the year before he or she submits the application. The department, in consultation with the dental hygiene examining committee (committee), is proposing the repeal of this requirement as it may streamline the application review process.

The department, in consultation with the committee, is also proposing changes to WAC 246-815-140 continuing education (CE). The committee is considering increasing the range of CE options to enhance skills and improve patient safety.

Reasons Supporting Proposal: RCW 43.70.280 gives the secretary authority to establish by rule administrative procedures/requirements for initial issuance of a health care profession license. The proposal changes application requirements by removing the requirement of a photo of applicant. This will streamline the application process to allow hygienists to apply for a license using an online application and it does not affect patient safety. RCW 18.29.130 allows the secretary to establish and implement by rule a continuing educa-

tion program. Increasing the range of CE options may enhance skills and improve patient safety.

Statutory Authority for Adoption: RCW 43.70.280 and 18.29.130(7).

Statute Being Implemented: Chapter 18.29 RCW.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Vicki Brown, Program Manager, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4865.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Vicki Brown, Program Manager, Health Professions/Facilities, Dental Hygiene Program, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4865, fax (360) 236-2901, e-mail vicki.brown@doh.wa.gov.

September 26, 2014

Dennis E. Worsham

Deputy Secretary

for John Wiesman, DrPH, MPH

Secretary

AMENDATORY SECTION (Amending WSR 04-20-049, filed 10/1/04, effective 11/1/04)

WAC 246-815-020 Dental hygiene ((~~examination~~) licensure—Initial eligibility and application requirements. (1) ~~((To be eligible to take the approved dental hygiene examination, the))~~ An applicant for a dental hygiene license must ((~~meet the following requirements~~)):

(a) ~~((The applicant must have))~~ Successfully ((~~completed~~) complete a dental hygiene education program approved by the secretary of the department of health pursuant to WAC 246-815-030.

(b) ~~((Applicants must))~~ Complete seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.

(c) ~~((The applicant must))~~ Demonstrate knowledge of Washington law pertaining to the practice of dental hygiene including the administration of legend drugs.

(d) ~~((The applicant must))~~ Complete the required application materials and pay the required fee.

(2) The application must include:
(a) The ~~((required examination))~~ fee required under WAC 246-815-990.

(b) Either the national board IBM card reflecting a passing score or a notarized copy of the national board certificate.

~~((c) One photograph of the applicant taken within one year preceding the application.))~~

(3) An official transcript ~~((or certificate of completion constitutes proof of successful completion))~~ from an approved dental hygiene education program. No other proof of successful completion is acceptable.

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

WAC 246-815-140 Continuing education for dental hygienists. (1) Purposes. The secretary of the department of health in consultation with the dental hygiene examining committee has determined that the public health, safety and welfare ~~((will be served by requiring all holders of dental hygiene licenses granted under chapter 18.29 RCW to continue their education after receiving such licenses.~~

(2) Requirements. Licensed dental hygienists must complete 15 clock hours of continuing education as required in chapter 246-12 WAC, Part 7. A current CPR card must be maintained as part of this requirement.

(3) Acceptable continuing education. Continuing education must be dental related education for professional development as a dental hygienist. The 15 clock hours shall be obtained through continuing education courses, correspondence courses, college credit courses, dental hygiene examination standardization/calibration workshops and dental hygiene examination item writer workshops)) is served by requiring all dental hygienists licensed under chapter 18.29 RCW to continue their education after receiving their licenses.

(2) Requirements. To renew a license a licensed dental hygienist must:

(a) Complete fifteen clock hours of continuing education each year following the first license renewal.

(b) Maintain a current basic life support (BLS) card for health care providers.

(c) Sign a declaration attesting to the completion of the required number of hours as part of the annual renewal requirement.

(3) Acceptable continuing education - Qualification of courses for continuing education credit. The department will not authorize or approve specific continuing education courses. Continuing education course work must contribute to the professional knowledge and development of the dental hygienist or to enhance services provided to patients.

For the purposes of this chapter, acceptable continuing education means courses offered or authorized by industry recognized local, state, private, national and international organizations, agencies or institutions of higher learning. Examples of sponsors or types of continuing education courses may include, but are not limited to:

(a) The Washington State Dental Association, American Dental Association, National Dental Association, Washington State Dental Hygienists' Association, American Dental Hygienists' Association, National Dental Hygienists' Association, including the constituent and component/branch societies.

(b) Basic life support (BLS), advanced cardiac life support (ACLS), Occupational Safety and Health Administration (OSHA)/Washington Industrial Safety and Health Act (WISHA), or emergency related training such as courses offered or authorized by the American Heart Association or the American Cancer Society; or any other organizations or agencies.

(c) Self-study through the use of multimedia devices or the study of books, research materials, or other publications.

(i) Multimedia devices. The required documentation for this activity is a letter or other documentation from the organization not to exceed five hours per year.

(ii) Books, research materials, or other publications. The required documentation for this activity is a two page synopsis written by the credential holder of what was learned, not to exceed five hours per year.

(d) Distance learning. Distance learning includes, but is not limited to: Correspondence course, webinar, print, audio/video broadcasting, audio/video teleconferencing, computer aided instruction, e-learning/online-learning, or computer broadcasting/webcasting that includes an assessment tool upon completion, not to exceed ten hours per year.

(e) A licensee who serves as an educator or who lectures in continuing education programs and/or courses, that contribute to the professional knowledge of a licensed dental hygienist may accumulate the same number of hours obtained by licensed dental hygienists attending the program or course, not to exceed eight hours per year.

(f) Attendance at a continuing education program with a featured speaker(s), not to exceed eight hours per year.

(g) Nonclinical courses relating to practice organization and management, patient management, methods of health delivery, medical/dental insurance courses, or retirement, not to exceed five hours per year.

(h) Dental hygiene examination standardization/calibration workshops and dental hygiene examination item writer workshops, not to exceed ten hours per year.

(i) Provision of clinical dental hygiene services in a documented volunteer capacity when preceded by educational/instructional training prior to provision of services, not to exceed five hours per year. Volunteering must be without compensation and under appropriate supervision.

(j) A licensee who serves as a public health official or employee, contractor for a state or local health agency, community prevention education expert, or works in a field that relates to prevention activities in public health dentistry, may accumulate hours related directly to providing services to the underserved, rural and at risk populations, not to exceed five hours per year.

(4) The department may randomly audit up to twenty-five percent of practitioners for compliance with the requirements in this section after the credential is renewed as allowed by chapter 246-12 WAC, Part 7.

WSR 14-20-072

PROPOSED RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2012-29—Filed September 26, 2014, 3:14 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-22-070.

Title of Rule and Other Identifying Information: Mental health and substance use disorder parity.

September 26, 2014

Mike Kreidler

Insurance Commissioner

Hearing Location(s): Office of the Insurance Commissioner, Training Room TR-120, 5000 Capitol Boulevard S.E., Tumwater, WA, on November 5, 2014, at 9:30 a.m.

Date of Intended Adoption: November 6, 2014.

Submit Written Comments to: Donna Dorris, P.O. Box 40258, Olympia, WA 98504-0258, e-mail rulescoordinator@oic.wa.gov, fax (360) 586-3109, by November 5, 2014.

Assistance for Persons with Disabilities: Contact Lori [Lorie] Villaflores by November 4, 2014, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule will consolidate existing state mental health and chemical dependency insurance regulations, incorporate the Affordable Care Act (ACA) (Pub. Law 111-148, as amended), and the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008 (MHPAEA) (Pub. Law 110-343); as part of this consolidation chapter 284-53 WAC is being repealed. It is anticipated that performing parity analysis with a standard set of instructions will benefit health carriers or issuers by creating a level playing field in the insurance market. Consumers will benefit by increased regulatory oversight of market practice and enhanced disclosure requirements regarding denied claims.

Reasons Supporting Proposal: MHPAEA requires parity between mental health/substance use disorder benefits and medical and surgical benefits. Health carriers (issuers) are required to perform a parity analysis for provisions relating to financial requirements, treatment limitations, and nonquantitative treatment limitations. Compliance is demonstrated by filing supporting documentation used to make parity analysis decisions. In addition, special disclosure requirements apply to obtain reasons for a claim denial.

Statutory Authority for Adoption: RCW 48.02.060, 48.43.715, 48.44.050 and 48.46.200, Paul Wellstone and Pete Domenici MHPAEA of 2008 (Pub. Law 110-343).

Statute Being Implemented: RCW 48.43.715, 48.21.241, 48.44.341, 48.46.291, 48.21.195, 48.21.197, 48.44.240, 48.44.241, 48.46.350, 48.46.355.

Rule is necessary because of federal law, MHPAEA (Pub. Law 110-343).

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Donna Dorris, P.O. Box 40258, Olympia, WA 98504-0258, (360) 725-7040; **Implementation:** Molly Nollette, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117; and **Enforcement:** AnnaLisa Gellerman, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule does not require a small business economic impact statement. The entities that must comply with the proposed rule are not small businesses, pursuant to chapter 19.85 RCW.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Donna Dorris, phone (360) 725-7040, fax (360) 586-3109, P.O. Box 40258, Olympia, WA 98504-0258, e-mail rulescoordinator@oic.wa.gov.

SUBCHAPTER K

MENTAL HEALTH AND SUBSTANCE USE DISORDER

NEW SECTION

WAC 284-43-1000 Scope and intent—Parity in mental health and substance use disorder benefits. This subchapter applies to all health plans and issuers. The purpose of this rule is to consolidate existing state mental health and chemical dependency regulation with federal mental health and substance use disorder parity requirements into state regulation. This rule also provides health plans and issuers with the method of demonstrating compliance with these requirements.

NEW SECTION

WAC 284-43-1010 Definitions. Aggregate lifetime limit means a dollar limitation on the total amount of specified benefits that may be paid under a health plan (or health insurance coverage offered in connection with a plan) for any coverage unit.

Annual dollar limit means a dollar limitation on the total amount of specified benefits that may be paid in a twelve-month period under a health plan (or health insurance coverage offered in connection with a plan) for any coverage unit.

Approved treatment program means a discrete program of chemical dependency treatment provided by a treatment program certified by the department of social and health services as meeting standards adopted under chapter 70.96A RCW.

Chemical dependency professional means a person certified as a chemical dependency professional by the Washington state department of health under chapter 18.205 RCW.

Classification of benefits means a group into which all medical/surgical benefits and mental health or substance use disorder benefits offered by a health plan must fall. For the purposes of this rule, the only classifications that may be used are: Inpatient, in-network; inpatient, out-of-network; outpatient, in-network; outpatient, out-of-network; emergency care; and prescription drugs.

Coverage unit means the way in which a health plan or issuer groups individuals for purposes of determining benefits, or premiums or contributions. For example, different coverage units include self-only, family, and employee-plus-spouse.

Cumulative financial requirements means financial requirements that determine whether or to what extent benefits are provided based on accumulated amounts and include deductibles and out-of-pocket maximums. Financial requirements do not include aggregate lifetime or annual dollar limits.

Cumulative quantitative treatment limitations means treatment limitations that determine whether or to what extent benefits are provided based on accumulated amounts, such as annual or lifetime day or visit limits.

Emergency condition, for the purpose of this subchapter, means a condition manifesting itself by acute symptoms of sufficient severity, including severe emotional or physical distress or a combination of severe emotional and physical distress, that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical or mental health attention to result in a condition placing the health of the individual, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.

Essential health benefits (EHBs). EHBs have the same definition as found in WAC 284-43-865. The definition of EHBs includes mental health and substance use disorder services, including behavioral health treatment. For EHBs, including mental health and substance use disorder benefits, federal and state law prohibit limitations or age, condition, lifetime and annual dollar amounts.

Financial requirements means cost sharing measures such as deductibles, copayments, coinsurance, and out-of-pocket maximums. Financial requirements do not include aggregate lifetime or annual dollar limits.

Health carrier or issuer has the same meaning as RCW 48.43.005(25).

Health plan has the same meaning as RCW 48.43.005(26).

Medical/surgical benefits means benefits with respect to items or services for medical conditions or surgical procedures, as defined under the terms of the plan or health insurance coverage and in accordance with applicable federal and state law, but does not include mental health or substance use disorder benefits. Any condition defined by the plan or coverage as being or as not being a medical/surgical condition must be defined to be consistent with generally recognized independent standards of current medical practice (for example, the most current version of the *International Classification of Diseases (ICD)* or state guidelines).

Medically necessary or medical necessity:

(a) With regard to chemical dependency and substance use disorder is defined by the most recent version of *The ASAM Criteria, Treatment Criteria for Addictive, Substance Related, and Co-Occurring Conditions* as published by the American Society of Addiction Medicine (ASAM).

(b) With regard to mental health services, pharmacy services, and any substance use disorder benefits not governed by ASAM, is a carrier determination as to whether a health service is a covered benefit because the service is consistent with generally recognized standards within a relevant health profession.

Mental health benefits means benefits with respect to items or services for mental health conditions, as defined under the terms of the plan or health insurance coverage and in accordance with applicable federal and state law. Any condition defined by the plan or coverage as being or as not being a mental health condition must be defined to be consistent with generally recognized independent standards of current medical practice (for example, the most current version of the

Diagnostic and Statistical Manual of Mental Disorders (DSM), the most current version of the *International Classification of Diseases (ICD)*, or state guidelines.

Nonquantitative treatment limitations (NQTL) means processes, strategies, or evidentiary standards, or other factors that are not expressed numerically, but otherwise limit the scope or duration of benefits for treatment. NQTLs include, but are not limited to:

(a) Medical management standards limiting or excluding benefits based on medical necessity or medical appropriateness, or based on whether the treatment is experimental or investigative;

(b) Formulary design for prescription drugs;

(c) For plans with multiple network tiers (such as preferred providers and participating providers), network tier design;

(d) Standards for provider admission to participate in a network, including reimbursement rates;

(e) Plan methods for determining usual, customary, and reasonable charges;

(f) Refusal to pay for higher-cost therapies until it can be shown that a lower-cost therapy is not effective (also known as fail-first policies or step therapy protocols);

(g) Exclusions based on failure to complete a course of treatment; and

(h) Restrictions based on geographic location, facility type, provider specialty, and other criteria that limit the scope or duration of benefits for services provided under the plan or coverage.

Predominant level: If a type of financial requirement or quantitative treatment limitation applies to substantially all medical surgical benefits in a classification, the predominant level is the level that applies to more than one-half of the medical/surgical benefits in that classification subject to the financial requirement of quantitative treatment limitation.

Quantitative parity analysis means a mathematical test by which plans and issuers determine what level of a financial requirement or quantitative treatment limitation, if any, is the most restrictive level that could be imposed on mental health or substance use disorder benefits within a classification.

Quantitative treatment limitations means types of objectively quantifiable treatment limitations such as frequency of treatments, number of visits, days of coverage, days in a waiting period or other similar limits on the scope or duration of treatment.

Substance use disorder includes illness characterized by a physiological or psychological dependency, or both, on a controlled substance regulated under chapter 69.50 RCW and/or alcoholic beverages. It is further characterized by a frequent or intense pattern of pathological use to the extent the user exhibits a loss of self-control over the amount and circumstances of use; develops symptoms of tolerance or physiological and/or psychological withdrawal if use of the controlled substance or alcoholic beverage is reduced or discontinued; and the user's health is substantially impaired or endangered or his or her social or economic function is substantially disrupted. Any disorder defined by the plan as being or as not being a substance use disorder must be defined to be consistent with generally recognized indepen-

dent standards of current medical practice (for example, the most current version of the DSM, the most current version of the ICD, or state guidelines).

Substance use disorder benefits means benefits with respect to items or services for substance use disorders, as defined under the terms of the plan or health insurance coverage and in accordance with applicable federal and state law. Substance use disorder benefits must include payment for reasonable charges for medically necessary treatment and supporting service rendered to an enrollee either within an approved treatment program or by a health care professional that meets the requirements of RCW 18.205.040(2), as part of the approved treatment plan.

Substantially all: A type of financial requirement or quantitative treatment limitation considered to apply to substantially all medical/surgical benefits in a classification of benefits if it applies to at least two-thirds of all medical/surgical benefits in that classification as determined by WAC 284-43-1030 (2)(a).

Treatment limitations means limits on benefits based on the frequency of treatment, number of visits, days of coverage, days in a waiting period, or other similar limits on the scope or duration of treatment. Treatment limitations include both quantitative treatment limitations, which are expressed numerically (such as fifty outpatient visits per year), and non-quantitative treatment limitations, which otherwise limit the scope or duration of benefits for treatment under a plan or coverage. A permanent exclusion of all benefits for a particular condition or disorder, however, is not a treatment limitation for purposes of this section.

NEW SECTION

WAC 284-43-1020 Classification of benefits. (1) A health plan providing mental health or substance use disorder benefits, must provide mental health or substance use disorder benefits in every classification in which medical/surgical benefits are provided.

(2) Parity requirements must be applied to the following six classifications of benefits: Inpatient, in-network; inpatient, out-of-network; outpatient, in-network; outpatient, out-of-network; emergency care; and prescription drugs. These are the only classifications of benefits that can be used.

(a) **Inpatient, in-network.** Benefits furnished on an inpatient basis and within a network of providers established or recognized under a plan or health insurance coverage.

(b) **Inpatient, out-of-network.** Benefits furnished on an inpatient basis and outside any network of providers established or recognized under a plan or health insurance coverage. This classification includes inpatient benefits under a plan (or health insurance coverage) that has no network of providers.

(c) **Outpatient, in-network.** Benefits furnished on an outpatient basis and within a network of providers established or recognized under a plan or health insurance coverage.

(d) **Outpatient, out-of-network.** Benefits furnished on an outpatient basis and outside any network of providers established or recognized under a plan or health insurance coverage. This classification includes outpatient benefits

under a plan (or health insurance coverage) that has no network of providers.

(e) **Emergency care.** Benefits for treatment of an emergency condition related to a mental health or substance use disorder. Such benefits must comply with the requirements for emergency medical services in RCW 48.43.093. Medically necessary detoxification must be covered as an emergency medical condition according to RCW 48.43.093, and may be provided in hospitals licensed under chapter 70.41 RCW. Medically necessary detoxification services must not require prenotification.

(f) **Prescription drugs.** Benefits for prescription drugs.

(3) In determining the classification in which a particular benefit belongs, a plan must apply the same standards to medical/surgical benefits as applied to mental health or substance use disorder benefits.

An issuer or health plan must assign covered intermediate mental health/substance use disorder benefits such as residential treatment, partial hospitalization, and intensive outpatient treatment, to the existing six classifications in the same way that they assign comparable intermediate medical/surgical benefits to these classifications. For example, if a health plan classifies medical care in skilled nursing facilities as inpatient benefits, then it must also treat covered mental health care in residential treatment facilities as inpatient benefits. If a health plan or issuer treats home health care as an outpatient benefit, then any covered intensive outpatient mental health or substance use disorder services and partial hospitalization must be considered outpatient benefits as well.

(4) A health plan or issuer may not apply any financial requirement or treatment limitation to mental health or substance use disorder benefits that is more restrictive than those applied to medical/surgical benefits. This parity analysis must be done on a classification-by-classification basis.

(5) Medical/surgical benefits and mental health or substance use disorder benefits cannot be categorized as being offered outside of these six classifications and therefore not subject to the parity analysis.

(a) A health plan or issuer must treat the least restrictive level of the financial requirement or quantitative treatment limitation that applies to at least two-thirds of medical/surgical benefits across all provider tiers in a classification as the predominant level that it may apply to mental health or substance use disorder benefits in the same classification.

(b) If a health plan or issuer classifies providers into tiers, and varies cost-sharing based on the different tiers, the criteria for classification must be applied to generalists and specialists providing mental health or substance use disorder services no more restrictively than such criteria are applied to medical/surgical benefit providers.

(6) Permitted subclassifications:

(a) A health plan or issuer is permitted to divide benefits furnished on an outpatient basis into two subclassifications:

(i) Office visits; and

(ii) All other outpatient items and services.

(b) A health plan or issuer may divide its benefits furnished on an in-network basis into subclassifications that reflect network tiers, if the tiering is based on reasonable factors and without regard to whether a provider is a mental

health or substance use disorder provider or a medical/surgical provider.

(c) After network tiers are established, the health plan or issuer may not impose any financial requirement or treatment limitation on mental health or substance use disorder benefits in any tier that is more restrictive than the predominant financial requirement or treatment limitation that applies to substantially all medical/surgical benefits in that tier.

(d) If a health plan applies different levels of financial requirements to different tiers of prescription drug benefits based on reasonable factors and without regard to whether a drug is generally prescribed with respect to medical/surgical benefits or with respect to mental health/substance use disorder benefits, the health plan satisfies the parity requirements with respect to prescription drug benefits. Reasonable factors include: Cost, efficacy, generic versus brand name, and mail order versus pharmacy pick-up.

(e) A parity analysis applying the financial requirement and treatment rules found in WAC 284-43-1030 and 284-43-1040 must be performed within each subclassification.

(7) **Prohibited subclassifications:** All subclassifications other than the permitted subclassification listed in subsection (6) of this section are specifically prohibited. For example, a plan is prohibited from basing a subclassification on generalists and specialists.

NEW SECTION

WAC 284-43-1030 Measuring health plan benefits—Financial requirements and quantitative treatment limitations. (1) Classification of benefits must be measured as follows:

(a) By type and level of financial requirement or treatment limitation.

(i) A financial requirement or treatment limitation type includes deductibles, copayments, coinsurance, and out-of-pocket maximums. Types of quantitative treatment limitations include annual, episode, and lifetime day and visit limits.

(ii) A financial requirement or treatment limitation level includes the amount of the financial requirement or treatment limitation type. For example, different levels of coinsurance include twenty percent and thirty percent; different levels of a copayment include fifteen dollars and twenty dollars; different levels of a deductible include two hundred fifty dollars and five hundred dollars; and different levels of an episode limit include twenty-one inpatient days per episode and thirty inpatient days per episode.

(b) A health plan or issuer may not apply any financial requirement or quantitative treatment limitation to mental health/substance use disorder benefits in any classification that is more restrictive than the predominant financial requirement or quantitative treatment limitation of that type applied to substantially all medical/surgical benefits in the same classification. Whether a financial requirement or treatment limitation is a predominant financial requirement or treatment limitation that applies to substantially all medical/surgical benefits in a classification is determined separately for each type of financial requirement or treatment limitation.

(c) The determination of the portion of medical/surgical benefits in a classification of benefits subject to a financial requirement or quantitative treatment limitation (or subject to any level of a financial requirement or quantitative treatment limitation) is based on the dollar amount of all plan payments for medical/surgical benefits in the classification expected to be paid under the health plan for the plan year.

(i) The dollar amount of plan payments is based on the amount the plan allows (before enrollee cost sharing) rather than the amount the plan pays (after enrollee cost sharing) because payment based on the allowed amount covers the full scope of the benefits being provided.

(ii) A reasonable actuarial method must be used to determine the dollar amount expected to be paid under a plan for medical/surgical benefits subject to a financial requirement or quantitative treatment limitation.

(d) Clarifications for certain threshold requirements when performing "substantially all" and "predominant" tests.

(i) For any deductible, the dollar amount of plan payments includes all plan payments with respect to claims that would be subject to the deductible if it had not been satisfied.

(ii) For any out-of-pocket maximum, the dollar amount of plan payments includes all plan payments associated with out-of-pocket payments that are taken into account towards the out-of-pocket maximum as well as all plan payments associated with out-of-pocket payments that would have been made towards the out-of-pocket maximum if it had not been satisfied.

(iii) Similar rules apply for any other thresholds at which the rate of plan payment changes.

(2) Application to different coverage units. If a health plan or insurer applies different levels of a financial requirement or quantitative treatment limitation to different coverage units in a classification of medical/surgical benefits, the "predominant" level that applies to "substantially all" medical/surgical benefits in the classification is determined separately for each coverage unit.

(a) Determining "substantially all": A type of financial requirement or quantitative treatment limitation is considered to apply to substantially all medical/surgical benefits in a classification of benefits if it applies to at least two-thirds of all medical/surgical benefits in that classification.

(i) Benefits subject to a zero level for a type of financial requirement are treated as benefits not subject to that type of financial requirement. Benefits with no quantitative treatment limitations are treated as benefits not subject to that type of quantitative treatment limitation.

(ii) If a type of financial requirement or quantitative treatment limitation does not apply to at least two-thirds of all medical/surgical benefits in a classification, the financial requirement or quantitative treatment limitation of that type cannot be applied to mental health or substance use disorder benefits in that classification.

(b) Determining "predominant":

(i) If a type of financial requirement or quantitative treatment limitation applies to at least two-thirds of all medical/surgical benefits in a classification as determined under (a) of this subsection, the level of the financial requirement or quantitative treatment limitation that applies to more than one-half of medical/surgical benefits in that classification

subject to the financial requirement or quantitative treatment limitation is the predominant level of that type in a classification of benefits.

(ii) If a type of financial requirement or quantitative treatment limitation applies to at least two-thirds of all medical/surgical benefits in a classification and there is no single level that applies to more than one-half of medical/surgical benefits in the classification subject to the financial requirement or quantitative treatment limitation, the health plan or issuer must combine levels until the combination of levels applies to more than one-half of medical/surgical benefits subject to the financial requirement or quantitative treatment limitation in the classification.

(iii) The least restrictive level within the combination is considered the predominant level of that type in the classification. (For this purpose, a health plan must combine the most restrictive levels first, with each less restrictive level added to the combination until the combination applies to more than one-half of the benefits subject to the financial requirement or treatment limitation.)

(3) Cumulative financial requirements and cumulative quantitative treatment limitations.

(a) A health plan or issuer may not apply cumulative financial requirements (such as deductibles and out-of-pocket maximums) or cumulative quantitative treatment limitations (such as annual or lifetime day or visit limits) for mental health or substance use disorder benefits in a classification that accumulate separately from any cumulative requirement or limitation established for medical/surgical benefits in the same classification.

(b) Cumulative requirements and limitation must also satisfy the quantitative parity analysis.

NEW SECTION

WAC 284-43-1040 Measuring health plan benefits—Nonquantitative treatment limitations. (1) A health plan or issuer may not impose an NQTL with respect to mental health or substance use disorder in any classification unless, under the terms of the health plan as written and in operation, any processes, strategies, evidentiary standards or other factors used in applying the NQTL to mental health or substance use disorder benefits in the classification are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the limitation with respect to medical/surgical benefits in the same classification.

(2) All health plan standards, such as in-and-out-of-network geographic limitations, limitations on inpatient services for situations where the participant is a threat to self or others, exclusions for court-ordered and involuntary holds, experimental treatment limitations, service coding, exclusions for services provided by clinical social workers, and network adequacy, while not specifically enumerated in the illustrative list of NQTLs must be applied in a manner that complies with this subsection.

NEW SECTION

WAC 284-43-1050 Prohibited exclusions. (1) Benefits for actual treatment and services rendered may not be denied

solely because a course of treatment was interrupted or was not completed.

(2) If a service is prescribed for a mental health condition and is medically necessary, it may not be denied solely on the basis that it is part of a category of services or benefits that is excluded by the terms of the contract.

(3) Benefits for mental health services and substance use disorder may not be limited or denied based solely on age or condition.

(4) Nothing in this section relieves a health plan or an issuer from its obligations to pay for a court ordered substance use disorder benefit or mental health benefit when it is medically necessary.

NEW SECTION

WAC 284-43-1060 Required disclosures. (1) Health plans and issuers must provide reasonable access to and copies of all documents, records, and other information relevant to an individual's claim. Health plans and issuers must provide disclosures consistent with WAC 284-43-620, 284-43-515, 284-43-525, and 284-43-410, within a reasonable time.

(2) Health plans and issuers must provide the criteria, processes, strategies, evidentiary standards and other factors used to make medical necessity determinations of mental health or substance use disorder benefits. These must be made available free of charge by the health plan issuer to any current or potential participant, beneficiary, or contracting provider upon request, within a reasonable time in compliance with WAC 284-43-410, and in a manner that provides reasonable access to the requestor. This requirement includes information on the processes, strategies, evidentiary standards, and other factors used to apply an NQTL with respect to medical/surgical and mental health or substance use disorder benefits under the health plan.

(3) The reason for any adverse benefit decision for mental health or substance use disorder benefits must be provided with the notification of the adverse benefit decision.

(4) Compliance with these disclosure requirements is not determinative of compliance with any other provisions of applicable federal or state law.

(5) If a health plan is subject to ERISA, it must provide the reason for the claim denial in a form and manner consistent with the requirements of 29 C.F.R. 2560.503-1.

NEW SECTION

WAC 284-43-1070 Compliance and reporting of quantitative parity analysis. (1) Health plans and issuers must file a justification demonstrating the analysis of each plan's financial requirements and quantitative treatment limitations as required under WAC 284-43-1030.

(2) Filing of this justification is subject to the requirements of chapters 284-44A, 284-46A, and 284-58 WAC and may be rejected and closed if it does not comply.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 284-53-005 Definitions.
 WAC 284-53-010 Standards for coverage of chemical dependency.

WSR 14-20-076
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed September 29, 2014, 8:44 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-31-327 When must an employer grant leave without pay?, 357-31-052 Is an employee entitled to any unpaid holidays?, and 357-31-053 Within what time frame must an employee notify their supervisor to request an unpaid holiday in accordance with WAC 357-31-052?

Hearing Location(s): Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501, on November 13, 2014, at 8:30 a.m.

Date of Intended Adoption: November 13, 2014.

Submit Written Comments to: Kristie Wilson, OFM, P.O. Box 47500, e-mail Kristie.wilson@ofm.wa.gov, fax (360) 586-4694 by November 6, 2014. For OFM tracking purposes, please note on submitted comments "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact OFM by November 6, 2014, TTY 711 or 1-800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SSB 5173 allows employees of the state and its political subdivisions two unpaid holidays per calendar year for reason of faith or conscience. Leave may only be denied if the employee is necessary to maintain public safety or approval results in an "undue hardship" as defined in rule by OFM. These new rules and the rule amendment address "undue hardship" for purposes of this bill. In addition, these changes establish a timeframe for when an employee must notify their supervisor to request unpaid leave for reasons of faith or conscience, leave may not be denied due to an employee not meeting the specified timeframe.

Reasons Supporting Proposal: This is to create rules for application of the two unpaid holidays for reason of faith or conscience.

Statutory Authority for Adoption: Chapter 41.06 RCW.
 Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kristie Wilson, 128 10th Avenue S.W., (360) 407-4139.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Rules related only to internal government operations.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

September 29, 2014

Roselyn Marcus
 Assistant Director of Legal
 and Legislative Services

NEW SECTION

WAC 357-31-052 Is an employee entitled to any unpaid holidays? Employees are entitled to two unpaid holidays per calendar year for a reason of faith or conscience or an organized activity conducted under the auspices of a religious denomination, church, or religious organization. The employer must allow the employee to take the unpaid holiday when requested unless the employee's absence would impose an undue hardship on the employer or the employee is necessary to maintain public safety. For this purpose "undue hardship" is defined in WAC 82-56-020.

NEW SECTION

WAC 357-31-053 Within what time frame must an employee notify their supervisor to request an unpaid holiday in accordance with WAC 357-31-052? When requesting an unpaid holiday in accordance with WAC 357-31-052, an employee must give at least fourteen calendar days' notice to the supervisor in accordance with the employer's leave policy. The employee and supervisor may agree upon a shorter time frame. Unpaid leave for this purpose must not be denied due to not meeting the time frame. Leave may only be denied for undue hardship as defined in WAC 82-56-020.

