

**WSR 15-07-012**  
**PROPOSED RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed March 9, 2015, 10:11 a.m.]

Continuance of WSR 14-24-062.

Preproposal statement of inquiry was filed as WSR 13-14-062.

Title of Rule and Other Identifying Information: Amends WAC 181-77-041 to permit legally deaf individuals to achieve an endorsement to teach American sign language (ASL) without meeting work experience requirements as an interpreter. Sets standards for all teachers of ASL.

Hearing Location(s): Radisson Hotel, SeaTac Airport, 18118 International Boulevard, Seattle, WA 98188, on May 21, 2015, at 8:30.

Date of Intended Adoption: May 21, 2015.

Submit Written Comments to: David Brenna, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by May 14, 2015.

Assistance for Persons with Disabilities: Contact David Brenna by May 14, 2015, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Addresses requirements for teaching ASL through a career and technical education (CTE) certificate.

Reasons Supporting Proposal: Removes barriers for deaf candidates for the certificate and raises standards for all ASL teachers.

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

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

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

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

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

March 9, 2015  
 David Brenna  
 Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 08-16-004, filed 7/23/08, effective 8/23/08)

**WAC 181-77-041 Requirements for candidates seeking career and technical education certification on the basis of business and industry work experience.** Candidates for certification who have not completed approved programs set forth in WAC 181-82-322 shall complete the fol-

lowing requirements in addition to those set forth in WAC 181-79A-150 (1) and (2) and 181-79A-155 (1) and (2).

(1) Initial.

(a) Candidates for the initial certificate shall provide documentation of paid occupational experience in the specific career and technical education subcategory for which certification is sought: Provided, That individuals seeking the initial certification for the sole purpose of instruction of American sign language who are deaf, hard of hearing per RCW 43.20A.720, or who's primary method of communication is American sign language, may have the requirements for interpreter experience waived by the certification office of the superintendent of public instruction.

(i) Three years (six thousand hours) is required.

(ii) One year (two thousand hours) must be within the past six years.

(iii) If all or part of the two thousand hours is more than six years old, an additional three hundred hours of recent (occurring in the last two years) occupational experience is required.

(iv) Individuals seeking this certification solely for teaching American sign language must also hold or earn the national interpreter certification, certified deaf interpreter certificate, the American sign language teachers association certificate, or meet the standard required of interpreters for the deaf per RCW 28A.410.271.

(b) Candidates for the initial certificate shall complete a professional educator standards board approved program under WAC 181-77A-029 in which they demonstrate competence in the general standards for all career and technical education teacher certificate candidates pursuant to WAC 181-77A-165, which include but are not limited to knowledge and skills in the following areas:

(i) General and specific safety;

(ii) Career and technical education teaching methods;

(iii) Occupational analysis;

(iv) Course organization and curriculum design;

(v) Philosophy of vocational education;

(vi) Personal student development and leadership techniques.

(c) Candidates for the initial certificate shall also demonstrate knowledge and skills in the following areas:

(i) School law;

(ii) Issues related to abuse as specified in WAC 181-77A-165(7).

(d) In addition, candidates for initial certification in career choices or coordinator of worksite learning shall demonstrate competency in knowledge and skills described in WAC 181-77A-180.

(2) Initial renewal. Candidates for renewal of the initial certificate must complete three quarter hours of credit or thirty clock hours of career and technical education educator training in the subject matter certified to teach since the initial certificate was issued or renewed.

(3) Continuing.

(a) Candidates for the continuing certificate shall have in addition to the requirements for the initial certificate at least nine quarter hours or ninety clock hours of career and technical education educator training in the career and technical

education subject matter to be certified completed subsequent to the issuance of the initial certificate.

(b) Candidates for the continuing certificate shall provide as a condition for the issuance of a continuing certificate documentation of two years of teaching/coordination in the career and technical education subject matter certified to teach with an authorized employer-i.e., school district(s) or skills center(s).

(4) Continuing certificate renewal.

(a) Candidates for renewal of the continuing certificate shall complete since the previous continuing certificate was issued one of the following:

(i) Six quarter hours or sixty clock hours of career and technical education educator training;

(ii) Three quarter hours or thirty clock hours of career and technical education educator training and three quarter hours or thirty clock hours of technical education/upgrading;

(iii) Three quarter hours or thirty clock hours of career and technical education educator training and three hundred hours of occupational experience.

(b) Beginning January 2018, renewal of continuing certificates under this section specifically for teaching American sign language will require the national interpreter certification, certified deaf interpreter certificate, the American sign language teachers association certificate, or meet the standard required of interpreters of the deaf per RCW 28A.410-.271.

#### WSR 15-07-024

#### PROPOSED RULES

#### DEPARTMENT OF HEALTH

[Filed March 10, 2015, 1:49 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-15-045.

Title of Rule and Other Identifying Information: Chapter 246-320 WAC, Hospital licensing regulations (construction standards only). The department of health is proposing amending the hospital licensing regulations to align with current federal standards and national consensus codes as recognized by the industry.

Hearing Location(s): Department of Health, Town Center 2, Room 158, 111 Israel Road S.E., Tumwater, WA 98501, on May 7, 2015, at 10:00 a.m.

Date of Intended Adoption: May 14, 2015.

Submit Written Comments to: John L. Williams, Department of Health, Community and Health Systems, P.O. Box 47852, Olympia, WA 98504-7852, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2321, by May 7, 2015.

Assistance for Persons with Disabilities: Contact John L. Williams by April 29, 2015, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to align the hospital licensing construction regulations of chapter 246-320 WAC with current federal and national construction standards to comply with RCW 70.41-.030. These proposed rules would only apply to new construc-

tion and renovation of hospital facilities after the effective date of the rule.

Reasons Supporting Proposal: The proposed rules would adopt the most current industry standards for health care facilities, which will provide for the public's safety and well-being. Adopting current standards would allow facilities to take advantage of newer construction methods. This change also provides the opportunity to be consistent with current federal standards that are vital to the health and safety of hospital patients and staff.

Statutory Authority for Adoption: RCW 70.41.030 and C.F.R. 2005, Title 42, Vol. 3, Sec. 482.41.

Statute Being Implemented: RCW 70.41.030.

Rule is necessary because of federal law, C.F.R. 2005, Title 42, Vol. 3, Sec. 482.41.

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting and Enforcement: John Williams, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-2950; and Implementation: Bart Eggen, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-2944.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Per chapter 19.85 RCW, no small business economic impact statement is required for rules that do not impose more than minor costs on businesses within an industry affected by the rule. The proposed rule would not impose more than minor costs on businesses.

A cost-benefit analysis is required under RCW 34.05-.328. A preliminary cost-benefit analysis may be obtained by contacting John Williams, Department of Health, Community and Health Systems, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-2944, fax (360) 236-2321, e-mail [john.williams@doh.wa.gov](mailto:john.williams@doh.wa.gov).

March 10, 2015

Dennis E. Worsham

Deputy Secretary

for John Wiesman, DrPH, MPH

Secretary

AMENDATORY SECTION (Amending WSR 10-17-120, filed 8/18/10, effective 9/18/10)

**WAC 246-320-500 Applicability of WAC 246-320-500 through 246-320-600.** The purpose of construction regulations is to provide for a safe and effective patient care environment. These rules are not retroactive and are intended to be applied as outlined below.

(1) These regulations apply to hospitals including:

(a) New buildings to be licensed as a hospital;

(b) Conversion of an existing building or portion of an existing building for use as a hospital;

(c) Additions to an existing hospital;

(d) Alterations to an existing hospital; and

(e) Buildings or portions of buildings licensed as a hospital and used for hospital services;

(f) Excluding nonpatient care buildings used exclusively for administration functions.

(2) The requirements of chapter 246-320 WAC in effect at the time the application and fee are submitted to the depart-

ment, and project number is assigned by the department, apply for the duration of the construction project.

(3) Standards for design and construction.

Facilities constructed and intended for use under this chapter shall comply with:

(a) The following chapters of the ~~((2010))~~ 2014 edition of the *Guidelines for Design and Construction of ~~((Health Care)) Hospitals and Outpatient Facilities~~* as developed by the Facilities Guidelines Institute and published by the American Society for Healthcare Engineering of the American Hospital Association, 155 North Wacker Drive Chicago, IL 60606, as amended in WAC 246-320-600:

- (i) 1.1 Introduction
- (ii) 1.2 Planning, Design, Construction, and Commissioning
- (iii) 1.3 Site
- (iv) 1.4 Equipment
- (v) 2.1 Common Elements for Hospitals
- (vi) 2.2 Specific Requirements for General Hospitals
- (vii) ~~((2.4 Specific Requirements for Critical Access Hospitals (Reserved))~~
- (viii) 2.5 Specific Requirements for Psychiatric Hospitals
- (ix) ~~2.6 Specific Requirements for Rehabilitation Hospitals and Other Facilities~~
- (x) ~~3.1 Common Elements for Outpatient Facilities~~
- (xi) ~~3.2 Specific Requirements for Primary Care Outpatient Centers~~
- (xii) ~~3.3 Specific Requirements for Small Primary Care (Neighborhood) Outpatient Facilities~~
- (xiii) ~~3.4 Specific Requirements for Freestanding Outpatient Diagnostic and Treatment Facilities~~
- (xiv) ~~3.6 Specific Requirements for Freestanding Cancer Treatment Facilities~~
- (xv) ~~3.7 Specific Requirements for Outpatient Surgical Facilities~~
- (xvi) ~~3.8 Specific Requirements for Office Surgical Facilities~~
- (xvii) ~~3.9 Specific Requirements for Gastrointestinal Endoscopy Facilities~~
- (xviii) ~~3.10 Specific Requirements for Renal Dialysis Centers~~
- (xix) ~~3.11 Specific Requirements for Psychiatric Outpatient Centers~~
- (xx) ~~3.12 Specific Requirements for Outpatient Rehabilitation Facilities~~
- (xxi) ~~4.3 Specific Requirements for Hospice Facilities~~
- (xxii) ~~5.1 Mobile, Transportable, and Relocatable Units~~
- (xxiii) ~~5.2 Freestanding Birth Centers~~
- (xxiv) ~~Part 6: Ventilation of Health Care Facilities))~~ 2.3 Specific Requirements for Freestanding Emergency Departments
- (viii) 2.4 Specific Requirements for Critical Access Hospitals
- (ix) 2.5 Specific Requirements for Psychiatric Hospitals
- (x) 2.6 Specific Requirements for Rehabilitation Hospitals and Other Facilities
- (xi) 2.7 Specific Requirements for Children's Hospitals
- (xii) 3.1 Common Elements for Outpatient Facilities

(xiii) 3.2 Specific Requirements for Primary Care Facilities

(xiv) 3.3 Specific Requirements for Freestanding Outpatient Diagnostic and Treatment Facilities

(xv) 3.4 Specific Requirements for Freestanding Birth Centers

(xvi) 3.5 Specific Requirements for Freestanding Urgent Care Facilities

(xvii) 3.6 Specific Requirements for Freestanding Cancer Treatment Facilities

(xviii) 3.7 Specific Requirements for Outpatient Surgical Facilities

(xix) 3.8 Specific Requirements for Office Based Procedure and Operating Rooms

(xx) 3.9 Specific Requirements for Endoscopy Facilities

(xxi) 3.10 Specific Requirements for Renal Dialysis Centers

(xxii) 3.11 Specific Requirements for Outpatient Psychiatric Centers

(xxiii) 3.12 Specific Requirements for Outpatient Rehabilitation Therapy Facilities

(xxiv) 3.13 Mobile, Transportable, and Relocatable Units

(xxv) 3.14 Specific Requirements for Dental Facilities

(xxvi) Part 4: Ventilation of Health Care Facilities

(b) The National Fire Protection Association, Life Safety Code, NFPA 101, ((2000)) as adopted by the centers for medicaid and medicare services.

(c) The State Building Code as adopted by the state building code council under the authority of chapter 19.27 RCW.

(d) Accepted procedure and practice in cross-contamination control, Pacific Northwest Edition, 6th Edition, December 1995, American Waterworks Association.

(e) The National Fire Protection Association, Health Care Facilities Code, NFPA 99, as adopted by the centers for medicaid and medicare services.

AMENDATORY SECTION (Amending WSR 10-17-120, filed 8/18/10, effective 9/18/10)

**WAC 246-320-505 Design, construction review, and approval of plans.** (1) Drawings and specifications for new construction, excluding minor alterations, must be prepared by or under the direction of, an architect registered under chapter 18.08 RCW. The services of a consulting engineer registered under chapter 18.43 RCW may be used for the various branches of work where appropriate. The services of a registered engineer may be used in lieu of the services of an architect if the scope of work ((involves engineering only)) is primarily engineering in nature.

(2) A hospital will meet the following requirements:

(a) Preconstruction. Request and attend a presubmission conference for projects with a construction value of two hundred fifty thousand dollars or more. The presubmission conference shall be scheduled to occur for the review of construction documents that are no less than fifty percent complete.

(b) Construction document review. Submit construction documents for proposed new construction to the department

for review within ten days of submission to the local authorities. Compliance with these standards and regulations does not relieve the hospital of the need to comply with applicable state and local building and zoning codes.