AMENDATORY SECTION (Amending WSR 09-17-057 and 09-18-112, filed 8/13/09 and 9/2/09, effective 12/3/09)

WAC 357-31-327 When must an employer grant leave without pay? An employer must grant leave without pay under the following conditions:

(1) When an employee who is a volunteer firefighter is called to duty to respond to a fire, natural disaster, or medical emergency;

(2) If the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.-020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730; or

(3) In accordance with WAC 357-31-373, for an employee to be with a spouse or registered domestic partner who is a member of the armed forces of the United States,

National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(4) When an employee requests a day off for a reason of faith or conscience or an organized activity conducted under the auspices of a religious denomination, church, or religious organization in accordance with WAC 357-31-052.

WSR 14-20-077
PROPOSED RULES
OFFICE OF
FINANCIAL MANAGEMENT

[Filed September 29, 2014, 8:44 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-13-090 How is an employee affected when his/her position is reallocated?, 357-28-135 How is an employee's salary determined when the employee is appointed to a position due to a layoff action?, 357-28-082 Is step M on the salary schedule different than other salary steps?, 357-28-110 Must an employee who is promoted receive a salary increase?, 357-28-115 Must an employee occupying a position that is reallocated to a class with a higher salary range receive a salary increase?, 357-28-120 What is the base salary of an employee occupying a position that is reallocated to a class with the same or lower salary range?, 357-28-035 What must be addressed in the employer's salary determination policy?, and 357-28-088 If an employee accepts a transfer or demotion will the time spent at step L count towards the six years to qualify for step M in the new position?

Hearing Location(s): Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501, on November 13, 2014, at 8:30 a.m.

Date of Intended Adoption: November 13, 2014.

Submit Written Comments to: Kristie Wilson, OFM, P.O. Box 47500, e-mail Kristie.wilson@ofm.wa.gov, fax (360) 586-4694, by November 6, 2014. For OFM tracking purposes, please note on submitted comments "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact OFM by November 6, 2014, TTY 711 or 1-800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These proposed changes correspond with the recent changes made for WFSE represented employees which allows an employee upon promotion or reallocation be placed at step M if that step falls within the required percentage of increase or minimum number of step increase.

Reasons Supporting Proposal: This is to align the state civil service rule with the supported collective bargaining agreement.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kristie Wilson, 128 10th Avenue S.W., (360) 407-4139.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Rules related only to internal government operations. No impact to businesses or industry.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

September 29, 2014
Roselyn Marcus
Assistant Director of Legal
and Legislative Services

AMENDATORY SECTION (Amending WSR 13-19-043, filed 9/13/13, effective 10/18/13)

WAC 357-13-090 How is an employee affected when his/her position is reallocated?

This table is used to determine how an employee whose position is reallocated is affected.			
	Employee's position reallocated to:		
	Class with a higher salary range maximum	Class with an equal salary range maximum	Class with a lower salary range maximum
Reallocation results from:			
A position review requested by the employee or initiated by the employer	<p><i>If the employee has performed the higher level duties for at least six months and meets the competencies and other position requirements:</i></p> <p>→ The employee remains in the position and is appointed with permanent status provided the probationary or trial service period for the class to which the position is reallocated is six months in duration. If the probationary period or trial service period is longer than six months and the employee has not performed higher level duties for the length of the probationary period or trial service period, the employer may require the employee serve the remainder of the probationary or trial service period before gaining permanent status in the reallocated position.</p> <p><i>If the reallocation is the result of a change in the duties of the position and the employee has not performed the higher level duties for six months or more:</i></p> <p>→ The employer must give the employee the opportunity to compete for the position. The employer may choose to promote the employee without competition as long as the employee meets the competencies and any other position requirements.</p> <p>If the employee is not selected for the position, the employer's layoff procedure applies. If the employee is appointed and he/she has already gained permanent status, the employee must serve a trial service period. If the employee has not completed the probationary period, then the new trial service period will overlap provided the higher and lower classes are in the same or a closely related field. If the classes are not in the same or closely related field, then the employee will start their probationary period over in the new class.</p>	<p><i>If the employee meets the competencies and other position requirements:</i></p> <p>→ The employee remains in the position and retains existing appointment status.</p> <p>→ The employee retains the previous base salary in accordance with WAC 357-28-120.</p> <p><i>If the employee does not meet the competencies and other position requirements:</i></p>	<p><i>If the employee meets the competencies and other position requirements and chooses to remain in the reallocated position:</i></p> <p>→ The employee retains appointment status; has the right to be placed on the employer's internal layoff list; and has his/her salary set in accordance with WAC 357-28-120.</p> <p><i>If the employee chooses to vacate the position or does not meet the competencies and other position requirements:</i></p> <p>→ The employer's layoff procedure applies.</p>

This table is used to determine how an employee whose position is reallocated is affected.			
	Employee's position reallocated to:		
	Class with a higher salary range maximum	Class with an equal salary range maximum	Class with a lower salary range maximum
Reallocation results from:			
A position review requested by the employee or initiated by the employer	<i>If the employee has performed the higher level duties for at least six months and meets the competencies and other position requirements:</i> Upon appointment to the higher class, the employee's base salary must be increased a minimum of a two step increase, not to exceed step ((L)) <u>M</u> of the range as provided in WAC 357-28-115.	<i>If the employee meets the competencies and other position requirements:</i> → The employer's layoff procedure applies.	<i>If the employee meets the competencies and other position requirements and chooses to remain in the reallocated position:</i>
The director revising the classification plan.	The employee remains in the position and keeps existing appointment status. See WAC 357-28-130 for determining the employee's salary.		

AMENDATORY SECTION (Amending WSR 13-19-043, filed 9/13/13, effective 10/18/13)

WAC 357-28-035 What must be addressed in the employer's salary determination policy? The employer's salary determination policy must minimally address the following:

- (1) Setting base salary for new employees;
- (2) Increasing base salary in accordance with WAC 357-28-110 when an employee promotes to a position in a new class;
- (3) Increasing base salary in accordance with WAC 357-28-110 when an employee promotes to a permanent position while in a nonpermanent appointment;
- (4) Setting base salary in accordance with WAC 357-28-140 when an employee transfers to a new position;
- (5) Setting base salary when an employee is appointed from an internal or statewide layoff list;
- (6) Setting base salary when an employee is reallocated to a position with a lower salary range and the employee's previous base salary is above step ((L)) M of the new salary range as permitted in WAC 357-28-120. Under no circumstance should an employee's salary exceed their previous base salary;
- (7) Setting base salary when an employee demotes for reasons other than accepting a demotion in lieu of layoff or accepting a demotion when a position is reallocated;
- (8) Setting base salary when an employee is reverted following a voluntary demotion;
- (9) Authorizing premiums for recruitment and retention as provided in WAC 357-28-095 and 357-28-100; and
- (10) Setting base salary and progression based on recruitment and retention rather than years of experience for the nurse special pay salary schedules, if allowed by the employer.

AMENDATORY SECTION (Amending WSR 13-19-043, filed 9/13/13, effective 10/18/13)

WAC 357-28-082 Is step M on the salary schedule different than other salary steps? Step M is a longevity step. An employee cannot be appointed to step M upon initial hire ((or progress to step M upon promotion)).

AMENDATORY SECTION (Amending WSR 13-19-043, filed 9/13/13, effective 10/18/13)

WAC 357-28-088 If an employee ((accepts a new appointment)) transfers or demotes will the time spent at step L count towards the six years to qualify for step M in the new position? If an employee ((accepts a new appointment)) transfers to a position ((which is the same pay range as the previous position,)) the time at step L in the previous position will count towards the six years to qualify for step M in the new position.

If an employee ((accepts a new appointment to a position which is a different pay range as the previous position)) is demoted (voluntary or involuntary), the time at step L in the previous position will not count towards the six years to qualify for step M ((in the new salary range. An exception to this is if the new appointment is due to an employee accepting a demotion in lieu of layoff or a layoff option to a position with a lower salary range maximum. In that case, the time spent at step L in the previous position will count towards the six years to qualify for step M in the new salary range)) except in accordance with WAC 357-28-135(2).

AMENDATORY SECTION (Amending WSR 13-19-043, filed 9/13/13, effective 10/18/13)

WAC 357-28-110 Must an employee who is promoted ((to a position in a class with a higher salary range)) receive a salary increase? An employee who is promoted ((to a position in a class with a higher salary range))

must receive a minimum increase of two steps not to exceed step ((~~E~~) M) of the salary range. The employer may grant (~~higher increases~~) more than an increase of two steps not to exceed step L if:

(1) Significant increases in duties and responsibilities, as documented by the employer, warrant greater compensation;

(2) The increase is necessary for internal salary alignment, retention of the employee, or other documented business needs; or

(3) The increase is necessary to bring the employee to the minimum of the salary range for the position.

AMENDATORY SECTION (Amending WSR 13-19-043, filed 9/13/13, effective 10/18/13)

WAC 357-28-115 Must an employee occupying a position that is reallocated to a class with a higher salary range receive a salary increase? An employee occupying a position that is reallocated to a class with a higher salary range must receive a minimum increase of at least two steps not to exceed step ((~~E~~) M) of the salary range in accordance with WAC 357-28-110.

AMENDATORY SECTION (Amending WSR 13-19-043, filed 9/13/13, effective 10/18/13)

WAC 357-28-120 What is the base salary of an employee occupying a position that is reallocated to a class with the same or lower salary range? An employee occupying a position that is reallocated to a class with the same or lower salary range must be placed within the new salary range at an amount equal to his/her previous base salary. If the previous base salary exceeds the new salary range, the employee's base salary must be set equal to step ((~~E~~) M) of the salary range for the reallocated position. The employee's base salary may be set ((~~at~~) higher than step M ((~~or higher than the range maximum.~~))) but not exceeding the previous base salary, if allowed by the employer's salary determination policy.

AMENDATORY SECTION (Amending WSR 13-19-043, filed 9/13/13, effective 10/18/13)

WAC 357-28-135 How is an employee's salary determined when the employee is appointed to a position due to a layoff action? The base salary of an employee appointed to a position due to a layoff action must be determined as follows:

(1) An employee who accepts a layoff option to a different position with the same salary range keeps the same base salary.

(2) An employee who accepts a demotion in lieu of layoff or accepts a layoff option to a position with a lower salary range maximum must be placed within the new range at a salary equal to the employee's previous base salary. If the previous base salary exceeds the new range, the employee's base salary must be set equal to step ((~~E~~) M) of the new salary range. If the employee's previous base salary was at step M of the salary range the employee must be placed at step M of the new salary range.

(3) An employee who is appointed from an internal or statewide layoff list to a position with the same range as the position from which the employee was laid off must be placed within the range at a salary equal to the employee's previous base salary.

(4) An employee who is appointed from an internal or statewide layoff list to a position with a lower range maximum than the position from which the employee was laid off must have the salary determined by the employer's salary determination policy.

WSR 14-20-078

PROPOSED RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed September 29, 2014, 8:44 a.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 357-49-010 For what actions can an individual request a director's review?, 357-49-017 When is a director's review part of the appeal process?, 357-52-010 What actions may be appealed?, 357-52-015 By when must an appeal be filed and received in order to be considered timely?, 357-58-505 Does a WMS employee have appeal rights?, and 357-58-515 When a WMS employee disagrees with an employer's action, can the employee request the employer reconsider the action that was taken?

Hearing Location(s): Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501, on November 13, 2014, at 8:30 a.m.

Date of Intended Adoption: November 13, 2014.

Submit Written Comments to: Kristie Wilson, OFM, P.O. Box 47500, e-mail Kristie.wilson@ofm.wa.gov, fax (360) 586-4694, by November 6, 2014. For OFM tracking purposes, please note on submitted comments "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact OFM by November 6, 2014, TTY 711 or 1-800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Currently, in rule we address what Washington management service (WMS) actions may be appealed; however, we do not include WMS rule violations as stated in RCW 41.06.170(2). Based on our recent review of the WMS civil service rules, we are proposing these rule changes to address WMS appeal rights by allowing WMS employees to file rule violations appeals in accordance with chapter 357-52 WAC.

Reasons Supporting Proposal: To be consistent with RCW 41.06.170, which allows employees to file rule violation appeals.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kristie Wilson, 128 10th Avenue S.W., Olympia, WA, (360) 407-4139.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Rules related only to internal government operations. No impact to businesses or industry.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

September 29, 2014

Roselyn Marcus

Assistant Director of Legal
and Legislative Services

AMENDATORY SECTION (Amending WSR 11-23-054, filed 11/10/11, effective 12/13/11)

WAC 357-49-010 For what actions ((~~may~~) can) an individual request a director's review? (1) If the department of enterprise services is responsible for the assessment process, an applicant or candidate may request a director's review of his/her examination results. If the director's office is responsible for the removal of his/her name from an applicant or candidate pool as specified in WAC 357-16-175 the individual may request a director's review. Director review decisions regarding the removal of an individual's name from an applicant or candidate pool or an individual's examination results are final and not subject to further review or appeal.

(2) An individual may request a director's review of the removal of his/her name from a layoff list as specified in WAC 357-46-145.

(3) An employee may request a director's review of the following:

(a) Allocation or reallocation per WAC 357-13-080; or

(b) Performance evaluation process or procedure per WAC 357-37-080.

(4) ~~((In addition to the subject listed in subsection (2) of this section, an employee who has been adversely affected by a violation of the civil service laws or rules may request a director's review within thirty calendar days of the date the employee could reasonably be expected to have knowledge of the action giving rise to a law or rule violation claim or the stated effective date, whichever is later.))~~ An individual may request the director review his/her request for remedial action per WAC 357-19-430 or 357-19-450. Requests for remedial action must be received within thirty calendar days of the date the individual could reasonably be expected to have knowledge of the action giving rise to violation of the non-permanent appointment or temporary appointment rules.

(5) An employee may not request a director's review of:

(a) An alleged violation of civil service laws or rules including those pertaining to layoff, except for removal of his/her name from a layoff list as provided in subsection (2) of this section; or

(b) The actions of reduction, dismissal, suspension, demotion or separation.

~~((5) An individual may request the director review his/her request for remedial action per WAC 357-19-430 or 357-19-450. Requests for remedial action must be received within thirty calendar days of the date the individual could reasonably be expected to have knowledge of the action giving rise to violation of the non-permanent appointment or temporary appointment rules.))~~

AMENDATORY SECTION (Amending WSR 05-19-011, filed 9/8/05, effective 10/10/05)

WAC 357-49-017 When is a director's review part of the appeal process? When an individual requests a director's review for any of the following types of actions, the director's review constitutes the initial step of the appeal process:

(1) Review of an employee's allocation or reallocation per WAC 357-13-080;

(2) Review of ~~((an alleged violation of civil service law or rules per WAC 357-49-010 (2) and (4)))~~ the removal of an employee's name from a layoff list as specified in WAC 357-46-145; and

(3) Review of a remedial action request per WAC 357-49-010(5).

AMENDATORY SECTION (Amending WSR 09-17-065, filed 8/13/09, effective 9/16/09)

WAC 357-52-010 What actions may be appealed? (1) Within WGS, the following actions may be appealed:

(a) Any permanent WGS employee subject to the statutory jurisdiction of the board who is dismissed, suspended, demoted, or separated or whose base salary is reduced may appeal to the board.

(b) Any employee, subject to the statutory jurisdiction of the board who adversely is affected by a violation of the state civil service law (chapter 41.06 RCW) or the rules contained in Title 357 WAC, ~~((or an employer,))~~ may appeal to the board as follows:

(i) For a violation of state civil service law or rules relating to a layoff action, excluding removal from a layoff list, the employee may appeal directly to the board.

(ii) For a violation of state civil service law or rules relating to any other subject, including removal from a layoff list, the employee ~~((or employer))~~ may appeal directly to the board ~~((by filing written exceptions to the director's review determination)),~~ except as provided in WAC 357-49-010(1).

(c) ~~((Through December 31, 2005, an employee in a position at the time of its allocation or reallocation or the employer may appeal to the personnel appeals board by filing written exceptions to the director's review determination in accordance with Title 358 WAC. As of January 1, 2006,))~~ An employee in a position at the time of its allocation or reallocation or the employer may appeal to the personnel resources board by filing written exceptions to the director's review determination.

(d) An employee whose position has been exempted from chapter 41.06 RCW or the exclusive bargaining unit representative for a vacant position that has been exempted from chapter 41.06 RCW may appeal the exemption to the board.

(e) An individual or the employer may appeal remedial action to the board by filing written exceptions to the director's review determination.

(2) Within WMS, the following actions may be appealed:

(a) Any permanent Washington management service employee who is dismissed, suspended, demoted, laid off, or separated, or whose base salary is reduced may appeal to the board. A determination of which Washington management service positions will be eliminated in a layoff action is not subject to appeal.

(b) For a violation of state civil service law or rules pertaining to WMS employees, a WMS employee who is adversely affected by a violation of the state civil service law (chapter 41.06 RCW) or the rules pertaining to WMS employees (chapter 357-58 WAC) may appeal directly to the board.

(c) An employee whose position has been exempted from chapter 41.06 RCW may appeal the exemption to the board.

AMENDATORY SECTION (Amending WSR 06-03-074, filed 1/12/06, effective 2/13/06)

WAC 357-52-015 By when must an appeal be filed and received in order to be considered timely? In order to be considered timely, an appeal must be received in writing at the office of the board within thirty calendar days after:

(1) The effective date of the disciplinary action, layoff, or separation((:));

(2) The date the employee could reasonably be expected to have knowledge of the action giving rise to a law or rule violation claim or the stated effective date, whichever is later;

(3) Service of the director's determination unless the rules specifically state that the director's determination is final((:)); or

((3)) (4) The effective date of the exemption of a position or the notice of exemption, whichever is later.

AMENDATORY SECTION (Amending WSR 05-21-053, filed 10/13/05, effective 11/15/05)

WAC 357-58-505 Does a WMS employee have appeal rights? Any permanent employee in a WMS position who is laid off, dismissed, suspended, demoted, separated, whose position has been reassigned beyond a reasonable commute without agreeing to the reassignment, or whose base salary is reduced may appeal in accordance with chapter 357-52 WAC. Any WMS employee who is adversely affected by a violation of the state civil service law (chapter 41.06 RCW) or the civil service rules pertaining to WMS employees (chapter 357-58 WAC) may appeal in accordance with chapter 357-52 WAC. The conclusion of an acting appointment is not subject to appeal.

AMENDATORY SECTION (Amending WSR 11-23-054, filed 11/10/11, effective 12/13/11)

WAC 357-58-515 When a WMS employee disagrees with an employer's action, can the employee request the employer reconsider the action that was taken? Each

agency will develop procedures to reconsider agency actions at the request of the employee. The agency's procedure must identify those actions for which an employee may request reconsideration. At a minimum, the agency's procedure must allow an employee to request reconsideration of the following:

(1) Salary adjustment (or lack thereof) when the responsibilities of the permanent employee's position have been changed.

(2) Placement following reversion of a permanent employee.

(3) Decisions about whether or not a position is included in the WMS. When reconsidering decisions concerning inclusion in WMS the following apply:

(a) The final agency internal decision must be made by the agency director or designee.

(b) If the incumbent disagrees with the agency director/designee's decision, he/she may request a ((director's)) review by the director, as long as such request is made within fifteen calendar days of notification of the decision. Such review will be limited to relevant documents and information and will be final.

WSR 14-20-079

PROPOSED RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed September 29, 2014, 8:44 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 357-01-345 Trial service period, 357-19-025 When must an employee serve a trial service period?, 357-19-125 What happens to a permanent Washington management service (WMS) employee who promotes or demotes to a Washington general service (WGS) position but fails to satisfactorily complete the trial service period?, 357-19-442 What happens to an employee's salary and periodic increment date when he/she is temporarily appointed to the higher level class under provisions of WAC 357-19-435(2)?, 357-58-375 When permanent WMS employees promote or demote to positions in the general service and fail to complete the trial service period what reversion rights do permanent WMS employees have?, and 357-19-115 To which employer and position would an employee revert?

Hearing Location(s): Office of Financial Management (OFM), Capitol Court Building, 1110 Capitol Way South, Suite 120, Conference Room 110, Olympia, WA 98501, on November 13, 2014, at 8:30 a.m.

Date of Intended Adoption: November 13, 2014.

Submit Written Comments to: Kristie Wilson, OFM, P.O. Box 47500, e-mail Kristie.wilson@ofm.wa.gov, fax (360) 586-4694, by November 6, 2014. For OFM tracking purposes, please note on submitted comments "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact OFM by November 6, 2014, TTY 711 or 1-800-833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These proposed rule changes clarify that if an employee is laid off and is appointed within two years of separation to a position with a higher salary range maximum than the position they were laid off from, they must serve a trial service period. The proposed changes to WAC 357-19-115 address which employer and position an employee would revert to and addresses when an employee is reverted during their trial service period and the employer's obligation to return an employee to a vacant position or position held by a nonpermanent appointee. We are proposing to remove the "transfer" language in WAC 357-19-125 to coincide with the language in WAC 357-58-375 since WMS appointments do not transfer to WGS.

Reasons Supporting Proposal: To clarify the civil service rules regarding trial service reversion.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Proponent: OFM, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Kristie Wilson, 128 10th Avenue S.W., Olympia, WA, (360) 407-4139.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Rules related only to internal government operations. No impact to businesses or industry.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are related to internal government operations and are not subject to violation by a nongovernmental party. See RCW 34.05.328 (5)(b)(ii) for exemption.

September 29, 2014

Roselyn Marcus

Assistant Director of Legal
and Legislative Services

AMENDATORY SECTION (Amending WSR 05-01-204, filed 12/21/04, effective 7/1/05)

WAC 357-01-345 Trial service period. The initial period of employment following:

(1) A promotional appointment to a position in a new class ~~((or the initial period of employment following))~~;

(2) A transfer ~~((or))~~, voluntary demotion, or elevation when required by the employer under the provisions of WAC 357-19-030; or

(3) An appointment within two years of separation due to layoff to a position with a higher salary range maximum than the position the employee was laid off from.

The trial service period will continue for six to twelve months as determined under the provisions of WAC 357-19-050.

AMENDATORY SECTION (Amending WSR 05-12-077, filed 5/27/05, effective 7/1/05)

WAC 357-19-025 When must an employee serve a trial service period? A permanent employee must serve a trial service period upon promotional appointment to a position in a class in which the employee has not held permanent status. A general government employee laid off in accordance with the provisions of WAC 357-46-010 or 357-58-445 is not considered to have had a break in continuous state service if within two years of separation the employee is appointed to a position. Upon appointment to a position with a higher salary range maximum than the position the employee was laid off from the employee must serve a trial service period.

AMENDATORY SECTION (Amending WSR 07-03-052, filed 1/12/07, effective 2/15/07)

WAC 357-19-115 To which employer and position would an employee revert? (1) A permanent employee who does not satisfactorily complete the trial service period or a Washington management service (WMS) review period or has failed to progress to the next step of an in-training plan in accordance with WAC 357-19-285, has reversion rights with the current employer at the time of reversion. An employee has the right to revert to a position, if available, in accordance with the following:

((+)) (a) For employees reverting from trial service following a promotion, transfer or elevation, the employer must revert the employee to a vacant position, or a position filled by a nonpermanent appointee as defined in WAC 357-01-210, for which the employee satisfies competencies and other position requirements and which is:

((+)) (i) Allocated to the class the employee last held permanent status in; or

((+)) (ii) If no positions are available, allocated to a class which has the same or lower salary range maximum.

((+)) (b) For employees reverting from trial service following a voluntary demotion, the employer must revert the employee to a vacant position, or a position filled by a nonpermanent appointee as defined in WAC 357-01-210, for which the employee satisfies the competencies and other position requirements and which is allocated to a class which has the same or lower salary range maximum as the class from which the employee is reverting.

(2) If no vacant position or position filled by a nonpermanent appointee as defined in WAC 357-01-210 is available, the employee is eligible to be placed on the employer's internal layoff list upon request in accordance with WAC 357-19-117.

AMENDATORY SECTION (Amending WSR 05-12-089, filed 5/27/05, effective 7/1/05)

WAC 357-19-125 What happens to a permanent Washington management service (WMS) employee who promotes(~~,- transfers~~) or demotes to a Washington general service (WGS) position but fails to satisfactorily complete the trial service period? A permanent Washington management service (WMS) employee who promotes(~~,-~~

transfers)) or demotes to a Washington general service (WGS) position but fails to satisfactorily complete the trial service period has reversion rights in accordance with WAC 357-58-375.

AMENDATORY SECTION (Amending WSR 05-01-192, filed 12/21/04, effective 7/1/05)

WAC 357-19-442 What happens to an employee's salary and periodic increment date when he/she is temporarily appointed to the higher level class under provisions of WAC 357-19-435(2)? Upon temporary appointment under the provisions ((the [of])) of WAC 357-19-435(2), the employee's base salary is determined in accordance with WAC 357-28-110 and his/her periodic increment date is unchanged.

AMENDATORY SECTION (Amending WSR 05-21-053, filed 10/13/05, effective 11/15/05)

WAC 357-58-375 When permanent WMS employees promote or demote to positions in the general service and fail to complete the trial service period what reversion rights do permanent WMS employees have? (1) When a permanent WMS employee **promotes** to a WGS position within the **same** agency and is reverted during the trial service period, the agency must place the employee in a vacant funded WMS position for which the employee is qualified, and that is comparable to the employee's position and salary prior to the WGS appointment. If no vacant funded positions are available, the agency must place the employee in a WMS position for which the employee is qualified and which is similar to the employee's previous position and salary. If the reversion of the employee causes the total number of employees to exceed the total number of positions to be filled, the employer may implement a layoff.

(2) When a permanent WMS employee **demotes** to a WGS position in the **same** agency and is reverted during the trial service period the agency must place the employee in a vacant funded WMS position for which the employee is qualified and with a salary that is equal to or less than the salary range maximum of the class from which the employee is reverting. If the reversion of the employee causes the total number of employees to exceed the total number of positions to be filled, the employer may implement a layoff.

(3) When a permanent WMS employee **promotes or demotes** to a WGS position in a **different** agency and is reverted during the trial service period, the employer may separate the employee by providing fifteen calendar days' written notice. The employee may apply for the general government transition pool.

WSR 14-20-080
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed September 29, 2014, 9:48 a.m.]

Continuance of WSR 14-15-034.

Preproposal statement of inquiry was filed as WSR 13-18-015.

Title of Rule and Other Identifying Information: New section WAC 181-79A-132, requires teachers holding an endorsement in special education, early childhood special education, English language learners or bilingual also hold a second endorsement in a different area.

Hearing Location(s): Educational Service District 112, 2500 N.E. 65th Avenue, Vancouver, WA 98661, on November 13, 2014, at 8:30.

Date of Intended Adoption: November 13, 2014.

Submit Written Comments to: David Brenna, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by November 6, 2014.

Assistance for Persons with Disabilities: Contact David Brenna by November 6, 2014, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Endorsements in special education and English learners are demonstrations of a teacher's competencies in working with the characteristics of a student. Content expertise is required for teachers to be properly assigned to courses, regardless of the characteristics of the student. The rule change requires future certificates issued include a content endorsement in addition to the student characteristic endorsement.

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

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

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting David Brenna, 600 Washington Street, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-4548, e-mail david.brenna@k12.wa.us.

September 29, 2014
David Brenna
Senior Policy Analyst

NEW SECTION

WAC 181-79A-132 Dual endorsement requirement. Per WAC 181-82A-215, all teachers are required to hold at least one endorsement, provided, a teacher who obtains a special education, early childhood special education, bilingual education, or English language learner endorsement after September 1, 2019, must earn and/or hold a second endorsement in another endorsement area. Special education, early childhood special education, bilingual education, English language learner, and traffic safety do not qualify as the other endorsement area. Provided, that individuals applying for a Washington state teacher certificate that have completed an

out-of-state teacher preparation program may have two years in which to add the second endorsement.

WSR 14-20-081
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed September 29, 2014, 10:07 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-13-015.

Title of Rule and Other Identifying Information: Amends WAC 181-85-075 to reflect new statutory requirements related to science, technology, engineering and math (STEM) integration.

Hearing Location(s): Educational Service District 112, 2500 N.E. 65th Avenue, Vancouver, WA 98661, on November 13, 2014, at 8:30.

Date of Intended Adoption: November 13, 2014.

Submit Written Comments to: David Brenna, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by November 6, 2014.

Assistance for Persons with Disabilities: Contact David Brenna by November 6, 2014, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes reflect statutory requirements for integration of STEM (science, technology, engineering and mathematics) into renewal of certain certificates.

Reasons Supporting Proposal: Statutory.

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

Statute Being Implemented: RCW 28A.410.221.

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

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendment does not have an impact on small business and therefore does not meet the requirements for a statement under RCW 19.85.030 (1) or (2).

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

September 29, 2014
David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 14-16-069, filed 7/31/14, effective 8/31/14)

WAC 181-85-075 Continuing education requirement. Continuing education requirements are as follows:

(1) Each holder of a continuing certificate affected by this chapter shall be required to complete during a five-year period one hundred fifty continuing education credit hours, as defined in WAC 181-85-025 and 181-85-030, prior to the lapse date of the first issue of the continuing certificate and during each five-year period between subsequent lapse dates as calculated in WAC 181-85-100.

(2) Individuals holding a valid continuing certificate in subsection (1) of this section may choose to renew the certificate via annual professional growth plans developed since the certificate was issued. Completion of four annual professional growth plans during each five-year period between subsequent lapse dates meets the requirement for renewal. Individuals completing fewer than four annual professional growth plans must complete the necessary continuing education credit hours needed to be the equivalent of one hundred fifty hours to meet the requirements of subsection (1) of this section. The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-79A-207 for teachers, WAC 181-78A-540(1) for administrators, or WAC 181-78A-540(2) for educational staff associates. For educators holding multiple certificates in chapter 181-85 WAC or WAC 181-79A-251, a professional growth plan for teacher, administrator, or educational staff associate shall meet the requirement for all certificates held by an individual which is affected by this section. Each completed annual professional growth plan shall receive the equivalent of thirty continuing education credit hours.

Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal.

(3) Provided, That each holder of a continuing or a standard certificate affected by this chapter may present a copy of a valid certificate issued by the National Board for Professional Teaching Standards in lieu of the completion of the continuing education credit hours required by this chapter.

(4) Each holder of a continuing school psychologist certificate affected by this chapter may present a copy of a valid National Certified School Psychologist certificate issued by the National Association of School Psychologists in lieu of the completion of the continuing education credit hours required by this chapter.

(5) Beginning September 1, 2014, continuing education or professional growth plans for teachers at the elementary and secondary levels in STEM-related subjects must include a specific focus on the integration of science, mathematics, technology, and/or engineering instruction as per RCW 28A.410.2212. This renewal requirement applies to the following endorsement areas: Elementary education; early childhood education; middle level mathematics and science; secondary mathematics; secondary science; the designated sciences; and career and technical education. Certificates being renewed starting in 2019 must demonstrate completion of at least fifteen continuing education credit hours, or at least

one-half of one annual professional growth plans with an emphasis on the integration of science, technology, engineering, and mathematics.

WSR 14-20-086
PROPOSED RULES
BOARD OF
PILOTAGE COMMISSIONERS

[Filed September 29, 2014, 11:34 a.m.]

Continuance of WSR 14-16-087.