~~((e))~~ The construction documents must include:

(i) A written program containing, but not limited to, the following:

(A) Information concerning services to be provided and operational methods to be used;

(B) An interim life safety measures plan to ensure the health and safety of occupants during construction and installation of finishes~~(-)~~;

(C) An infection control risk assessment indicating appropriate infection control measures, keeping the surrounding area free of dust and fumes, and ensuring rooms or areas are well ventilated, unoccupied, and unavailable for use until free of volatile fumes and odors~~(-)~~;

(ii) Drawings and specifications to include coordinated architectural, mechanical, and electrical work. Each room, area, and item of fixed equipment and major movable equipment must be identified on all drawings to demonstrate that the required facilities for each function are provided; and

(iii) Floor plan of the existing building showing the alterations and additions, and indicating location of any service or support areas; and

(iv) Required paths of exit serving the alterations or additions~~(-)~~

~~(d))~~; and

(v) Verification that the capacities and loads of infrastructure systems will accommodate planned load.

(c) Resubmittals. The hospital will respond in writing when the department requests additional or corrected construction documents;

~~((e) Notify)~~ (d) Construction. Comply with the following requirements during the construction phase.

(i) The hospital will not begin construction until all of the following items are complete:

(A) The department has approved construction documents or granted authorization to begin construction; and

(B) The local jurisdictions have issued a building permit; and

(C) The hospital has notified the department in writing when construction ~~(has commenced;~~

~~(f) Provide the department with)) will commence.~~

(ii) The department will issue an "authorization to begin construction" when the construction documents have been conditionally approved or when all of the following items have been reviewed and approved:

(A) A signed form acknowledging the risks if starting construction before the plan review has been completed. The acknowledgment of risks form shall be signed by the:

~~((i))~~ (I) Architect; and

~~((ii))~~ (II) Hospital CEO, COO, or designee; and

~~((iii))~~ (III) Hospital facilities director.

~~((g))~~ (B) The infection control risk assessment;

(C) The interim life safety plan;

(D) A presubmission conference has occurred.

(iii) Submit to the department for review any addenda or modifications to the construction documents;

~~((h))~~ (iv) Assure construction is completed in compliance with the final "department approved" documents. Compliance with these standards and regulations does not relieve the hospital of the need to comply with applicable state and local building and zoning codes. Where differences in interpretations occur, the hospital will follow the most stringent requirement.

~~((i))~~ (v) The hospital will allow any necessary inspections for the verification of compliance with the construction documents, addenda, and modifications.

~~((j) Notify the department in writing when construction is completed and include a copy of the local jurisdiction's approval for occupancy.~~

~~(3))~~ (e) Project closeout. The hospital will not ~~((begin construction or))~~ use any new or remodeled areas until:

~~((a) The infection control risk assessment has been approved by the department;~~

~~(b) The interim life safety plan has been approved by the department;~~

~~(c) An acknowledgment of risk form has been submitted to the department as required by subsection (2)(f) of this section;~~

~~(d))~~ (i) The department has approved construction documents ~~((or granted authorization to begin construction))~~; and

~~((e))~~ (ii) The local jurisdictions have ~~((issued a building permit))~~ completed all required inspections and approvals, when applicable or given approval to occupy~~(-~~

~~(4) The department will issue an "authorization to begin construction" when subsection (3)(a), (b), and (c) are approved and the presubmission conference is concluded); and~~

(iii) The facility notifies the department in writing when construction is completed and includes a copy of the local jurisdiction's approval for occupancy.

AMENDATORY SECTION (Amending WSR 10-17-120, filed 8/18/10, effective 9/18/10)

**WAC 246-320-600 Washington state amendments.**

This section contains the Washington state amendments to the ~~((2010))~~ 2014 edition of the *Guidelines for Design and Construction of ~~((Health Care))~~ Hospitals and Outpatient Facilities* as developed by the Facilities Guideline Institute and published by the American Society for Healthcare Engineering of the American Hospital Association, 155 North Wacker Drive Chicago, IL 60606. The language below will replace the corresponding language of the 2014 edition of the Guidelines in its entirety. Subsections with an asterisk (\*) preceding a paragraph number indicates that explanatory or educational material can be found in an appendix item located in the ~~((2010))~~ 2014 Guidelines.

**CHAPTER 1.1 INTRODUCTION**

~~((1.1-5.5))~~ **1.1-6.3 Deviations**

Authorities adopting these standards as codes may approve plans and specifications that contain deviations if it is determined that the applicable intent or objective has been met.

**1.1-8 Referenced Codes and Standards**

Washington State Building Code (<http://www.sbccc.wa.gov/>)

**CHAPTER 1.2 PLANNING, DESIGN, AND IMPLEMENTATION PROCESS****~~(1.2-6.1.4 Design Criteria for Room Noise Levels~~**

~~(1) Room noise levels shall not exceed the sound level ranges shown for the chosen rating system in Table 1.2-2 (Minimum-Maximum Design Criteria for Noise in Interior Spaces):)~~ **1.2-3.8.2.1 Design Features**

**Appendix note:**

The security portion of the safety risk assessment should consider the placement of emergency call devices in public and staff toilets.

**Table A1.2**

Add footnote to this table:

The security specialist shall review portions of the infection control component, specifically: Construction and demolition related risk such as planned utility shutdowns, relocations, and pathway disruptions.

**CHAPTER 2.1 COMMON ELEMENTS FOR HOSPITALS****2.1-2.6.5 Handwashing Station****2.1-2.6.5.3 Additional Requirements for Handwashing Stations that Serve Multiple Patient Care Stations**

(1) At least one handwashing station shall be provided for every four patient care stations or fewer and for each major fraction thereof.

(2) Based on the arrangement of the patient care stations, handwashing stations shall be evenly distributed and provide uniform distance from the two patient care stations farthest from a handwashing station.

(3) Post anesthesia care unit (PACU) handwashing stations. At least one handwashing station with hands-free or wrist-blade operable controls shall be available for every six beds or fraction thereof, uniformly distributed to provide equal access from each bed.

**2.1-2.6.7 Nourishment Area or Room**

~~(2.1-2.1.6.7.5))~~ **2.1-2.1.6.7.4** Nourishment function may be combined with a clean utility without duplication of sinks and work counters.

**2.1-2.6.12 Environmental Services Room**

2.1-2.6.12.3 Environmental services and soiled rooms may be combined.

**2.1-4.3 Food and Nutrition Services**

2.1-4.3.1.3 Regulations, Construction, equipment, and installation of food and nutrition service facilities in a hospital shall comply with the requirements of:

- (1) U.S. Food and Drug Administration (FDA).
- (2) U.S. Department of Agriculture (USDA).
- (3) Underwriters Laboratories, Inc. (UL).
- (4) NSF International.
- (5) Chapter 246-215 WAC, the Washington state food code.

**2.1-7.2.2.1 Corridor Width**

2.1-7.2.2.1 Corridor width. For corridor width requirements, see applicable building codes. In addition to building code requirements, in areas typically used for stretcher trans-

port a minimum corridor or aisle width of 6 feet shall be provided.

**2.1-7.2.2.10 Handrails**

(1) Unless the safety risk assessment determines that handrails are not needed, handrails shall be installed on one side of patient use corridors.

(2) Handrails shall comply with local, state, and federal requirements referenced in Section 1.1-4.1 (Designs Standards for the Disabled) as amended in this section.

(3) Rail ends shall return to the wall or floor.

(4) Handrails, including fasteners, shall be smooth and have a nontextured surface free of rough edges.

(5) Handrails shall have eased edges and corners.

(6) Handrail finishes shall be cleanable.

**2.1-7.2.3 Surfaces****~~(2.1-7.2.3.2 Flooring~~**

~~2.1-7.2.3.2(14) The floors and wall bases of kitchens, soiled workrooms, and other areas subject to frequent wet cleaning shall be either seamless flooring with integral coved base, sealed ceramic tile with ceramic tile base, or equivalent.~~

**\*2.1-8.2.1 General**

Basic HVAC system requirements are defined in Part 6 of this document, ANSI/ASHRAE/ASHE Standard 170-2008: *Ventilation of Health Care Facilities*. This section of the Guidelines includes additional requirements.

**\*2.1-8.2.1 General****\*2.1-8.2.1.1 Mechanical system design**

~~(f) VAV systems. The energy-saving potential of variable air volume systems is recognized, and the requirements herein are intended to maximize appropriate use of those systems. Any system used for occupied areas shall include provisions to avoid air stagnation in interior spaces where thermostat demands are met by temperatures of surrounding areas and air movement relationship changes if constant volume and variable volume are supplied by one air handling system with a common pressure dependent return system.~~

**\*2.1-8.2.1.1 Mechanical system design**

~~(2) Air handling systems with unitary equipment that serves only one room. These units shall be permitted for use as recirculating units only. All outdoor air shall be provided by a separate air handling system with proper filtration, as noted in 2.1-8.2.5.1 (Filter efficiencies).~~

~~(a) Recirculating room HVAC units themselves shall have a MERV 6 (or higher) filter in Filter Bank 1 and are not required to have Filter Bank 2. For more information see AIA (2006).~~

~~(b) Recirculating room units shall be allowed in General Laboratory rooms and Sterilizer Equipment rooms provided at least 6 air changes are provided by the air handling system and adequate total cooling capacity is provided.~~

**2.1-8.2.2 HVAC Requirements for Specific Locations****2.1-8.2.2.7 Emergency and radiology waiting areas**

~~When these areas are not enclosed, the exhaust air change rate shall be based on the general volume of the space designated for patients waiting for treatment.~~

**2.1-8.2.4 HVAC Air Distribution**

**2.1-8.2.4.2 HVAC ductwork**

**\*2) Humidifiers**

(a) If humidifiers are located upstream of the final filters, they shall be at least twice the rated distance for full moisture absorption upstream of the final filters.

(b) Ductwork with duct-mounted humidifiers shall have a means of water removal.

(c) Humidifiers shall be connected to airflow proving switches that prevent humidification unless the required volume of airflow is present or high-limit humidistats are provided.

(d) All duct takeoffs shall be sufficiently downstream of the humidifier to ensure complete moisture absorption.

(e) Steam humidifiers shall be used. Reservoir type water spray or evaporative pan humidifiers shall not be used.

**Appendix Language:**

A2.1-8.2.4.1(2) It is recognized that some facilities may not require humidity control within the ranges in table 2.1-2 and that the final determination of a facility's ability to control humidity will be made by that facility.)) 2.1-7.2.3.1 Flooring and wall bases.

2.1-7.2.3.1(6) The following rooms shall have floor and wall base assemblies that are monolithic and have an integral coved wall base that is carried up the wall a minimum of 6 inches (150 mm) and is tightly sealed to the wall:

- (a) Operating rooms;
- (b) Interventional imaging rooms, including cardiac catheterization labs;
- (c) Cesarean delivery rooms;
- (d) Cystoscopy, urology, and minor surgical procedure rooms;
- (e) Endoscopy procedure rooms;
- (f) Endoscopy instrument processing rooms;
- (g) IV and chemotherapy preparation rooms;
- (h) Airborne infection isolation (AII) rooms;
- (i) Protective environment (PE) rooms;
- (j) Anterooms to AII and PE rooms, where provided;
- (k) Sterile processing rooms;
- (l) Central processing rooms.

**2.1-8.3.4.3(7) Lighting for Specific Locations in the Hospital**

2.1-8.3.4.3(7) When installed in patient care areas, upright fixtures or troughs that create ledges which collect dust shall be provided with a lens on the top of the fixture to facilitate cleaning.

**2.1-8.3.7 Call Systems**

**2.1-8.3.7.3 Bath Stations**

**Appendix Language:**

A2.1-8.3.7.3 Where new construction or renovation work is undertaken, hospitals should make every effort to install assistance systems in all public and staff toilets.

**2.1-8.4.3 Plumbing Fixtures**

**2.1-8.4.3.1 General**

(1) Materials. The material used for plumbing fixtures shall be nonabsorptive and acid-resistant.

(2) Clearances. Water spouts used in lavatories and sinks shall have clearances adequate to:

(a) avoid contaminating utensils and the contents of carafes, etc.

(b) provide a minimum clearance of 6" from the bottom of the spout to the flood rim of the sink to support proper hand washing asepsis technique without the user touching the faucet, control levers, or the basin.

**Appendix Language:**

A2.1-8.4.3.2(3) Aerator usage on water spouts may contribute to the enhanced growth of waterborne organisms and is not recommended.

~~((2.1-8.4.3.6 Scrub sinks. Freestanding scrub sinks and lavatories used for scrubbing in procedure rooms shall be trimmed with foot, knee, or electronic sensor controls; single-lever wrist blades are not permitted.))~~

**Table 2.1-2 Locations for Nurse Call Devices in Hospitals**

Modify table as follows:

Section	Location	Duty station
2.1-2.7.1	Staff lounge	Optional

**CHAPTER 2.2 SPECIFIC REQUIREMENTS FOR GENERAL HOSPITALS**

**2.2-2.2 Medical/Surgical Nursing Unit**

**2.2-2.2.2 Patient Room**

**2.2-2.2.2.1 Capacity**

(1) In new construction, the maximum number of beds per room shall be two.

(2) Where renovation work is undertaken and the present capacity is more than one patient, maximum room capacity shall be no more than the present capacity with a maximum of four patients.