Title of Rule and Other Identifying Information: WAC 363-116-082 Limitations on new pilots.

Hearing Location(s): 2901 Third Avenue, 5th Floor, Alki Conference Room, Seattle, WA 98121, on December 16, 2014, at 9:30 a.m.

Date of Intended Adoption: December 16, 2014.

Submit Written Comments to: Captain Harry Dudley, Chairman, 2901 Third Avenue, Suite 500, Seattle, WA 98121, e-mail larsonp@wsdot.wa.gov, fax (206) 515-3906, by December 10, 2014.

Assistance for Persons with Disabilities: Contact Shawna Erickson by December 12, 2014, (206) 515-3647.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this filing is to continue the September 18, 2014, public hearing to December 16, 2014; and extend the deadline to receive public comments to December 10, 2014.

Reasons Supporting Proposal: Stakeholder comments are welcome and will continue to be considered.

September 29, 2014
Peggy Larson
Executive Director

WSR 14-20-089
PROPOSED RULES
BOARD OF
PILOTAGE COMMISSIONERS

[Filed September 29, 2014, 1:51 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: WAC 363-116-300 Pilotage rates for the Puget Sound pilotage district.

Hearing Location(s): 2901 Third Avenue, 5th Floor, Alki Conference Room, Seattle, WA 98121, on November 18, 2014, at 9:30 a.m.

Date of Intended Adoption: November 18, 2014.

Submit Written Comments to: Captain Harry Dudley, Chairman, 2901 Third Avenue, Suite 500, Seattle, WA 98121, e-mail larsonp@wsdot.wa.gov, fax (206) 515-3906, by November 11, 2014.

Assistance for Persons with Disabilities: Contact Shawna Erickson by November 14, 2014, (206) 515-3647.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the

proposal is to set a Puget Sound pilotage district tariff for the period of January 1 through June 30, 2015.

The proposed rule contains the following set of interdependent economic provisions changing the tariff[s] that are intended to be adopted only in full as a package with no other changes to the tariff.

(1) An increase in the boarding charge from \$53 to \$348, concurrent with a change in the name associated with this charge to "Pilot Boat Fee"; the revised figure being fairly representative of the actual cost of services;

(2) An across-the-board decrease in the amount of 6.52 percent to the rates listed in the LOA (Length Over All) rate schedule for Zone II to Zone VI, inclusive;

(3) An across-the-board decrease in the amount of 6.52 percent for all tonnage charges greater than 20,000 gross tons; and

(4) A tariff expiration date of June 30, 2015.

Reasons Supporting Proposal: Stakeholders Pacific Merchant Shipping Association, Puget Sound Pilots and the ports of Tacoma and Seattle are in support of this group of changes and have jointly presented it to the board for consideration.

Statutory Authority for Adoption: Chapter 88.16 RCW.

Statute Being Implemented: RCW 88.16.035.

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: Current rates for the Puget Sound pilotage district expire on December 31, 2014. New rates must be set annually.

Name of Proponent: Puget Sound Pilots, Pacific Merchant Shipping Association and the Ports of Seattle and Tacoma, private.

Name of Agency Personnel Responsible for Drafting: Peggy Larson, 2901 Third Avenue, Seattle, WA 98121, (206) 515-3904; Implementation and Enforcement: Board of Pilotage Commissioners, 2901 Third Avenue, Seattle, WA 98121, (206) 515-3904.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule is being considered in the context of the required annual review of the rates charged for pilotage services.

The application of the proposed revisions is clear in the description of the proposal and its anticipated effects as well as the proposed tariff shown below.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to the adoption of these rules. The Washington state board of pilotage commissioners is not a listed agency in RCW 34.05.328 (5)(a)(i).

September 29, 2014
Peggy Larson
Executive Director

AMENDATORY SECTION (Amending WSR 14-02-092, filed 12/31/13, effective 1/1/14)

WAC 363-116-300 Pilotage rates for the Puget Sound pilotage district. Effective 0001 hours January 1, ~~((2014))~~ 2015, through 2400 hours ~~((December 31, 2014))~~ June 30, 2015.

CLASSIFICATION	RATE
Ship length overall (LOA)	
Charges:	
Per LOA rate schedule in this section.	
((Boarding charge:)) Pilot boat fee:	\$ ((53.00)) <u>348.00</u>
Per each boarding/deboarding at the Port Angeles pilot station.	
Harbor shift - Live ship (Seattle Port)	LOA Zone I
Harbor shift - Live ship (other than Seattle Port)	LOA Zone I
Harbor shift - Dead ship	Double LOA Zone I
Towing charge - Dead ship:	Double LOA Zone
LOA of tug + LOA of tow + beam of tow	
Any tow exceeding seven hours, two pilots are mandatory. Harbor shifts shall constitute and be limited to those services in moving vessels from dock to dock, from anchorage to dock, from dock to anchorage, or from anchorage to anchorage in the same port after all other applicable tariff charges for pilotage services have been recognized as payable.	
Compass Adjustment	\$359.00
Radio Direction Finder Calibration	\$359.00
Launching Vessels	\$540.00
Trial Trips, 6 hours or less (minimum \$1,014.00)	\$169.00 per hour
Trial Trips, over 6 hours (two pilots)	\$338.00 per hour
Shilshole Bay - Salmon Bay	\$211.00
Salmon Bay - Lake Union	\$164.00
Lake Union - Lake Washington (plus LOA zone from Webster Point)	\$211.00
Cancellation Charge	LOA Zone I
Cancellation Charge - Port Angeles:	LOA Zone II
(When a pilot is ordered and vessel proceeds to a port outside the Puget Sound pilotage district without stopping for a pilot or when a pilot order is canceled less than twelve hours prior to the original ETA.)	
Waterway and Bridge Charges:	
<i>Ships up to 90' beam:</i>	
A charge of \$266.00 shall be in addition to bridge charges for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle, south of Eleventh Street in any of the Tacoma waterways, in Port Gamble, or in the Snohomish River. Any vessel movements required to transit through bridges shall have an additional charge of \$127.00 per bridge.	
<i>Ships 90' beam and/or over:</i>	
A charge of \$361.00 shall be in addition to bridge charges for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle and south of Eleventh Street in any of the Tacoma waterways. Any vessel movements required to transit through bridges shall have an additional charge of \$251.00 per bridge.	
(The above charges shall not apply to transit of vessels from Shilshole Bay to the limits of Lake Washington.)	
<i>Two or three pilots required:</i>	
In a case where two or three pilots are employed for a single vessel waterway or bridge transit, the second and/or third pilot charge shall include the bridge and waterway charge in addition to the harbor shift rate.	
Docking Delay After Anchoring:	
Applicable harbor shift rate to apply, plus \$274.00 per hour standby. No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is \$274.00 for every hour or fraction thereof.	
Sailing Delay:	
No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is \$274.00 for every hour or fraction thereof. The assessment of the standby charge shall not exceed a period of twelve hours in any twenty-four-hour period.	
Slowdown:	
When a vessel chooses not to maintain its normal speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater, from the predicted arrival time had the vessel maintained its normal speed capabilities, a charge of \$274.00 per hour, and each fraction thereof, will be assessed for the resultant difference in arrival time.	

Delayed Arrival – Port Angeles:

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the vessel does not arrive within two hours of its ETA, or its ETA is amended less than six hours prior to the original ETA, a charge of \$274.00 for each hour delay, or fraction thereof, shall be assessed in addition to all other appropriate charges.

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the ETA is delayed to six hours or more beyond the original ETA, a cancellation charge shall be assessed, in addition to all other appropriate charges, if the ETA was not amended at least twelve hours prior to the original ETA.

Tonnage Charges:

0 to 20,000 gross tons:

Additional charge to LOA zone mileage of \$0.0084 a gross ton for all gross tonnage up to 20,000 gross tons.

20,000 to 50,000 gross tons:

Additional charge to LOA zone mileage of ~~\$(0.0871)~~ 0.0814 a gross ton for all gross tonnage in excess of 20,000 gross tons up to 50,000 gross tons.

50,000 gross tons and up:

In excess of 50,000 gross tons, the charge shall be ~~\$(0.1042)~~ 0.0974 per gross ton.

For vessels where a certificate of international gross tonnage is required, the appropriate international gross tonnage shall apply.

Transportation to Vessels on Puget Sound:

March Point or Anacortes	\$195.00
Bangor	190.00
Bellingham	225.00
Bremerton	167.50
Cherry Point	260.00
Dupont	120.00
Edmonds	42.50
Everett	72.50
Ferndale	247.50

Direct Transit Charge

\$2,107.00

Sailing Delay Charge. Shall be levied for each hour or fraction thereof that the vessel departure is delayed beyond its scheduled departure from a British Columbia port, provided that no charge will be levied for delays of one hour or less and further provided that the charge shall not exceed a period of 12 hours in any 24 hour period.

\$283.00 per hour

Slow Down Charge. Shall be levied for each hour or fraction thereof that a vessel's arrival at a U.S. or BC port is delayed when a vessel chooses not to maintain its normal safe speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater from the arrival time had the vessel maintained its normal safe speed capabilities.

\$283.00 per hour

Cancellation Charge. Shall be levied when a pilot arrives at a vessel for departure from a British Columbia port and the job is canceled. The charge is in addition to the applicable direct transit charge, standby, transportation and expenses.

\$525.00

Manchester	162.50
Mukilteo	65.00
Olympia	155.00
Point Wells	42.50
Port Gamble	230.00
Port Townsend (Indian Island)	277.50
Seattle	18.75
Tacoma	87.50

(a) Intraharbor transportation for the Port Angeles port area: Transportation between Port Angeles pilot station and Port Angeles harbor docks - \$15.00.

(b) Interport shifts: Transportation paid to and from both points.

(c) Intraharbor shifts: Transportation to be paid both ways. If intraharbor shift is canceled on or before scheduled reporting time, transportation paid one way only.

(d) Cancellation: Transportation both ways unless notice of cancellation is received prior to scheduled reporting time in which case transportation need only be paid one way.

(e) Any new facilities or other seldom used terminals, not covered above, shall be based on mileage x \$2.00 per mile.

Delinquent Payment Charge:

1 1/2% per month after 30 days from first billing.

Nonuse of Pilots:

Ships taking and discharging pilots without using their services through all Puget Sound and adjacent inland waters shall pay full pilotage charges on the LOA zone mileage basis from Port Angeles to destination, from place of departure to Port Angeles, or for entire distance between two ports on Puget Sound and adjacent inland waters.

British Columbia Direct Transit Charge:

In the event that a pilot consents to board or disembark a vessel at a British Columbia port, which consent shall not unreasonably be withheld, the following additional charges shall apply in addition to the normal LOA, tonnage and other charges provided in this tariff that apply to the portion of the transit in U.S. waters:

Transportation Charge Vancouver Area. Vessels departing or arriving at ports in the Vancouver-Victoria-New Westminster Range of British Columbia. \$514.00

Transportation Charge Outports. Vessels departing or arriving at British Columbia ports other than those in the Vancouver-Victoria-New Westminster Range. \$649.00

Training Surcharge:

On January 1, 2011, a surcharge of \$15.00 for each pilot trainee then receiving a stipend pursuant to the training program provided in WAC 363-116-078 shall be added to each pilotage assignment.

LOA Rate Schedule:

The following rate schedule is based upon distances furnished by National Oceanic and Atmospheric Administration, computed to the nearest half-mile and includes retirement fund contributions.

LOA (Length Overall)	ZONE I Intra Harbor	ZONE II 0-30 Miles	ZONE III 31-50 Miles	ZONE IV 51-75 Miles	ZONE V 76-100 Miles	ZONE VI 101 Miles & Over
((UP to 449	263	408	695	1,036	1,395	1,810
450-459	274	415	699	1,052	1,417	1,819
460-469	276	419	711	1,069	1,437	1,827
470-479	285	432	719	1,091	1,441	1,830
480-489	294	439	722	1,110	1,450	1,839
490-499	298	445	733	1,131	1,467	1,848
500-509	313	453	744	1,143	1,479	1,859
510-519	315	461	751	1,161	1,495	1,866
520-529	319	478	762	1,166	1,508	1,881
530-539	329	484	771	1,179	1,532	1,902
540-549	334	490	789	1,192	1,555	1,920
550-559	341	507	794	1,209	1,568	1,938
560-569	353	527	810	1,221	1,582	1,956
570-579	361	531	813	1,226	1,599	1,969
580-589	376	540	832	1,235	1,608	1,989
590-599	393	552	837	1,241	1,632	2,013
600-609	408	569	849	1,245	1,652	2,022
610-619	431	574	863	1,250	1,668	2,040
620-629	447	581	871	1,266	1,687	2,064
630-639	468	591	881	1,269	1,702	2,082
640-649	486	605	890	1,271	1,716	2,097
650-659	520	615	906	1,281	1,737	2,119
660-669	530	623	914	1,289	1,756	2,135
670-679	550	639	923	1,312	1,776	2,149
680-689	557	649	935	1,323	1,791	2,169
690-699	574	659	950	1,346	1,810	2,215
700-719	599	681	967	1,364	1,845	2,239
720-739	634	699	992	1,382	1,881	2,276
740-759	659	733	1,011	1,395	1,920	2,318
760-779	685	756	1,036	1,417	1,956	2,347
780-799	719	790	1,052	1,437	1,989	2,390
800-819	748	813	1,072	1,444	2,022	2,426

LOA	ZONE I	ZONE II	ZONE III	ZONE IV	ZONE V	ZONE VI
(Length Overall)	Intra Harbor	0-30 Miles	31-50 Miles	51-75 Miles	76-100 Miles	101 Miles & Over
820-839	771	843	1,097	1,467	2,064	2,453
840-859	804	877	1,119	1,484	2,095	2,496
860-879	834	906	1,138	1,522	2,135	2,532
880-899	863	932	1,161	1,557	2,169	2,569
900-919	889	963	1,180	1,598	2,215	2,604
920-939	917	992	1,209	1,632	2,237	2,640
940-959	950	1,018	1,227	1,668	2,276	2,672
960-979	971	1,048	1,248	1,702	2,318	2,712
980-999	1,003	1,072	1,270	1,737	2,347	2,747
1000-1019	1,065	1,141	1,327	1,829	2,459	2,865
1020-1039	1,094	1,175	1,368	1,881	2,533	2,949
1040-1059	1,127	1,204	1,408	1,938	2,605	3,036
1060-1079	1,161	1,246	1,449	1,996	2,686	3,126
1080-1099	1,196	1,281	1,491	2,054	2,765	3,221
1100-1119	1,230	1,320	1,537	2,118	2,848	3,318
1120-1139	1,268	1,363	1,584	2,179	2,933	3,417
1140-1159	1,304	1,401	1,629	2,244	3,022	3,521
1160-1179	1,343	1,441	1,681	2,312	3,112	3,624
1180-1199	1,384	1,485	1,729	2,381	3,206	3,734
1200-1219	1,427	1,530	1,780	2,453	3,302	3,844
1220-1239	1,467	1,576	1,832	2,527	3,399	3,959
1240-1259	1,511	1,622	1,886	2,602	3,502	4,077
1260-1279	1,555	1,670	1,944	2,680	3,608	4,199
1280-1299	1,602	1,721	2,003	2,760	3,713	4,326
1300-1319	1,651	1,770	2,061	2,842	3,825	4,454
1320-1339	1,701	1,824	2,125	2,927	3,939	4,589
1340-1359	1,749	1,879	2,188	3,014	4,057	4,727
1360-1379	1,803	1,933	2,253	3,106	4,177	4,866
1380-1399	1,855	1,991	2,322	3,197	4,303	5,014
1400-1419	1,912	2,052	2,389	3,292	4,431	5,163
1420-1439	1,968	2,114	2,461	3,392	4,566	5,318
1440-1459	2,029	2,177	2,536	3,493	4,702	5,477
1460-1479	2,086	2,240	2,610	3,597	4,843	5,638
1480-1499	2,150	2,307	2,687	3,704	4,986	5,808
1500-Over	2,215	2,377	2,767	3,817	5,135	5,981))
<u>UP to 449</u>	<u>263</u>	<u>381</u>	<u>650</u>	<u>968</u>	<u>1,304</u>	<u>1,692</u>
<u>450 - 459</u>	<u>274</u>	<u>388</u>	<u>653</u>	<u>983</u>	<u>1,325</u>	<u>1,700</u>
<u>460 - 469</u>	<u>276</u>	<u>392</u>	<u>665</u>	<u>999</u>	<u>1,343</u>	<u>1,708</u>
<u>470 - 479</u>	<u>285</u>	<u>404</u>	<u>672</u>	<u>1,020</u>	<u>1,347</u>	<u>1,711</u>
<u>480 - 489</u>	<u>294</u>	<u>410</u>	<u>675</u>	<u>1,038</u>	<u>1,355</u>	<u>1,719</u>

LOA (Length Overall)	ZONE I Intra Harbor	ZONE II 0-30 Miles	ZONE III 31-50 Miles	ZONE IV 51-75 Miles	ZONE V 76-100 Miles	ZONE VI 101 Miles & Over
<u>490 - 499</u>	<u>298</u>	<u>416</u>	<u>685</u>	<u>1,057</u>	<u>1,371</u>	<u>1,728</u>
<u>500 - 509</u>	<u>313</u>	<u>423</u>	<u>695</u>	<u>1,068</u>	<u>1,383</u>	<u>1,738</u>
<u>510 - 519</u>	<u>315</u>	<u>431</u>	<u>702</u>	<u>1,085</u>	<u>1,398</u>	<u>1,744</u>
<u>520 - 529</u>	<u>319</u>	<u>447</u>	<u>712</u>	<u>1,090</u>	<u>1,410</u>	<u>1,758</u>
<u>530 - 539</u>	<u>329</u>	<u>452</u>	<u>721</u>	<u>1,102</u>	<u>1,432</u>	<u>1,778</u>
<u>540 - 549</u>	<u>334</u>	<u>458</u>	<u>738</u>	<u>1,114</u>	<u>1,454</u>	<u>1,795</u>
<u>550 - 559</u>	<u>341</u>	<u>474</u>	<u>742</u>	<u>1,130</u>	<u>1,466</u>	<u>1,812</u>
<u>560 - 569</u>	<u>353</u>	<u>493</u>	<u>757</u>	<u>1,141</u>	<u>1,479</u>	<u>1,828</u>
<u>570 - 579</u>	<u>361</u>	<u>496</u>	<u>760</u>	<u>1,146</u>	<u>1,495</u>	<u>1,841</u>
<u>580 - 589</u>	<u>376</u>	<u>505</u>	<u>778</u>	<u>1,154</u>	<u>1,503</u>	<u>1,859</u>
<u>590 - 599</u>	<u>393</u>	<u>516</u>	<u>782</u>	<u>1,160</u>	<u>1,526</u>	<u>1,882</u>
<u>600 - 609</u>	<u>408</u>	<u>532</u>	<u>794</u>	<u>1,164</u>	<u>1,544</u>	<u>1,890</u>
<u>610 - 619</u>	<u>431</u>	<u>537</u>	<u>807</u>	<u>1,169</u>	<u>1,559</u>	<u>1,907</u>
<u>620 - 629</u>	<u>447</u>	<u>543</u>	<u>814</u>	<u>1,183</u>	<u>1,577</u>	<u>1,929</u>
<u>630 - 639</u>	<u>468</u>	<u>552</u>	<u>824</u>	<u>1,186</u>	<u>1,591</u>	<u>1,946</u>
<u>640 - 649</u>	<u>486</u>	<u>566</u>	<u>832</u>	<u>1,188</u>	<u>1,604</u>	<u>1,960</u>
<u>650 - 659</u>	<u>520</u>	<u>575</u>	<u>847</u>	<u>1,197</u>	<u>1,624</u>	<u>1,981</u>
<u>660 - 669</u>	<u>530</u>	<u>582</u>	<u>854</u>	<u>1,205</u>	<u>1,642</u>	<u>1,996</u>
<u>670 - 679</u>	<u>550</u>	<u>597</u>	<u>863</u>	<u>1,226</u>	<u>1,660</u>	<u>2,009</u>
<u>680 - 689</u>	<u>557</u>	<u>607</u>	<u>874</u>	<u>1,237</u>	<u>1,674</u>	<u>2,028</u>
<u>690 - 699</u>	<u>574</u>	<u>616</u>	<u>888</u>	<u>1,258</u>	<u>1,692</u>	<u>2,071</u>
<u>700 - 719</u>	<u>599</u>	<u>637</u>	<u>904</u>	<u>1,275</u>	<u>1,725</u>	<u>2,093</u>
<u>720 - 739</u>	<u>634</u>	<u>653</u>	<u>927</u>	<u>1,292</u>	<u>1,758</u>	<u>2,128</u>
<u>740 - 759</u>	<u>659</u>	<u>685</u>	<u>945</u>	<u>1,304</u>	<u>1,795</u>	<u>2,167</u>
<u>760 - 779</u>	<u>685</u>	<u>707</u>	<u>968</u>	<u>1,325</u>	<u>1,828</u>	<u>2,194</u>
<u>780 - 799</u>	<u>719</u>	<u>738</u>	<u>983</u>	<u>1,343</u>	<u>1,859</u>	<u>2,234</u>
<u>800 - 819</u>	<u>748</u>	<u>760</u>	<u>1,002</u>	<u>1,350</u>	<u>1,890</u>	<u>2,268</u>
<u>820 - 839</u>	<u>771</u>	<u>788</u>	<u>1,025</u>	<u>1,371</u>	<u>1,929</u>	<u>2,293</u>
<u>840 - 859</u>	<u>804</u>	<u>820</u>	<u>1,046</u>	<u>1,387</u>	<u>1,958</u>	<u>2,333</u>
<u>860 - 879</u>	<u>834</u>	<u>847</u>	<u>1,064</u>	<u>1,423</u>	<u>1,996</u>	<u>2,367</u>
<u>880 - 899</u>	<u>863</u>	<u>871</u>	<u>1,085</u>	<u>1,455</u>	<u>2,028</u>	<u>2,402</u>
<u>900 - 919</u>	<u>889</u>	<u>900</u>	<u>1,103</u>	<u>1,494</u>	<u>2,071</u>	<u>2,434</u>
<u>920 - 939</u>	<u>917</u>	<u>927</u>	<u>1,130</u>	<u>1,526</u>	<u>2,091</u>	<u>2,468</u>
<u>940 - 959</u>	<u>950</u>	<u>952</u>	<u>1,147</u>	<u>1,559</u>	<u>2,128</u>	<u>2,498</u>
<u>960 - 979</u>	<u>971</u>	<u>980</u>	<u>1,167</u>	<u>1,591</u>	<u>2,167</u>	<u>2,535</u>
<u>980 - 999</u>	<u>1,003</u>	<u>1,002</u>	<u>1,187</u>	<u>1,624</u>	<u>2,194</u>	<u>2,568</u>
<u>1000 - 1019</u>	<u>1,065</u>	<u>1,067</u>	<u>1,240</u>	<u>1,710</u>	<u>2,299</u>	<u>2,678</u>
<u>1020 - 1039</u>	<u>1,094</u>	<u>1,098</u>	<u>1,279</u>	<u>1,758</u>	<u>2,368</u>	<u>2,757</u>
<u>1040 - 1059</u>	<u>1,127</u>	<u>1,125</u>	<u>1,316</u>	<u>1,812</u>	<u>2,435</u>	<u>2,838</u>
<u>1060 - 1079</u>	<u>1,161</u>	<u>1,165</u>	<u>1,355</u>	<u>1,866</u>	<u>2,511</u>	<u>2,922</u>

LOA	ZONE I	ZONE II	ZONE III	ZONE IV	ZONE V	ZONE VI
(Length Overall)	Intra Harbor	0-30 Miles	31-50 Miles	51-75 Miles	76-100 Miles	101 Miles & Over
<u>1080 - 1099</u>	<u>1,196</u>	<u>1,197</u>	<u>1,394</u>	<u>1,920</u>	<u>2,585</u>	<u>3,011</u>
<u>1100 - 1119</u>	<u>1,230</u>	<u>1,234</u>	<u>1,437</u>	<u>1,980</u>	<u>2,662</u>	<u>3,102</u>
<u>1120 - 1139</u>	<u>1,268</u>	<u>1,274</u>	<u>1,481</u>	<u>2,037</u>	<u>2,742</u>	<u>3,194</u>
<u>1140 - 1159</u>	<u>1,304</u>	<u>1,310</u>	<u>1,523</u>	<u>2,098</u>	<u>2,825</u>	<u>3,291</u>
<u>1160 - 1179</u>	<u>1,343</u>	<u>1,347</u>	<u>1,571</u>	<u>2,161</u>	<u>2,909</u>	<u>3,388</u>
<u>1180 - 1199</u>	<u>1,384</u>	<u>1,388</u>	<u>1,616</u>	<u>2,226</u>	<u>2,997</u>	<u>3,491</u>
<u>1200 - 1219</u>	<u>1,427</u>	<u>1,430</u>	<u>1,664</u>	<u>2,293</u>	<u>3,087</u>	<u>3,593</u>
<u>1220 - 1239</u>	<u>1,467</u>	<u>1,473</u>	<u>1,713</u>	<u>2,362</u>	<u>3,177</u>	<u>3,701</u>
<u>1240 - 1259</u>	<u>1,511</u>	<u>1,516</u>	<u>1,763</u>	<u>2,432</u>	<u>3,274</u>	<u>3,811</u>
<u>1260 - 1279</u>	<u>1,555</u>	<u>1,561</u>	<u>1,817</u>	<u>2,505</u>	<u>3,373</u>	<u>3,925</u>
<u>1280 - 1299</u>	<u>1,602</u>	<u>1,609</u>	<u>1,872</u>	<u>2,580</u>	<u>3,471</u>	<u>4,044</u>
<u>1300 - 1319</u>	<u>1,651</u>	<u>1,655</u>	<u>1,927</u>	<u>2,657</u>	<u>3,576</u>	<u>4,164</u>
<u>1320 - 1339</u>	<u>1,701</u>	<u>1,705</u>	<u>1,986</u>	<u>2,736</u>	<u>3,682</u>	<u>4,290</u>
<u>1340 - 1359</u>	<u>1,749</u>	<u>1,756</u>	<u>2,045</u>	<u>2,817</u>	<u>3,792</u>	<u>4,419</u>
<u>1360 - 1379</u>	<u>1,803</u>	<u>1,807</u>	<u>2,106</u>	<u>2,903</u>	<u>3,905</u>	<u>4,549</u>
<u>1380 - 1399</u>	<u>1,855</u>	<u>1,861</u>	<u>2,171</u>	<u>2,989</u>	<u>4,022</u>	<u>4,687</u>
<u>1400 - 1419</u>	<u>1,912</u>	<u>1,918</u>	<u>2,233</u>	<u>3,077</u>	<u>4,142</u>	<u>4,826</u>
<u>1420 - 1439</u>	<u>1,968</u>	<u>1,976</u>	<u>2,301</u>	<u>3,171</u>	<u>4,268</u>	<u>4,971</u>
<u>1440 - 1459</u>	<u>2,029</u>	<u>2,035</u>	<u>2,371</u>	<u>3,265</u>	<u>4,395</u>	<u>5,120</u>
<u>1460 - 1479</u>	<u>2,086</u>	<u>2,094</u>	<u>2,440</u>	<u>3,362</u>	<u>4,527</u>	<u>5,270</u>
<u>1480 - 1499</u>	<u>2,150</u>	<u>2,157</u>	<u>2,512</u>	<u>3,462</u>	<u>4,661</u>	<u>5,429</u>
<u>1500 - Over</u>	<u>2,215</u>	<u>2,222</u>	<u>2,587</u>	<u>3,568</u>	<u>4,800</u>	<u>5,591</u>

WSR 14-20-092
PROPOSED RULES
PROFESSIONAL EDUCATOR
STANDARDS BOARD

[Filed September 29, 2014, 2:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-14-063.

Title of Rule and Other Identifying Information: Amends WAC 181-79A-030, 181-79A-221 and 181-79A-251, to address changes in renewal and professional growth plans, requirements for school psychologist certification and corrections to renewal related to national board certification.

Hearing Location(s): Educational Service District 112, 2500 N.E. 65th Avenue, Vancouver, WA 98661, on November 13, 2014, at 8:30.

Date of Intended Adoption: November 13, 2014.

Submit Written Comments to: David Brenna, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by November 6, 2014.

Assistance for Persons with Disabilities: Contact David Brenna by November 6, 2014, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: A number of changes are required to clarify and specify renewal requirements, national board options and changes in preparation of school psychologist certificates. Professional growth plan requirements are clarified in the definitions section, WAC 181-79A-030. Finally, statutory requirements for integration of STEM (science, technology, engineering and mathematics) into renewal of certain certificates is included.

Reasons Supporting Proposal: Clarifies a number of issues related to certification and renewal.

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

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

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amend-

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

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

September 29, 2014
David Brenna
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 13-20-026, filed 9/23/13, effective 10/24/13)

WAC 181-79A-030 Definitions. The following definitions shall apply to terms used in this chapter:

(1) The terms, "program approval," "endorsement," "interstate compact," "college or university," and "regionally accredited institution of higher education," as defined in WAC 180-78-010 and 181-78A-010 shall apply to the provisions of this chapter.

(2) "Certificate" means the license issued by the superintendent of public instruction to teachers, administrators, and educational staff associates verifying that the individual has met the requirements set forth in this chapter.

(3) "Certificate renewal" means the process whereby the validity of a certificate, subject to expiration, is extended.

(4) "Certificate reinstatement" means the process whereby the validity of an expired certificate is regained.

(5) "Lapsed certificate" means a residency certificate that is subject to the timelines and renewal described under WAC 181-79A-251.

(6) "Expired certificate" means a teacher certificate that can only be reinstated under WAC 181-79A-251.

(7) "Classroom teaching" means instructing pupils in an instructional setting.

(8) "Approved baccalaureate degree" for the purpose of this chapter, means a baccalaureate from a regionally accredited college or university in any of the subject areas of the endorsement listed in chapter 181-82 WAC as now or hereafter amended: Provided, That if a candidate is accepted into a program in Washington state on or before August 31, 2000, and completes the program on or before August 31, 2003, in accordance with WAC 181-79A-299, the candidate may hold a baccalaureate degree in any of the subject areas of the endorsements listed in WAC 181-79A-302. Such degrees shall require the completion of at least forty-five quarter hours (thirty semester hours) of course work in the subject area: Provided, That a candidate who holds a baccalaureate degree in another academic field will not be required to obtain a second baccalaureate degree if the candidate provides evidence to the superintendent of public instruction that he or she has completed the required forty-five quarter or thirty semester hours of course work in one of the subject areas of the endorsements listed in chapter 181-82 WAC: Provided further, That a candidate who holds a baccalaureate degree in early childhood education, elementary education, or special education will not be required to obtain a second baccalaureate degree if the candidate provides evidence to

the superintendent of public instruction that he or she has completed thirty quarter or twenty semester credit hours in one academic field in an approved endorsement area pursuant to WAC 181-82A-202.

(9) "Issues of abuse course work requirement" means completion of course work or an in-service program on issues of abuse. The content shall discuss the identification of physical, emotional, sexual, and substance abuse, information on the impact of abuse on the behavior and learning abilities of students, discussion of the responsibilities of a teacher to report abuse or provide assistance to students who are victims of abuse, and methods for teaching students about abuse of all types and their prevention. Additionally, content areas identified by the legislature in RCW 28A.410.035 shall be required in the issues of abuse course, including exploitation of minors and suicide prevention.

(10) "Approved master's degree" for the purpose of this chapter, means a master's or doctorate degree from a regionally accredited college or university.

(11) "Credit hour(s)" means credit (normally 100 level or above) awarded by a regionally accredited institution of higher education.

(12) "Previous standards" means a certification system in place prior to a revision in rules that results in changed names and/or validity periods for the certificates issued.

(13) "Application for certification" means an application for a certificate or endorsement that includes a signed affidavit (as specified in WAC 181-79A-157) by the applicant. Such application shall be considered valid for two years from the date of receipt by the superintendent of public instruction, or its designee.

(14) "Professional growth team" for the purpose of renewal of the professional certificate, means a team comprised of the individual renewing the certificate and a minimum of ~~(three)~~ one colleague(s), who holds a current educator certificate, chosen by the individual.

(15) "Professional growth plan."

(a) Teacher individualized professional growth plan means the document which identifies the specific competencies, knowledge, skills and experiences needed to meet the standards at the "career level" benchmarks as published by the professional educator standards board.

(b) Principal/program administrator individualized professional growth plan means the document which identifies the specific competencies, knowledge, skills and experiences needed to meet the standards at the "career level" benchmarks set forth in WAC 181-78A-540(1).

(c) ESA individualized professional growth plan means the document which identifies the specific competencies, knowledge, skills and experiences needed to meet the standards and career level benchmarks set forth in WAC 181-78A-540(2).

(16) "A positive impact on student learning" means that a teacher through instruction and assessment has been able to document students' increased knowledge and/or demonstration of a skill or skills related to the state goals and/or essential academic learning requirements: Provided, That teachers employed by private schools who are candidates for the professional teaching certificate shall document students'

increased knowledge and/or demonstration of a skill or skills related to either:

(a) The state goals or essential academic learning requirements; or

(b) Such alternative learning goals as the private school has established.

(17) "Professional certificate support provider" means any organization or institution operating training or consulting services as a public entity or private company holding an appropriate business license.

(18) "Approved private school" means any organization of institution providing educational services to children including, but not limited to, approved private schools, state institutions, juvenile institutions, nonpublic agencies providing special education services, development centers, and bureau of Indian affairs schools.

AMENDATORY SECTION (Amending WSR 14-09-121, filed 4/23/14, effective 5/24/14)

WAC 181-79A-221 Academic and experience requirements for certification—School counselors and school psychologists. Candidates for school counselor and school psychologist certification shall complete the following requirements in addition to those set forth in WAC 181-79A-150 and 181-79A-226: Provided, That it shall not be necessary for any candidate who holds a master's or doctorate degree to obtain the specified master's degree if the candidate provides satisfactory evidence to the superintendent of public instruction that he or she has completed all course work requirements relevant to the required master's degree and has satisfactorily completed a comprehensive examination required in such master's degree program. This examination shall be an examination of a regionally accredited institution of higher education or the National Counselor Examination (NCE) of the National Board of Certified Counselors (NBCC) or, in the case of school psychologists, hold the NCSP accreditation from the National Association of School Psychologists (NASP): Provided, That if any candidate has been awarded a master's degree without a comprehensive examination, the candidate, as a condition for certification, shall successfully complete the Praxis II exam in the appropriate role.

(1) School counselor.

(a) Residency.

(i) The candidate shall hold a master's degree with a major in counseling.

(ii) The candidate shall have successfully completed a comprehensive examination of the knowledge included in the course work for the required master's degree. This examination shall be a proctored examination of a regionally accredited institution of higher education or the candidate may meet this requirement by receiving a passing score on the Praxis II guidance and counseling examination.

(b) Continuing.

(i) The candidate shall hold a valid initial or residency school psychologist certificate, an approved master's degree with a major in counseling, and shall have completed at least fifteen quarter (ten semester) credit hours of graduate course work offered by a college or university with a state approved

school psychologist program or one hundred fifty clock hours of study, which meet the state continuing education clock hour criteria pursuant to chapter 181-85 WAC, or a combination of credits and clock hours equivalent to the above. Such study shall:

(A) Be based on the school psychologist performance domains included in WAC 181-78A-270 (5)(a):

(B) Be taken subsequent to the issuance of the initial or residency school psychologist certificate; and

(C) Be determined in consultation with and approved by the candidate's employer or the administrator of a state approved school psychologist preparation program.

(ii) The candidate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

~~((iii) The candidates must demonstrate their respective knowledge and skills while employed in that role by passing a one-quarter or one-semester college or university course that includes peer review. The college or university shall establish the procedures for the peer review with advice from the respective professional education advisory board.))~~

(c) Professional. ~~((The candidate shall have completed an approved professional certificate program, provided, that))~~ An individual who holds a school counseling certificate issued by the National Board for Professional Teaching Standards (NBPTS) shall be deemed to have met the requirement for completion of a professional certificate program, in recognition that NBPTS certification is issued only to individuals who have demonstrated highly advanced skills as a school counselor.

(2) School psychologist.

(a) Residency.

(i) The candidate shall hold a master's degree with a major or specialization in school psychology.

(ii) The candidate shall have successfully completed a comprehensive examination of the knowledge included in the course work for the required master's degree. This examination shall be a proctored examination of a regionally accredited institution of higher education or the candidate may meet this requirement by receiving a passing score on the Praxis II school psychology examination.

(b) Continuing.

(i) The candidate shall hold a master's degree with a major or specialization in school psychology.

(ii) The candidate shall provide documentation of one hundred eighty days or full-time equivalent or more employment in the respective role with an authorized employer—i.e., school district, educational service district, state agency, college or university, private school, or private school system—and at least thirty days of such employment with the same employer.

(iii) The candidates must demonstrate their respective knowledge and skills while employed in that role by passing a one-quarter or one-semester college or university course that includes peer review. The college or university shall

establish the procedures for the peer review with advice from the respective professional education advisory board.

(c) Professional. The candidate shall have completed an approved professional certificate program: Provided, That an individual who holds an NCSP certificate issued by the National Association of School Psychologists (NASP) shall be deemed to have met the requirement for completion of a professional certificate program, in recognition that NCSP certification is issued only to individuals who have demonstrated highly advanced skills as a school psychologist.

(3) Beginning with certificates first issued after July 1, 2015, continuing and/or professional certificates for school counselors and school psychologists include a requirement for suicide prevention training per RCW 28A.410.226.

AMENDATORY SECTION (Amending WSR 14-16-105, filed 8/6/14, effective 9/6/14)

WAC 181-79A-251 Residency and professional certification. Renewal and reinstatement.

(1) Residency certificate. Residency certificates shall be renewed under one of the following options:

(a) Teachers.

(i) Individuals who hold, or have held, residency certificates have the following options for renewal past the first three-year certificate:

(A) Candidates who have attempted and failed the professional certificate assessment are eligible for a two-year renewal;

(B) Candidates who have not been employed or employed less than full-time as a teacher during the dated, three-year residency certificate may receive a two-year renewal by submitting an affidavit to the certification office confirming that they will register and submit a uniform assessment portfolio or they will complete assessment for National Board for Professional Teaching Standards or they may permit their certificate to lapse until such time they register for the professional certificate assessment;

(C) Candidates whose three-year residency certificate has lapsed may receive a two-year renewal by submitting an affidavit to the certification office confirming that they will register and submit a uniform assessment portfolio for the professional certificate assessment(;

~~(D) Individuals who complete a National Board Certification assessment but do not earn National Board Certification, may use that completed assessment to renew the residency certificate for two years)) or assessment for National Board for Professional Teaching Standards.~~

(ii) A residency certificate expires after the first renewal if the candidate has not registered for and submitted a portfolio assessment prior to June 30th of the expiration year, to achieve the professional certificate, provided: When the first two-year renewal on residency certificates expires, teachers have two renewal options:

(A) Teachers who were employed but failed the professional certification assessment, may receive a second two-year renewal;

(B) Teachers who were unemployed or employed less than full-time during the first two-year renewal may permit their certificate to lapse and receive a second two-year

renewal by submitting an affidavit to the certification office confirming that they will register and submit a uniform assessment portfolio for the professional certification assessment.

(C) An individual who completes a National Board Certification assessment but does not earn National Board Certification, may use that completed assessment to renew the residency certificate for two years in lieu of submitting an affidavit to the certification office confirming that they will register and submit the Washington uniform assessment portfolio as per this section, WAC 181-79A-251.

(iii) Teachers who hold expired residency certificates may be reinstated by having a district request, under WAC 181-79A-231, a transitional certification not less than five years following the final residency expiration: Provided, That the teacher registers and passes the professional certification assessment within two years.

(iv) Teachers that hold a dated residency certificate prior to September 2011 that have expiration dates past September 2011 are subject to the same renewal options as described in (a)(ii) and (iii) of this subsection.

(b) Principals/program administrators may renew their residency certificate in one of the following ways:

(i) Individuals who hold, or have held, a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535 (2)(a) may have the certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.

(ii) Individuals who hold, or have held, residency certificates who are not in the role of principal or program administrator may have their residency certificates renewed for an additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work from a regionally accredited institution of higher education or completion of one hundred fifty continuing education credit hours, directly related to the current performance-based leadership standards as defined in WAC 181-78A-270 (2)(b) from a regionally accredited institution of higher education taken since the issuance of the residency certificate.

(c) School counselors and school psychologists may renew their residency certificate in one of the following ways:

~~(i) ((Individuals who hold a residency certificate and who qualify for enrollment in a professional certificate program pursuant to WAC 181-78A-535(3) may have the certificate renewed for one additional two-year period upon verification by the professional certificate program administrator that the candidate is enrolled in a state approved professional certificate program.~~

~~(ii))~~ Individuals who hold, (or have held), a residency certificate who are not in the role of school counselor or school psychologist may have their residency certificates renewed for an additional five-year period by the completion of fifteen quarter credits (ten semester credits) of college credit course work from a regionally accredited institution of higher education or completion of one hundred fifty continuing education hours, directly related to the current performance-based standards as defined in WAC 181-78A-270 (5), (7), or (9) from a

regionally accredited institution of higher education taken since the issuance of the residency certificate.

~~((iii))~~ (ii) An individual school psychologist who is applying for the National Certificate for School Psychologist (NCSP) may apply for a one-time two-year renewal with verification of NCSP submission. Individuals with expiring certificates in 2014, 2015, 2016, or 2017 may apply for a second two-year renewal with verification of NCSP submission.

~~((iv))~~ (iii) An individual school counselor who completes a national board certification from the National Board of Professional Teaching Standards (NBPTS) assessment but does not earn national board certification may use that completed assessment to renew the residency certificate one-time for two years.

~~((v))~~ (iv) School psychologists with residency certificates dated to expire June 30, 2013, 2014, ~~((v))~~ 2015, 2016, or 2017 may apply until June 30, 2016, for a ~~((one-time))~~ two-year extension. These individuals may apply for a second two-year extension until June 30, 2018.

(2) Professional certificate.

(a) Teachers.

(i) A valid professional certificate may be renewed for additional five-year periods by the completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC or by completing the professional growth plan as defined in WAC 181-79A-030. Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours: Provided, That professional certificates issued under rules prior to September 1, 2014, retain the option of clock hours or professional growth plans for renewal. Beginning September 1, 2014, four professional growth plans developed annually during the period in which the certificate is valid in collaboration with the professional growth team as defined in WAC 181-79A-030 are required for renewal. The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-79A-207. Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal. Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours. An expired professional certificate issued under rules in effect prior to September 1, 2014, may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour requirement within the five years prior to the date of the renewal application. All continuing education credit hours shall relate to either (a)(i)(A) or (B) of this subsection: Provided, That both categories (a)(i)(A) and (B) of this subsection must be represented in the one hundred fifty continuing education credit hours required for renewal:

(A) One or more of the following three standards:

(I) Effective instruction.

(II) Professional contributions.

(III) Professional development.

(B) One of the salary criteria specified in WAC 392-121-262.

(ii) Beginning September 1, 2014, continuing education or professional growth plans for teachers at the elementary and secondary levels in STEM-related subjects must include a specific focus on the integration of science, mathematics, technology, and engineering instruction as per RCW 28A.410.2212. This renewal requirement applies to the following endorsement areas: Elementary education; early childhood education; middle level mathematics and science; secondary mathematics and science; the designated secondary sciences; technology; and career and technical education endorsements. Beginning in 2019, certificate holders with these endorsements must demonstrate that twenty percent of the continuing education or professional growth planning address STEM integration. This requirement is for all professional teacher certificate holders regardless of date of issuance of the first professional certificate.

(iii) Individuals not in the role as a teacher in a public school or approved private school holding a professional teaching certificate may have their professional certificate renewed for a five-year period by the completion of:

(A) Fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based leadership standards as defined in WAC 181-78A-540; or

(B) One hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-79A-207; or

(C) Beginning September 1, 2014, four professional growth plans developed annually during the period in which the certificate is valid in collaboration with the professional growth team as defined in WAC 181-79A-030 are required for renewal. The professional growth plans must document formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-79A-207. Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal. Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours; or

(D) Teachers addressed in this section are also subject to (a)(ii) of this subsection.

(iv) Provided, That a professional certificate may be renewed based on the possession of a valid teaching certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater.

(b) Principals/program administrators.

(i) A professional certificate may be renewed for additional five-year periods for individuals in the role as a principal, assistant principal or program administrator in a public school or approved private school by:

(A) Completion of four professional growth plans developed annually since the certificate was issued, in collabora-

tion with ~~((a minimum of three certificated colleagues))~~ the professional growth team as defined in WAC 181-79A-030, that documents formalized learning opportunities and professional development activities that relate to the six standards and "career level" benchmarks defined in WAC 181-78A-540(1). Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal. Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours.

(B) Documented evidence of results of the professional growth plan on student learning.

(C) As per RCW 28A.405.278 beginning September 1, 2016, all professional administrator certificates must complete continuing education on the revised teacher and principal evaluation systems under RCW 28A.405.100 as a requirement for renewal of professional administrator certificates including requiring knowledge and competencies in teacher and principal evaluation systems as an aspect of professional growth plans (PGPs) used for certificate renewal.

(ii) Individuals not in the role as a principal, assistant principal, or program administrator in a public school or approved private school may have their professional certificate renewed for a five-year period by the completion of:

(A) Fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based leadership standards as defined in WAC 181-78A-540(1) from a regionally accredited institution of higher education taken since the issuance of the professional certificate; or

(B) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-540(1); or

(C) Completion of four professional growth plans developed annually since the certificate was issued in collaboration with the professional growth team as defined in WAC 181-79A-030 that documents formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-78A-540(2). Individuals may apply their focused evaluation professional growth activities of the evaluation system toward the professional growth plan for certificate renewal. Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours; or

(D) Principals, assistant principals, or program administrators addressed in this section are also subject to subsection (b)(i)(C) of this section.

(c) School counselors and school psychologists.

(i) For certificates issued under rules in effect prior to September 1, 2014, a valid professional certificate may be renewed for additional five-year periods by:

(A) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current perfor-

mance-based standards as defined in WAC 181-78A-270 (5), (7), or (9); or

(B) Completion of four professional growth plans that are developed annually since the certificate was issued in collaboration with ~~((a minimum of three certificated colleagues or supervisor))~~ the professional growth team as defined in WAC 181-79A-030, and that documents formalized learning opportunities and professional development activities that relate to the standards and career level benchmarks defined in WAC 181-78A-540(2). Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours~~((or~~

~~(C) An expired professional certificate issued under rules in effect prior to September 1, 2014, may be renewed for an additional five-year period by presenting evidence to the superintendent of public instruction of completing the continuing education credit hour requirement within the five years prior to the date of the renewal application)).~~

(ii) Beginning September 1, 2014, a valid professional certificate may be renewed for additional five-year periods for individuals in the role as a school counselor or school psychologist in a public school, approved private school, or in a state agency which provides educational services to students by completion of four professional growth plans developed annually since the certificate was issued in collaboration with the professional growth team as defined in WAC 181-79A-030 that documents formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-78A-540(2). Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours.

(iii) Individuals not in the role as a school counselor or school psychologist in a public school or approved private school may have their professional certificate renewed for an additional five-year period by:

(A) Completion of fifteen quarter credits (ten semester credits) of college credit course work directly related to the current performance-based standards as defined in WAC 181-78A-540(2) from a regionally accredited institution of higher education taken since the issuance of the professional certificate; or

(B) Completion of one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC since the certificate was issued and which relate to the current performance-based standards as defined in WAC 181-78A-540(2); or

(C) Completion of four annual professional growth plans developed since the certificate was issued in collaboration with the professional growth team as defined in WAC 181-79A-030 that documents formalized learning opportunities and professional development activities that relate to the standards and "career level" benchmarks defined in WAC 181-78A-540(2). Individuals who complete the requirements of the annual professional growth plan to renew their professional certificate shall receive the equivalent of thirty hours of continuing education credit hours.

(iv) Provided, That a school counselor professional certificate may be renewed based on the possession of a valid school counselor certificate issued by the National Board for Professional Teaching Standards at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the National Board Certificate, whichever is greater; or

(v) Provided, That a school psychologist professional certificate may be renewed based on the possession of a valid national certified school psychology certificate issued by the national association of school psychologists at the time of application for the renewal of the professional certificate. Such renewal shall be valid for five years or until the expiration of the national certified school psychology certificate, whichever is greater.

(d) Provided, any educator holding a professional certificate in (a), (b), or (c) of this subsection, which requires completion of four PGPs in five years, may renew the professional certificate for one time only by completing one hundred fifty continuing education credit hours as defined in chapter 181-85 WAC, or with completion of fifteen quarter credit hours related to job responsibilities, in lieu of completion of four professional growth plans as required by (a)(ii)(C), (b)(ii)(A), and (c)(ii) of this subsection. Individuals with valid certificates must show completion of the hours as described in this section since the professional certificate was issued. Individuals with an expired professional certificate must complete the hours as described in this section within the five years prior to the date of the renewal application. Provided, That this section is no longer in effect after June 30, 2020.

(e) For educators holding multiple certificates in (a), (b), or (c) of this subsection, or in chapter 181-85 WAC, a professional growth plan for teacher, administrator, or education staff associate shall meet the requirement for all certificates held by an individual which is affected by this section.

(f) The one time renewal option of using clock hours or credits in lieu of professional growth plans as required applies to any/all professional certificates an educator may hold, and is only available to the individual one time. This section is no longer in effect after June 30, 2020.

(g) After July 1, 2015, professional certificates for school counselors or psychologists, in addition to the requirements in this chapter, must attend training in suicide prevention as per RCW 28A.410.226 for renewal of their certificate.

WSR 14-20-098

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed September 29, 2014, 4:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-06-072.

Title of Rule and Other Identifying Information: WAC 458-20-257 (Rule 257) Real property warranties and service contracts—Tangible personal property warranties and service contracts.

Hearing Location(s): Capital Plaza Building, 4th Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA, on Wednesday, November 12, 2014, at 10 a.m. *Call-in option can be provided upon request no later than three days before the hearing date.* Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Date of Intended Adoption: November 14, 2014.

Submit Written Comments to: Gayle Carlson, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail GayleC@dor.wa.gov, by November 12, 2014.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499, or Renee Cosare, (360) 725-7514, no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule 257 explains the business and occupation (B&O), retail sales, and use tax reporting responsibilities of persons:

- Selling warranties and maintenance agreements for tangible personal property; and
- Performing services to tangible personal property covered by such a warranty or maintenance agreement.

The department is proposing an amendment to Rule 257 to:

- Update the rule to recognize that sales of extended warranties for tangible personal property are retail sales;
- Explain that the sale of a mixed agreement (an agreement containing provisions of both a warranty and service contract for tangible personal property) is a bundled transaction;
- Add a new subsection pertaining to the taxability of income from sales of real property warranties and service agreements; and
- Reformat the rule to provide the information in a more useful manner.

Reasons Supporting Proposal: To update the rule to recognize current law.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: RCW 82.04.050 and 82.08.-010.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Gayle Carlson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1576; Implementation: Dylan Waits, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1583; and Enforcement: Alan Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impose any new performance requirement or administrative burden on any small business not already required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. This is not a significant legislative rule as defined in RCW 34.05.328.

September 29, 2014
Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 90-10-081, filed 5/2/90, effective 6/2/90)

WAC 458-20-257 Real property warranties and service contracts—Tangible personal property warranties and ((maintenance agreements)) service contracts. ((+))

Definitions. For the purposes of this section, the following terms will apply:

(a) ~~Warranties.~~ Warranties, sometimes referred to as guarantees, are agreements which call for the replacement or repair of tangible personal property with no additional charge for parts or labor, or both, based upon the happening of some unforeseen occurrence, e.g., the property needs repair within the warranty period.

(b) ~~Warrantor.~~ The warrantor is the person obligated, as specified in the warranty agreement, to perform labor and/or provide materials to the owner of the personal property to which the warranty agreement relates.

(c) ~~Maintenance agreements.~~ Maintenance agreements sometimes referred to as service contracts, are agreements which require the specific performance of repairing, cleaning, altering, or improving of tangible personal property on a regular or irregular basis to ensure its continued satisfactory operation.

(2) B&O tax.

(a) ~~Manufacturer's warranties included in the retail selling price of the article being sold.~~

(i) ~~When a manufacturer's warranty is included in the retail selling price of the property sold and no additional charge is made, the value of the warranty is a part of the selling price. The value of the warranty is included in the "gross proceeds of sale" of the article sold and reported under the appropriate classification, e.g. retailing, wholesaling, etc.~~

(ii) ~~When a repair is made by the manufacturer-warrantor under the warranty, the value of the labor and or parts provided are not subject to B&O tax.~~

(iii) ~~When a person other than the manufacturer warrantor makes a repair for the manufacturer-warrantor, the person making the repair is making a wholesale sale of the repair service to the manufacturer-warrantor. The person doing the repair is B&O taxable under the wholesaling classification on the value of the parts and labor provided.~~

(b) ~~Nonmanufacturer's warranties and manufacturer's warranties not included in the retail selling price of the article being sold.~~

(i) ~~When a warranty is sold for a charge separate from the charge of the product, e.g., a warranty extending the manufacturer's warranty, the charge is reported in the service and other activities classification of the B&O tax.~~

(ii) ~~When a repair is made by the warrantor under a separately stated warranty, the value of the labor and or parts provided are not subject to B&O tax.~~

(iii) ~~When a person other than the warrantor makes a repair for the warrantor, the person making the repair is making a retail sale of the repair service to the warrantor. The person making the repair is B&O taxable under the retailing classification.~~

(c) ~~Maintenance agreements.~~

(i) ~~Maintenance agreements (service contracts) require the periodic specific performance of inspecting, cleaning, physical servicing, altering, and/or improving of tangible personal property. Charges for maintenance agreements are retail sales, subject to retailing B&O tax and retail sales tax under all circumstances.~~

(d) ~~Amounts received as a commission or other consideration for selling a warranty or maintenance agreement of a third party warrantor or provider are generally subject to B&O tax under the service and other activities classification. However, if the seller of the warranty is licensed under chapter 48.17 RCW with respect to this selling activity, the commission is subject to B&O tax under the insurance agent classification.~~

(e) ~~In the event a warrantor purchases an insurance policy to cover the warranty, amounts received by the warrantor under the insurance policy are insurance claim reimbursements not subject to B&O tax.~~

(3) Retail sales tax.

(a) ~~Manufacturer's warranties included in the retail selling price of the article being sold.~~

(i) ~~When a manufacturer's warranty is included in the retail selling price of the property sold and no additional or separate charge is made, the value of the warranty is a part of the selling price and retail sales tax applies to the entire selling price of the article being sold.~~

(ii) ~~When a repair is made by the manufacturer-warrantor under the warranty, the repair performed is not a retail sale and no retail sales tax is collected.~~

(iii) ~~When a person other than the manufacturer-warrantor makes a repair for the manufacturer-warrantor, the person making the repair is making a wholesale sale of the repair service to the manufacturer-warrantor. No retail sales tax is collected from the manufacturer-warrantor.~~

(b) ~~Nonmanufacturer's warranties and manufacturer's warranties not included in the retail selling price of the article being sold.~~

(i) ~~When a warranty is sold for a charge separate from the charge of the product, e.g., a warranty extending the manufacturer's warranty, the sale is not a retail sale and no retail sales tax is collected on the amount charged.~~

(ii) ~~When a repair is made by the warrantor under its own separately stated warranty, the value of the labor and/or parts provided is not a retail sale and no retail sales tax is collected.~~

(iii) ~~When a person other than the warrantor makes a repair for the warrantor, the person making the repair is making a retail sale of the repair service to the warrantor. Retail sales tax is collected from the warrantor measured by the labor and materials provided.~~

(c) ~~Maintenance agreements are sales at retail and subject to retail sales tax under all circumstances.~~

(i) ~~Parties subcontracting to the party selling the maintenance agreement are making sales at wholesale, and are~~

required to take from their customer (maintenance seller) a resale certificate as provided in WAC 458-20-102.

~~(4) USE TAX.~~

~~(a) Manufacturer's warranties included in the retail selling price of the article being sold.~~

~~(i) When a manufacturer warrantor makes repairs required under its warranty, the value of the parts used in making the repairs is not subject to use tax.~~

~~(ii) Where a third party makes repairs for a manufacturer warrantor, the transaction is a wholesale sale and the parts used in the repair are not subject to use tax.~~

~~(b) Nonmanufacturer's warranties and manufacturer's warranties not included in the retail selling price of the article being sold.~~

~~(i) When a repair is made by the warrantor under a separately stated warranty, the warrantor is the consumer of the parts and the parts are subject to use tax measured by the warrantor's cost.~~

~~(ii) When a person other than the warrantor makes a repair for the warrantor, the person making the repair is making a retail sale to the warrantor. Retail sales tax, not use tax, is collected.~~

~~(c) Maintenance agreements.~~

~~(i) Persons performing services under the requirements of maintenance agreements sold by them, are not subject to use tax or retail sales tax on materials which become a part of the required repairs or services.~~

~~(5) **Additional service — deductible.** In the event services are provided in addition to any warranty or maintenance agreement, such services are separately taxable as retail sales, subject to retail sales tax and retailing B&O tax. This includes so-called "deductible" amounts not covered by a warranty or maintenance agreement.~~

~~(6) **Mixed agreements.** If an agreement contains warranty provisions but also requires the actual specific performance of inspection, cleaning, servicing, altering, or improving the property on a regular or irregular basis, without regard to the operating condition of the property, such agreements are fully taxable as maintenance agreements, not warranties.~~

~~(7) **Examples:**~~

~~(a) An automobile dealer sells a vehicle to a customer for selling price of \$15,000 cash and the selling price includes a manufacturer's limited warranty for 5 years or 50,000 miles. The owner of the vehicle has \$600 (\$200 parts and \$400 labor) warranty work, paying no deductible, performed by the dealer who is not the manufacturer warrantor. The tax liability of the dealer is as follows:~~

~~(i) Retail sales tax is collected on the \$15,000 selling price.~~

~~(ii) The \$15,000 selling price is reported under the retailing B&O tax classification. The \$600 repair is reported under the wholesaling B&O tax classification.~~

~~(iii) The \$200 of parts used in the repair are not subject to use tax.~~

~~(b) The automobile dealer in example (a) also sells its own extended warranty to the customer for \$200. The dealer insures itself with an insurance carrier and under the policy, claims are paid on the retail value of the repairs. In addition to the repairs in example (a), the customer has the dealer complete \$500 of repairs under the dealer's extended war-~~

~~ranty. The customer paid the \$100 deductible and the dealer received \$400 from his insurance carrier. In completing the repair, the dealer installed parts from its inventory which had a cost to the dealer of \$150 and subcontracted part of the repair to an electrical shop which charged the dealer \$200. The tax liability to the dealer and the subcontractor are as follows:~~

~~(i) The dealer reports the \$200 sale of the warranty under the service and other activities classification of B&O tax. No retail sales tax is collected on the sale.~~

~~(ii) The \$100 deductible received by the dealer is a retail sale subject to retail sales tax and retailing B&O tax.~~

~~(iii) The \$400 received by the dealer from the insurance company is a nontaxable insurance claim reimbursement.~~

~~(iv) The dealer is the consumer of the parts removed from its inventory and used in the repair. The \$150 dealer cost of the parts taken from inventory is subject to use tax.~~

~~(v) The subcontractor is making a retail sale to the dealer subject to retail sales tax and retailing B&O.)~~

~~(1) **Introduction.** This rule explains the business and occupation (B&O) tax, retail sales tax, and use tax reporting responsibilities of persons selling or performing services covered by warranties, service contracts, and mixed agreements. For additional information on computer software maintenance agreements see WAC 458-20-15502, Taxation of computer software. The information in this rule is organized into the following three parts:~~

~~(a) PART I: Real Property Service Contracts.~~

~~(b) PART II: Tangible Personal Property Agreements.~~

~~(c) PART III: Commonly Asked Questions.~~

~~(2) This rule contains examples that identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.~~

PART I

Real Property Service Contracts

~~(101) **Home service contract.** A home service contract or agreement means a contract or agreement for a separately stated consideration for any duration to perform the service, repair, replacement, or maintenance of property or indemnification for service, repair, replacement, or maintenance, for the operational or structural failure of any residential property due to a defect in materials, workmanship, inherent defect or normal wear and tear, with or without additional provisions for incidental payment or indemnity under limited circumstances. Home service contracts and agreements cover real property including, but not limited to, air conditioning systems, electrical systems, structural building components, and built-in appliances.~~

~~(102) **Sales of service contracts or agreements.** Income from sales of home service contracts or agreements that cover real property is subject to the service and other activities B&O tax. See RCW 82.04.290.~~

~~(103) **Sales of addendums for additional coverage.** Additional coverage for tangible personal property not covered in the home service contract or agreement is often available. Income from the sales to consumers of additional cover-~~

age or addendums is subject to retailing B&O tax and retail sales tax.

(104) Sales of repair services or parts to obligor.

(a) Home service contracts or agreements. When a person obligated under a home service contract or agreement performs repairs for no additional charge, the obligor is the consumer of parts and materials used for the repair, and retail sales tax must be paid to the supplier. If retail sales tax is not paid at the time of purchase, deferred sales tax or use tax is due on the parts and materials.

If an obligor hires another party to perform the repair work, the person making the repairs is making a retail sale to the obligor and must collect retail sales tax.

(b) Addendums for additional coverage for tangible personal property. Persons obligated under an addendum for additional coverage of tangible personal property may purchase the following from a supplier or service provider at wholesale without incurring retail sales tax, provided the obligor provides the supplier or service provider with a reseller permit:

- Parts purchased to replace or become an ingredient or component of tangible personal property covered by the addendum, as long as there is no intervening use of the parts as a consumer; and

- Repair services purchased to satisfy the obligor's obligations under an addendum.

(i) A reseller permit documents the wholesale nature of any sale as provided in WAC 458-20-102, Reseller permits. (Reseller permits replaced resale certificates effective January 1, 2010.)

(ii) The supplier or service provider is taxable under the wholesaling B&O tax classification on the value of the parts and labor provided.

(105) Additional charges for parts or repair services covered under a home service contract or agreement. In some cases, a customer is required to pay an amount for services or parts not fully covered under a home service contract or agreement. This additional amount is subject to both the retailing B&O tax and retail sales tax.