~~((2.2-2.2.2.5 Hand-washing stations~~

~~(1) Location~~

~~(a) A hand-washing station shall be provided in every toilet room serving more than one patient. Alcohol-based hand sanitizers shall be provided where sinks are not required.~~

~~(b) A hand-washing station shall be provided in the patient room in addition to that in the toilet room.~~

~~(i) This hand-washing station shall be convenient for use by health care personnel and others entering and leaving the room.~~

~~(ii) When multi-patient rooms are permitted, this station shall be located outside the patients' cubicle curtains.~~

~~2.2-2.2.6 Support Areas for Medical/Surgical Nursing Units~~

~~2.2-2.2.6.5 Hand-washing stations. For design requirements, see 2.1-2.6.5.~~

~~(1) Hand-washing stations shall be conveniently accessible to the medication station and nourishment area. "Convenient" is defined as not requiring staff to access more than two spaces separated by a door.~~

~~(2) If it is convenient to each area, one hand-washing station shall be permitted to serve several areas.~~

~~2.2-3.2 Freestanding Emergency Care Facility~~

~~2.2-3.2.1 General~~

2.2-3.2.1.1 Definition

(1) "Freestanding emergency care facility" shall mean an extension of an existing hospital emergency department that is physically separate from (i.e., not located on the same campus as) the main hospital emergency department and that is intended to provide comprehensive emergency service.

(2) A freestanding emergency care facility that does not provide 24-hour-a-day, seven-day-a-week operation or that is not capable of providing basic services as defined for hospital emergency departments shall not be classified as a freestanding emergency care facility and shall be described under other portions of this document. Any facility advertising itself to the public as an emergency department or facility shall meet the requirements of Section 2.2-3.2.

2.2-3.2.1.2 Application. Except as noted in the following sections, the requirements for freestanding emergency service shall be the same as for hospital emergency service as described in Section 2.2-3.1 (Emergency Service).

2.2-3.2.2 Facility Requirements

This section is not adopted

2.2-3.3.3 Pre- and Postoperative Patient Care Areas\*2.2-3.3.3.3 Post-anesthetic care unit (PACU)

(4) Each PACU shall contain the following:

(a) A medication station.

(b) Hand-washing stations. At least one hand-washing station with hands-free or wrist-blade operable controls shall be available for every six beds or fraction thereof, uniformly distributed to provide equal access from each bed.

(c) Nurse station with charting facilities.

(d) Clinical sink.

(e) Provisions for bedpan cleaning.

(f) Storage space for stretchers, supplies, and equipment.

(g) Staff toilet. A staff toilet shall be located within the working area to maintain staff availability to patients.) 2.2-

3.3.3.3 Control Room

2.2-3.3.3.3(2) The room shall be physically separated from the hybrid operating room with walls and a door. A door is not required when the control is built, maintained, and controlled exactly the same as the operating room.

2.2-3.3.4.2 Preoperative Patient Care Area

2.2-3.3.4.2(2)(b)(ii) Where bays are used, an aisle with a minimum clearance of 6 feet (1.83 meters) independent of the foot clearance between patient stations or other fixed objects shall be provided.

2.2-3.3.4.3 Phase I Postanesthesia Care Unit (PACU)

2.2-3.3.4.3(b) PACU size. A minimum of 1.5 postanesthesia patient care stations or as determined by the functional program per operating room shall be provided.

2.2-3.4.2.1 CT Scanner Room

2.2-3.4.2.1(1)(b) CT scanner room(s) shall be sized to allow a minimum clearance of 4 feet (122 centimeters) on the patient transfer and foot side of the table and 3 feet (91 centimeters) on nontransfer side of the table.

2.2-3.4.4 Magnetic Resonance Imaging (MRI) Facilities

2.2-3.4.4.2(2) The MRI scanner room(s) shall have a minimum clearance of 4 feet (122 centimeters) on the patient transfer side and foot of the table and 3 feet (91 centimeters) on nontransfer side of the table. The door swing shall not interfere with the patient transfer.

2.2-3.5.2 Interventional Imaging Procedure Room

2.2-3.5.2.2 Ceilings. Ceilings in interventional imaging procedure rooms shall be designed as semirestricted, see 2.1-7.2.3.3(3) for finishes.

2.2-4.2 Pharmacy Service

2.2-4.2.1 General: Until final adoption of USP 797 by either federal or other state programs, facilities may request plan review for conformance to USP 797 with their initial submission to the Department of Health, Construction Review Services.

CHAPTER 2.4 CRITICAL ACCESS HOSPITALS2.4-1.1 Application

2.4-1.1 Application. Chapter 2.4 contains specific requirements for small rural hospitals. The functional program for these facilities must clearly describe a scope of services that is appropriate for chapter 2.4. For facilities with services that are not appropriately addressed in chapter 2.4, the appropriate portions of chapters 2.2, 2.3, 2.5, 2.6 and 2.7 will apply.

CHAPTER 3.1 OUTPATIENT FACILITIES\*3.1-3.2.2 General Purpose Examination/Observation Room

3.1-3.2.2.2 Space requirements

(3) Existing general purpose examination rooms under review for addition to a hospital license shall be no less than 80 gross square feet and provide a minimum 2'-6" clearance around the examination table.

~~(3.1-4.1.2 Laboratory Testing/Work Area~~

~~3.1-4.1.2.2 Work counters~~

~~(2) Work counters shall be sufficient to meet equipment specifications and lab technician needs and have the following:~~

~~(a) Sinks.~~

~~(b) Communications service.~~

~~(c) Electrical service.~~

~~3.1-6.1.1 Vehicular Drop-Off and Pedestrian Entrance~~

~~3.1-6.1.1 Vehicular Drop-Off and Pedestrian Entrance~~ (for ambulatory surgery facilities only). This shall be at grade level, sheltered from inclement weather, and accessible to the disabled.

~~A3.1-6.1.1 Accessibility requirements for all facility types can be found in 1.1-4.1~~

3.1-7.1 Building Codes and Standards3.1-7.1.1.2

This Section is not adopted.

3.1-7.1.1.3

This section is not adopted.

**3.1-7.1.3 Provision for Disasters****3.1-7.1.3.1 Earthquakes**

Seismic force resistance of new construction for outpatient facilities shall comply with Section 1.2-6.5 (Provisions for Disasters). Where the outpatient facility is part of an existing building, that facility shall comply with applicable local codes.) **3.1-3.2.3 Special Purpose Examination Room**

3.1-3.2.3.2(c) A room arrangement in which an examination table, recliner, bed or chair is placed at an angle, closer to one wall than another or against a wall to accommodate the type of patient being served shall be permitted.

**3.1-7.2.2 Architectural Details****(3.1-7.2.2.1 Corridor width**

(1) Public corridors shall have a minimum width of 5 feet (1.52 meters). Staff-only corridors shall be permitted to be 3 feet 8 inches (1.12 meters) wide unless greater width is required by NFPA 101 (occupant load calculations). Existing clinics that do not use gurneys shall meet the requirements of NFPA 101 for appropriate occupancy type.

**3.1-8.2.4 HVAC Air Distribution**

3.1-8.2.4.1 Return air systems. For patient care areas where invasive applications or procedures are performed and rooms containing materials used in these applications and procedures, return air shall be via ducted systems.) **3.1-7.2.2.2 Ceiling Height**

**3.1-7.2.2.2(2)**

This subsection is not adopted.

**3.1-7.2.3.1 Flooring and Wall Bases**

3.1-7.2.3.1(5) The following rooms shall have floor and wall base assemblies that are monolithic and have an integral coved wall base that is carried up the wall a minimum of 6 inches (150 mm) and is tightly sealed to the wall:

- (a) Operating rooms;
- (b) Interventional imaging rooms, including cardiac catheterization labs;
- (c) Cystoscopy, urology and minor surgical procedure rooms;
- (d) Endoscopy procedure rooms;
- (e) Endoscopy instrument processing rooms;
- (f) IV and chemotherapy preparation rooms;
- (g) Airborne infection isolation (AII) rooms;
- (h) Anterooms to AII and PE rooms, where provided;
- (i) Sterile processing rooms.

**3.1-8.4.3 Plumbing Fixtures****3.1-8.4.3.1 General**

(2) Clearances. Water spouts used in lavatories and sinks shall have clearances adequate to:

- (a) avoid contaminating utensils and the contents of carafes, etc.
- (b) provide a minimum clearance of 6" from the bottom of the spout to the flood rim of the sink to support proper hand washing asepsis technique without the user touching the faucet, control levers, or the basin.

Appendix Language:

A3.1-8.4.3 Aerator usage on water spouts may contribute to the enhanced growth of waterborne organisms and is not recommended.

**CHAPTER 3.2 SPECIFIC REQUIREMENTS FOR PRIMARY CARE OUTPATIENT CENTERS****3.2-1.3 Site****(3.2-1.3.1) 3.2-1.3.2 Parking**

This section is not adopted.

**(CHAPTER 3.3 SPECIFIC REQUIREMENTS FOR SMALL PRIMARY CARE (NEIGHBORHOOD) OUTPATIENT FACILITIES****3.3-1.3 Site****3.3-1.3.2 Parking**

This section is not adopted.) **CHAPTER 3.5 SPECIFIC REQUIREMENTS FOR FREESTANDING URGENT CARE FACILITIES**

**3.5-1.1 Application**

3.5-1.1 Application. This chapter applies to facilities that provide urgent care to the public but are not freestanding emergency departments. The functional program for the facilities must clearly describe a scope of services that are appropriate for urgent care, as determined by the department.

**CHAPTER 3.7 SPECIFIC REQUIREMENTS FOR OUTPATIENT SURGICAL FACILITIES****3.7-1.3 Site****3.7-1.3.2 Parking**

This section is not adopted.

**3.7-3.6.13.1(2) Location**

3.7-3.6.13.1(2) Location. The sterile processing room shall be designed to provide a one-way traffic pattern of contaminated materials/instruments to clean materials/instruments to the sterilizer equipment. Two remotely located doors shall be provided as follows:

- (a) Entrance to the contaminated side of the sterile processing room shall be from the semirestricted area.
- (b) Exit from the clean side of the sterile processing room to the semirestricted area or to an operating room shall be permitted.

**3.7-5.1.2 On-Site Sterilization Facilities**

3.7-5.1.2 On-Site Sterilization Facilities. When sterilization occurs on-site, one of the following conditions shall apply:

- (1) Outpatient surgical facilities with three or fewer operating rooms where immediate use sterilization occurs on-site shall meet the requirements in Section 3.7-3.6.13 (Sterile Processing Room) or shall meet the requirements of Section 2.1-5.1.
- (2) Outpatient surgical facilities with four or more operating rooms, or facilities that do not use immediate use sterilization, shall meet the requirements of Section 2.1-5.1.

**CHAPTER 3.9 SPECIFIC REQUIREMENTS FOR ENDOSCOPY FACILITIES****3.9-3.3.2.2 Space Requirements**

3.9-3.3.2.2(2)(b) Where bays are used, an aisle with a minimum clearance of 6 feet (1.83 meters) independent of the foot clearance between patient stations or other fixed objects shall be provided.



**CHAPTER 3.11 SPECIFIC REQUIREMENTS FOR PSYCHIATRIC OUTPATIENT CENTERS**

**3.11-1.3 Site**

3.11-1.3.1 Parking

This section is not adopted.

**CHAPTER ~~((5.1))~~ 3.13 MOBILE, TRANSPORTABLE, AND RELOCATABLE UNITS**

~~((5.1-1.1.1))~~ **3.13-1.1 Application**

~~((5.1-1.1.1.1))~~ 3.13-1.1.1 Unit Types

This section applies to mobile, transportable, and modular structures as defined below. These units can increase public access to needed services.

Mobile mammography units do not require review by the Department of Health, Construction Review Services.

Appendix Language:

~~((A5.1-1.1.1.1))~~ A3.13-1.1.1 The facility providing services, including mobile mammography, should review these requirements in consideration of the service offering and the delivery of care model.

~~((5.1-7.2 Architectural Details and Surfaces for Unit Construction~~

~~5.1-7.2.2 Surfaces~~

~~If the mobile unit is permanently installed, finishes shall comply with the requirements in this section.~~

~~5.1-7.2.2.1 Interior finish materials~~

~~(1) Interior finish materials shall meet the requirements of NEPA 101.~~

~~5.1-8.6))~~ **3.13-8.6 Safety and Security Systems**

~~((5.1-8.6.1))~~ 3.13-8.6.1 Fire Alarm System

Fire alarm notification shall be provided to the facility while the unit is on-site.

~~((5.1-8.6.1.2))~~ 3.13-8.6.1.2 Each mobile unit shall provide fire alarm notification by one of the following methods:

- (1) Via an auto-dialer connected to the unit's smoke detectors.
- (2) An audible device located on the outside of the unit.
- (3) Connection to the building fire alarm system.

**Part ~~((6))~~ 4**

**ANSI/ASHRAE/ASHE Standard ~~((170-2008))~~ 170-2013: Ventilation of Health Care Facilities**

~~((Table 7-1—Design Parameters~~

Function of Space	RH (k), %
Class B and C operating rooms (m)(n)(o)	max 60
Operating/surgical cystoscopy (m)(n)(o)	max 60
Delivery room (Caesarean) (m)(n)(o)	max 60
Treatment room (p)	max 60
Trauma room (crisis or shock) (e)	max 60
Laser eye room	max 60
Class A Operating/Procedure room (o)(d)	max 60
Endoscopy	max 60))

**Section 7.2 Additional Room Specific Requirements**

**7.2.3 Combination Airborne Infectious Isolation/Protective Environment (AII/PE) Room**

7.2.3(c)(2)

This section is not adopted.