(106) Commissions earned by third parties. Consideration received by a third party as a commission, for selling a home service contract or agreement for the actual obligor, is generally subject to B&O tax under the service and other activities B&O tax classification. However, if the seller of the home service contract or agreement is licensed under chapter 48.17 RCW with respect to this selling activity, the commission is subject to B&O tax under the insurance producers classification.

PART II

Tangible Personal Property Agreements

(201) Definitions. For the purposes of Parts II and III of this rule, the following terms will apply:

(a) Agreement. Unless otherwise stated, "agreement" means "service contract," "warranty," or "mixed agreement" as those terms are defined.

(b) Insurance rider. An insurance rider is an attachment to an insurance policy that modifies the conditions of the policy by expanding or restricting its benefits or excluding certain conditions from the coverage.

(c) Mixed agreement. A mixed agreement is an agreement that contains provisions of both warranty and service contracts.

(d) Service contract. A service contract, sometimes referred to as a maintenance agreement or even an extended warranty, provides for the repairing, cleaning, altering, or improving of tangible personal property, generally for the purpose of continued satisfactory operation. These services may be performed on a regular or irregular basis. Even though a service contract may be referred to by some other name, it is the coverage that determines whether the contract is a service contract or extended warranty.

(e) Warranty. A warranty, sometimes referred to as a guarantee, is an agreement which provides for the replacement or repair of tangible personal property at no additional charge or at a reduced charge for tangible personal property, labor, or both, or to compensate for the replacement or repair of tangible personal property, based upon the happening of some unforeseen occurrence, e.g., a component part fails and the property needs repair. Unless otherwise stated, the term warranty includes both a warranty and an extended warranty.

(202) Sales of agreements for tangible personal property.

(a) Retail sales. Income from agreements sold with or without tangible personal property to consumers is subject to the retailing B&O tax and retail sales tax, unless a specific exemption applies. Income from the sales of insurance riders to consumers is also subject to retailing B&O tax and retail sales tax. See RCW 82.04.050.

Example 1. An automobile dealer sells a vehicle to a customer for a selling price of \$20,000 that includes a manufacturer's limited five years or 50,000 miles warranty. The automobile dealer extends coverage for an additional two years, as a bonus to the customer. When the automobile dealer purchased the two-year agreement, for coverage from the manufacturer with the intent to provide the agreement with purchase to the customer, the purchase was for resale.

(b) Wholesale sales. Sales of agreements can be made at wholesale when the buyer will be reselling the agreement without intervening use, or including the agreement in the sale of tangible personal property, and the seller takes from the buyer a copy of the buyer's reseller permit. The reseller permit documents the wholesale nature of any sale as provided in WAC 458-20-102, Reseller permits. (Reseller permits replaced resale certificates effective January 1, 2010.)

(i) Example 2. A home improvement store (store) sells a lawnmower to a customer. The store also makes available for purchase a manufacturer's agreement for extended coverage. The customer decides to purchase an agreement from the store for the lawnmower. As the store is reselling the agreement, the store may purchase it at wholesale from the manufacturer with the use of a reseller permit. Both the sales of the lawnmower and agreement to the customer are taxable retail sales.

(ii) Example 3. For a special holiday sale, the home improvement store in Example 2 purchases the manufacturer's extended warranties to provide with the sales of lawnmowers. The store makes no intervening use of the extended warranties, and does not charge customers for the warranties. The warranty purchases by the store are wholesale purchases

as long as the store provides a copy of its reseller permit to the manufacturer. The store is not the consumer of the warranties as the warranties are provided to customers as a condition of purchase of the lawnmowers.

(c) Agreement purchases from a third party. When an agreement is purchased by a manufacturer, wholesaler, or retailer to be included in the sale of tangible personal property, the purchase can be made at wholesale with the use of a reseller permit. In this instance, the manufacturer, wholesaler, or retailer is not the consumer of the warranty.

Example 4. If a vehicle wholesaler sells a vehicle to a retailer and includes an agreement with the sale, the sale of the vehicle with agreement is a wholesale sale. RCW 82.04.050. The retailer must provide the wholesaler with a reseller permit.

(d) Deferred sales or use tax due. If a manufacturer, wholesaler, or retailer purchases an agreement, without knowing whether it will be sold or given as an incentive with the sale of tangible personal property, the agreement can be purchased at wholesale with the use of a reseller permit.

(e) Additional charges for parts or repair services covered under an agreement. In some cases, a customer is required to pay an amount for services or parts not fully covered under an agreement. This additional amount is subject to both the retailing B&O tax and retail sales tax, unless an exemption applies.

Example 5. The automobile dealer in Example 1 sells a vehicle to a customer for a selling price of \$20,000 that includes a manufacturer's limited five-year or 50,000 miles warranty. The dealer also sells its own extended warranty to the customer for \$200. The dealer insures itself with an insurance carrier, and under the policy claims are paid on the retail value of the repairs. The customer has the dealer complete \$500 of repairs under the warranty. The customer pays a reduced charge of \$100 for the warranty services and the dealer receives \$400 from its insurance carrier. In completing the repair, the dealer installed parts from its inventory which had a cost to the dealer of \$150 and subcontracted part of the repair to an electrical shop which charged the dealer \$200. The tax liability to the dealer and subcontractor is as follows:

(i) In addition to retail sales tax collected on the \$20,000 selling price, retail sales tax must be collected on the \$200 selling price for the dealer's own extended warranty.

(ii) The \$20,200 selling price for both the automobile and warranty is reported under the retailing B&O tax and retail sales tax classifications on the excise tax return. The \$20,000 paid for the automobile (but not the cost of the warranty) is also subject to the motor vehicle excise tax.

(iii) The \$100 charge paid by the customer for the warranty services performed is subject to the retailing B&O tax, and the dealer must collect retail sales tax from the customer.

(iv) The \$400 received by the dealer from the insurance company is a nontaxable insurance claim reimbursement.

(v) The \$150 cost of the parts taken from inventory is not subject to use tax.

(vi) The subcontractor is making a \$200 wholesale sale to the dealer, if the dealer provides the subcontractor with a copy of its reseller permit.

(f) Exemptions. The sale of an agreement is not exempt simply because the sale of the tangible personal property to

which it applies is exempt. Generally, for the sale of the agreement to be exempt, there must be a provision in statute exempting all services or products covered by the agreement. If all such obligations are not exempt, the sale of the agreement is subject to retail sales tax. See RCW 82.08.190 and 82.08.195 for additional information regarding the taxation of bundled transactions.

(i) Service contracts. Since a service contract is a contract for the repairing, cleaning, altering, or improving of the tangible personal property covered by the contract, the sale of a service contract may be exempt from retail sales tax if there is a statutory exemption for all activities covered by the contract.

(A) Example 6. RCW 82.08.955 provides a retail sales tax exemption for both the sales and repair of machinery and equipment used directly for retail sales of a biodiesel blend or E85 motor fuel. Company A sells machinery that qualifies for exemption under RCW 82.08.955 to Dealer BF. The purchase price of the machinery is \$10,000 and includes a ninety-day warranty against defects in material and workmanship. Dealer BF also purchases a service contract for an additional \$300 that covers the repairing and cleaning of qualified parts. If Dealer BF provides Company A with an exemption certificate, the \$10,000 selling price and \$300 service contract price are exempt from retail sales tax. Company A reports the total \$10,300 under the retailing B&O tax and retail sales tax classifications, taking a deduction under retail sales tax for the exemption.

(B) Example 7. RCW 82.08.809 provides an exemption for the purchase of vehicles using clean alternative fuels provided the provisions of the exemption are followed. A dealer sells a new vehicle powered by natural gas for \$30,000 and a \$500 two-year service contract to a customer. The sale of the vehicle is exempt from retail sales tax, but the sale of the service contract is subject to retail sales tax as there is no statutory exemption for the repair activities covered by the service contract.

(ii) Warranties. The sale of a warranty is exempt only if a specific statutory exemption is available. The place of sale for a warranty is the seller's business location if the buyer receives the warranty at that location. See RCW 82.32.730 and WAC 458-20-145. Local sales and use tax for additional sourcing information. See WAC 458-20-15502 for computer software warranties.

Warranties purchased and received outside of Washington are subject to use tax when put to use in Washington. See RCW 82.12.020.

Example 8. Assume that Dealer BF in Example 6 also purchases an extended warranty for an additional \$200. If Dealer BF provides Company A with a valid exemption certificate, the \$10,000 selling price and \$300 service contract are exempt from retail sales tax, but the \$200 for the extended warranty is subject to retail sales tax. RCW 82.08.955 does not provide for an exemption for a warranty for eligible equipment. As there is no corresponding tax exemption for B&O tax, the total amount of \$10,500 is subject to the retailing B&O tax.

(iii) Mixed agreements. The sale of a mixed agreement for tangible personal property, which by definition contains provisions of both a warranty and a service contract, is a

"bundled transaction." Retail sales tax must generally be collected on the selling price of a mixed agreement, unless both the warranty provisions and service contract provisions each separately qualify for a retail sales tax exemption. Refer to RCW 82.08.190 and 82.08.195 for additional guidance on how retail sales tax applies to bundled transactions.

(203) Commissions earned by third parties. Consideration received by a third party as a commission, for selling an agreement for the actual warrantor, is generally subject to B&O tax under the service and other activities B&O tax classification. In this situation, the third-party seller never takes possession of the agreement, and the warrantor maintains liability for the provisions of the agreement. However, if the seller of the agreement is licensed under chapter 48.17 RCW with respect to this selling activity, the commission is subject to B&O tax under the insurance producers classification.

(204) Sales of repair services or parts to obligor. A person obligated under an agreement, including any third-party obligor under an agreement sold to a retailer and provided at no additional charge to the end consumer, may purchase the following from a supplier or service provider at wholesale without incurring retail sales tax, provided the obligor provides the supplier or service provider with a reseller permit:

- Parts purchased to replace or become an ingredient or component of tangible personal property covered by the agreement, as long as there is no intervening use of the parts as a consumer; and
- Repair services purchased to satisfy the obligor's obligations under an agreement.

The supplier or service provider is taxable under the wholesaling B&O tax classification on the value of the parts and labor provided.

(205) Warranties with insurance elements. There are tangible personal property agreements that include elements of insurance (i.e., theft, loss) and elements of warranty (operational failure, damage). Sales to consumers of agreements defined as a warranty, service contract or maintenance agreement, that are not otherwise insurance contracts subject to Title 48 RCW insurance premiums tax, are subject to retailing B&O tax and retail sales tax. See RCW 48.14.080. If a bundled transaction includes both taxable and nontaxable plans, retailing B&O and retail sales taxes are due. For more information on bundled transactions see RCW 82.08.190 and 82.08.195.

PART III

Commonly Asked Questions

(301) Is it a warranty or service contract when a credit card company replaces lost or damaged items purchased by one of their credit card holders? The credit card company (company) covering the purchased items would be providing an insurance product, but the company may not be charging the card holders for the benefit of having lost or damaged items replaced at no charge and if not, the company would not owe premiums tax, but owe B&O tax on income. When the company replaces items, the company is responsible for paying sales tax on the items purchased and provided as replacements.

(302) Is identity theft protection considered a warranty? Identity theft protection is not tangible personal property. The protection plan may be a combination of products including monitoring a person's accounts. It depends on the coverage as to whether the protection plan is an insurance product that is subject to the premiums tax.

(303) Are agreements that cover accidentally dropping a phone in water an insurance product? Most agreements are service contracts and not insurance products, and are covered under chapter 48.110 RCW, Service contracts and protection product guarantees. See WAC 458-20-15503 for information on digital automated services.

(304) If a loaner piece of equipment is included in the cost of a warranty, does the customer using the loaner owe use tax on the loaned piece of equipment? If the loan of the equipment is included in the warranty, the customer does not owe use tax on the use of the loaned equipment.

WSR 14-20-109

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed September 30, 2014, 1:47 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-15-069.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-478-0015 Need standards for cash assistance, to revise the basic need standards for cash assistance.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on November 4, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than November 5, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., November 4, 2014.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS Rules Consultant, TTY (360) 664-6178 or (360) 664-6092 or by e-mail Kildaja@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The community services division is proposing to amend WAC 388-478-0015 in order to revise the basic need standards for cash assistance programs.

Reasons Supporting Proposal: DSHS is required by RCW 74.04.770 to establish standards of need for cash assistance programs on an annual basis.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, and 74.08.090.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, and 74.08.090

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Leslie Kozak, P.O. Box 45470, Olympia, WA 98504-5470, (360) 725-4589.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendment only affects DSHS clients by revising the need standards for cash assistance.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents." This rule affects the need standards for cash assistance as outlined in WAC 388-478-0015.

September 25, 2014
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-24-041, filed 11/26/13, effective 1/1/14)

WAC 388-478-0015 Need standards for cash assistance. The need standards for cash assistance units are:

(1) For assistance units with obligation to pay shelter costs:

Assistance Unit Size	Need Standard
1	\$(1,189) <u>1,254</u>
2	((1,504)) <u>1,587</u>
3	((1,857)) <u>1,959</u>
4	((2,191)) <u>2,312</u>
5	((2,526)) <u>2,664</u>
6	((2,860)) <u>3,017</u>
7	((3,305)) <u>3,487</u>
8	((3,658)) <u>3,859</u>
9	((4,011)) <u>4,231</u>
10 or more	((4,364)) <u>4,604</u>

(2) For assistance units with shelter provided at no cost:

Assistance Unit Size	Need Standard
1	\$(609) <u>632</u>
2	((770)) <u>799</u>
3	((954)) <u>987</u>
4	((1,122)) <u>1,165</u>
5	((1,293)) <u>1,342</u>
6	((1,465)) <u>1,520</u>
7	((1,693)) <u>1,757</u>
8	((1,873)) <u>1,944</u>
9	((2,054)) <u>2,132</u>
10 or more	((2,235)) <u>2,319</u>

WSR 14-20-113
PROPOSED RULES
GREEN RIVER
COMMUNITY COLLEGE
[Filed September 30, 2014, 3:24 p.m.]

Supplemental Notice to WSR 14-12-087.
Preproposal statement of inquiry was filed as WSR 14-07-119.

Title of Rule and Other Identifying Information: Revision of the rules of student conduct, chapter 132J-125 WAC, for Green River Community College. Revision includes repealing chapter 132J-125 WAC and replacing with chapter 132J-126 WAC, Rules of student conduct, chapter 132J-150 WAC, Policy on the use of college facilities, and chapter 132J-155 WAC, Use of facilities for first amendment activities.

Hearing Location(s): Glacier Room, Lindbloom Center, on Thursday, November 13, 2014, at 10:00 a.m. Open hearing workshops: October 13 at 2 p.m. and October 22 at 6 p.m.
Date of Intended Adoption: December 1, 2014.

Submit Written Comments to: Timothy Malroy, 12401 S.E. 320th Street, Auburn, WA 98092, e-mail conduct@greenriver.edu, fax (253) 288-3467, by November 25, 2014.

Assistance for Persons with Disabilities: Contact Jamie Hatleberg by November 10, 2014, TTY (253) 833-9111.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To revise the rules in place to govern student rights and responsibilities at Green River Community College. The existing code is being revised

to reflect current best practices in student conduct and proper legal language as well as bringing the college in compliance with recent federal mandates.

Reasons Supporting Proposal: Repealing old chapter 132J-125 WAC, Rules of student conduct and replacing with chapter 132J-126 WAC, Rules of student conduct. New mandate from federal government concerning Title IX and Violence Against Women Act.

Statutory Authority for Adoption: RCW 28B.50.140 (13).

Rule is necessary because of federal law, Public Law 113-4 Violence Against Women Reauthorization Act of 2013.

Name of Proponent: Green River Community College, public.

Name of Agency Personnel Responsible for Drafting and Implementation: Tim Malroy, LC-126, (253) 833-9111; and Enforcement: Dr. Deb Casey, LC-205, (253) 833-9111.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

A cost-benefit analysis is not required under RCW 34.05.328. No cost to implement code revision.

September 30, 2014

Timothy J. Malroy
Conduct Officer

Chapter 132J-126 WAC

RULES OF STUDENT CONDUCT

NEW SECTION

WAC 132J-126-010 Purpose. (1) Green River Community College, an agency of the state of Washington, provides a variety of educational opportunities for students; namely the opportunities to examine the academic, vocational, technical, cultural, social, and recreational aspects of society. Green River Community College as an institution of society must maintain conditions conducive to the effective performance of its functions. Consequently, Green River Community College has special expectations regarding the conduct of students. Student conduct that detracts from, or interferes with, the accomplishment of college purposes is not acceptable.

(2) The student is a member of the community at large, and as such has the rights and responsibilities of any citizen. In addition, admission to Green River Community College carries with it the presumption that students will conduct themselves as responsible members of the college community. This includes an expectation that students will obey the law, will comply with rules and regulations of the college, will maintain a high standard of integrity and honesty, and will respect the rights, privileges, and property of other members of the college community.

(3) The following rules regarding the conduct of students are adopted in order to provide students a full understanding of the rules that will enable the college to maintain conditions conducive to the effective performance of the college's functions. Sanctions for violations of the rules of student conduct will be administered by the college in the manner provided by

said rules. When violation(s) of laws of the state of Washington and/or the United States are also involved, the college may refer such matters to the appropriate authorities. In cases of minors, this conduct may also be referred to parents or legal guardians.

(4) The office of judicial programs, under the leadership of the vice-president of student affairs, maintains and administers the student code of conduct for Green River Community College. The office of judicial programs and Green River Community College strive to engage our students to become civic minded citizens who positively contribute to society and achieve their educational goals. The office of judicial programs seeks to educate students as to their rights, responsibilities, and expectations as members of Green River Community College while providing a fair and educational process through which alleged violations of the code of conduct are adjudicated.

NEW SECTION

WAC 132J-126-020 Statement of jurisdiction. The student conduct code shall apply to student conduct that occurs on college premises, to conduct that occurs at or in connection with college sponsored activities, or to off-campus conduct that, in the judgment of the college, adversely affects the college community or the pursuit of its objectives. Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences or any other college-sanctioned social or club activities. Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. Inappropriate conduct by students who have completed classes and are awaiting graduation ceremony are covered by this student conduct code.

NEW SECTION

WAC 132J-126-030 Definitions. The following definitions shall apply for the purpose of this student conduct code:

"Assembly" is any overt activity engaged in by two or more persons, the object of which is to gain publicity, advocate a view, petition for a cause or disseminate information to any person, persons, or groups of persons.

"Business day" means a weekday, excluding weekends and college holidays.

"College" means Green River Community College.

"College facilities" includes all buildings, structures, grounds, office space, and parking lots.

"College groups" shall mean individuals or groups who are currently enrolled students or current employees of the college, or guests of the college who are sponsored by a rec-

ognized student organization, employee organization, or the administration of the college.

"College official" includes any person employed by the college, performing assigned administrative or professional responsibilities.

"College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

"Complainant" means any person who submits a charge alleging that a student violated the student code. When a student believes that she/he has been a victim of another student's misconduct, the student who believes she/he has been a victim will have the same rights under this student code as are provided to the complainant, even if another member of the college community submitted the charge himself or herself.

"Conduct review officer" is the vice-president of student affairs or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

"Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

"Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or a dismissal are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

"Expressive activity" includes, but is not necessarily limited to, informational picketing, petition circulation, the distribution of informational leaflets or pamphlets, speech making, demonstrations, rallies, appearances of speakers in outdoor areas, protests, meetings to display group feelings or sentiments and/or other types of assemblies to share information, perspectives or viewpoints.

"Faculty member" means any person hired by the college to conduct classroom, counseling, or teaching activities or who is otherwise considered by the college to be a member of its faculty.

"Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by e-mail and first class mail to the specified college official's office and college e-mail address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

"May" is used in the permissive sense.

"Member of the college community" includes any person who is a student, faculty member, college official or any other person employed by the college. A person's status in a particular situation shall be determined by the vice-president of student affairs or designee.

"Noncollege groups" shall mean individuals, or combinations of individuals, who are not currently enrolled students or current employees of the college and who are not officially affiliated or associated with, or invited guests of a recognized student organization, recognized employee group, or the administration of the college.

"Organization" means number of persons who have complied with the formal requirements for college recognition/registration.

"Policy" means the written regulations of the college as found in, but not limited to, the student code, the college web page and computer use policy, and catalogs.

"The president" is the president of the college. The president is authorized to delegate any and all of his or her responsibilities as set forth in this chapter as may be reasonably necessary.

"Respondent" is the student against whom disciplinary action is initiated.

"Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document by e-mail and by certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is e-mailed and deposited in the mail.

"Shall" is used in the imperative sense.

"Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered students.

"Student conduct officer" is a college administrator designated by the president or vice-president of student affairs to be responsible for implementing and enforcing the student conduct code. The president or vice-president of student affairs is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

"Vice-president of student affairs" means the college administrator who reports to the college president, who serves as the college's student judicial affairs administrator, and who is responsible for administering the student rights and responsibilities code. The vice-president of student affairs may designate a student conduct officer to fulfill this responsibility.

NEW SECTION

WAC 132J-126-040 Student code authority. (1) The vice-president of student affairs or designee shall develop

policies for the administration of the student conduct system and procedural rules for the conduct of student conduct hearings that are not inconsistent with provisions of the student code.

(2) The vice-president of student affairs or designee shall determine the composition of the student conduct committee in accordance with WAC 132J-126-180.

(3) Decisions made by a student conduct officer shall be final, pending the normal appeal process.

NEW SECTION

WAC 132J-126-050 Statement of student rights. As members of the academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following enumerated rights are guaranteed to each student within the limitations of statutory law and college policy which are deemed necessary to achieve the educational goals of the college:

(1) Academic freedom.

(a) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(b) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(c) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(d) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(2) Due process.

(a) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(b) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(c) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

NEW SECTION

WAC 132J-126-060 Right to sale of personal property. (1) Students have the right to engage in legal, incidental sales of personal property in private transactions.

(2) All other sales shall take place in Lindbloom Student Center subject to the approval and requirements of the vice-president of student affairs or designee.

NEW SECTION

WAC 132J-126-070 Denial of access to Green River Community College. (1) The vice-president of student affairs may deny admission to a prospective student, or continued attendance to an enrolled student, if it reasonably appears that the student would not be competent to profit from the curriculum offerings of the college, or would, by the student's presence or conduct, create a disruptive atmosphere within the college or a substantial risk of actual harm to self or other members of the campus community.

(2) Denial of access decisions may be appealed, as or like disciplinary actions, to the student conduct committee.

NEW SECTION

WAC 132J-126-080 Rights of ownership of works. It shall be the policy of Green River Community College that employees of the college shall not use students' published or unpublished works for personal gain without written consent of the student.

NEW SECTION

WAC 132J-126-090 Conduct—Student responsibilities. Any student shall be subject to disciplinary action as provided for in this chapter, who either as a principal actor, aide, abettor, or accomplice as defined in RCW 9A.08.020:

Materially and substantially interferes with the personal rights or privileges of others or the educational process of the college;

Violates any provision of this chapter; or

Commits any prohibited act including, but not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication. In academically honest writing or speaking, the student documents his/her source of information whenever:

Another person's exact words are quoted;

Another person's idea, opinion or theory is used through paraphrase; and

Facts, statistics, or other illustrative materials are borrowed.

In order to complete academically honest work, students should:

Acknowledge all sources according to the method of citation preferred by the instructor;

Write as much as possible from one's own understanding of the materials and in one's own voice;

Ask an authority on the subject, such as the instructor who assigned the work; and

Seek help from academic student services such as the library and/or writing center.

(2) **Definition of plagiarism.** Plagiarism is defined as using others' original ideas in your written or spoken work without giving proper credit.

Ideas include, but are not limited to:

Facts;
Opinions;
Images;
Statistics;
Equations;
Hypotheses;
Theories.

Plagiarism can occur in two ways: Intentional and unintentional.

Ways that intentional plagiarism occur include, but are not limited to:

Turning in someone else's work as your own;
Copying words or ideas from someone else without giving credit;
Failing to put a quotation in quotation marks;
Giving incorrect information about the source of a quotation;
Changing words but copying the sentence structure of a source without giving credit;

Copying so many words or ideas from a source that it makes up the majority of your work, whether you give credit or not.

Unintentional plagiarism may occur when a student has tried in good faith to document their academic work but fails to do so accurately and/or thoroughly. Unintentional plagiarism may also occur when a student has not had course work covering plagiarism and documentation and is therefore unprepared for college academic writing or speaking.

(3) **Definition of cheating.** Cheating is defined as intentional deception in producing or creating academic work. Cheating includes, but is not limited to:

Intentional plagiarism;
Selling or giving your own completed work to others who intend to turn it in as their own;
Purchasing or accepting the work of others with the intent of turning it in as your own;
Acquiring and/or using teachers' editions of textbooks, without the permission of the specific instructor, in order to complete your course assignments;

Obtaining or attempting to obtain an examination prior to its administration;

Referring to devices, materials or sources not authorized by the instructor;

Receiving assistance from another person when not authorized by the instructor;

Providing assistance to another person when not authorized by the instructor;

Taking an examination for another person;

Obtaining or attempting to obtain another person to take one's own examination;

Falsifying laboratory results or copying another person's laboratory results; and

Falsifying or attempting to falsify the record of one's grades or evaluation.

(4) **Definition of fabrication.** Fabrication is defined as intentional misrepresentation of an activity done by a student for an academic project or practicum. Fabrication includes, but is not limited to:

Counterfeiting data, research results, information, or procedures with inadequate foundation in fact;

Counterfeiting a record of internship or practicum experiences;

Submitting a false excuse for absence or tardiness; and

Unauthorized multiple submission of the same work; sabotage of others' work.

(5) **Tobacco, electronic cigarettes, and related products.** The use of tobacco, electronic cigarettes, and related products are not allowed on college campus. In addition to the main campus, this also includes any building and premises owned, leased or operated by the college outside of the main campus. "Related products" include, but are not limited to cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

(6) **Alcohol.** The use, possession, delivery, sale, or being visibly under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(7) **Drugs/substance abuse.**

(a) Any student who, while in any college facility or participating in a college-related program, uses, possesses, consumes, is demonstrably under the influence of, or sells any narcotic drug or controlled substance as defined in RCW 69.50.101, in violation of law or in a manner which significantly disrupts a college activity, shall be subject to discipline. For purposes of this section, "sell" includes the statutory meaning in RCW 69.50.410.

(b) **Marijuana.** The use, possession, delivery, sale, or being visibly under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form, is prohibited. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(8) **Conduct at college functions.** Any student who significantly disrupts or obstructs any teaching, research, administration, disciplinary proceedings, other college activities, including its public service functions on or off campus, or of other authorized noncollege activities when the conduct occurs on college premises.

(9) **Theft; stolen property; robbery.** Any student who, while in any college facility or participating in a college-related program, commits or attempts to commit theft as defined in RCW 9A.56.020, or possesses stolen property as defined in RCW 9A.56.140, or commits or attempts to commit robbery as defined in RCW 9A.56.190, shall be subject to discipline.

(10) **Damaging property.**

(a) Any student who causes or attempts to cause physical damage to property owned, controlled or operated by the college, or to property owned, controlled or operated by another person while said property is located on college facilities, shall be subject to discipline.

(b) Any student who in this or any other manner is guilty of malicious mischief in violation of RCW 9A.48.070 through 9A.48.100.

(11) **Abuse; intimidation.** Physical abuse, verbal abuse, threats, intimidation, coercion, and/or other conduct which threatens or endangers the health or safety of any person.

(12) **Hazing.** Hazing, defined as an act which endangers the mental or physical health or safety of a student, or which destroys or removes public or private property, for the purpose of initiation, admission into, affiliation with, or as a condition for continued membership in, a group or organization. The express or implied consent of the victim will not be a defense. Apathy or acquiescence in the presence of hazing are not neutral acts; they are violations of this rule.

(13) **Failure to comply.** Failure to comply with directions of college officials, campus safety officers, or law enforcement officers acting in performance of their duties and/or failure to identify oneself to these persons when requested to do so.

(14) **Possession of keys.** Unauthorized possession, duplication or use of keys to any college premises or unauthorized entry to or use of college premises.

(15) **Policy violation.** Violation of any college policy, rule, or regulation published in hard copy or available electronically on the college web site.

(16) **Violation of laws.** Violation of any federal, state, or local law.

(17) **False alarms.** Falsely setting off or otherwise tampering with any emergency safety equipment, alarm, or other device established for the safety of individuals and/or college facilities.

(18) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media and electronic.

(19) **Sexual misconduct.**

(a) Sexual misconduct is any sexual activity with another that is unwanted and nonconsensual. Sexual misconduct includes physical contact as well as voyeurism.

(b) Consent to sexual activity requires that, at the time of the act, there are actual words or conduct demonstrating freely given agreement to sexual activity, silence or passivity is not consent. Even if words or conduct alone seem to imply consent, sexual activity is nonconsensual when:

(i) Force or blackmail is threatened or used to procure compliance with the sexual activity; or

(ii) The person is unconscious or physically unable to communicate his or her unwillingness to engage in sexual activity; or

(iii) The person lacks the mental capacity at the time of the sexual activity to be able to understand the nature or consequences of the act, whether that incapacity is produced by illness, defect, the influence of alcohol or another substance, or some other cause.

(c) A person commits voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, he or she knowingly views, photographs, or films another person, without that person's knowledge and consent, while the person being viewed, photographed, or filmed is in a place where he or she has a reasonable expectation of privacy.

(d) The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members.

(e) The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(20) **Sexual violence.** The term "sexual violence" incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated without clear, knowing, and voluntary consent, such as committing a sexual act against a person's will, exceeding the scope of consent, or where the person is incapable of giving consent, including rape, sexual assault, sexual battery, sexual coercion, sexual exploitation, gender- or sex-based stalking. The term further includes acts of dating or domestic violence. A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause.

(21) **Weapons and fireworks.** Possession or use of fireworks anywhere on campus; possession, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife, or any other cutting or stabbing instrument, or club, or incendiary device, or explosive, or any facsimile weapons, or any other weapon apparently capable of producing bodily harm and/or property damage is prohibited on the college campus, subject to the following exceptions: Commissioned law enforcement personnel, legally authorized military personnel, or bank-related security personnel required by their office to carry such weapons or devices; possession or use of disabling chemical sprays when used for self-defense; or the president may authorize possession of a weapon on campus upon a showing that the weapon is reasonably related to a legitimate pedagogical purpose.

(22) **Demonstrations.** Participating in an on-campus or off-campus demonstration, riot, or activity that disrupts the normal operations of the college and/or infringes on the rights of other members of the college community; leading or inciting others to disrupt scheduled and/or normal activities within any campus building or area.

(23) **Disorderly conduct.** Conduct that is disorderly, lewd, indecent, or obscene; breach of peace; or aiding, abetting, or procuring another person to breach the peace on college premises or at functions sponsored by, or participated in by, the college or members of the college community. Disorderly conduct includes, but is not limited to, any unauthorized use of electronic or other devices to make an audio or

video record of any person while on college premises without his/her prior knowledge, or without his/her effective consent when such a recording is in a place or situation where he or she has a reasonable expectation of privacy. This includes, but is not limited to, surreptitiously taking pictures of another person in a gym, locker room, or restroom.

(24) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community because of his/her race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(25) **Stalking.** Stalking, defined as intentionally and repeatedly harassing or following a person and intentionally or unintentionally placing the person being followed or harassed in fear of physical harm to one's self or property or physical harm to another person or another's property.

(26) **Improper use of technology.** Theft or other abuse of computer facilities and resources including, but not limited to:

(a) Unauthorized entry into a file, to use, read, or change the contents, or for any other purpose.

(b) Unauthorized transfer of a file.

(c) Use of another individual's identification and/or password.

(d) Use of computing facilities and resources to interfere with the work of another student, faculty member, or college official.

(e) Use of computing facilities and resources to view or send obscene or abusive messages.

(f) Use of computing facilities and resources to interfere with normal operation of the college computing system.

(g) Use of computing facilities and resources in violation of copyright laws.

(h) Any violation of the Student Affairs Policy SA-24 - Student Acceptable Computer Use.

(27) **Forgery or alteration of records.** Any student who, while in any college facility or participating in a college-related program, engages in forgery, as defined in RCW 9A.60.020.

(28) **Disruption of conduct process.** Abuse of the student conduct system including, but not limited to:

(a) Falsification, distortion, or misrepresentation of information before a student conduct officer.

(b) Disruption or interference with the orderly conduct of a student conduct hearing proceeding.

(c) Institution of a student conduct code proceeding in bad faith.

(d) Attempting to discourage an individual's proper participation in, or use of, the student conduct system.

(e) Attempting to influence the impartiality of a member of a student conduct officer prior to, and/or during the course of, the student conduct hearing proceeding.

(f) Harassment (verbal or physical) and/or intimidation of a member of a student conduct officer prior to, during, and/or after a student conduct hearing proceeding.

(g) Failure to comply with the sanction(s) imposed under the student code.

(h) Influencing or attempting to influence another person to commit an abuse of the student conduct code system.

(29) **False complaint.** Filing a formal complaint falsely accusing another student or college employee with violating a provision of this chapter.

(30) **Classroom conduct.** Any student who significantly disrupts any college class and makes it unreasonably difficult to conduct the class in an orderly manner shall be subject to disciplinary action. An instructor/faculty member may impose any of the following actions for classroom conduct:

(a) Warning: An oral or written notice to a student that college and/or classroom expectations about conduct have not been met.

(b) Reprimand: A written notice which censures a student for improper conduct and includes a warning that continuation or repetition of improper conduct shall result in further disciplinary action.

(c) Summary suspension for a maximum of two days: As defined in WAC 132J-126-230.

At any time, severe misconduct or continued misconduct shall be just cause for the matter to be forwarded immediately to the vice-president of student affairs or designee for further action.

NEW SECTION

WAC 132J-126-100 Violation of law and college discipline. (1) College disciplinary proceedings may be instituted against a student charged with conduct that potentially violates both the criminal law and this student code (that is, if both possible violations result from the same factual situation) without regard to the pendency of civil or criminal litigation in court or criminal arrest and prosecution. Proceedings under this student code may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus at the discretion of the vice-president of student affairs or designee. Determinations made or sanctions imposed under this student code shall not be subject to change because criminal charges arising out of the same facts giving rise to violation of college rules were dismissed, reduced, or resolved in favor of, or against the criminal law defendant.

(2) When a student is charged by federal, state, or local authorities with a violation of law, the college will not request or agree to special consideration for that individual because of his or her status as a student. If the alleged offense is also being processed under the student code, the college may advise off-campus authorities of the existence of the student code and of how such matters are typically handled within the college community. The college will attempt to cooperate with law enforcement and other agencies in the enforcement of criminal law on campus and in the conditions imposed by criminal courts for the rehabilitation of student violators (provided that the conditions do not conflict with campus rules or sanctions). Individual students and other members of the college community, acting in their personal capacities, remain free to interact with governmental representatives as they deem appropriate.

NEW SECTION**WAC 132J-126-120 Purpose of disciplinary action.**

The college may apply sanctions or take other appropriate action for violations of the student code of conduct. Disciplinary proceedings shall determine whether and under what conditions the violator may continue as a student of the college.

NEW SECTION

WAC 132J-126-130 Disciplinary terms. The following definitions of disciplinary terms have been established to provide consistency in the application of penalties:

(1) **Warning** - A notice in writing to the student that the student is violating or has violated institutional regulations.

(2) **Probation** - A written reprimand for violation of specified regulations. Probation is indefinite or for a designated period of time and includes the probability of more severe disciplinary sanctions if the student is found to violate any institutional regulation(s) during the probationary period.

(3) **Loss of privileges** - Denial of specified college privileges for a designated period of time.

(4) **Fines** - Previously established and published fines may be imposed.

(5) **Restitution** - Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement.

(6) **Discretionary sanctions** - These may include, but are not limited to, work assignments, essays, service to the college, or other related discretionary assignments.

(7) **College suspension** - Separation of the student from the college for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified.

(8) **College dismissal** - Permanent separation of the student from the college.

(9) **Revocation of admission and/or degree** - Admission to or a degree awarded from the college may be revoked for fraud, misrepresentation, or other violation of college standards in obtaining the degree, or for other serious violations committed by a student prior to graduation.

(10) **Registration hold** - Students may have their registration privileges put on hold pending the completion of specified sanctions/conditions. Holds may be placed and removed only by the vice-president of student affairs or designee.

(11) Deactivation, loss of privileges, including college recognition, for a specified period of time, applies to groups and organizations.

NEW SECTION**WAC 132J-126-140 Initiation of disciplinary action.**

(1) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the president shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall

briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting the student conduct officer may take disciplinary action based upon the available information.

(3) Within ten days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting his or her decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

(4) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings;

(b) Impose a disciplinary sanction(s), as described in WAC 132J-126-130;

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

NEW SECTION**WAC 132J-126-150 Appeal from disciplinary action.**

The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within twenty-one days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(1) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(2) The parties to an appeal shall be the respondent and the conduct review officer.

(3) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(4) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

(5) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

(6) The student conduct committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of ten instructional days;

(b) Dismissals; and

(c) Discipline cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(7) Student conduct appeals from the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

- (a) Suspensions of ten instructional days or less;
- (b) Disciplinary probation;
- (c) Written reprimands; and
- (d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(8) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

NEW SECTION

WAC 132J-126-160 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer designated by the president. The conduct review officer shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) Before taking action, the conduct review officer shall conduct an informal hearing and provide each party (a) an opportunity to be informed of the agency's view of the matter; and (b) an opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon both the parties within ten days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within twenty-one days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) If the conduct review officer upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or dismissal, the matter shall be referred to the student conduct committee for a disciplinary hearing.

NEW SECTION

WAC 132J-126-170 Brief adjudicative proceedings—Review of an initial decision. (1) An initial decision is subject to review by the president, provided the respondent files a written request for review with the conduct review officer within twenty-one days of service of the initial decision.

(2) The president shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the

proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within twenty days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within twenty days after the request is submitted.

(5) If the president upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or dismissal, the matter shall be referred to the student conduct committee for a disciplinary hearing.

NEW SECTION

WAC 132J-126-180 Student conduct committee. (1) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government;

(b) Two faculty members appointed by the president;

(c) One administrative staff member (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The administrative staff member shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

NEW SECTION

WAC 132J-126-190 Appeal—Student conduct committee. (1) Proceedings of the student conduct committee shall be governed by the Administrative Procedure Act, chapter 34.05 RCW, and by the Model Rules of Procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(2) The student conduct committee chair shall serve all parties with written notice of the hearing not less than seven days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The chair may shorten this notice period if both parties agree, and

also may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct prehearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of (a) the conduct officer's notification of imposition of discipline (or referral to the committee); and (b) the notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) Each party may be accompanied at the hearing by a nonattorney assistant of his/her choice. A respondent may elect to be represented by an attorney at his or her own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent is represented by an attorney, the student conduct officer may also be represented by a second, appropriately screened assistant attorney general.

NEW SECTION

WAC 132J-126-200 Student conduct appeals committee hearings—Presentations of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either (a) proceed with the hearing and issuance of its decision; or (b) serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of

the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that he/she selects, in accordance with RCW 34.05.-449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recordings shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer (unless represented by an assistant attorney general) shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

NEW SECTION

WAC 132J-126-210 Student conduct committee—Initial decision. (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

NEW SECTION

WAC 132J-126-220 Appeal from student conduct committee initial decision. (1) A respondent who is

aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within twenty-one days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president shall provide a written decision to all parties within forty-five days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) The president may, at his or her discretion, suspend any disciplinary action pending review of the merits of the findings, conclusions, and disciplinary actions imposed.

(5) The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

NEW SECTION

WAC 132J-126-230 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety, or welfare of members of the college community; or

(c) Poses an ongoing threat of disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass

shall be included that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5)(a) An officer designated by the president, who shall be someone other than the conduct review officer, shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension. The hearing will be conducted as a brief adjudicative proceeding.

(b) During the summary suspension hearing, the issue before the reviewing officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope.

(c) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope.

(d) If the student fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings.

(e) As soon as practicable following the hearing, the conduct review officer shall issue a written decision which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal.

(f) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices who may be bound or protected by it.

NEW SECTION

WAC 132J-126-240 Supplemental procedures for sexual misconduct cases. Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision-making process and to appeal any disciplinary decision.

Application of the following procedures is limited to student conduct code proceedings involving allegations of sexual misconduct by a student. In such cases, these procedures shall supplement the student disciplinary procedures in WAC 132J-126-140 through 132J-126-230. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.

NEW SECTION

WAC 132J-126-250 Supplemental definitions. The following supplemental definitions shall apply for purposes of student conduct code proceedings involving allegations of sexual misconduct by a student:

(1) A "complainant" is an alleged victim of sexual misconduct, as defined in subsection (2) of this section.

(2) "Sexual misconduct" is prohibited sexual- or gender-based conduct by a student including, but not limited to:

(a) Sexual activity for which clear and voluntary consent has not been given in advance;

(b) Sexual activity with someone who is incapable of giving valid consent because, for example, she or he is underage, sleeping or otherwise incapacitated due to alcohol or drugs;

(c) Sexual harassment;

(d) Sexual violence, which includes, but is not limited to, sexual assault, domestic violence, intimate violence, and sexual- or gender-based stalking;

(e) Nonphysical conduct such as sexual- or gender-based digital media stalking, sexual- or gender-based online harassment, sexual- or gender-based cyberbullying, nonconsensual recording of a sexual activity, and nonconsensual distribution of a recording of a sexual activity.

NEW SECTION

WAC 132J-126-260 Supplemental complaint process. The following supplemental procedures shall apply with respect to complaints or other reports of alleged sexual misconduct by a student:

(1) The college's Title IX compliance officer shall investigate complaints or other reports of alleged sexual misconduct by a student. Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(2) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(3) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety, and welfare of the complainant or other members of the college community or compromising the college's duty to investigate and process sexual harassment and sexual violence complaints.

(4) The student conduct officer, prior to initiating disciplinary action, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(5) The student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure that

prompt notice of the protective disciplinary sanctions and/or conditions.

NEW SECTION

WAC 132J-126-270 Supplemental appeal rights. (1) The following actions by the student conduct officer may be appealed by the complainant:

(a) The dismissal of a sexual misconduct complaint; or

(b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(2) A complainant may appeal a disciplinary decision by filing a notice of appeal with the conduct review officer within twenty-one days of service of the notice of the discipline decision provided for in WAC 132J-126-260. The notice of appeal may include a written statement setting forth the grounds of appeal. Failure to file a timely notice of appeal constitutes a waiver of this right and the disciplinary decision shall be deemed final.

(3) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(4) Except as otherwise specified in this supplemental procedure, a complainant who timely appeals a disciplinary decision or who intervenes as a party to a respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

(5) An appeal by a complainant from the following disciplinary actions involving allegations of sexual misconduct against a student shall be handled as a brief adjudicative proceeding:

(a) Exoneration and dismissal of the proceedings;

(b) A disciplinary warning;

(c) A written reprimand;

(d) Disciplinary probation;

(e) Suspensions of ten instructional days or less; and/or

(f) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(6) An appeal by a complainant from disciplinary action imposing a suspension in excess of ten instructional days or a dismissal shall be reviewed by the student conduct board.

(7) In proceedings before the student conduct committee, respondent and complainant shall have the right to be accompanied by a nonattorney assistant of their choosing during the appeal process. The complainant may choose to be represented at the hearing by an attorney at his or her own expense, but will be deemed to have waived that right unless, at least four business days before the hearing, he or she files a written notice of the attorney's identity and participation with the committee chair, and with copies to the respondent and the student conduct officer.

(8) In proceedings before the student conduct committee, complainant and respondent shall not directly question or cross examine one another. All questions shall be directed to the committee chair, who will act as an intermediary and pose questions on the parties' behalf.

(9) Student conduct hearings involving sexual misconduct allegations shall be closed to the public, unless respon-

dent and complainant both waive this requirement in writing and request that the hearing be open to the public. Complainant, respondent, and their respective nonattorney assistants and/or attorneys may attend portions of the hearing where argument, testimony and/or evidence are presented to the student conduct committee.

(10) The chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon the complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights.

(11) Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties.

(12) The president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

NEW SECTION

WAC 132J-126-280 Brief adjudicative proceedings authorized. This rule is adopted in accordance with RCW 34.05.482 through 34.05.494. Brief adjudicative proceedings shall be used, unless provided otherwise by another rule or determined otherwise in a particular case by the president, or a designee, in regard to:

(1) Student conduct appeals involving the following disciplinary actions:

- (a) Suspensions of ten instructional days or less;
- (b) Disciplinary probation;
- (c) Written reprimands;
- (d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions; and
- (e) Appeals by a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:

(i) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or

(ii) Issues a verbal warning to respondent.

(2) Brief adjudicative proceedings are informal hearings and shall be conducted in a manner which will bring about a prompt fair resolution of the matter.

NEW SECTION

WAC 132J-126-290 Brief adjudicative proceedings—Agency record. The agency record for brief adjudicative proceedings shall consist of any documents regarding the matters that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the review-

ing officer for any review. These records shall be maintained as the official record of the proceedings.

NEW SECTION

WAC 132J-126-300 Recordkeeping. (1) The vice-president of student affairs shall maintain for at least six years the following records of student grievance and disciplinary actions and proceedings:

(a) Only initial and final orders in cases where a student's grievance has been sustained or a disciplinary action against a student has been reversed and the student fully exonerated;

(b) The complete records, including all orders, in all other cases where adjudication has been requested;

(c) A list or other summary of all disciplinary actions reported or known to the vice-president and not appealed.

(2) Final disciplinary actions shall be entered on student judicial records, provided that the vice-president of student affairs shall have discretion to remove some or all of that information from a student's judicial record upon the student's request and showing of good cause.

Chapter 132J-150 WAC

POLICY ON THE USE OF THE COLLEGE FACILITIES

NEW SECTION

WAC 132J-150-010 Use of college facilities. Because Green River Community College is an educational institution provided and maintained by the people of the state, its campus, buildings, properties, and facilities shall be reserved at all times for those activities which either are related directly to its educational mission or are justifiable on the basis of their contributions to the cultural, social, or economic development of the state.

NEW SECTION

WAC 132J-150-020 Limitation of use to school activities. The college buildings, properties, and facilities, including those assigned to student programs, may be used only for:

(1) The regularly established teaching, research, or public service activities of the college and its departments or related agencies.

(2) Cultural, educational, or recreational activities of the students or of the faculty or staff.

(3) Short courses, conferences, seminars, or similar events, conducted either in the public service or for the advancement of specific departmental professional interests, when arranged under the sponsorship of the college or its departments.

(4) Public events of a cultural or professional nature brought to the campus at the request of college departments or committees and presented with their active sponsorship and active participation.

(5) Activities or programs sponsored by educational institutions, by state or federal agencies, by charitable agencies or civic or community organizations whose activities are

of widespread public service and of a character appropriate to the college.

(6) College facilities shall be assigned to student organizations for regular business meetings, social functions and for programs open to the public. Any recognized campus student organization may invite speakers from outside the college community. In conformance with state guidelines, the appearance of an invited speaker on campus does not represent an endorsement by the college, its students, faculty, administration or the board of trustees, whether implicit or explicit, of the speaker's views.

(7) Reasonable conditions may be imposed to regulate the timeliness of requests, to determine the appropriateness of space assigned, time of use, and to ensure the proper maintenance of the facilities. Subject to the same limitations, college facilities shall be made available for assignment to individuals or groups within the college community. Such arrangements by both organizations and individuals must be made through the designated administrative officer. Allocation of space shall be made in accordance with published college regulations and on the basis of time, space availability, priority of request and the demonstrated needs of the individual, group or organization.

(8) Use of space shall not interfere with regularly scheduled classes or activities. Physical abuse of assigned facilities may result in limitation of future allocation of space to the offending parties. Charges may be imposed for damage or for any unusual costs for the use of facilities. The individual, group or organization requesting space will be required to state in advance the general purpose of any meeting. If any charge or collection of funds is contemplated, advance permission from the party giving authority for space allocations will be required.

NEW SECTION

WAC 132J-150-030 Limitation of use. (1) Primary consideration shall be given at all times to activities specifically related to the college's mission, and no arrangements shall be made that may interfere with, or operate to the detriment of, the college's own teaching, research, or public service programs.

(2) College facilities may be rented to private or commercial organizations or associations, but college facilities may not be used for commercial sales, solicitations, advertising or promotional activities, unless:

(a) Such activities serve educational purposes of the college; and

(b) Such activities are under the sponsorship of a college department or office or officially chartered student club.

(3) College facilities are available to recognized student groups, subject to these general policies and to the rules and regulations of the college governing student affairs.

(4) No person or group may use or enter onto college facilities having in their possession firearms, even if licensed to do so, except commissioned law enforcement officers or individuals who receive written prior approval from the president of the college or designee.

NEW SECTION

WAC 132J-150-040 Administrative control. The board hereby delegates to the president authority to set up administrative procedures for proper review of the use of college facilities; to establish, within the framework of these policies, regulations governing such use; and to establish rental schedules where appropriate.

NEW SECTION

WAC 132J-150-050 Trespass. (1) Individuals who are not students or members of the faculty or staff and who violate the district's rules, or whose conduct threatens the safety or security of its students, staff, or faculty will be advised of the specific nature of the violation, and if they persist in the violation, they will be requested by the campus president, or his or her designee, to leave the college property. Such a request will be deemed to prohibit the entry of, withdraw the license or privilege to enter onto or remain upon any portion of the college property by the person or group of persons requested to leave, and subject such individuals to arrest under the provisions of chapter 9A.52 RCW.

(2) Members of the college community (students, faculty, and staff) who do not comply with these regulations will be reported to the appropriate college office or agency for action in accordance with established college policies.

(3) When the college revokes the license or privilege of any person to be on college property, temporarily or for a stated period of time, that person may file a request for review of the decision with the vice-president of administration or designee within ten days of receipt of the trespass notice. The request must contain the reasons why the individual disagrees with the trespass notice. The trespass notice will remain in effect during the pendency of any review period. The decision of the vice-president of business administration or designee will be the final decision of the college and should be issued within five work days.

NEW SECTION

WAC 132J-150-060 Prohibited conduct at college facilities. (1) State law relative to public institutions governs the use or possession of intoxicants on campus or at college functions. The use or possession of unlawful narcotics or drugs, not medically prescribed, on college property or at college functions, is prohibited. Students obviously under the influence of intoxicants, unlawful drugs or narcotics while in college facilities shall be subject to disciplinary action.

(2) A lottery or any other form of gambling is prohibited at Green River Community College.

(3) The use of tobacco, electronic cigarettes, and related products is not allowed on college premises.

(4) Destruction of property is also prohibited by state law in reference to public institutions.

Chapter 132J-155 WAC

USE OF FACILITIES FOR FIRST AMENDMENT
ACTIVITIESNEW SECTION

WAC 132J-155-010 Statement of purpose. Green River Community College is an educational institution provided and maintained by the people of the state of Washington. College facilities are reserved primarily for educational use including, but not limited to, instruction, research, public assembly of college groups, student activities and other activities directly related to the educational mission of the college. The public character of the college does not grant to individuals the right to substantially interfere with, or otherwise disrupt the normal activities for and to which the college's facilities and grounds are dedicated. Accordingly, the college is designated a public forum opened for the purposes recited herein and further subject to the time, place, and manner provisions set forth in these rules.

The purpose of the time, place, and manner regulations set forth in this policy is to establish procedures and reasonable controls for the use of college facilities for both college and noncollege groups. It is intended to balance the college's responsibility to fulfill their mission as state educational institutions of Washington with the interests of college groups and noncollege groups who are interested in using the campus for purposes of constitutionally protected speech, assembly or expression. The college recognizes that college groups should be accorded the opportunity to utilize the facilities and grounds of the college to the fullest extent possible. The college intends to open its campus to noncollege groups to the extent that the usage does not conflict with the rights of college groups or substantially disrupt the educational process.

NEW SECTION

WAC 132J-155-020 Definitions. "College facilities" or "campus" includes all buildings, structures, grounds, office space, and parking lots.

"College group" means individuals who are currently enrolled students or current employees of Green River Community College or individuals who are sponsored by faculty, a recognized student organization or a recognized employee group of the college.

"Noncollege group" means individuals or groups who are not currently enrolled students or current employees of Green River Community College.

"Public forum areas" means those areas of campus that the college has chosen to be open as places for expressive activities protected by the first amendment, subject to reasonable time, place or manner provisions.

"Sponsor" means that when a college group invites a noncollege group onto campus, the college group will be responsible for the activity and will designate an individual to be present at all times during the activity. The sponsor will ensure that those participating in the sponsored activity are aware of the college's rules and policies governing the activ-

ity. This definition does not apply to noncollege groups that rent college facilities.

NEW SECTION

WAC 132J-155-030 Use of facilities. (1) There shall be no camping on college facilities or grounds between the hours of 10:00 p.m. and 6:00 a.m. Camping is defined to include sleeping, cooking activities, or storing personal belongings, for personal habitation, or the erection of tents or other shelters or structures used for purposes of personal habitation.

(2) Any sound amplification device may only be used at a volume which does not disrupt or disturb the normal use of classrooms, offices or laboratories, or any previously scheduled college activity.

(3) College groups are encouraged to notify the campus public safety department no later than twenty-four hours in advance of an activity. However, unscheduled activities are permitted so long as the activity does not displace any other activities occurring at the college.

(4) All sites used for first amendment activities should be cleaned up and left in their original condition and may be subject to inspection by a representative of the college after the activity. Reasonable charges may be assessed against the sponsoring organization for the costs of extraordinary cleanup or for the repair of damaged property.

(5) All college and noncollege groups must comply with fire, safety, sanitation or special regulations specified for the activity.

(6) The activity must not be conducted in such a manner as to obstruct vehicular, bicycle, pedestrian, or other traffic or otherwise interfere with ingress or egress to the college, college buildings or facilities, or college activities. The activity must not create safety hazards or pose safety risks to others.

(7) The activity must not substantially interfere with educational activities inside or outside any college building or otherwise prevent the college from fulfilling its mission and achieving its primary purpose of providing an education to its students. The activity must not substantially infringe on the rights and privileges of college students, employees, or invitees to the college.

(8) College facilities may not be used for commercial sales, solicitations, advertising or promotional activities, unless:

(a) Such activities serve educational purposes of the college; and

(b) Such activities are under the sponsorship of a college department, office, or officially chartered student club.

(9) The activity must also be conducted in accordance with any other applicable college policies and rules, local ordinances, state, and federal laws.

NEW SECTION

WAC 132J-155-040 Additional requirements for noncollege groups. (1) College facilities may be rented by noncollege groups in accordance with the college's facilities use policy. Noncollege groups may otherwise use college facilities in accordance with Green River Community College's rules.

(2) The college designates its grounds and outdoor spaces as the public forum area(s) for use by noncollege groups for first amendment activities on campus. Nothing in these rules prohibits noncollege groups from engaging in first amendment activities at open public meetings, subject to the requirements of RCW 42.30.050.

(3) Noncollege groups may use the public forum areas for first amendment activities between the hours of 6:00 a.m. and 10:00 p.m. on days that the college is open to the general public.

(4) Before engaging in first amendment activities, all noncollege groups are encouraged to sign in and notify the college of the noncollege group's presence on campus and to acknowledge receipt of these rules and to ensure that there are no scheduling conflicts. This notice does not involve any application or approval process, and therefore, the ability to use designated areas will not be denied unless they are already reserved for use by another group. This notice is intended to provide the college with knowledge of the noncollege group's presence on campus so that the college can notify the appropriate members of its staff whose services might be needed or impacted by the use of the designated area. When signing in, the individual or group are encouraged to provide the following information:

(a) The name, address, and telephone number of the individual, group, entity, or organization sponsoring the activity (hereinafter "the sponsoring organization");

(b) The name, address, and telephone number of a contact person for the sponsoring organization;

(c) The date, time, and requested location of the activity;

(d) The type of sound amplification devices to be used in connection with the activity, if any; and

(e) The estimated number of people expected to participate in the activity.

NEW SECTION

WAC 132J-155-050 Distribution of materials. Information may be distributed as long as it is not obscene or does not promote the imminent prospect of actual violence or harm. The distributor is encouraged, but not required, to include its name and address on the distributed information. College groups may post information on bulletin boards, kiosks and other display areas designated for that purpose, and may distribute materials throughout the open areas of campus. Noncollege groups may distribute materials only on the grounds and outside spaces of the campus.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132J-125-010 Purpose.

WAC 132J-125-020 Definitions.

WAC 132J-125-030 Jurisdiction.

WAC 132J-125-055 Right to demand identification.

WAC 132J-125-060 Freedom of expression.

WAC 132J-125-065 Right to assembly.

WAC 132J-125-070 Right to outside speakers.

WAC 132J-125-075 Right to sale of personal property.

WAC 132J-125-080 Distribution of materials.

WAC 132J-125-085 Denial of access to Green River Community College.

WAC 132J-125-090 Trespass.

WAC 132J-125-095 Smoking.

WAC 132J-125-100 Liquor.

WAC 132J-125-105 Drugs/substance abuse.

WAC 132J-125-110 Conduct at college functions.

WAC 132J-125-115 Theft—Stolen property—Robbery.

WAC 132J-125-120 Damaging property.

WAC 132J-125-125 Interference—Intimidation.

WAC 132J-125-130 Offensive language.

WAC 132J-125-135 Sexual harassment.

WAC 132J-125-140 Forgery or alteration of records.

WAC 132J-125-145 Computer trespass.

WAC 132J-125-150 Firearms/explosives.

WAC 132J-125-155 Other punishable acts.

WAC 132J-125-160 Initiation and types of nonacademic discipline.

WAC 132J-125-165 Appeal of nonacademic discipline.

WAC 132J-125-170 College disciplinary board.

WAC 132J-125-180 Academic responsibilities.

WAC 132J-125-190 Student academic rights.

WAC 132J-125-200 Plagiarism/cheating.

WAC 132J-125-210 Classroom conduct.

WAC 132J-125-220 Initiation of academic discipline.

WAC 132J-125-230 Student academic grievance.

WAC 132J-125-240 Appeal of academic discipline—Filing of academic grievance.

WAC 132J-125-250 College academic board.

WAC 132J-125-260 Discipline and grievance—Type of adjudicative proceeding.

WAC 132J-125-270 Discipline and grievance—Proceedings generally.

WAC 132J-125-280 Discipline and grievance—Regular adjudicative proceedings.

WAC 132J-125-290 Discipline and grievance—Brief adjudicative proceedings.

WAC 132J-125-300 Summary suspension or removal.

WAC 132J-125-310 Recordkeeping.

WSR 14-20-115
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Operations Support and Services Division)
 (Language Testing and Certification Program)
 [Filed October 1, 2014, 8:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-03-070.

Title of Rule and Other Identifying Information: Chapter 388-03 WAC, Certification of DSHS spoken language interpreters, translators, employees, and licensed agency personnel (LAPL).

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on November 25, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than November 26, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., November 25, 2014.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, TTY (360) 664-6178 or (360) 664-6092 or e-mail Kildaja@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:

- To reflect the changed name of the program;
- To implement agreements reached between OFM and WFSE/AFSCME;
- To specify and implement interpreter precertification training requirements;
- To specify and implement interpreter postcertification continuing education requirements; and
- To specify and implement interpreter decertification process and procedures.

All of the above are changes to existing chapter 388-03 WAC. Anticipated effects of the proposed changes include program operations that will conform to common industry standards and improved quality of certified interpreters/translators. The ultimate effect of the proposal is to improve the quality of interpreter services to the limited English proficient population.

Statutory Authority for Adoption: RCW 74.08.090; 45 C.F.R. Section 80.3 (b)(2); RCW 74.04.025; Civil Rights Act of 1964.

Statute Being Implemented: RCW 74.04.025.

Rule is necessary because of federal law, federal court decision, and state court decision: Civil Rights Act of 1964; *Reyes vs. Thompson* Consent Order (1991).

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Hungling Fu, (360) 664-6035; Implementation and Enforcement: Maria Siguenza, (360) 664-6038.

No small business economic impact statement has been prepared under chapter 19.85 RCW. As explained in the cost-benefit analysis, the DSHS language testing and certification program has analyzed the existing rules and the proposed rule amendment and concludes that they will impose no costs on small businesses.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Hungling Fu, 1115 Washington Street S.E., Olympia, WA 98501, phone (360) 664-6035, e-mail fuh@dshs.wa.gov.

September 22, 2014
 Katherine I. Vasquez
 Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 14-21 issue of the Register.

WSR 14-20-121
PROPOSED RULES
LIQUOR CONTROL BOARD
 [Filed October 1, 2014, 10:35 a.m.]

Supplemental Notice to WSR 14-16-118.

Preproposal statement of inquiry was filed as WSR 14-13-044.

Title of Rule and Other Identifying Information: A new section in Title 314 WAC, WAC 314-02-112 What is a caterer's license? The new rule explains the requirements for the caterer's license and the activities allowed under the license.

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on November 5, 2014, at 10:00 a.m.

Date of Intended Adoption: November 12, 2014.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 09504 [98504], e-mail rules@liq.wa.gov, fax (360) 664-9689, by November 5, 2014.

Assistance for Persons with Disabilities: Contact Karen McCall by November 5, 2014, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New rules are needed to clarify new legislation that passed in the 2014 legislative session, ESHB 2680.

Reasons Supporting Proposal: Applicants applying for the caterer's license need to know the requirements for the license and what activities are allowed under the license.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, Chief Enforcement, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not required.

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

October 1, 2014
Sharon Foster
Chairman

NEW SECTION

WAC 314-02-112 What is a caterer's license? (1) A caterer's license allows the licensee to sell spirits, beer, and wine by the individual serving for consumption on the premises at a catered event location.

(2) The catered event location must be owned, leased, or operated by:

(a) The holder of the caterer's license; or

(b) The sponsor of the event for which the catering services are being provided.

(3) The caterer licensee is responsible for all areas of a location where alcohol is sold, served, consumed, or stored.

(4) If the catered event is open and advertised to the public, the event must be sponsored by a nonprofit society or organization as defined in RCW 66.24.375.

(a) A registered nonprofit holding a public or civic event may invite a caterer to provide alcohol service at a location within the parameters of the event.

(b) If attendance at the catered event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement in subsection (2) of this section does not apply.

(5) A spirits, beer, and wine caterer licensee must have the ability to serve at least eight complete meals. A commissary kitchen, licensed by the city and/or county health department, shall be maintained in a substantial manner as a place for preparing and cooking complete meals. The caterer licensee must maintain the kitchen equipment necessary to prepare the complete meals required under this section. The complete meals must be prepared at the licensed commissary kitchen premises. For the purposes of this title:

(a) "Complete meal" means an entrée and at least one side dish.