**7.4 Surgery Rooms**

7.4.4 Sterile Processing Room. Where a sterile processing room is provided, it shall meet the following requirements:

(a) The airflow design shall provide a "clean to dirty" airflow within the space with supply air provided over the clean area and exhaust provided from the soiled area.

(b) This room shall be positive to adjacent spaces with the exception of operating rooms or positively pressurized procedure rooms.

(c) A minimum of two outside air changes and six total air changes shall be provided.

(d) Two filter banks shall be required: The primary filter shall be MERV 7, the final filter shall be MERV 14.

(e) Room air shall be exhausted to the exterior.

**WSR 15-07-025**

**PROPOSED RULES**

**DEPARTMENT OF HEALTH**

[Filed March 10, 2015, 2:10 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-282-990(5), sanitary control of shellfish - fees, commercial geoduck paralytic shellfish poisoning (PSP) testing.

Hearing Location(s): Department of Health, Town Center 3, Room 252, 243 Israel Road S.E., Tumwater, WA 98501, on April 21, 2015, at 2:30 p.m.

Date of Intended Adoption: April 28, 2015.

Submit Written Comments to: Rick Porso, Department of Health, P.O. Box 7824, Olympia, WA 98504-7824, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2257, by April 21, 2015.

Assistance for Persons with Disabilities: Contact Theresa McGuire by April 14, 2015, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to equitably assess the costs of commercial geoduck PSP testing. The cost assessment will follow the annual redistribution formula which is based on the number of tests done in the previous year. The testing is essential to public health as it is the only way to determine if dangerous levels of PSP exist in commercial geoduck and ensure toxic shellfish do not reach consumers.

Reasons Supporting Proposal: The proposed geoduck PSP fee redistribution is based on the 2014 total cost of service for the entities that submitted geoduck tests and the number of tests done for each entity.

Statutory Authority for Adoption: RCW 43.70.250.

Statute Being Implemented: RCW 43.70.250.

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: Rick Porso, 243 Israel Road S.E., Tumwater, WA 98501, (360) 236-3302.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(f), a small business economic impact statement is not required for proposed rules that set or adjust fees or rates pursuant to legislative standards.

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(vi) exempts rules that set or adjust fees or rates pursuant to legislative standards.

March 10, 2015  
John Wiesman, DrPH, MPH  
Secretary

**AMENDATORY SECTION** (Amending WSR 14-12-082, filed 6/3/14, effective 7/4/14)

**WAC 246-282-990 Fees.** (1) The required annual shellfish operation license fees for shellstock shippers and shucker-packers due October 1, 2011, shall be reduced by twenty-five percent of the annual shellfish operation license fees in subsection (2) of this section. Beginning July 1, 2012, and for every subsequent year, the full annual shellfish operation license fees in subsection (2) of this section shall be assessed.

(2) Annual shellfish operation license fees are:

Type of Operation	Annual Fee
Harvester	\$263
Shellstock Shipper	
0 - 49 Acres	\$297
50 or greater Acres	\$476
Scallop Shellstock Shipper	\$297
Shucker-Packer	
Plants with floor space < 2000 sq. ft.	\$542
Plants with floor space 2000 sq. ft. to 5000 sq. ft.	\$656
Plants with floor space > 5000 sq. ft.	\$1,210

(3) The fee for each export certificate is \$20.00.

(4) Annual PSP testing fees for companies harvesting species other than geoduck intertidally (between the extremes of high and low tide) are as follows:

Fee Category	Type of Operation	Number of Harvest Sites	Fee
	Harvester	≤ 2	\$173
	Harvester	3 or more	\$259

Fee Category	Type of Operation	Number of Harvest Sites	Fee
	Shellstock Shipper	≤ 2	\$195
	0 - 49 acres		
	Shellstock Shipper	3 or more	\$292
	0 - 49 acres		
	Shellstock Shipper	N/A	\$468
	50 or greater acres		
	Shucker-Packer	≤ 2	\$354
	(plants < 2000 ft <sup>2</sup> )		
	Shucker-Packer	3 or more	\$533
	(plants < 2000 ft <sup>2</sup> )		
	Shucker-Packer	≤ 2	\$429
	(plants 2000 - 5000 ft <sup>2</sup> )		
	Shucker-Packer	3 or more	\$644
	(plants 2000 - 5000 ft <sup>2</sup> )		
	Shucker-Packer	N/A	\$1,189
	(plants > 5000 ft <sup>2</sup> )		

(a) The number of harvest sites will be the total number of harvest sites on the licensed company's harvest site certificate:

- (i) At the time of first licensure; or
- (ii) January 1 of each year for companies licensed as harvesters; or
- (iii) July 1 of each year for companies licensed as shellstock shippers and shucker packers.

(b) Two or more contiguous parcels with a total acreage of one acre or less is considered one harvest site.

(5) Annual PSP testing fees for companies harvesting geoduck are as follows:

Harvester	Fee
Department of natural resources (quota tracts harvested by DNR contract holders)	<del>\$(9,140))</del> <u>10,670</u>
Discovery Bay Shellfish	<del>\$(2,226))</del> <u>1,135</u>
Jamestown S'Klallam Tribe	<del>\$(2,226))</del> <u>1,589</u>
Lower Elwha Klallam Tribe	<del>\$(3,515))</del> <u>2,384</u>
Lummi Nation	<del>\$(703))</del> <u>227</u>
Nisqually Tribe	<del>\$(2,461))</del> <u>5,902</u>
Port Gamble S'Klallam Tribe	<del>\$(3,749))</del> <u>1,362</u>
Puyallup Tribe of Indians	<del>\$(9,257))</del> <u>8,286</u>

<b>Harvester</b>	<b>Fee</b>
Skokomish Indian Tribe	\$114
Squaxin Island Tribe	<del>\$(2,109)</del> 3,292
Suquamish Tribe	<del>\$(14,178)</del> 15,093
Swinomish Tribe	<del>\$(820)</del> 1,022
<del>((Taylor Shellfish</del>	<del>\$234)</del>
Tulalip Tribe	<del>\$(7,382)</del> 6,924

(6) PSP fees must be paid in full to department of health before a commercial shellfish license is issued or renewed.

(7) Refunds for PSP fees will be given only if the applicant withdraws a new or renewal license application prior to the effective date of the new or renewed license.

**WSR 15-07-044**  
**PROPOSED RULES**  
**UTILITIES AND TRANSPORTATION**  
**COMMISSION**

[Docket UE-131723—Filed March 12, 2015, 9:46 a.m.]

Continuance of WSR 14-18-084.

Preproposal statement of inquiry was filed as WSR 13-20-127.

Title of Rule and Other Identifying Information: Chapter 480-109 WAC, Electric companies—Acquisition of minimum quantities of conservation and renewable energy as required by the Energy Independence Act (chapter 19.285 RCW).

Date of Intended Adoption: May 15, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Energy Independence Act provides that the Washington utilities and transportation commission (commission) "may adopt rules to ensure the proper implementation and enforcement of this chapter as it applies to investor-owned utilities," (RCW 19.285.080). The commission initiated an inquiry to determine whether revised regulations were needed to ensure that the renewable resource and conservation requirements were properly implemented and enforced and whether revised rules would further the objectives of the act; promote energy independence in the state and the Pacific Northwest region; stabilize electricity prices for Washington residents; provide economic benefits for Washington counties and farmers; create high-quality jobs in Washington; provide opportunities for training apprentice workers in the renewable energy field; protect clean air and water; and position Washington state as a national leader in clean energy technologies.

The commission considered adoption of proposed rules in chapter 480-109 WAC at a rule-making hearing on November 5, 2014. The commission amended, adopted, and repealed certain rules in chapter 480-109 WAC implementing chapter 19.285 RCW the Energy Independence Act and

filed its adoption order with the code reviser on March 12, 2015. In the adoption order the commission defers consideration of WAC 480-109-300, a reporting requirement for energy and emissions intensity metrics.

The purpose of this continuance of WSR 14-18-084 is to provide notice of the commission's intended date of adoption of WAC 480-109-300 with the code reviser. The commission does not intend to hold any further rule adoption hearing on this section.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 80.01.040, 80.04.160, and 19.285.080 (1) and (4).

Statute Being Implemented: Not applicable.

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

Name of Proponent: [Utilities and transportation commission], governmental.

Name of Agency Personnel Responsible for Drafting: David Nightingale, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1154; Implementation and Enforcement: Steven V. King, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1115.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule require investor-owned utilities, none of which qualify as a small business, to acquire certain minimum amounts of renewable resources and all cost-effective, reliable and available conservation. Because the proposed rule will not increase costs to small businesses, a small business economic impact statement is not required under RCW 19.85.030(1).

A cost-benefit analysis is not required under RCW 34.05.328. The commission is not an agency to which RCW 34.05.328 applies. The proposed rule is not a significant legislative rule of the sort referenced in RCW 34.05.328(5).

March 12, 2015

Steven V. King

Executive Director  
and Secretary

**NEW SECTION**

**WAC 480-109-300 Energy and emissions intensity metrics.** (1) A utility must report metrics of energy and emissions intensity to the commission on or before June 1st of each year. The report must include annual values for each metric for the preceding ten calendar years. Each value reported must be based on the annual energy or emissions from all generating resources providing service to customers of that utility in Washington state, regardless of the location of the generating resources. When the metrics are calculated from generators that serve out-of-state and in-state customers, the annual energy and emissions outputs must be prorated to represent the proportion of the resource used by Washington customers.

(2) The energy and emissions intensity report shall include the following metrics:

(a) Average MWh per residential customer;

- (b) Average MWh per commercial customer;
- (c) MWh per capita;
- (d) Million tons of CO<sub>2</sub> emissions; and
- (e) Comparison of annual million tons of CO<sub>2</sub> emissions to 1990 emissions.

(3) **Unknown generation sources.** For resources where the utility purchases energy from unknown generation sources, often called "spot market" purchases, from which the emission rates are unknown, the utility shall report emission metrics using the average electric power CO<sub>2</sub> emissions rate described as the net system mix (spot market) in the Washington state electric utility fuel mix disclosure reports compiled by the department pursuant to RCW 19.29A.080. For the resources described in this subsection, a utility must show in the report required in subsection (1) of this section the following:

- (a) Tons of CO<sub>2</sub> from unknown generation sources;
  - (b) MWh delivered to its retail customers from unknown generation sources; and
  - (c) Percentage of total load represented by unknown generation sources.
- (4) The energy and emissions intensity report must include narrative text and graphics describing trends and an analysis of the likely causes of changes, or lack of changes, in the metrics.

#### WSR 15-07-054

#### PROPOSED RULES

#### DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed March 13, 2015, 2:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-14-100.

Title of Rule and Other Identifying Information: WAC 246-817-230 Dentist retired active status, the dental quality assurance commission (commission) is proposing the addition of a new section to create a retired active status dentist license, including continuing education requirements.

Hearing Location(s): Department of Health, Point Plaza East, Room 152/153, 310 Israel Road S.E., Tumwater, WA 98501, on April 24, 2015, at 8:05 a.m.

Date of Intended Adoption: April 24, 2015.

Submit Written Comments to: Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504-7852, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2901, by April 17, 2015.

Assistance for Persons with Disabilities: Contact Jennifer Santiago by April 17, 2015, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule creates a retired active license to allow a dentist to provide dental services in emergent or intermittent circumstances for no compensation. The secretary of health is proposing a retired status fee under separate rule making.

Reasons Supporting Proposal: RCW 18.130.250 allows the commission to establish a retired active status license. The goal is to improve volunteerism in dental care and dental care in emergent circumstances.

Statutory Authority for Adoption: RCW 18.32.065 and 18.130.250.

Statute Being Implemented: RCW 18.130.250.

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

Name of Proponent: Washington state dental quality assurance commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jennifer Santiago, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4893.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 and 34.05.310 (4)(c), a small business economic impact statement is not required for proposed rules that adopt or incorporate by reference - without material change - federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards. A preliminary cost-benefit analysis may be obtained by contacting Jennifer Santiago, P.O. Box 47852, Olympia, WA 98504, phone (360) 236-4893, fax (360) 236-2901, e-mail [jennifer.santiago@doh.wa.gov](mailto:jennifer.santiago@doh.wa.gov).

March 13, 2015

Trina Castle

Executive Director

#### NEW SECTION

**WAC 246-817-230 Dentist retired active status.** (1) To obtain a retired active status license, a licensed dentist must comply with chapter 246-12 WAC, Part 5, excluding WAC 246-12-120 (2)(c) and (d).

(2) A licensed dentist with a retired active status license may practice under the following conditions:

(a) In emergent circumstances calling for immediate action; or

(b) In intermittent circumstances on a nonpermanent basis.

(3) A licensed dentist with a retired active license may not receive compensation for dental services.

(4) A licensed dentist with a retired active status license must renew every year on or before the practitioner's birthday according to WAC 246-12-130 and 246-817-990 and must complete twenty-one hours of continuing education as required in WAC 246-817-440 every year with renewal.

**WSR 15-07-060**  
**WITHDRAWAL OF PROPOSED RULES**  
**HORSE RACING COMMISSION**

[Filed March 16, 2015, 8:55 a.m.]

The Washington horse racing commission would like to withdraw from publication our proposed rule making (CR-102), WSR 15-04-108, filed on February 3, 2015.

Douglas L. Moore  
 Executive Secretary

**WSR 15-07-067**  
**PROPOSED RULES**  
**LOWER COLUMBIA COLLEGE**

[Filed March 16, 2015, 2:56 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-03-133.

Title of Rule and Other Identifying Information: Repeal of chapter 132M-121 WAC and replace entirely with proposed chapter 132M-125 WAC, Student code of conduct.

Hearing Location(s): Lower Columbia College, Heritage Room, Administration Building Room 100, 1600 Maple Street, Longview, CO [WA] 98632, on May 20, 2015, at 5 p.m.

Date of Intended Adoption: May 20, 2015.

Submit Written Comments to: Linda Clark, 1600 Maple Street, P.O. Box 3010, e-mail lclark@lcc.ctc.edu, fax (360) 442-2109, by May 13, 2015.

Assistance for Persons with Disabilities: Contact Linda Clark by May 13, 2015, TTY 800-833-6388, phone (360) 442-2100.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This is an update of the existing student code of conduct policy to bring it into alignment with the current Violence Against Women Act (VAWA), Department of Education Dear Colleague letter dated April 2011. This repeals the old code of conduct and replaces it with a new WAC. New rules contain substantial reorganization of existing material and additions of new materials. For clarity, it is easier to delete old rules and replace with the new rules.

Reasons Supporting Proposal: The United States Department of Education, Office for Civil Rights has provided colleges with recent specific guidance on Title IX requirements: Dear Colleague Letter, April 4, 2011, and Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students or Third Parties, January 2001; May 9, 2013, University of Montana-Missoula OCR compliance review and settlement agreement. See also 2013 amendment to VAWA. Without changes to Lower Columbia College's WAC related to student conduct, the college will be out of compliance.

Statutory Authority for Adoption: RCW 28B50.140 [28B.50.140] and 42.56.040.

Statute Being Implemented: RCW 28B50.140 [28B.50.-140] and 42.56.040.

Rule is necessary because of federal law, Title IX and VAWA; OCR May 9, 2013, University of Montana-Missoula OCR compliance; Department of Education Dear Colleague Letter, April 4.

Name of Proponent: Lower Columbia College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Lisa Matye Edwards, LCC Admission Building, 1600 Maple Street, Longview, WA 98632, (360) 442-2300.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule will not impact any entity other than Lower Columbia College.

A cost-benefit analysis is not required under RCW 34.05.328. Not required and no significant economic impact.

March 16, 2015  
 Lisa Matye Edwards  
 Vice-President  
 for Student Success

**Chapter 132M-125 WAC**  
**CODE OF STUDENT CONDUCT**

NEW SECTION

**WAC 132M-125-005 Student responsibilities.** (1) Lower Columbia College, an agency of the state of Washington, exists for the development of students and to provide a variety of educational opportunities, and the opportunity to examine cultural, social, and recreational aspects of society. Lower Columbia College, as an institution of society, must maintain conditions conducive to the effective performance of its functions. Consequently, Lower Columbia 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, first of all, a member of the community at large, and as such has the rights and responsibilities of any citizen. In addition, admission to Lower Columbia 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. Lower Columbia College expects an environment of integrity, respect, collaboration, cooperation, diversity, and innovation that fosters personal growth, academic excellence and accountability.

(3) Students are responsible for their conduct. These standards of conduct for students promote Lower Columbia College's educational purposes and provide students a full understanding of their rights and responsibilities. Sanctions for violations of the standards of conduct for students will be administered under this chapter. When violations of laws of the state of Washington and/or the United States are also involved, the college may refer such matters to proper authorities and in the case of minors, this conduct may be referred to parents or legal guardians.

NEW SECTION

**WAC 132M-125-010 Authority.** The board of trustees, acting pursuant to RCW 28B.10.528 and 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice-president of student success or designee. The student conduct officer shall serve as the principal investigator and administrator for alleged violations of this code.

NEW SECTION

**WAC 132M-125-015 Definitions.** The following definitions shall apply for purposes of this student conduct code:

(1) "ASLCC" means the associated students of Lower Columbia College as defined in the constitution of that body.

(2) "Assembly" means any overt activity engaged in by one 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 group of persons.

(3) "Board" means the board of trustees of community college District No. 13, state of Washington.

(4) "Conduct review officer" is the vice-president of student success 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.

(5) "College" means Lower Columbia College and any other college centers or facilities established within Washington state community college District No. 13.

(6) "College community" means trustees, students, staff, faculty, and visitors on college-owned or controlled facilities.

(7) "College facilities" and "college facility" mean and include any and all real and personal property owned, rented, leased or operated by the board of trustees of Washington state community college District No. 13, and shall include all buildings and appurtenances attached thereto and all parking lots and other grounds. College facilities extend to distance education classroom environments, and agencies or institutions that have an educational agreement with the college.

(8) "College official" includes any person employed by the college performing assigned duties.

(9) "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.

(10) "Complainant" means any person who submits a charge alleging that a student violated the code of student conduct.

(11) "Controlled substance" means and includes any drug or substance as defined in chapter 69.50 RCW as now law or hereafter amended.

(12) "Day" means a weekday, excluding weekends and college holidays.

(13) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(14) "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 days or an expulsion are heard by the student conduct committee. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(15) "Faculty member" and "instructor" mean any employee of community college District No. 13 who is employed on a full-time or part-time basis as a teacher, instructor, counselor or librarian.

(16) "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) 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.

(17) "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.

(18) "RCW" means Revised Code of Washington which can be accessed at <http://apps.leg.wa.gov/rcw/>.

(19) "Respondent" is the student against whom disciplinary action is initiated.

(20) "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) Sending the document by e-mail and by either certified mail or first class mail to the party's last known address. It is the responsibility of each student to regularly check their official Lower Columbia College e-mail address.

Service is deemed complete upon hand delivery of the document or upon the date the document is e-mailed.

(21) "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 have been notified of their acceptance for admission, persons who withdraw after allegedly violating the code, or persons who are not officially enrolled for a particular term but who have a continuing relationship with the college, are considered "students."

(22) "Student conduct officer" is a college administrator designated by the president or vice-president of student success to be responsible for implementing and enforcing the student conduct code. The president or vice-president of student success 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.

(23) "Student organization" means any number of students who have met the formal requirements of clubs and organizations.

NEW SECTION**WAC 132M-125-020 Statement of jurisdiction.** (1)

The student conduct code shall apply to student conduct that occurs:

- (a) In or on college facilities;
  - (b) At or in connection with college sponsored activities;
- or
- (c) Off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives.

(2) 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.

(3) In addition to initiating discipline proceeding for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college may proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil proceedings or criminal prosecution.

NEW SECTION

**WAC 132M-125-025 Students studying abroad.** Students who participate in any college-sponsored or sanctioned international study program shall observe the following:

- (1) The laws of the host country;
- (2) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying;
- (3) Any other agreements related to the student's study program in another country; and
- (4) Lower Columbia College's standards of conduct for students.

NEW SECTION

**WAC 132M-125-030 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 132M-125-035 Prohibited student conduct.**

The college may impose disciplinary sanctions against a student who commits, or aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct which include, but are not limited to, any of the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes using or any attempt to use, give, or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment.

(c) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(d) No student shall be allowed to withdraw from a course or from the college to avoid the consequences of academic dishonesty.

(2) **Other dishonesty.** Any other acts of dishonesty. Such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Obstruction or disruption.** Obstruction or disruption of (a) any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity, or (b) any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college. Participation in any activity which unreasonably disrupts the operations of the college or infringes on the rights of another member of the college community, or leads or incites another person to engage in such an activity.

(4) **Assault.** Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this subsection:

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

(b) Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated or harassed, even if the perpetrator lacks such an intent.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites, to harass, abuse, bully or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's e-mail communications directly or through spyware, sending threatening e-mails, disrupting electronic communications with spam or by sending a computer virus, sending false messages to third parties using another's e-mail identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Attempted or actual damage to, or theft or misuse of, real or personal property or money of:

(a) The college or state;

(b) Any student or college officer, employee, or organization;

(c) Any other member of the college community or organization; or

(d) Possession of such property or money after it has been stolen.

(7) **Failure to comply with directive.** Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Possession or use of firearms, explosives, dangerous chemicals or other dangerous weapons which can be used to inflict bodily harm or to damage real or personal property is prohibited on the college campus, at any other facilities leased or operated by the college, or at any activity under the administration or sponsorship of the college. Exceptions to this policy are permitted when the weapon is used in conjunction with an approved college instructional program, is carried by duly constituted law enforcement officer.

(9) **Hazing.** Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student.

(10) **Alcohol, drug, and tobacco violations.**

(a) **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.

(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. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or being under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) **Tobacco, electronic cigarettes and related products.** Consistent with its efforts to promote wellness, fitness, and a campus environment conducive to work, study, and activities for staff, students, and the public, Lower Columbia College maintains a smoke-free campus. The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location is prohibited, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased or operated by the college. "Related products" includes, but is not limited to cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

(11) **Lewd conduct.** Conduct which is obscene, lewd, or indecent.

(12) **Disorderly conduct.** Conduct which disrupts campus operations or the educational environment, is disturbing the peace, or assisting or encouraging another person to disturb the peace.

(13) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community because of her/his 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. Such finding is considered an aggravating factor in determining a sanction for such conduct.



(14) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** 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.

(c) **Sexual violence.** The term "sexual violence" incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated without clear, knowing, and voluntary consent, such as committing a sexual act against a person's will, exceeding the scope of consent, or where the person is incapable of giving consent, 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.

(15) **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 communications.

(16) **Retaliation.** Retaliation, intimidation, threats, or coercion against anyone who asserts a right protected by federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment, or who cooperates in an investigation.

(17) **Theft or misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the student computing resources policy ([http://www.LowerColumbia.edu/student\\_services/computing\\_resources/policy.php](http://www.LowerColumbia.edu/student_services/computing_resources/policy.php)).

(18) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(19) **Safety violations.** Safety violation includes any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(20) **Abuse or misuse of any procedures.** Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

(a) Failure to obey a subpoena;

(b) Falsification or misrepresentation of information;

(c) Disruption, or interference with the orderly conduct of a proceeding;

(d) Interfering with someone else's proper participation in a proceeding;

(e) Destroying or altering potential evidence, or attempting to intimidate or otherwise improperly pressure a witness or potential witness;

(f) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member; or

(g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.

(21) **Motor vehicles.** Operation of any motor vehicle on college property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person.

(22) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(23) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing as an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state or local laws to civil and criminal authorities for disposition. The college shall proceed with

student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

#### NEW SECTION

**WAC 132M-125-040 Trespass.** The vice-president of student success or designee shall have the authority and power to:

(1) Prohibit the entry, or withdraw the license or privilege of any person or group of persons to enter onto or remain on any college premises or facility;

(2) Give notice against trespass by any manner provided by law, to any person, persons, or group of persons against whom the license or privilege has been withdrawn or who have been prohibited from, entering onto or remaining upon all or any portion of college premises or a college facility; or

(3) Order any person, persons, or group of persons to leave or vacate all or any portion of the college premises or facility. Such power and authority may be exercised to halt any event which is deemed to be unreasonably disruptive of order or impedes the movement of persons or vehicles or which disrupts or threatens to disrupt the ingress and/or egress of persons from facilities owned and/or operated by the college. Any individual remaining on or reentering the college premises or facility after receiving notice that his or her license or privilege to be on that property has been revoked shall be subject to disciplinary action and/or charges of criminal trespass.

#### NEW SECTION

**WAC 132M-125-045 Disciplinary sanctions and terms and conditions.** The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code. Depending upon the misconduct, more than one sanction may be required. Other than college expulsion or revocation or withholding of a degree, disciplinary sanctions are not made part of the student's academic record, but are part of the student's disciplinary record. Violation of any term or condition of any disciplinary sanction constitutes a new violation and may subject the student to additional sanctions.

(1) **Disciplinary warning:** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(2) **Written reprimand:** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) **Disciplinary probation:** Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may

be for a limited period of time or may be for the duration of the student's attendance at the college.

(4) **Disciplinary suspension:** Dismissal from the college and from the student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(5) **Dismissal:** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(6) Disciplinary terms and conditions that may be imposed in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) **Educational sanction.** The college may require the student to complete an educational activity or experience directly related to the violation committed, at the student's expense.

(b) **Professional evaluation:** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(c) **Not in good standing:** A student may be deemed "not in good standing" with the college. If so the student shall be subject to the following restrictions:

(i) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(ii) Ineligible to represent the college to anyone outside the college community in any way, including representing the college at any official function, or any forms of intercollegiate competition or representation.

(d) **Restitution or monetary fine.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, monetary fine, or other compensation.

(e) **Hold on transcript or registration.** This is a temporary measure restricting release of a student's transcript or access to registration. Upon satisfactory completion of the conditions of the sanction, the hold is released.

(f) **Revocation of admission or degree.** Admission to or a degree awarded from the college may be revoked for fraud, misrepresentation, or other violation of standards of conduct for students in obtaining the degree, or for other serious violations committed by a student prior to graduation.