(b) "Entrée" means the main course of a meal. Some examples of entrées are fish, steak, chicken, pork, pasta, pizza, hamburgers, seafood salad, Cobb salad, chef's salad, sandwiches, and breakfast items (as long as they include a side dish). Entrées do not include snack items, or menu items which consist solely of precooked frozen food that is reheated, or consist solely of carry-out items obtained from another business.

(c) Examples of side dishes are soups, vegetables, salads, potatoes, french fries, rice, fruit, and bread.

(6) A beer and wine caterer licensee must have the ability to provide minimum food service. A commissary kitchen shall be maintained in a substantial manner as a place for preparing and cooking minimum food service. The caterer licensee must maintain the kitchen equipment necessary to prepare minimum food service required under this section.

The minimum food service must be prepared at the licensed commissary kitchen premises. For purposes of this title:

"Minimum food service" means items such as sandwiches, salad, soup, hamburgers, pizza, and fry orders.

(7) The applicant must provide the liquor control board with a copy of their commissary kitchen license issued by the city or county health department.

(8) The licensee is required to send a list of scheduled catered events to their regional enforcement office on the first of each month. The licensee must provide the following information:

(a) Date of the catered events;

(b) Time of the catered events; and

(c) Place and location of catered events.

Any changes to the information provided to the board must be reported to the regional enforcement office seventy-two hours prior to the catered event.

(9) A caterer's license holder is not allowed to cater events at a liquor licensed premises.

(10) The holder of the caterer's license may store liquor on other premises operated by the licensee if the licensee owns or has a leasehold interest at the other premises. Documentation must be provided to the board showing the licensee owns or has a leasehold interest in the property.

(11) All employees that sell or serve alcohol must hold MAST permits.

(12) The annual fee for the caterer's license is as follows:

(a) The annual fee for beer is two hundred dollars;

(b) The annual fee for wine is two hundred dollars; and

(c) The annual fee for a combined spirits, beer, and wine is one thousand dollars.

WSR 14-20-122

PROPOSED RULES

LIQUOR CONTROL BOARD

[Filed October 1, 2014, 10:36 a.m.]

Supplemental Notice to WSR 14-16-119.

Preproposal statement of inquiry was filed as WSR 14-13-047.

Title of Rule and Other Identifying Information: WAC 314-02-015 What is a spirits, beer, and wine restaurant license?, 314-02-041 What is a hotel license?, 314-02-045 What is a beer and/or wine restaurant license?, 314-02-070 What is a tavern license?, 314-02-105 What is a beer and/or wine specialty store?, 314-20-017 Brewery and microbrewery retail liquor licenses—Selling kegs and containers, 314-24-160 Domestic wineries—Retail sales of wine on winery premises—Wine served without charge on premises—Spirits, beer and wine restaurant operation, and 314-24-161 Domestic winery—Additional locations for retail sales only.

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on November 5, 2014, at 10:00 a.m.

Date of Intended Adoption: November 12, 2014.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9689, by November 5, 2014.

Assistance for Persons with Disabilities: Contact Karen McCall by November 5, 2014, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revisions to current rules are needed to clarify new legislation that passed in the 2014 legislative session. In addition, revisions to current rules regarding additional location wineries are needed to allow multiple licenses under the same entity at a single location.

Reasons Supporting Proposal: Applicants and licensees need to know the requirements to sell wine or cider "growlers" under the licenses that allow such activity. Wineries that want to have multiple licenses at their additional locations need to be aware of the requirements for those licenses.

Statutory Authority for Adoption: RCW 66.08.030, 66.24.371, 66.24.590.

Statute Being Implemented: RCW 66.24.170, 66.24.240, 66.24.244, 66.24.354, 66.24.371, 66.24.590, 66.28.360.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, Chief Enforcement, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not required.

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

October 1, 2014
Sharon Foster
Chairman

AMENDATORY SECTION (Amending WSR 13-06-024, filed 2/27/13, effective 3/30/13)

WAC 314-02-015 What is a spirits, beer, and wine restaurant license? (1) Per RCW 66.24.400, this license allows a restaurant to:

- (a) Serve spirits by the individual glass for on-premises consumption;
- (b) Serve beer by the bottle or can or by tap for on-premises consumption;
- (c) Serve wine for on-premises consumption;
- (d) Allow patrons to remove recorked wine from the licensed premises;
- (e) Sell wine by the bottle for off-premises consumption with the appropriate endorsement; and
- (f) Sell kegs of malt liquor with the appropriate endorsement. This endorsement also allows the sale of beer or cider as defined in RCW 66.24.210(6) to a purchaser in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap by the retailer at the time of sale.

(2) To obtain and maintain a spirits, beer, and wine restaurant license, the restaurant must be open to the public at least five hours a day during the hours of 8:00 a.m. and 11:00 p.m., three days a week.

(3) All applicants for a spirits, beer, and wine license must establish, to the satisfaction of the board, that the premises will operate as a bona fide restaurant. The term "bona fide restaurant" is defined in RCW 66.24.410(2).

AMENDATORY SECTION (Amending WSR 11-23-045, filed 11/9/11, effective 12/10/11)

WAC 314-02-041 What is a hotel license? (1) Per RCW 66.24.590, this license allows a hotel to:

- (a) Serve spirits by the individual serving for consumption on the licensed premises;
 - (b) Serve beer, including strong beer, and wine for consumption on the licensed premises;
 - (c) Sell at retail, from locked honor bars, in individual units, spirits not to exceed fifty milliliters, beer in individual units not to exceed twelve ounces, and wine in individual bottles not to exceed three hundred eighty-five milliliters, to registered guests of the hotel for consumption in guest rooms;
 - (d) Provide, without additional charge, to overnight guests, spirits, beer, and wine by the individual serving for consumption on the licensed premises at a specified regular date, time, and place. Self-service by guests is prohibited;
 - (e) Sell beer, including strong beer, wine, or spirits, in the manufacturer's sealed container or by the individual drink to guests through room service, or through service to occupants of private residential units which are part of the buildings or complex of buildings, that include the hotel;
 - (f) Sell beer, including strong beer, and wine, in the manufacturer's sealed container at retail sales locations within the hotel premises;
 - (g) Place in guest rooms at check-in, complimentary beer, including strong beer, or wine in a manufacturer's sealed container; and
 - (h) Sell beer and cider as defined in RCW 66.24.210(6) to a purchaser in a sanitary container brought to the premises by the purchaser or furnished by the licensee and filled at the tap in the restaurant area by the licensee at the time of sale.
- (2) The annual fee for a hotel license is two thousand dollars.

AMENDATORY SECTION (Amending WSR 13-06-024, filed 2/27/13, effective 3/30/13)

WAC 314-02-045 What is a beer and/or wine restaurant license? (1) Per RCW 66.24.320 and 66.24.354, this license allows a restaurant to:

Privilege	Annual fee
(a) Serve beer by the bottle or can or by tap for on-premises consumption.	\$200
(b) Serve wine for on-premises consumption (see RCW 66.24.320 regarding patrons removing recorked wine from the premises).	\$200

Privilege	Annual fee
(c) Sell beer and/or wine in the original, unopened containers for off-premises consumption.	\$120
(d) Sell tap beer for off-premises consumption in a sanitary container holding less than four gallons of beer, and brought to the premises by the purchaser.	In conjunction with off-premises privilege outlined in ((subsection)) (c) of this subsection.
(e) <u>Sell cider as defined in RCW 66.24.210(6) for off-premises consumption to a purchaser in a sanitary container brought to the premises by the purchaser or provided by the licensee and filled at the tap in the restaurant at the time of purchase. The licensee must comply with federal regulations.</u>	<u>In conjunction with off-premises privilege outlined in (c) of this subsection.</u>
(f) Sell beer in kegs or other containers holding at least four gallons of beer (see WAC 314-02-115 regarding the requirements for registering kegs).	In conjunction with off-premises privilege outlined in ((subsection)) (c) of this subsection.

(2) All applicants for a beer and/or wine restaurant license must establish, to the satisfaction of the board, that the premises will operate as a bona fide restaurant, as defined in RCW 66.04.010(30).

(a) Minimum food service is required, as defined in WAC 314-02-010.

(b) To obtain and maintain a beer and/or wine restaurant license, the restaurant must be open to the public at least five hours a day, three days a week.

(3) If a beer and/or wine restaurant's dedicated dining area comprises less than fifteen percent of the total customer service area, the premises must maintain a tavern license (see WAC 314-02-070 regarding the tavern license).

AMENDATORY SECTION (Amending WSR 11-23-045, filed 11/9/11, effective 12/10/11)

WAC 314-02-070 What is a tavern license? (1) Per RCW 66.24.330 and 66.24.354, this license allows a tavern to:

Privilege	Annual fee
(a) Serve beer by the bottle or can or by tap for on-premises consumption.	\$200
(b) Serve wine for on-premises consumption.	\$200
(c) Sell beer and/or wine in the original, unopened containers for off-premises consumption.	\$120

Privilege	Annual fee
(d) Sell tap beer for off-premises consumption in a sanitary container holding less than four gallons of beer, and brought to the premises by the purchaser.	In conjunction with off-premises privilege outlined in ((subsection)) (c) of this subsection.
(e) <u>Sell cider as defined in RCW 66.24.210(6) for off-premises consumption to a purchaser in a sanitary container brought to the premises by the purchaser or provided by the licensee and filled at the tap in the tavern at the time of purchase. The licensee must comply with federal regulations.</u>	<u>In conjunction with off-premises privilege outlined in (c) of this subsection.</u>
(f) Sell beer in kegs or other containers holding at least four gallons of beer (see WAC 314-02-110 regarding the requirements for registering kegs).	In conjunction with off-premises privilege outlined in ((subsection)) (c) of this subsection.

(2) A tavern licensee may not allow persons under twenty-one years of age on the premises at any time (see RCW 66.44.316 for information regarding employees and professional musicians under twenty-one years of age).

AMENDATORY SECTION (Amending WSR 13-08-002, filed 3/20/13, effective 4/20/13)

WAC 314-02-105 What is a beer and/or wine specialty store license? (1) Per RCW 66.24.371, a beer and/or wine specialty store license allows a licensee to sell beer and/or wine for off-premises consumption.

(2) The annual fee for this license is one hundred dollars.

(3) Qualifications for license - To obtain and maintain a beer and/or wine specialty store license, the premises must be stocked with an inventory of beer and/or wine in excess of three thousand dollars wholesale value. This inventory must be:

(a) Stocked within the confines of the licensed premises; and

(b) Maintained on the premises at all times the premises is licensed, with the exception of beginning and closing inventory for seasonal operations or when the inventory is being sold out immediately prior to discontinuing or selling the business.

(4) Qualifications to sample - A beer and/or wine specialty store licensee may allow customers to sample beer and wine for the purpose of sales promotion, if the primary business is the sale of beer and/or wine at retail, and the licensee meets the requirements outlined in either (a) or (b) of this subsection:

(a) A licensee's gross retail sales of alcohol exceeds fifty percent of all annual gross sales for the entire business; or

(b) The licensed premises is a beer and/or wine specialty store that conducts bona fide cooking classes for the purpose of pairing beer and/or wine with food, under the following conditions:

(i) The licensee must establish to the satisfaction of the board that the classes are bona fide cooking courses. The licensee must charge participants a fee for the course(s).

(ii) The sampling must be limited to a clearly defined area of the premises.

(iii) The licensee must receive prior approval from the board's licensing and regulation division before conducting sampling with cooking classes.

(iv) Once approved for sampling, the licensee must provide the board's enforcement and education division a list of all scheduled cooking classes during which beer and/or wine samples will be served. The licensee must notify the board's enforcement and education division at least forty-eight hours in advance if classes are added.

(5) Licensees who qualify for sampling under subsection (4) of this section may sample under the following conditions:

(a) Employees conducting sampling must hold a class 12 alcohol server permit;

(b) No more than a total of ten ounces of alcohol may be provided to a customer during any one visit to the premises;

(c) Each sample must be two ounces or less.

(6) A beer and/or wine specialty store licensee may sell beer in kegs or other containers holding at least four gallons of beer. See WAC 314-02-115 regarding keg registration requirements.

(7) A beer and/or wine specialty store licensee may receive an endorsement to permit the sale of beer and cider as defined in RCW 66.24.210(6) to a purchaser in a sanitary container brought to the premises by the purchaser, or provided by the licensee or manufacturer, and filled at the tap by the licensee at the time of sale under the following conditions:

(a) The beer and/or wine specialty store sales of alcohol must exceed fifty percent of their total sales; (~~(or)~~)

(b) The board may waive the fifty percent beer and/or wine sale criteria if the beer and/or wine specialty store maintains a wholesale alcohol inventory that exceeds fifteen thousand dollars.

AMENDATORY SECTION (Amending WSR 09-02-009, filed 12/29/08, effective 1/29/09)

WAC 314-20-017 Brewery and microbrewery retail liquor licenses—Selling kegs and containers. A brewery or microbrewery licensed under RCW 66.24.240 or 66.24.244 may hold up to two retail liquor licenses to operate a spirits, beer, and wine restaurant, a tavern, a beer and/or wine restaurant, or any combination thereof.

(1) Definitions.

(a) For the purposes of this section, a "container" is a sealable receptacle, such as a carton, jug, growler or keg, and has no minimum holding requirement. A "keg" is a container holding four gallons or more.

(b) "Malt liquor" is a specific type of "beer" (as explained in RCW 66.04.010).

(c) "Beer" includes malt liquor and flavored malt beverages (as explained in RCW 66.04.010).

(2) Applicable to retail licenses for spirits, beer, and wine restaurants, beer and/or wine restaurants, and taverns.

(a) A retail license is separate from a brewery or microbrewery license.

(b) All containers of beer must be sold from the retail premises.

(c) A retail location may be located on or off the brewery or microbrewery premises.

(3) A brewery-operated or microbrewery-operated spirits, beer, and wine restaurant may sell containers of beer of its own production and cider as defined in RCW 66.24.210(6) without a kegs-to-go endorsement provided that it sells this beer and cider for off-premises consumption only. A brewery or microbrewery may supply the container or use a container brought to the premises by a customer, and filled at the tap at the time of sale.

(4) A brewery-operated or microbrewery-operated spirits, beer, and wine restaurant may sell kegs of malt liquor of another brewery's or microbrewery's production provided that it:

(a) Sells this malt liquor for off-premises consumption only;

(b) Has a kegs-to-go endorsement; and

(c) Supplies the kegs.

(5) A tavern or beer and/or wine restaurant that is operated by a brewery or microbrewery and has an off-premises beer and wine retailer's privilege may:

(a) Sell kegs of malt liquor for either on-premises or off-premises consumption. The malt liquor may be of the licensee's own production or the production of another brewery or microbrewery; (~~and~~)

(b) Sell containers of beer for either on-premises or off-premises consumption provided that the customer supplies the container. The beer may be of the licensee's own production or the production of another brewery or microbrewery; and

(c) Sell containers of cider as defined in RCW 66.24.210(6) for off-premises consumption in a sanitary container brought to the premises by the customer or provided by the licensee and filled at the tap at the time of sale, provided the licensee has a license to sell wine. The licensee must comply with federal regulations.

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

WAC 314-24-160 Domestic wineries—Retail sales of wine on winery premises—Wine served without charge on premises—Spirit, beer and wine restaurant operation.

(1) A domestic winery holding a proper retail license, pursuant to chapter 66.24 RCW, may sell wine of its own production at retail on the winery premises.

(2) In selling wine of its own production at retail on its premises as provided in subsection (1) of this regulation, a domestic winery shall conduct such operation in conformity with the statutes and regulations which apply to holders of such wine retailers' licenses. The winery shall maintain

records of its retail operation separate from other winery operation records.

(3) Upon written authorization of the board, pursuant to RCW 66.04.011, wine of a domestic winery's own production and/or liquor products other than wine of a licensee's own production may be consumed in designated parks and picnic areas adjacent to and held by the same ownership as the domestic winery.

(4) A domestic winery or a lessee of a licensed domestic winery operating a spirit, beer and wine restaurant, licensed pursuant to RCW 66.28.295, shall conduct such operation in conformity with the statutes and regulations which apply to holders of such spirit, beer and wine restaurant licenses.

(5) A domestic winery may serve its own wine and wine not of its own production without charge on the winery premises as authorized by RCW 66.28.295.

(6) No retail license or fee is required for the holder of a domestic winery license to serve wine without charge on the winery premises as set forth in subsection (5) of this regulation. Before exercising this privilege, however, such winery shall obtain approval of the proposed service area and facilities. Such winery shall maintain a separate record of all wine so served.

(7) A domestic winery may sell for off-premises consumption wine of its own production in kegs or sanitary containers brought to the premises by the purchaser or furnished by the licensee and filled at the tap at the time of sale.

(8) A winery is required to obtain the appropriate retail license to sell beer, wine, or spirits on the winery premises that is not of its own production.

AMENDATORY SECTION (Amending WSR 09-02-010, filed 12/29/08, effective 1/29/09)

WAC 314-24-161 Domestic winery—Additional locations for retail sales only. A licensee holding a domestic winery license under RCW 66.24.170 may apply for two additional location licenses.

(1) Wine-related retail activities allowed at an additional location include:

(a) Serving of samples provided with or without charge to customers (must be wine of the winery's own production). Samples are subject to taxes under WAC 314-19-015 (4)(b);

(b) Selling wine of the winery's own production for either on-premises or off-premises consumption; (~~and~~)

(c) Selling for off-premises consumption wine of its own production in kegs or sanitary containers brought to the premises by the purchaser or furnished by the licensee and filled at the tap at the time of sale; and

(d) Renting space for public and private events, such as catered events (subject to all of the provisions of this section, to Title 66 RCW covering the "tied house" restrictions, and to RCW 66.24.320 and 66.24.420).

(2) A licensee may request approval for an outside designated area. For the purpose of this section, an "outside designated area" means a specific area located on an outside track of land where alcohol consumption is allowed.

(a) An outside designated area must have prior written approval from the board's licensing division.

(b) The outside designated area shall be marked as such, and shall be enclosed in accordance with WAC 314-02-130(1).

(c) The outside designated area shall be on the licensed premises.

(3) Anyone involved in the selling or serving of wine, including the pouring of samples, at an additional location for on-premises consumption must obtain a Class 12 or Class 13 alcohol server permit.

(4) A winery additional location may hold a beer and wine restaurant license at the additional location premises under the following conditions:

(a) The licensee must apply for a beer and wine restaurant license with fees for the additional location:

(i) If a location is shared with multiple wineries not of the same entity, violations will be addressed per the requirements of RCW 66.24.170(4).

(ii) Where the location is shared with multiple wineries, the applicant will include in their application a list of other license holders at that location as well as a sketch illustrating the location of each licensee.

(b) The licensee must abide by all laws and rules of the retail license; and

(c) No free samples are allowed on the retail portion of the premises.

**WSR 14-20-125
PROPOSED RULES
NOXIOUS WEED
CONTROL BOARD**

[Filed October 1, 2014, 11:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-14-021 [14-14-094].

Title of Rule and Other Identifying Information: Chapter 16-750 WAC, State noxious weed list and schedule of monetary penalties. The board is proposing to amend the state noxious weed list for 2014. Specifically, the board is considering: The addition of one Class A noxious weed and three Class C noxious weeds; reclassification of one Class A noxious weed; modifications to designations of nine Class B noxious weeds; updates of scientific names of three noxious weeds; extension of officer terms.

Hearing Location(s): The Confluence Technology Center, 285 Technology Center Way, Wenatchee, WA 98801, on November 4, 2014, at 1:00-3:00 p.m.

Date of Intended Adoption: November 28, 2014.

Submit Written Comments to: Alison Halpern, Washington State Noxious Weed Control Board (WSNWCB), P.O. Box 42560, Olympia, WA 98504-2560, e-mail ahalpern@agr.wa.gov or noxiousweeds@agr.wa.gov, fax (360) 902-2094, by November 3, 2013 [2014].

Assistance for Persons with Disabilities: Contact Wendy DesCamp by October 31, 2014, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington state noxious weed list provides the basis for noxious weed

control efforts for county noxious weed control boards and other entities. It also provides guidelines for the state noxious weed control board. This proposal makes several amendments to WAC 16-750-005 through 16-750-015.

Reasons Supporting Proposal: WSNWCB is charged with updating the state noxious weed list on an annual basis to ensure it accurately reflects the noxious weed control priorities and noxious weed distribution.

Statutory Authority for Adoption: Chapter 17.10 RCW.

Statute Being Implemented: Chapter 17.10 RCW.

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

Name of Proponent: WSNWCB, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Alison Halpern, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2053.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.030 (1)(a) requires that an agency prepare a small business economic impact statement (SBEIS) for proposed rules that impose more than a minor cost on businesses in an industry. An analysis of the direct economic effects of the proposed rule amendments indicates that costs to small businesses would be negligible or none at all. A copy of the analysis is shown below, and it can also be obtained by contacting Alison Halpern, WSNWCB, P.O. Box 42560, Olympia, WA 98504-2560.

AN ANALYSIS TO DETERMINE IF AN SBEIS IS REQUIRED FOR WSNWCB PROPOSALS TO CHANGE THE NOXIOUS WEED LIST (RCW 17.10.080)

Rule Summary: RCW 17.10.080 authorizes the WSNWCB to adopt a state noxious weed list annually to make changes as deemed necessary and helpful in reducing the threat and impact of noxious weeds in the state. These annual changes to the weed list are based primarily on proposals received by the WSNWCB, and they are voted on in November following a public hearing. Possible changes to the weed list include but are not limited to: The addition of new species; deletion of species that have been eradicated or found to be less detrimental than originally predicted; changes in Class B areas designated for control; the change of noxious weed class of a species.

The current proposed changes to the 2015 noxious weed list include:

- Adding Ravenna grass, *Saccharum ravennae*, as a Class A noxious weed.
- Adding pampas grass, *Cortaderia selloana*, as a Class C noxious weed.
- Adding jubata grass, *Cortaderia jubata*, as a Class C noxious weed.
- Adding Italian arum, *Arum italicum*, as a Class C noxious weed.
- Reclassifying shiny geranium, *Geranium lucidum*, from a Class A to a Class B noxious weed.
- Undesignating Dalmatian toadflax, knapweeds (meadow, spotted, diffuse), knotweeds (all except Himalayan), and yellow archangel in Cowlitz County.

- Undesignate the wall hawkweed subgenus in King County.
- Designate hoary alyssum throughout Okanogan County and correct Class B designation in the rest of Region 4.
- Update scientific names of *Cardaria draba* (now *Lepidium draba*), *Cardaria pubescens* (now *Lepidium appelianum*) and *Centaurea jacea x nigra* (now *Centaurea .x moncktonii*).
- Extend WSNWCB officer term from one year to two years.

Purpose of this Analysis: RCW 19.85.030 requires agencies to prepare an SBEIS if the proposed rule will impose more than minor costs on businesses in an industry. The purpose of this analysis is to determine if the proposed changes to the 2015 noxious weed list will impose "more than minor costs" on the businesses directly affected by these proposed changes, which would thereby require WSNWCB to prepare a formal SBEIS.

Nature of aforementioned noxious weed species in Washington:

Proposed additions of Class A noxious weed: Ravenna grass is a large, nonnative, perennial, ornamental grass that has been found escaping in eastern Washington in the last couple of years. It produces large basal clumps of leaves that can crowd out native and desirable plant species. In Washington, seeds of Ravenna grass are spreading from ornamental plantings and can successfully germinate in a wide range of habitats, including locations near the Columbia and Yakima rivers. Just this summer, escaped Ravenna grass plants were also found in Oregon, near the Columbia River, becoming Oregon's first document[ed] record. Locations of Ravenna grass are still limited in Washington and by listing it as a Class A noxious weed, eradication would be required throughout the state, thus eliminating the seed source and spread of plants before they become more widespread.

Proposed addition of Class C noxious weeds: Pampas grass is a large, nonnative, perennial bunch grass, with showy plumes, used in ornamental plantings in Washington. It is a known invasive species in California and is also escaped in Oregon. Last year, escaped populations of pampas grass were discovered in Washington, with the largest infestation having almost five hundred plants. Due to its apparent recent spread, its ability to crowd out desirable plant species, and the range of conditions it can establish and survive, listing pampas grass as a Class C noxious weed would increase awareness about the invasiveness of this species as well as provide education on best management practices. The state noxious weed board does not require control of Class C noxious weeds, but adding it to the state noxious weed list would provide county weed boards the option to require control.

Jubata grass is also a large, nonnative, perennial bunchgrass that is occasionally used as an ornamental species. It is a listed noxious weed in California with large infestation occurring along the coast. It is also a noxious weed in Oregon and has been documented in Washington. Last year, escaped populations of pampas grass were discovered in Washington. Due to the similarity in appearance of jubata and pampas grass, and that jubata grass is a listed noxious weed in nearby states, jubata grass is proposed for listing as a Class C nox-

ious weed. This listing would increase awareness about jubata grass and provide information on how to control it. Adding jubata grass to the state noxious weed list would also provide county noxious weed boards the option to require control.

Italian arum is a nonnative, perennial groundcover that was originally introduced as an ornamental plant. While its spread appears to be moderate, once established in the landscape, it is very difficult to control. It has now naturalized in a number of counties in western Washington and appears to be establishing populations more rapidly as additional infestations are being discovered. Due to it establishing in riparian areas and other habitats, its toxicity, and it being very difficult to control once established, it is being proposed as a Class C noxious weed to raise awareness, prevent introductions, and promote control. Adding Italian arum to the state noxious weed list would also provide county noxious weed boards the option to require control.

Proposed reclassifications of existing noxious weeds: Shiny geranium is a small, annual plant of open woodlands and forested habitat, and it also does extremely well in disturbed habitat such as roadsides. Although it was only known to occur in two locations in Washington when it was listed in 2009 as a Class A noxious weed, it has since rapidly expanded its range in Clark County and has been found in several other counties, where it is being effectively controlled. Reclassifying it as a Class B noxious weed and designating it everywhere it [in] Washington except in Clark County will keep this species contained in that [those] counties where control, rather than eradication is a more reasonable goal. Other counties will still work to keep it controlled.

Proposed modifications of current Class B designations: The designations of eleven Class B noxious weeds will be adjusted to better match existing distribution of those species in seven counties. Namely:

- Undesignating Dalmatian toadflax, knapweeds (meadow, spotted, diffuse), knotweeds (all except Himalayan), and yellow archangel in Cowlitz County.
- Undesignate the wall hawkweed subgenus in King County.
- Designate hoary alyssum throughout Okanogan County.
- Correct Class B designation in the rest of Region 4 by undesignating it in Pend Oreille County.

Proposed changes to scientific names: The scientific names of three noxious weeds will be updated to improve consistency with national taxonomic standards.

- *Cardaria draba* → *Lepidium draba*
- *Cardaria pubescens* → *Lepidium appelianum*
- *Centaurea x nigra* → *C. x moncktonii*

Proposed extension of WSNWCB officer terms: Extending the officer (*i.e.*, chair, vice-chair, and secretary) positions to two years gives board members more time to gain experience to be more effective in these elected roles.

Affected Groups and the Cost of Compliance:

The horticultural industry: The horticultural industry is the group of businesses most likely to be indirectly impacted

by the proposed listings Ravenna grass, pampas grass, jubata grass, and Italian arum. However, it is unlikely that these listings will directly cause these businesses to lose sales, revenue, or jobs. The noxious weed list is separate from the WSDA quarantine list (chapter 16-752 WAC), which prohibits the sale and transport of particular species, thus these potential noxious weed listings would not directly prohibit the sales of this [these] plants. Nurseries selling these nonnative, invasive species could potentially experience a decrease in sales of these plants by consumers who voluntarily choose not to purchase ornamental species that are listed noxious weeds. To help assess the magnitude of this indirect economic impact, the state weed board developed a survey through SurveyMonkey (<https://www.surveymonkey.com/s/6DLMYYY>).

A printed survey of the proposed listings for the four aforementioned invasive plants, the 2014 noxious weed list, the WSDA quarantine list, and a self-addressed stamped envelope were initially mailed to two hundred WSDA-licensed nurseries on August 14, 2014. The sampling strategy used was a systematic, random design so that at least three nurseries per county were included in the survey, with King County, Pierce, and Spokane counties weighted more heavily based on demographics. Some counties such as Adams, Columbia, Douglas, and Wahkiakum had fewer than three retail nurseries and did not receive as many surveys. A second round of nineteen surveys was mailed out to different nurseries after nineteen were returned as undeliverable. When possible, these substitute surveys were sent to nurseries within the same counties as the returned ones. A link to the online survey was also sent on August 22 to over one thousand three hundred businesses licensed with WSDA that had provided e-mail addresses in their application.

We received a total of seventy-three online responses between August 22 and September 18, 2014. Additionally, a total of seventy paper copy surveys were mailed back between August 16 and September 30 for a total of one hundred forty-three unique responses.

Demographics of respondents: Of the total responding nurseries and landscaping companies, one hundred twenty-seven indicated that they were considered a small business as defined by RCW 19.85.020. Two establishments were not small businesses. Three respondents were not sure if their businesses were considered small businesses, and eleven left this survey question blank. Nurseries participating in the surveys came from thirty-one different counties. Three respondents noted that their businesses were situated in at least two counties.

Survey results: *Proposed addition of Ravenna grass as a Class A noxious weed:* Of one hundred thirty-three businesses that responded, only six (about 4.5 percent) noted that they carried Ravenna grass. A total of one hundred twenty-five nurseries (94.0 percent) did not carry it, and two (1.5 percent) were not sure. None of the respondents carrying Ravenna grass noted that listing it as a Class A noxious weed would impact their business and an additional eleven respondents who do not carry Ravenna grass felt that listing it would not have an economic impact. One respondent was not sure if it would have an impact. One of the respondents who carries Ravenna grass noted that listing it would have a "minimal

effect on sales ... wouldn't mind if it was listed on noxious weed list."

Proposed addition of Class C noxious weeds:

Pampas grass + jubata grass: Pampas grass and jubata grass were grouped together in the survey, though the respondents had the ability to specify which one they carried. Of one hundred forty-two businesses that responded:

- Twenty-three (about 16.0 percent) indicated that they sold pampas grass.
- Only one (0.71 percent) respondent carried jubata grass.
- A total of one hundred seventeen nurseries (82.4 percent) did not carry pampas grass or jubata grass.
- One nursery (0.71 percent) did not respond to the question.

When asked if listing pampas grass and jubata grass would have an impact on their business:

- Eight respondents (5.6 percent of all nurseries) indicated that listing pampas grass would impact their business.
- Twelve respondents (8.6 percent of all businesses) indicated that it would not impact their business.
- Four respondents (2.8 percent of all businesses) were not sure if a Class C listing of pampas grass would impact their business.
- The nursery selling jubata grass indicated that listing it as a Class C noxious weed would not have an economic impact on its business.
- An additional twelve respondents who carried neither pampas grass or jubata grass indicated that listing them as noxious weeds would not have an economic impact to their business, while one respondent was not sure if there would be an impact.

Six businesses of the eight business[es] that indicated an economic impact provided comments regarding estimated loss revenue or employee hours as a result of listing pampas grass as a Class C noxious weed:

- "Minimal effect on sales ... wouldn't mind if it was listed on noxious weed list."
- \$395/yr.
- \$100/month.
- \$500.
- \$3,000 lost sales.
- "Only if I am unable to be compensated for pampas grass."

Italian arum: Of the one hundred forty responding businesses (three left the answer blank), ten respondents (7.1 percent) indicated that they carried Italian arum as part of their inventory, and one hundred thirty respondents (92.9 percent) indicated that they did not carry this plant. Of the respondents who carry this plant, three businesses (2.1 percent of all nurseries) noted that a Class C noxious weed listing would have an economic impact; however, no estimates of lost revenue or employee hours were provided. Four businesses responded that this proposed listing would not have any impact on their business, and two respondents were not sure. An additional

twelve businesses that did not carry Italian arum noted that a noxious weed listing would not have an economic impact.

Nonspecific groups:

Proposed addition of Class A noxious weed: A Class A noxious weed listing means that the WSNWCB would require eradication of existing Ravenna grass plants. In Benton County, much of the escaped Ravenna grass occurs on federal land. Removal of ornamental plantings will be required; however, county weed boards will be encouraged to work with landowners so that they will be given ample time to remove existing plants and replant noninvasive alternatives. Much of the escaped Ravenna grass in Benton County is on public land, including federally owned land.

Proposed additions of Class C noxious weeds: A Class C listing of a species means that the WSNWCB recognizes that the species meets the criteria of a noxious weed. Control of Class C noxious weeds is not mandated by the state, although county noxious weed control boards have the option of selecting Class C noxious weeds for mandatory control at the local level. The WSNWCB and county weed boards can provide educational material about identification and control of these species. For these three ornamental species (pampas grass, jubata grass, and Italian arum), the WSNWCB will recommend noninvasive alternatives to use in landscaping and gardening, and will actively communicate with the Washington state nursery and [Landscape Association].

Proposed reclassifications of existing noxious weeds: The reclassification of the Class A noxious weed shiny geranium would actually reduce control requirements. Due to the rapid expansion of this plant, many landowners (particular county) in Clark County have technically been out of compliance due to the inability to eradicate these populations. The mandatory eradication of shiny geranium would no longer be required in Clark County, although the county weed board will likely require selective control in specific parts of Clark County. Control in all other counties will still be required, and since control strategies of an annual plant such as shiny geranium are the same as eradication strategies, efforts in other counties will likely not change.

Proposed modifications of current Class B designations: The proposed modifications of designations for nine Class B noxious weeds would have minimal if any economic impacts to small businesses. Class B noxious weeds are generally designated where they are absent, limited, or pose a serious threat to health, agriculture, or natural areas so the economic impact is not unreasonable. Additionally, most of these changes in designations reduce control requirements.

Proposed updating of scientific names of three noxious weeds: Updating taxonomic names of noxious weeds will have no economic impact to landowners.

Proposed extension of WSNWCB officer terms: Extending the WSNWCB officer (*i.e.*, chair, vice-chair, and secretary) positions to two years will not cause any economic impact.

Alternatives to the Proposed Assessment:

Proposed addition of a Class A noxious weed: The alternative to the proposed listing would be that Ravenna grass is not added as Class A noxious weed for 2015, resulting in a status quo of the current situation, whereby individual landowners or land managers have the option of voluntarily con-

trolling Ravenna grass while it is still limited. However, given the recent rate that it has been documented spreading in south-central Washington (and now in Oregon), this plant is likely to become increasing [increasingly] invasive and is a risk in riparian habitat. Federal agencies with Ravenna grass on their property are less likely to voluntarily control it if it is not a listed noxious weed, especially a Class A noxious weed.

Proposed addition of Class C noxious weeds: The alternative to the proposed listings would be to not list pampas grass, jubata grass, and Italian arum as Class C noxious weeds, resulting in a status quo of the current situation, whereby individual landowners or land managers have the option of voluntarily controlling these species. County noxious weed control boards could continue to educate about these species where they are a local concern, but control could not be mandated.

Proposed reclassifications of existing noxious weeds: The alternative to the proposed reclassifications of shiny geranium would be to leave it as Class A noxious weed. All landowners, including those in Clark County where it has become widespread, would be required to eradicate this noxious weed.

Proposed modifications of current Class B designations: The alternative to the proposed modifications to Class B designations would be the [to] leave the designations the way they are. Landowners would still be required to control Class B noxious weeds that do not get undesignated as requested by county weed boards. County weed boards request the designation of a Class B noxious weed would have the option of selecting Class B nondesignates as county selects.

Proposed updating of scientific names of three noxious weeds: The current scientific names, though outdated, would still be used by the WSNWCB.

Proposed extension of WSNWCB officer terms: Terms would continue to be annual.

Conclusions: Few, if any, small businesses will be directly impacted by these proposed changes to the 2015 noxious weed list. Based on feedback from the horticultural industry, Ravenna grass, jubata grass and Italian arum do not seem to be widely carried in the nursery trade, and it is unlikely that these businesses will experience negligible, indirect, negative impacts to sales or revenue, even those nurseries that carry these three plants.

It does appear that more nurseries and landscaping companies still carry or plant pampas grass, which has been commonly used as a landscaping plant. Only a small percentage of total businesses (5.6 percent) indicated that listing pampas grass as a Class C noxious weed could have an economic impact, and one estimate was as high as \$3K in lost revenue. This would not be a direct effect, as the noxious weed listing does not prohibit the continued sale of this species. However, there may be a reduced demand for pampas grass by gardeners, landscapers, and landscaping clients due to its status as an invasive plant.

To mitigate this potential reduction in sales and use of pampas grass (along with Ravenna grass, jubata grass, and Italian arum), the WSNWCB is committed to working with horticulturalists to compile a list of suitable, marketable, non-invasive alternatives. This information will be provided on the WSNWCB web site and, pending available funding, a

reprint of the very successful and popular GardenWise: Non-invasive plants for your garden. The WSNWCB will reach out to the Washington State Nursery and Landscape Association, the Washington Association of Landscape Professionals, and the Washington chapter of the American Society of Landscape Architects to promote these noninvasive alternative[s] to these invasive plants.

Based upon the above analysis, the WSNWCB concludes that minor costs - if any - imposed would affect less than ten percent of small businesses and would not exceed \$100 in lost sales or revenue as a *direct* result of these proposed rule-making changes. Nor would any of these amendments to the noxious weed list directly cause the creation of or loss of any jobs. The WSNWCB concludes that small businesses will not be disproportionately impacted, nor would the proposed rule changes impose more than a minor cost on businesses in an industry. Therefore, we conclude that a formal SBEIS is not required.

A cost-benefit analysis is not required under RCW 34.05.328. The WSNWCB is not one of the agencies listed in this section.

October 1, 2014
 Alison Halpern
 Executive Secretary

AMENDATORY SECTION (Amending WSR 14-02-072, filed 12/30/13, effective 1/30/14)

WAC 16-750-005 State noxious weed list—Class A noxious weeds.

Common Name	Scientific Name
broom, French	<i>Genista monspessulana</i>
broom, Spanish	<i>Spartium junceum</i>
common crupina	<i>Crupina vulgaris</i>
cordgrass, common	<i>Spartina anglica</i>
cordgrass, dense-flowered	<i>Spartina densiflora</i>
cordgrass, salt meadow	<i>Spartina patens</i>
cordgrass, smooth	<i>Spartina alterniflora</i>
dyer's woad	<i>Isatis tinctoria</i>
eggleaf spurge	<i>Euphorbia oblongata</i>
false brome	<i>Brachypodium sylvaticum</i>
floating primrose-willow	<i>Ludwigia peploides</i>
flowering rush	<i>Butomus umbellatus</i>
garlic mustard	<i>Alliaria petiolata</i>
giant hogweed	<i>Heracleum mantegazzianum</i>
goatsrue	<i>Galega officinalis</i>
hydrilla	<i>Hydrilla verticillata</i>
Johnsongrass	<i>Sorghum halepense</i>
knapweed, bighead	<i>Centaurea macrocephala</i>
knapweed, Vochin	<i>Centaurea nigrescens</i>

Common Name	Scientific Name	Common Name	Scientific Name
kudzu	<i>Pueraria montana</i> var. <i>lobata</i>	silverleaf nightshade	<i>Solanum elaeagnifolium</i>
meadow clary	<i>Salvia pratensis</i>	spurge flax	<i>Thymelaea passerina</i>
oriental clematis	<i>Clematis orientalis</i>	Syrian bean-caper	<i>Zygophyllum fabago</i>
purple starthistle	<i>Centaurea calcitrapa</i>	Texas blueweed	<i>Helianthus ciliaris</i>
<u>Ravenna grass</u>	<u><i>Saccharum ravennae</i></u>	thistle, Italian	<i>Carduus pycnocephalus</i>
reed sweetgrass	<i>Glyceria maxima</i>	thistle, milk	<i>Silybum marianum</i>
ricefield bulrush	<i>Schoenoplectus mucronatus</i>	thistle, slenderflower	<i>Carduus tenuiflorus</i>
sage, clary	<i>Salvia sclarea</i>	variable-leaf milfoil	<i>Myriophyllum heterophyllum</i>
sage, Mediterranean	<i>Salvia aethiopsis</i>	wild four o'clock	<i>Mirabilis nyctaginea</i>
(shiny geranium)	<i>Geranium lucidum</i>		

AMENDATORY SECTION (Amending WSR 14-02-072, filed 12/30/13, effective 1/30/14)

WAC 16-750-011 State noxious weed list—Class B noxious weeds.

Name		Will be a "Class B designate" in all lands lying within:	
(1)	blueweed, <i>Echium vulgare</i>	(a)	regions 1, 2, 3, 4, 6
		(b)	region 5, except Spokane County
(2)	Brazilian elodea, <i>Egeria densa</i>	(a)	region 1, except Grays Harbor and Pacific counties
		(b)	region 2, except Kitsap and Snohomish counties
		(c)	King County of region 2, except lakes Dolloff, Fenwick, Union, Washington, and Sammamish, and the Sammamish River
		(d)	region 3, except Wahkiakum County
		(e)	regions 4, 5, and 6
(3)	bugloss, annual, <i>Anchusa arvensis</i>	(a)	regions 1, 2, 3, 4, and 6
		(b)	region 5, except Spokane County
(4)	bugloss, common, <i>Anchusa officinalis</i>	(a)	regions 1, 2, 3, 4, and 6
		(b)	region 5, except Spokane County
(5)	butterfly bush, <i>Buddleja davidii</i>	(a)	The portion of Thurston County lying below the ordinary high-water mark of the Nisqually River in region 2
		(b)	Cowlitz County of region 3
(6)	camelthorn, <i>Alhagi maurorum</i>	(a)	regions 1, 2, 3, 4, and 5
		(b)	region 6, except Walla Walla County
(7)	common fennel, <i>Foeniculum vulgare</i> (except bulbing fennel, <i>F. vulgare</i> var. <i>azoricum</i>)	(a)	region 1, except Jefferson County
		(b)	region 2, except King and Skagit counties
		(c)	region 3, except Clark County
		(d)	regions 4, 5, and 6
(8)	common reed, <i>Phragmites australis</i> (nonnative genotypes only)	(a)	regions 1, 2, 3, and 4
		(b)	region 5, except Grant County
		(c)	Asotin, Columbia, and Garfield counties of region 6

		Will be a "Class B designate" in all lands lying within:	
Name			
(9)	Dalmatian toadflax, <i>Linaria dal-</i> <i>matica</i> ssp. <i>dalmatica</i>	(a)	regions 1((, 2, and 3)) and 2
		(b)	<u>region 3, except Cowlitz County</u>
		(c)	Adams and Lincoln counties of region 5
		((e)) (d)	Benton and Walla Walla counties of region 6
(10)	Eurasian watermilfoil, <i>Myriophyl-</i> <i>lum spicatum</i>	(a)	region 1, except Pacific and Mason counties
		(b)	Island and San Juan counties of region 2
		(c)	Clark and Cowlitz counties of region 3
		(d)	Chelan and Okanogan counties, and all lakes with public boat launches except Fan Lake in Pend Oreille County of region 4
		(e)	Adams and Lincoln counties of region 5
		(f)	Asotin, Columbia, and Garfield counties of region 6
(11)	fanwort, <i>Cabomba caroliniana</i>	(a)	regions 2, 4, 5, and 6
		(b)	region 1, except Grays Harbor
		(c)	region 3, except Cowlitz County
(12)	gorse, <i>Ulex europaeus</i>	(a)	region 1, except Grays Harbor and Pacific counties
		(b)	regions 2, 3, 4, 5, 6
(13)	grass-leaved arrowhead, <i>Sagit-</i> <i>taria graminea</i>	(a)	region 1, except Mason County
		(b)	region 2, except Snohomish County
		(c)	regions 3, 4, 5, and 6
(14)	hairy willow-herb, <i>Epilobium hir-</i> <i>sutum</i>	(a)	regions 1, 3, and 4
		(b)	region 2, except Thurston and Whatcom counties
		(c)	region 5, except Klickitat County
		(d)	Asotin, Columbia, and Garfield counties of region 6
(15)	hawkweed oxtongue, <i>Picris hiera-</i> <i>cioides</i>	(a)	regions 1, 2, 4, 5, and 6
		(b)	region 3, except Skamania County
(16)	hawkweed, orange, <i>Hieracium</i> <i>aurantiacum</i>	(a)	regions 1, 3, and 6
		(b)	region 2, except Whatcom County
		(c)	region 4, except Pend Oreille and Stevens counties
		(d)	region 5, except Kittitas and Spokane counties
(17)	hawkweeds: All nonnative species and hybrids of the Meadow subge- nus (<i>Pilosella</i>), including, but not limited to, mouseear (<i>Hieracium</i> <i>pilosella</i>), pale (<i>H. lactucella</i>), queen-devil (<i>H. glomeratum</i>), tall (<i>H. piloselloides</i>), whiplash (<i>H.</i> <i>flagellare</i>), yellow (<i>H. caespito-</i> <i>sum</i>), and yellow-devil (<i>H. x flori-</i> <i>bundum</i>)	(a)	region 1
		(b)	region 2, except Pierce and Thurston counties
		(c)	region 3, except Cowlitz County
		(d)	Chelan, Douglas, and Okanogan counties of region 4
		(e)	region 5, except Klickitat and Spokane counties
		(f)	region 6

	Name	Will be a "Class B designate" in all lands lying within:
(18)	hawkweeds: All nonnative species and hybrids of the Wall subgenus (<i>Hieracium</i>), including, but not limited to, common (<i>Hieracium lachenalii</i>), European (<i>H. sabaudum</i>), polar (<i>H. atratum</i>), smooth (<i>H. laevigatum</i>), spotted (<i>H. maculatum</i>), and wall (<i>H. murorum</i>)	(a) regions 1, 3, 5, and 6 (b) region 2, except <u>King</u> , Skagit and Whatcom counties (c) region 4, except Stevens County
(19)	herb-Robert, <i>Geranium robertianum</i>	(a) regions 4, 5, and 6
(20)	hoary alyssum, <i>Berteroa incana</i>	(a) regions 1, 2, 3, and 6 (b) ((All areas south of highway 20 in Ferry County and all areas in Okanogan County except Ranges 29-31 East of Townships 37-40 North of)) region 4, <u>except Pend Oreille County and those areas lying north of highway 20 in Ferry County</u> (c) region 5, except Klickitat County
(21)	houndstongue, <i>Cynoglossum officinale</i>	(a) regions 1, 2, and 3 (b) Chelan County of region 4 (c) Yakima, Grant and Adams counties of region 5 (d) Benton County of region 6
(22)	indigobush, <i>Amorpha fruticosa</i>	(a) regions 1, 2, and 4 (b) Lewis and Skamania counties of region 3 (c) region 5, except Klickitat County
(23)	knapweed, black, <i>Centaurea nigra</i>	(a) regions 1, 2, 3, 4, 5, and 6
(24)	knapweed, brown, <i>Centaurea jacea</i>	(a) regions 1, 2, 3, 4, 5, and 6
(25)	knapweed, diffuse, <i>Centaurea diffusa</i>	(a) region 1, except Mason County (b) region((s 2 and 3)) <u>2</u> (c) <u>region 3, except Cowlitz County</u> (d) Adams County of region 5
(26)	knapweed, meadow, <i>Centaurea ((jacea x nigra)) x moncktonii</i>	(a) regions 1((,-3,)) and 4 (b) region 2, except Pierce and Whatcom counties (c) Thurston County of region 2, except below the ordinary high water mark of the Nisqually River (d) <u>region 3, except Cowlitz County</u> (e) region 5, except Kittitas and Klickitat counties ((e)) (f) region 6, except Franklin and Walla Walla counties
(27)	knapweed, Russian, <i>Acroptilon repens</i>	(a) regions 1, 2, and 3 (b) Ferry and Pend Oreille counties of region 4 (c) Lincoln, Spokane, and Whitman counties of region 5 (d) Adams County of region 5, except for the area west of Highway 17 and north of Highway 26 (e) Asotin and Garfield counties of region 6

Name		Will be a "Class B designate" in all lands lying within:	
(28)	knapweed, spotted, <i>Centaurea stoebe</i>	(a)	region 1, except Grays Harbor
		(b)	region 2, except Whatcom County
		(c)	region 3, <u>except Cowlitz County</u>
		(d)	Ferry County of region 4
		(e)	Adams, Grant and Yakima counties of region 5
		(f)	region 6, except Columbia and Walla Walla counties
(29)	knotweed, Bohemian, <i>Polygonum x bohemicum</i>	(a)	Island County of region 2
		(b)	((Cowlitz and)) Skamania ((counties)) <u>County</u> of region 3
		(c)	region 4, except Stevens County
		(d)	region 5, except Whitman and Yakima counties
		(e)	region 6
(30)	knotweed, giant, <i>Polygonum sachalinense</i>	(a)	region 2, except King, Pierce, and Snohomish counties
		(b)	region 3, except <u>Cowlitz and Lewis</u> ((County)) <u>counties</u>
		(c)	regions 4, 5, and 6
(31)	knotweed, Himalayan, <i>Polygonum polystachyum</i>	(a)	region 1, except Pacific County
		(b)	region 2, except King and Pierce counties
		(c)	Cowlitz, Lewis and Skamania counties of region 3
		(d)	region 4, except Stevens County
		(e)	regions 5 and 6
(32)	knotweed, Japanese, <i>Polygonum cuspidatum</i>	(a)	Island, San Juan, and Whatcom counties of region 2
		(b)	((Cowlitz and)) Skamania ((counties)) <u>County</u> of region 3
		(c)	region 4, except Okanogan and Stevens counties
		(d)	region 5, except Spokane County
		(e)	region 6
(33)	kochia, <i>Kochia scoparia</i>	(a)	regions 1, 2, and 3
		(b)	Stevens and Pend Oreille counties of region 4
		(c)	Adams County of region 5
(34)	lesser celandine, <i>Ficaria verna</i>	(a)	Snohomish County of region 2
		(b)	Skamania County of region 3
		(c)	Pend Oreille and Stevens counties of region 4
(35)	loosestrife, garden, <i>Lysimachia vulgaris</i>	(a)	regions 1, 2, 3, 4, 5, 6
(36)	loosestrife, purple, <i>Lythrum salicaria</i>	(a)	Clallam and Jefferson counties of region 1
		(b)	region 2, except Kitsap, Pierce, Skagit, and Snohomish counties
		(c)	Clark, Lewis, and Skamania counties of region 3
		(d)	region 4, except Douglas County
		(e)	region 5, except Grant and Spokane counties
		(f)	Columbia, Garfield, and Walla Walla counties of region 6

Name		Will be a "Class B designate" in all lands lying within:	
(37)	loosestrife, wand, <i>Lythrum virgatum</i>	(a)	Clallam and Jefferson counties of region 1
		(b)	region 2, except Kitsap, Pierce, Skagit, and Snohomish counties
		(c)	Clark, Lewis, and Skamania counties of region 3
		(d)	region 4, except Douglas County
		(e)	region 5, except Grant and Spokane counties
		(f)	Columbia, Garfield, and Walla Walla counties of region 6
(38)	parrotfeather, <i>Myriophyllum aquaticum</i>	(a)	region 1, except Pacific County
		(b)	regions 2, 4, 5, and 6
		(c)	Clark and Skamania counties of region 3
(39)	perennial pepperweed, <i>Lepidium latifolium</i>	(a)	regions 1, 2, and 4
		(b)	region 3, except Clark and Cowlitz counties
		(c)	Kittitas, Lincoln and Spokane counties of region 5
		(d)	Columbia and Garfield counties of region 6
(40)	poison hemlock, <i>Conium maculatum</i>	(a)	Clallam, Mason, and Pacific counties of region 1
		(b)	region 2, except King, Skagit, and Whatcom counties
		(c)	Clark and Skamania counties of region 3
		(d)	Chelan and Pend Oreille counties of region 4
		(e)	Grant, Kittitas and Lincoln counties of region 5
(41)	policeman's helmet, <i>Impatiens glandulifera</i>	(a)	region 1, except Pacific County
		(b)	region 2, except Pierce, Thurston, and Whatcom counties
		(c)	region 3, except Clark County
		(d)	regions 4, 5, and 6
(42)	puncturevine, <i>Tribulus terrestris</i>	(a)	regions 1, 2, and 3
		(b)	Ferry, Pend Oreille, and Stevens counties of region 4
		(c)	region 5, except Grant, Klickitat, and Yakima counties
(43)	rush skeletonweed, <i>Chondrilla juncea</i>	(a)	regions 1 and 3
		(b)	region 2, except Kitsap County
		(c)	region 4, except all areas of Stevens County south of Township 29
		(d)	Kittitas and Yakima counties of region 5, and Adams County, except those areas lying east of Sage Road, the western border of Range 36
		(e)	Asotin County of region 6
(44)	saltcedar, <i>Tamarix ramosissima</i> (unless intentionally planted prior to 2004)	(a)	regions 1, 3, 4, and 5
		(b)	region 2, except King and Thurston counties
		(c)	region 6, except Benton and Franklin counties
(45)	Scotch broom, <i>Cytisus scoparius</i>	(a)	regions 4 and 6
		(b)	region 5, except Klickitat County
(46)	<u>shiny geranium, <i>Geranium lucidum</i></u>	<u>(a)</u>	<u>regions 1, 2, 4, 5, and 6</u>
		<u>(b)</u>	<u>region 3, except Clark County</u>

Name		Will be a "Class B designate" in all lands lying within:	
(47)	spurge laurel, <i>Daphne laureola</i>	(a)	region 1, except Clallam and Jefferson counties
		(b)	region 2, except King, Kitsap, and Pierce counties
		(c)	region 3, except Skamania County
		(d)	regions 4, 5, and 6
((47)) (48)	spurge, leafy, <i>Euphorbia esula</i>	(a)	regions 1, 2, 3, and 4
		(b)	region 5, except Spokane and Whitman counties
		(c)	region 6, except Columbia and Garfield counties
((48)) (49)	spurge, myrtle, <i>Euphorbia myrsinites</i>	(a)	region 1, except Clallam and Jefferson counties
		(b)	region 2, except King, Kitsap, and Whatcom counties
		(c)	regions 3, 5, and 6
		(d)	region 4, except Okanogan and Stevens counties
((49)) (50)	sulfur cinquefoil, <i>Potentilla recta</i>	(a)	region 1
		(b)	region 2, except Pierce and Thurston counties
		(c)	region 3, except Lewis and Skamania counties
		(d)	Adams, Grant, Lincoln, and Whitman counties of region 5
		(e)	region 6, except Asotin County
((50)) (51)	tansy ragwort, <i>Senecio jacobaea</i>	(a)	Island and San Juan counties of region 2
		(b)	Clark and Wahkiakum counties of region 3
		(c)	regions 4 and 6
		(d)	region 5, except Klickitat County
((51)) (52)	thistle, musk, <i>Carduus nutans</i>	(a)	regions 1, 2, 3, and 6
		(b)	region 4, except Douglas and Ferry counties
		(c)	region 5, except Kittitas County
((52)) (53)	thistle, plumeless, <i>Carduus acanthoides</i>	(a)	regions 1, 2, 3, 5, 6
		(b)	region 4, except those areas north of State Highway 20 in Stevens County
((53)) (54)	thistle, Scotch, <i>Onopordum acanthium</i>	(a)	regions 1, 2, and 3
		(b)	region 4, except Douglas County
		(c)	region 5, except Spokane and Whitman counties
((54)) (55)	velvetleaf, <i>Abutilon theophrasti</i>	(a)	regions 1, 2, 3, and 4
		(b)	region 5, except Yakima County
		(c)	region 6, except Franklin County
((55)) (56)	water primrose, <i>Ludwigia hexapetala</i>	(a)	regions 1, 2, 4, 5, and 6
		(b)	region 3, except Cowlitz County
((56)) (57)	white bryony, <i>Bryonia alba</i>	(a)	regions 1, 2, 3, and 4
		(b)	region 5, except Whitman County
		(c)	Benton County of region 6
((57)) (58)	wild chervil, <i>Anthriscus sylvestris</i>	(a)	regions 1, 4, and 6
		(b)	region 2, except Island and Whatcom counties
		(c)	Wahkiakum and Lewis counties of region 3
		(d)	region 5, except Whitman County

Name	Will be a "Class B designate" in all lands lying within:
((58)) (59) yellow archangel, <i>Lamiastrum galeobdolon</i>	(a) Clallam County of region 1 (b) Island, San Juan, Skagit, and Whatcom counties of region 2 (c) ((Cowlitz)) Skamania and Wahkiakum counties of region 3 (d) regions 4, 5, and 6
((59)) (60) yellow floating heart, <i>Nymphoides peltata</i>	(a) regions 1, 2, and 6 (b) region 3, except Cowlitz County (c) region 4, except Stevens County (d) region 5, except Spokane County
((60)) (61) yellow nutsedge, <i>Cyperus esculentus</i>	(a) regions 1, 3, and 4 (b) region 2, except Skagit and Thurston counties (c) region 5, except Klickitat and Yakima Counties (d) region 6, except Franklin and Walla Walla counties
((61)) (62) yellow starthistle, <i>Centaurea solstitialis</i>	(a) regions 1, 2, and 3 (b) region 4, except T36 R38 in the area contained within Hwy 395/Hwy 20, Pingston Creek Road, and Highland Loop Road in Stevens County (c) region 5, except Klickitat, and Whitman counties

AMENDATORY SECTION (Amending WSR 14-02-072, filed 12/30/13, effective 1/30/14)

WAC 16-750-015 State noxious weed list—Class C noxious weeds.

Common Name	Scientific Name	Common Name	Scientific Name
absinth wormwood	<i>Artemisia absinthium</i>	field bindweed	<i>Hedera helix</i> 'Star'
Austrian fieldcress	<i>Rorippa austriaca</i>	fragrant water lily	<i>Convolvulus arvensis</i>
babysbreath	<i>Gypsophila paniculata</i>	hairy whitetop	<i>Nymphaea odorata</i>
black henbane	<i>Hyoscyamus niger</i>	hoary cress	((<i>Cardaria pubescens</i>)) <i>Lepidium appelianum</i>
blackberry, evergreen	<i>Rubus laciniatus</i>	Italian arum	((<i>Cardaria draba</i>)) <i>Lepidium draba</i>
blackberry, Himalayan	<i>Rubus armeniacus</i>	Japanese eelgrass	<i>Arum italicum</i>
blackgrass	<i>Alopecurus myosuroides</i>	jointed goatgrass	<i>Zostera japonica</i>
buffalobur	<i>Solanum rostratum</i>	<u>jubata grass</u>	<i>Aegilops cylindrica</i>
cereal rye	<i>Secale cereale</i>	lawnweed	<i>Cortaderia jubata</i>
common barberry	<i>Berberis vulgaris</i>	lepyrodielis	<i>Soliva sessilis</i>
common catsear	<i>Hypochaeris radicata</i>	longspine sandbur	<i>Lepyrodielis holosteoides</i>
common groundsel	<i>Senecio vulgaris</i>	nonnative cattail species and hybrids	<i>Cenchrus longispinus</i>
common St. Johnswort	<i>Hypericum perforatum</i>		Including, but not limited to, <i>Typha angustifolia</i> , <i>T. domingensis</i> (((<i>T. minima</i>))) and <i>T. x glauca</i>
common tansy	<i>Tanacetum vulgare</i>	old man's beard	<i>Clematis vitalba</i>
common teasel	<i>Dipsacus fullonum</i>	oxeye daisy	<i>Leucanthemum vulgare</i>
curly-leaf pondweed	<i>Potamogeton crispus</i>	<u>pampas grass</u>	<i>Cortaderia selloana</i>
English ivy 4 cultivars only:	<i>Hedera hibernica</i> 'Hibernica'	perennial sowthistle	<i>Sonchus arvensis</i> ssp. <i>arvensis</i>
	<i>Hedera helix</i> 'Baltica'	reed canarygrass	<i>Phalaris arundinacea</i>
	<i>Hedera helix</i> 'Pittsburgh'	Russian olive	<i>Elaeagnus angustifolia</i>

Common Name	Scientific Name
scentless mayweed	<i>Matricaria perforata</i>
smoothseed alfalfa dodder	<i>Cuscuta approximata</i>
spikeweed	<i>Hemizonia pungens</i>
spiny cocklebur	<i>Xanthium spinosum</i>
Swainsonpea	<i>Sphaerophysa salsula</i>
thistle, bull	<i>Cirsium vulgare</i>
thistle, Canada	<i>Cirsium arvense</i>
tree-of-heaven	<i>Ailanthus altissima</i>
white cockle	<i>Silene latifolia</i> ssp. <i>alba</i>
wild carrot (except where commercially grown)	<i>Daucus carota</i>
yellow flag iris	<i>Iris pseudacorus</i>
yellow toadflax	<i>Linaria vulgaris</i>

ary)). Officers are elected by a majority vote of the voting members present.

(5) Vacancies of officers other than chairperson, shall be filled by election of the voting board members present.

AMENDATORY SECTION (Amending WSR 12-01-050, filed 12/15/11, effective 1/15/12)

WAC 16-750-130 State noxious weed control board—Organization. The organization of the board is as follows:

(1) The officers of the board are the chairperson, vice-chairperson, and secretary. The title of the chief administrative officer is the executive secretary.

(2) Duties of officers.

(a) The chairperson presides at all meetings of the board, has the power to appoint committees, acts as ex officio member of all committees except the executive committee, serves as chairperson of the executive committee, serves as official signer of agreements between the board and public or private agencies, and performs such other duties as pertain to the office.

(b) The vice-chairperson performs the duties of the chairperson in his or her absence, acts as an ex officio member of all committees, and any other duties delegated by the chairperson. The vice-chairperson will assume the duties of and serve out the term of the chairperson upon permanent departure of the chairperson.

(c) The secretary is the official keeper of the minutes and, approves them, and presents them to the board for adoption. In the absence of the chairperson and vice-chairperson, the secretary performs the duties of the chairperson.

(d) The duties of the executive secretary, in addition to administrative duties assigned elsewhere in this chapter, are to keep a record of the proceedings of the board, notify all board members, county noxious weed control boards, and weed districts of meetings, act as an ex officio nonvoting member of all committees, negotiate agreements with public and private agencies on behalf of the board, and perform other responsibilities as delegated by the chairperson.

(3) Term of office. Term of office for officers of the board is ~~((twelve months))~~ two years following elections held at the first board meeting in January and ending at the January meeting of the ~~((following))~~ second year.

(4) Election of officers. Elections will be held every two years at the ~~((first))~~ January meeting of the first year ~~((in Jan-~~