(g) **Withholding degree.** The college may withhold awarding a degree otherwise earned until the completion of the process set forth in this chapter, including the completion of all sanctions imposed.

(h) **No trespass order.** A student may be restricted from college property based on his/her misconduct.

(i) **No contact order.** A prohibition of direct or indirect physical, verbal, or written contact, including electronic, with another individual or group.

## HEARING PROCEDURES

### NEW SECTION

#### **WAC 132M-125-100 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 132M-125-045.

(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 132M-125-105 Appeal from disciplinary action.** (1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within twenty-one days of the student conduct officer's decision. Failure to timely file a notice of appeal consti-

tutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

(2) The notice of appeal must include a brief statement explaining why the respondent is seeking review.

(3) The parties to an appeal shall be the respondent and the conduct review officer.

(4) 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.

(5) 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.

(6) Imposition of disciplinary action for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended.

(7) 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.

(8) 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.

(9) 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 132M-125-110 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 college'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 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 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 expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

#### NEW SECTION

**WAC 132M-125-115 Brief adjudicative proceedings—Review of an initial decision.** (1) An initial decision is subject to review by the president or designee, provided the respondent files a written request for review with the conduct review officer within twenty-one days of the initial decision.

(2) The president or designee 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 or designee 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-one 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-one days after the request is submitted.

(5) If the president or designee upon review determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

#### NEW SECTION

**WAC 132M-125-120 Student conduct committee.** (1) The student conduct committee shall consist of five members:

- (a) Two full-time students appointed by the student government (ASLCC);
- (b) Two faculty members appointed by the faculty association;
- (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 132M-125-125 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 132M-125-130 Student conduct 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 recording 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 132M-125-135 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-one 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 132M-125-140 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 or designee by filing a notice of appeal with the president's office within twenty-one days 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 or designee'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 or designee shall provide a written decision to all parties within forty-five days after receipt of the notice of appeal. The president's or designee's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) The president or designee 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 or designee shall not engage in an ex parte communication with any of the parties regarding an appeal.

#### NEW SECTION

**WAC 132M-125-145 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 substantial 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 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) The conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(b) During the summary suspension hearing, the issue before the conduct review 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 132M-125-150 Classroom misconduct and authority to suspend for no more than one day.** (1) Faculty members have the authority to take appropriate action to maintain order and proper conduct in the classroom and to maintain the effective cooperation of students in fulfilling the objectives of the course.

(2) Bringing any person, thing, or object to a teaching and learning environment that may disrupt the environment or cause a safety or health hazard, without the express approval of the faculty member is expressly prohibited.

(3) Faculty members or college administrators have the right to suspend any student from any single class or related activity for no more than one day, if the student's misconduct creates disruption to the point that it is difficult or impossible to maintain the decorum of the class, related activity or the learning and teaching environment. The faculty member or college administrator shall report this suspension to the student conduct office or designee on the same day of the suspension. In consultation with the faculty member, the student conduct office may set conditions for the student upon return to the class or activity.

#### **DISCIPLINE PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF SEXUAL MISCONDUCT**

#### NEW SECTION

**WAC 132M-125-200 Supplemental sexual misconduct procedures.** 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 132M-125-005 through 132M-125-145. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.

#### NEW SECTION

**WAC 132M-125-205 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 under-age, 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 132M-125-210 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 or designee 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 and respondent of their 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 imposed upon the respondent for the complainant's protection.

#### NEW SECTION

**WAC 132M-125-215 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 the notice of the discipline decision provided for in WAC 132M-125-210(5). 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 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 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 days or an expulsion shall be reviewed by the student conduct committee.

(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. 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 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 respondent 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 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 or designee subject to the same procedures and deadlines applicable to other parties.

(12) The president or designee, 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 132M-125-220 Brief adjudicative proceedings—College record.** The college record for brief adjudicative proceedings shall consist of any documents regarding the matter that were considered or prepared by the presiding officer for the brief adjudicative proceeding or by the reviewing officer for any review. These records shall be maintained as the official record of the proceedings.

#### NEW SECTION

**WAC 132M-125-225 Recordkeeping.** (1) The record in a brief adjudicative proceeding shall consist of all documents as required by law and as specified in RCW 34.05.476.

(2) The office of the vice-president of student success shall maintain records of student grievance and disciplinary proceedings for at least six years.

(3) The disciplinary record is confidential.

(4) Students may request a copy of their own disciplinary record at their own reasonable expense by making a written request to the vice-president of student success. Personally identifiable student information is redacted to protect another student's privacy.

(5) Students may authorize release of their own disciplinary record to a third party in compliance with FERPA, 20 U.S.C. Sec. 1232g, by making a written request to the vice-president of student success.

(6) The college may inform the complainant of the outcome of any disciplinary proceeding involving a crime of violence or nonforcible sex offense, as permitted by FERPA, 20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99.

(7) The college may not communicate a student's disciplinary record to any person or agency outside the college without the prior written consent of the student, except as required or permitted by law. Exceptions include, but are not limited to:

(a) The student's parents or legal guardians may review these records if the student is a minor or a dependent, if the student is a minor and disciplinary action involves the use or possession of alcohol or controlled substance, or in connection with a health or safety emergency regardless if the student is a dependent or a minor, as permitted by FERPA, 20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99.

(b) To another educational institution, upon request, where the student seeks to, intends to, or has enrolled.

(c) Information concerning registered sex offenders.

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

- WAC 132M-121-010 Statement of policy and purpose.
- WAC 132M-121-020 Definitions.
- WAC 132M-121-030 Jurisdiction.
- WAC 132M-121-040 Right to demand identification.
- WAC 132M-121-041 Freedom of expression.
- WAC 132M-121-042 Right to assembly.
- WAC 132M-121-043 Right to outside speakers.
- WAC 132M-121-044 Distribution of materials.
- WAC 132M-121-045 Denial of access to Lower Columbia College.
- WAC 132M-121-046 Trespass.
- WAC 132M-121-050 Smoking.
- WAC 132M-121-051 Liquor.
- WAC 132M-121-052 Drugs/substance abuse.
- WAC 132M-121-053 Hazing.
- WAC 132M-121-054 Failure to comply.
- WAC 132M-121-055 Disorderly or disruptive conduct.
- WAC 132M-121-056 Theft—Stolen property—Robbery.
- WAC 132M-121-057 Damaging property.
- WAC 132M-121-058 Interference—Intimidation—Physical abuse—Verbal abuse—Threats—Harassment—Stalking.
- WAC 132M-121-059 Obscene, lewd or indecent conduct.
- WAC 132M-121-060 Racial harassment.
- WAC 132M-121-061 Sexual harassment.
- WAC 132M-121-062 Forgery or alteration of records.
- WAC 132M-121-063 Computer trespass.
- WAC 132M-121-064 Firearms/explosives.
- WAC 132M-121-065 Other punishable acts.
- WAC 132M-121-066 False information.
- WAC 132M-121-067 Academic dishonesty.
- WAC 132M-121-068 Malicious harassment.
- WAC 132M-121-100 Initiation of discipline.
- WAC 132M-121-105 Sanctions.
- WAC 132M-121-110 Student conduct committee.
- WAC 132M-121-115 Appeals.
- WAC 132M-121-120 Groups and organizations.
- WAC 132M-121-200 Summary suspension.



- WAC 132M-121-300 Adjudicative proceedings before the student conduct committee.
- WAC 132M-121-310 Recordkeeping.
- WAC 132M-121-320 Evidence admissible in hearings.
- WAC 132M-121-330 Initial order—Petition for administrative review—Final order.
- WAC 132M-121-340 Suspension for failure to appear.
- WAC 132M-121-350 Final decision.
- WAC 132M-121-500 Severability.

**WSR 15-07-071**  
**WITHDRAWAL OF PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
 (By the Code Reviser's Office)  
 [Filed March 17, 2015, 8:18 a.m.]

WAC 246-817-740, 246-817-745, 246-817-760 and 246-817-772, proposed by the department of health in WSR 14-18-031, appearing in issue 14-18 of the Washington State Register, which was distributed on September 17, 2014, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor  
 Washington State Register

**WSR 15-07-072**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**  
 [Filed March 17, 2015, 8:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-03-081.

Title of Rule and Other Identifying Information: Chapter 296-17 WAC, General reporting rules, audit and recordkeeping, rates and rating system for Washington workers' compensation insurance and chapter 296-17A WAC, Classifications for Washington workers' compensation insurance.

Hearing Location(s): Labor and Industries Building, Room S119, 7273 Linderson Way S.W., Tumwater, WA 98501, on April 21, 2015, at 10:00 a.m.

Date of Intended Adoption: May 19, 2015.

Submit Written Comments to: Jo Anne Attwood, P.O. Box 44148, Olympia, WA 98504-4148, e-mail JoAnne.Attwood@lni.wa.gov, fax (360) 902-4799, by April 21, 2015, 5:00 p.m.

Assistance for Persons with Disabilities: Contact office of information and assistance by April 17, 2015, TTY (360) 902-5797.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:

WAC Numbers	WAC Description	What is Changing	Reason for Change
296-17-31014	Farming and agriculture	Add definition of a farm labor contractor to the agricultural reporting rules.	Classification and reporting rules refer to "farm labor contractor," yet no definition existed in the rules. The definition is taken from the farm labor contracting rules in WAC 296-310-010.
296-17A-3415	Factory built housing dealers	Spelling out that 3415 (factory built housing dealers) includes delivery to a customer from the dealer.	We have always included this kind of delivery in 3415, but confusion existed because it was not spelled out in 3415. 0517 (set up of factory built housing units performed by a contractor) implied 3415 includes this delivery.
296-17A-6207-04	Fireworks exhibition	Correct reference in text from 4601 (Fireworks manufacturing) to 3701 (Chemical mixing, blending and repackaging only: Fireworks manufacturing).	Exclusion currently points to 4601, which was repealed in 2010. 3701 is the correct classification.
296-17A-6303-03	Insurance sales personnel and claims adjusters	Remove "voluntary" from "to elect voluntary coverage" to read "to elect coverage."	Confusion could exist around whether the rule referred to volunteer coverage. The coverage being elected is not volunteer coverage.

The department intends to review these chapters and make revisions to:

- Correct typographical and other errors (such as invalid telephone numbers and out-of-date references),
- Revise wording and formatting to make the rules easier to understand and apply, and
- Incorporate and formalize existing agency practices (such as expressly including in a risk classification employment that the department currently includes by interpretation or analogy).

The purpose of this rule making is not to make substantive changes to how the department classifies employment, but to review and revise the classification plan to ensure it is clear and understandable. These changes will not change the way we calculate employer rates, our reporting requirements, or how we classify businesses.

As part of this rule making, the department also intends to review these chapters as required by SSB 5679 (chapter 30, Laws of 2013 2nd sp. sess.) to make changes where possible to reduce the regulatory burden on employers insured with the state fund.

Statutory Authority for Adoption: RCW 51.04.020 and 51.16.035.

Statute Being Implemented: RCW 51.16.035.

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

Name of Proponent: [Department of labor and industries], governmental.

Name of Agency Personnel Responsible for Drafting: Jo Anne Attwood, Tumwater, Washington, (360) 902-4777; Implementation: Mike Ratko, Tumwater, Washington, (360) 902-6369; and Enforcement: Victoria Kennedy, Tumwater, Washington, (360) 902-4997.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency is exempt from conducting a small business economic impact statement since the proposed rules set or adjust fees or rates pursuant to legislative standards described in RCW 34.05.310 (4)(f) and do not change current coverage options for employers and workers.

A cost-benefit analysis is not required under RCW 34.05.328. Since the proposed rules do not change any existing coverage options for employers or workers and adjust fees pursuant to legislative standards, they are exempted by RCW 34.05.328 (5)(b)(vi) from the requirement for a cost-benefit analysis.

March 17, 2015  
Joel Sacks  
Director

AMENDATORY SECTION (Amending WSR 14-18-079, filed 9/3/14, effective 10/4/14)

**WAC 296-17-31014 Farming and agriculture. (1) Does this same classification approach apply to farming or agricultural operations?**

Yes, but it may not appear so without further explanation. We classify farming and agricultural operations by type of crop or livestock raised. This is done because each type of

grower will use different processes and grow or raise multiple crops and livestock which have different levels of hazards. It is common for farmers and ranchers to have several basic classifications assigned to their account covering various types of crops or livestock. If you fail to keep the records required in the auditing recordkeeping section of chapter 296-17 WAC, and we discover this, we will assign all worker hours for which records were not maintained to the highest rated classification applicable to the work performed.

**(2) I am involved in diversified farming and have several basic classifications assigned to my business. Can I have one classification assigned to my account to cover the different types of farming I am involved in?**

Yes, your account manager can assist you in determining the single classification that will apply to your business. The name and phone number of your account manager can be found on your quarterly premium report or your annual rate notice. For your convenience you can call us at 360-902-4817 and we will put you in contact with your assigned account manager.

**(3) How do you determine what single farming classification will be assigned to my business?**

The approach used to assign a single classification to a farming business is much the same as we use for construction or erection contractors. To do this, we will need a break down of exposure (*estimate of hours to be worked by your employees*) by type of crop or livestock being cared for (*classification*). This information will be used to estimate the premium which would be paid using multiple classifications. The total premium is then divided by the total estimated hours to produce an average rate per hour. We will select the classification assigned to your business which carries the hourly premium rate which is the closest to the average rate that we produced from the estimated hours. Classification 4806 is not to be assigned to any grower as the single farming classification.

**(4) How will I know what single farming classification you have assigned to my business?**

We will send you a written notice of the basic classification that will apply to your business.

**(5) If I requested a single classification for my farming operation can I change my mind and use multiple classifications?**

Yes, but you will need to call your account manager to verify the applicable classifications.

The name and phone number of your account manager can be found on your quarterly premium report or your annual rate notice. For your convenience you can call us at 360-902-4817 and we will put you in contact with your assigned account manager.

**(6) What is a farm labor contractor?**

A farm labor contractor is a specialty contractor who supplies laborers to a farm operation for specified services such as weeding, planting, irrigating, and fertilizing. Generally, work involves manual labor tasks as opposed to machine operations.

**(7) I am a farm labor contractor. How is my business classified?**

If you are a farm labor contractor we will assign the basic classification that applies to the type of crop being grown, or

livestock being cared for. If you contract to supply both machine operators and machinery on a project, all operations are to be assigned to classification 4808.

~~((7))~~ **(8) Farm internship pilot program. Who may participate in the farm internship pilot program created by the department as a result of Title 49 RCW, effective June 12, 2014?**

Small farms with annual sales of less than two hundred fifty thousand dollars per year located in San Juan, Skagit, King, Whatcom, Kitsap, Pierce, Jefferson, Spokane, Yakima, Chelan, Grant, Island, Snohomish, Kittitas, Lincoln, and Thurston counties that receive a special certification from the department may have farm interns. Employers who qualify may report no more than three farm interns. Farm internship program risk classifications are: WAC 296-17A-4814, 296-17A-4815, and 296-17A-4816.

AMENDATORY SECTION (Amending WSR 07-01-014, filed 12/8/06, effective 12/8/06)

**WAC 296-17A-3415 Classification 3415.**

**3415-00 Factory built housing dealers**

Applies to establishments engaged in the sales and service of factory built housing units such as mobile/manufactured homes or modular homes. Work contemplated by this classification includes:

- Pick up of units from housing factory(:);
- Delivery of the unit to a sales location or customer's site;
- Set up of units at sales lot or customer locations(:);
- Installation of skirting(:);
- Aligning cabinets and doors(:); and
- Touch up painting when performed by employees of an employer subject to this classification.

This classification also includes:

- Parts department employees(:);
- Sales employees who assist in duties described in this classification(:); and
- Lot employees engaged in the maintenance of grounds or in the maintenance of factory built home units on display at the lot.

This classification excludes ~~((delivery of))~~:

- Contractors who deliver and set up factory built home units ~~((and set up by contractor which is to be reported separately in classification))~~ which are classified in 0517;

• Employees involved in work such as, but not limited to, concrete work, electrical, plumbing, landscaping, and fence construction who are to be reported separately in the construction classification applicable to the work they are performing; and

• Modular or mobile home sales personnel who, if all the conditions of the Exception classifications, WAC 296-17-31018 are met, may be reported separately in classification 6301 ~~((provided all the conditions of the general reporting rule covering standard exception employees have been met))~~.

~~((Special note:))~~ • Construction of separate out-buildings such as garages, carports, well houses and storage sheds ~~((which may be constructed in connection with a modular or mobile set up are excluded from this classification and))~~,

which are to be reported separately in the applicable construction classifications.

• Establishments engaged exclusively in the delivery of modular or mobile homes, ~~((but who))~~ which are not involved in any aspect of the set-up of the structure, are to be reported separately in classification 1102.

AMENDATORY SECTION (Amending WSR 14-17-085, filed 8/19/14, effective 9/19/14)

**WAC 296-17A-6207 Classification 6207.**

**6207-00 Carnivals - Traveling**

Applies to those employees of an employer engaged in operating traveling carnivals, who are drivers and/or engaged in the set up and/or tear down of mechanical and nonmechanical amusement rides, and any temporary structure associated with a traveling carnival such as, but not limited to, game, food, or souvenir concession booths, mobile offices, aid rooms or ticket booths.

This classification excludes clerical office employees who are assigned to a permanent office location with no outside duties who may be reported separately in classification 4904 provided all the conditions of the general reporting rules covering standard exception employees have been met; clerical employees who travel with the carnival or with ride operators and who work out of a mobile office, ride operators, game attendants, ticket sellers/takers and personnel involved in the care, custody, and maintenance of carnival facilities who are to be reported separately in classification 6208; establishments engaged in operating mechanical or nonmechanical rides at a permanent location which are to be reported separately in classification 6208; and establishments engaged in operating video or amusement game arcades at a permanent location, not within or operated in connection with an amusement park, which are to be reported separately in classification 6406.

*Special note:* Permanent shop employees, and those employees assigned to the shop during the winter quartering period may be reported separately in classification 5206 provided the conditions set forth in WAC 296-17-31018 have been met.

**6207-01 Circuses - Traveling**

Applies to establishments engaged in operating a traveling circus. Work contemplated by this classification includes all preparations, operations and maintenance normally performed by employees of an employer having operations subject to this classification. Employments include, but are not limited to, drivers, trainers, performers, ticket sellers/takers, clerical staff who travel with the circus, set up/tear down of mechanical and nonmechanical rides, concession booths or stands, mobile offices, aid rooms, ticket booths and all other temporary structures associated with a traveling circus.

This classification excludes clerical office employees who are assigned to a permanent office location with no outside duties, who may be reported separately in classification 4904 provided all the conditions of the general reporting rules covering standard exception employees have been met.

*Special note:* Classifications 6208 and 5206 do not apply to circus operations.

**6207-02 Amusement rides - Traveling**

Applies to establishments engaged in operating mechanical or nonmechanical amusement rides. Employments contemplated by this classification include, but are not limited to, drivers and all employees engaged in the set up and tear down, operation, and maintenance of mechanical and nonmechanical rides and all other temporary structures associated with the amusement rides. This classification also includes automobile stunt shows, such as monster trucks or motorcycle car jumps, that perform for entertainment purposes. Covered employments associated with automobile stunt shows include, but are not limited to, drivers, mechanics, and maintenance employees who set up and take down ramps or other structures used in the show.

This classification excludes clerical office employees who are assigned to a permanent office location with no outside duties, who may be reported separately in classification 4904 provided all the conditions of the general reporting rule covering standard exception employees have been met; clerical employees who travel with the amusement operations and work out of a mobile office, ride operators, attendants, ticket sellers/takers, and personnel involved in the care, custody, and maintenance of amusement facilities who may be reported separately in classification 6208; employers engaged in operating mechanical or nonmechanical rides at a permanent location which are to be reported separately in classification 6208; and establishments engaged in operating video or amusement game arcades at a permanent location, not within or operated in connection with an amusement park, which are to be reported separately in classification 6406.

**Special note:** Permanent shop employees, and those employees assigned to the shop during the winter quartering period, may be reported separately in classification 5206 provided the conditions set forth in WAC 296-17A-5206 have been met.

**6207-03 Rodeos**

Applies to establishments engaged in the production of rodeos. Employments contemplated by this classification include all operations normally performed by employees of an employer having operations subject to this classification such as, but not limited to, drivers and all arena employees, setting up/tearing down temporary enclosures/structures/bleachers, clowns, gate openers, animal handlers, ticket sellers/takers, first-aid staff, and clerical staff who travel with the rodeo.

This classification excludes clerical office employees who are assigned to a permanent office location with no outside duties, who may be reported separately in classification 4904 provided all the conditions of the general reporting rule covering standard exception employees have been met; and stock handlers who contract with a rodeo producer to supply horses, bulls, or other rodeo animals, who are to be reported separately in classification 7302.

**Special note:** Classifications 6208 and 5206 do not apply to rodeos.

**6207-04 Fireworks exhibition**

Applies to establishments engaged in producing pyrotechnic exhibitions. This classification includes purchasing

ready made fireworks, setting up displays, timing fuses, lighting the fireworks, and cleaning up.

This classification excludes establishments engaged in the manufacture of fireworks which are to be reported separately in classification ((460+)) 3701.

AMENDATORY SECTION (Amending WSR 14-17-085, filed 8/19/14, effective 9/19/14)

**WAC 296-17A-6303 Classification 6303.****Sales personnel with outside duties, messengers, insurance producers or surplus line brokers, social workers and dieticians employed by a home health care service**

Although referenced as sales personnel, this classification also applies to others with similar type activities. While some duties may be performed in a business office, the work is often conducted away from the employer's physical business location or in showrooms. We refer to work that takes place away from the employer's premises as "outside sales."

Classification **6303** is a standard exception classification, as described in WAC 296-17-31018 Exception classifications, with restrictions on both the type of work and where the work can take place. If any of a worker's duties are excluded from **6303** because of restrictions described in this rule, then none of the worker's hours may be reported in classification **6303**.

**Special note:** Care must be taken to:

- Look beyond job titles such as salesperson, social worker, or messenger. Job titles do not ensure the work satisfies the restrictions for classification **6303**;
  - Ensure standard exceptions are permitted - Some basic classifications include sales work;
  - Ensure workers assigned classification **6303** perform no work other than what is allowed by this classification or that permitted in WAC 296-17-4904.
- Classification **6303** includes all activities allowed by WAC 296-17A-4904 (office workers) as well as:
- Meeting with customers off premises;
  - Showing and demonstrating products and merchandise;
  - Off-site classroom instructional training;
  - Driving oneself or being transported to or from meeting or training locations;
  - Delivering interoffice mail, correspondence and legal documents necessary for administering the employer's business;
  - Providing counseling or verbal direction to clients of a home health care service;
  - Performing public relations for employers' business.
- Classification **6303** excludes:
- Stocking, shipping, receiving, or delivering merchandise;
  - The demonstration of machinery or equipment;
  - Workers who perform any duties not specifically allowed by WAC 296-17A-4904 or 296-17A-6303;
  - Specialty services merchandising products in stores, reported in classification **0607-19**;
  - Directly supervising workers not included in classifications **4904** or **6303**;
  - Providing samples to retail customers, reported in classification **6406-40** or **7106-01**;

- Working as a driver for a service that transports or chauffeurs others;
- Driving, cooking, or cleaning for, or physically assisting others for home health care services;
- Employees of collection agencies, who are reported separately in **5301-13**;
- Door-to-door sales persons who are reported separately in **6309-22**;
- Employees of services (WAC 269-17A-4903) providing inspection or valuation services to others;
- Employees of messenger services who are reported separately in **1101-09**;
- Employees working for a legal messenger service who are reported separately in **6601-07**;
- Construction estimators, who are reported in classification **4911**, when their work is limited to time and material estimating for a full work shift.

**Special note:** Hands on training outside of a classroom setting has to be reported separately in the applicable basic classification. For example, a karate instructor is reported in classification 6204, not 6303.

For administrative purposes, classification **6303** is divided into the following subclassifications:

**6303-00 Outside sales personnel, messengers, N.O.C.**

**6303-03 Insurance sales personnel and claims adjusters**

**Special note:** Individuals licensed by the insurance commissioner as insurance producers for soliciting, negotiating, and selling insurance are exempt from coverage as specified in RCW 51.12.020(11) and 48.17.010. To elect ((voluntary)) coverage, these individuals must submit a completed optional coverage form to the department.

**6303-21 Home health care services: Social workers and dietitians**

Social workers are employed by home health care services providing care for people living with disabilities. Duties include teaching people living with physical or developmental disabilities in their own home to manage daily living skills such as caring for themselves, dressing, cooking, shopping, and going to the doctor.

Dieticians (also called nutritionists) are referred to patients by their physicians. The dietitian assesses the patient's current nutritional status, and then develops a food plan to meet the patient's needs.

Subclassification **6303-21** excludes:

- Cooking, cleaning, transporting and physically assisting clients;
- Nursing and home health care services which are to be reported separately in **6110-00**;
- Therapy services which are reported separately in **6109**;
- Domestic servants who are to be reported separately in **6510-00**;
- Chore workers who are to be reported separately in **6511**;
- Home care services provided through the home care referral registry (HCRR) who are to be reported separately in **6512-00**.

**Special note:** Subclassification **6303-21** is not to be assigned to any account that does not also have classification **6110** and/or **6511**.

**WSR 15-07-082**

**PROPOSED RULES**

**HEALTH CARE AUTHORITY**

(Washington Apple Health)

[Filed March 17, 2015, 1:15 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 182-556-0100 Chemical dependency treatment services, 182-556-0200 Chiropractic services for children, 182-556-0300 Personal care services, 182-556-0400 Limitations on services available to recipients of categorically needy medical assistance, and 182-556-0600 Mental health services.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Pear Conference Room, CSP 107, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at [http://www.hca.wa.gov/documents/directions\\_to\\_csp.pdf](http://www.hca.wa.gov/documents/directions_to_csp.pdf) or directions can be obtained by calling (360) 725-1000), on April 21, 2015, at 10:00 a.m.

Date of Intended Adoption: Not sooner than April 22, 2015.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by April 21, 2015.

Assistance for Persons with Disabilities: Contact Kelly Richters by April 13, 2015, TTY (800) 848-5429 or (360) 725-1307 or e-mail [kelly.richters@hca.wa.gov](mailto:kelly.richters@hca.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These are house-keeping changes to correct agency names, program names, rule numbers, and to make other clarifications that do not change the effect of the rules.

Reasons Supporting Proposal: These changes will provide the reader with correct information and improve clarity.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Melinda Froud, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1408.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed filing is exempt from the small business economic impact statement requirement under chapter 19.85 RCW.

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

March 17, 2015  
Jason R. P. Crabbe  
Rules Coordinator

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

**WAC 182-556-0100 Chemical dependency treatment services.** The ~~((department))~~ medicaid agency covers chemical dependency treatment services ~~((, as defined in))~~ under chapter ~~((388-805))~~ 388-877B WAC ~~((;))~~ for ~~((medicaid and children's))~~ Washington apple health clients. ~~((Coverage))~~ The agency's payment is limited to services performed by providers ~~((defined in))~~ under WAC ~~((388-502-0002))~~ 182-502-0002.

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

**WAC 182-556-0200 Chiropractic services for children.** (1) The ~~((department will))~~ medicaid agency pays only for chiropractic services:

- (a) For clients who are:
    - (i) Under age twenty-one ~~((years of age))~~; and
    - (ii) Referred by a screening provider under the healthy kids/early and periodic screening, diagnosis, and treatment (EPSDT) program.
  - (b) That are:
    - (i) Medically necessary under WAC 182-500-0070, safe, effective, and not experimental;
    - (ii) Provided by a chiropractor licensed in the state where services are provided; and
    - (iii) Within the scope of the chiropractor's license.
  - (c) Limited to:
    - (i) Chiropractic manipulative treatments of the spine; and
    - (ii) X rays of the spine.
- (2) Chiropractic services are paid according to fees established by the ~~((department))~~ agency using methodology set ~~((forth))~~ out in WAC ~~((388-531-1850))~~ 182-531-1850.

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

**WAC 182-556-0300 Personal care services.** The ~~((department))~~ medicaid agency pays for personal care services for a Title XIX categorically needy ~~((medicaid client as provided))~~ Washington apple health client under chapter 388-71 WAC, Home and community services and programs.

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

**WAC 182-556-0400 Limitations on services available to ~~((recipients of))~~ categorically needy ~~((medical assistance))~~ Washington apple health clients.** (1) Organ transplants are limited to the cornea, heart, heart-lung, kidney, kidney-pancreas, liver, pancreas, single lung, and bone marrow.

(2) The ~~((department shall provide))~~ medicaid agency pays for treatment, dialysis, equipment, and supplies for

acute and chronic nonfunctioning kidneys ~~((when the client is in the))~~ for a client in a home, hospital, or kidney center as described under WAC ~~((388-540-005))~~ 182-540-005.

(3) ~~The agency pays for~~ detoxification and medical stabilization ~~((are provided))~~ to ~~((chemically using))~~ chemical-using pregnant women in a hospital.

(4) The ~~((department shall provide))~~ agency pays for detoxification of acute alcohol or other drug intoxication only in a certified detoxification center or in a general hospital ~~((having))~~ that has a detoxification provider agreement with the ~~((department))~~ agency.

(5) The ~~((department shall provide))~~ agency pays for out-patient chemical dependency treatment in programs qualified under chapter 275-25 WAC and certified under chapter 275-19 WAC or its successor.

(6) The ~~((department))~~ agency may require a second opinion ~~((and/or))~~, or consultation, or both before ~~((the approval of))~~ approving any elective surgical procedure.

(7) The ~~((department))~~ agency designates diagnoses that may require surgical intervention:

- (a) Performed in other than a hospital in-patient setting; and
- (b) Requiring prior agency approval ~~((by the department))~~ for a hospital admission.

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

**WAC 182-556-0600 Mental health services.** Mental health-related services are available to an eligible client ~~((s))~~ under chapter 388-865 WAC and WAC ~~((388-531-1400))~~ 182-531-1400.

## WSR 15-07-084

### PROPOSED RULES

### HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed March 17, 2015, 1:38 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-03-055.

Title of Rule and Other Identifying Information: WAC 182-503-0530 Citizenship and alien status and 182-503-0535 Washington apple health—Citizenship and alien status.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Pear Conference Room, CSP 107, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at [http://www.hca.wa.gov/documents/directions\\_to\\_csp.pdf](http://www.hca.wa.gov/documents/directions_to_csp.pdf) or directions can be obtained by calling (360) 725-1000), on April 21, 2015, at 10:00 a.m.

Date of Intended Adoption: Not sooner than April 22, 2015.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. on April 21, 2015.

Assistance for Persons with Disabilities: Contact Kelly Richters by April 13, 2015, TTY (800) 848-5429 or (360) 725-1307 or e-mail [kelly.richters@hca.wa.gov](mailto:kelly.richters@hca.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule combines text from both sections with the intention of repealing WAC 182-503-0530. The proposed rule clarifies policy by simplifying the subsections about client eligibility, and the five-year bar. Only necessary terms appear in the definition section, and supplemental resource information has been removed.

Reasons Supporting Proposal: Reconstruction of these rules is necessary to reduce the risk of conflict with federal law.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1842; Implementation and Enforcement: Mick Pettersen, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-0913.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative [rules] review committee has not requested the filing of a small business economic impact statement, and these rules do not impose a disproportionate cost impact on 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.

March 17, 2015  
Jason R. P. Crabbe  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-16-052, filed 7/29/14, effective 8/29/14)

**WAC 182-503-0535 Washington apple health—Citizenship and ~~(alien)~~ immigration status.** ~~((1) To receive Washington apple health (WAH) coverage, you must meet all other eligibility requirements and be one of the following as defined in WAC 182-503-0530:~~

- ~~(a) A United States (U.S.) citizen;~~
- ~~(b) A U.S. national;~~
- ~~(c) A qualified alien; or~~
- ~~(d) A nonqualified alien and you are a:~~
  - ~~(i) Pregnant woman;~~
  - ~~(ii) Person who is otherwise eligible for medical care services (see WAC 182-508-0005);~~
  - ~~(iii) Child under age nineteen; or~~
  - ~~(iv) Child under age twenty-one who resides in an institution.~~

~~(2) If you are a nonqualified alien approved under deferred action childhood arrivals (DACA), then you are not eligible for WAH under subsection (1)(d) of this section.~~

~~However, you may qualify under subsection (6) of this section.~~

~~(3) If you are a qualified alien as defined in WAC 182-503-0530, who physically entered the U.S. before August 22, 1996, you may receive WAH for nonpregnant adults if you:~~

- ~~(a) Became a qualified alien before August 22, 1996; or~~
- ~~(b) Became a qualified alien on or after August 22, 1996, and have continuously resided in the U.S. between your date of entry into the U.S. and the date on which you became a qualified alien.~~

~~(4) If you are a qualified alien who physically entered the U.S. on or after August 22, 1996, and you are a nonpregnant adult, you are not eligible to receive WAH for five years beginning on the day you most recently became a qualified alien, unless you meet one of the exemptions in subsection (5) of this section. This is called the five-year bar. The five-year bar starts on the day you obtain qualified alien status.~~

~~(5) You are exempt from the five-year bar if you are one of the following qualified aliens as defined in WAC 182-503-0530:~~

- ~~(a) Amerasian lawful permanent residents;~~
- ~~(b) Asylees;~~
- ~~(c) Cuban/Haitian entrants;~~
- ~~(d) Persons granted withholding of deportation or removal;~~
- ~~(e) Refugees;~~
- ~~(f) Special immigrants from Iraq and Afghanistan;~~
- ~~(g) Victims of trafficking who have been certified or had their eligibility approved by the Office of Refugee Resettlement (ORR); and~~
- ~~(h) American Indians born outside the U.S. without regard to immigration status or date of entry if:~~

~~(i) They were born in Canada and are fifty percent American Indian blood (but need not belong to a federally recognized tribe); or~~

~~(ii) They are members of a federally recognized Indian tribe or Alaskan Native village or corporation; and~~

~~(i) Lawful permanent residents, parolees, or battered aliens, who are also an armed services member or veteran, or a family member of an armed services member or veteran, as described below:~~

~~(i) On active duty in the U.S. military, other than active duty for training;~~

~~(ii) An honorably discharged U.S. veteran;~~

~~(iii) A veteran of the military forces of the Philippines who served prior to July 1st, 1946, as described in Title 38, Section 107 of the U.S. Code; or~~

~~(iv) The spouse, unremarried widow or widower, or unmarried dependent child of a veteran or active duty service member.~~

~~(6) If you are ineligible for WAH because of the five-year bar or because of your immigration status, including if you are approved under DACA, you may be eligible for:~~

~~(a) The WAH alien emergency medical program as described in WAC 182-507-0110 through 182-507-0125;~~

~~(b) WAH pregnancy medical for noncitizen women as described in WAC 182-505-0115;~~

~~(c) WAH for kids for pregnant minors as described in WAC 182-505-0117;~~

(d) State-funded WAH for kids as described in WAC 182-505-0210; or

(e) The medical care services (MCS) program as described in chapter 182-508 WAC.) (1) **Definitions.**

(a) **Nonqualified alien** means someone who is lawfully present in the United States (U.S.) but who is not a qualified alien, a U.S. citizen, a U.S. national, or a qualifying American Indian born abroad.

(b) **Qualified alien** means someone who is lawfully present in the United States and who is one or more of the following:

(i) A person lawfully admitted for permanent residence (LPR).

(ii) An abused spouse or child, a parent of an abused child, or a child of an abused spouse who no longer resides with the person who committed the abuse, and who has one of the following:

(A) A pending or approved I-130 petition or application to immigrate as an immediate relative of a U.S. citizen or as the spouse of an unmarried LPR younger than twenty-one years of age.

(B) Proof of a pending application for suspension of deportation or cancellation of removal under the Violence Against Women Act (VAWA).

(C) A notice of prima facie approval of a pending self-petition under VAWA. An abused spouse's petition covers his or her child if the child is younger than twenty-one years of age. In that case, the child retains qualified alien status even after he or she turns twenty-one years of age.

(iii) A person who has been granted parole into the U.S. for one year or more, under the Immigration and Nationality Act (INA) Section 212 (d)(5), including public interest paroles.

(iv) A member of a Hmong or Highland Laotian tribe that rendered military assistance to the U.S. between August 5, 1964, and May 7, 1975, including the spouse, unremarried widow or widower, and unmarried dependent child of the tribal member.

(v) A person who was admitted into the U.S. as a conditional entrant under INA Section 203 (a)(7) before April 1, 1980.

(vi) A person admitted to the U.S. as a refugee under INA Section 207.

(vii) A person who has been granted asylum under INA Section 208.

(viii) A person granted withholding of deportation or removal under INA Section 243(h) or 241 (b)(3).

(ix) A Cuban or Haitian national who was paroled into the U.S. or given other special status.

(x) An Amerasian child of a U.S. citizen under 8 C.F.R. Section 204.4(a).

(xi) A person from Iraq or Afghanistan who has been granted special immigrant status under INA Section 101 (a)(27).

(xii) A person who has been certified or approved as a victim of trafficking by the federal office of refugee resettlement, or who is:

(A) The spouse or child of a trafficking victim of any age; or

(B) The parent or minor sibling of a trafficking victim who is younger than twenty-one years of age.

(c) **U.S. citizen** means someone who is a United States citizen under federal law.

(d) **U.S. national** means someone who is a United States national under federal law.

(e) **Undocumented person** means someone who is not lawfully present in the U.S.

(f) **Qualifying American Indian born abroad** means someone who:

(i) Was born in Canada and has at least fifty percent American Indian blood, regardless of tribal membership; or

(ii) Was born outside of the United States and is a member of a federally recognized tribe or an Alaska Native enrolled by the Secretary of the Interior under the Alaska Native Claims Settlement Act.

**(2) Eligibility.**

(a) A U.S. citizen, U.S. national or qualifying American Indian born abroad may be eligible for:

(i) Apple health for adults;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Classic medicaid.

(b) A qualified alien who meets or is exempt from the five-year bar may be eligible for:

(i) Apple health for adults;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Classic medicaid.

(c) A qualified alien who neither meets nor is exempt from the five-year bar may be eligible for:

(i) Alien medical programs;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Medical care services.

(d) A nonqualified alien may be eligible for:

(i) Alien medical programs;

(ii) Apple health for kids;

(iii) Apple health for pregnant women; or

(iv) Medical care services.

(e) An undocumented person may be eligible for:

(i) Alien medical programs;

(ii) State-only funded apple health for kids; or

(iii) State-only funded apple health for pregnant women.

**(3) The five-year bar.**

(a) A qualified alien meets the five-year bar if he or she:  
(i) Continuously resided in the U.S. for five years or more from the date he or she became a qualified alien; or

(ii) Entered the U.S. before August 22, 1996, and:

(A) Became a qualified alien before August 22, 1996; or

(B) Became a qualified alien on or after August 22, 1996, and has continuously resided in the U.S. between the date of entry into the U.S. and the date he or she became a qualified alien.

(b) A qualified alien is exempt from the five-year bar if he or she is:

(i) A qualified alien as defined in subsections (1)(b)(vi) through (xii) of this section;



(ii) An LPR, parolee, or abused person, who is also an armed services member or veteran, or a family member of an armed services member or veteran, as described below:

(A) An active-duty member of the U.S. military, other than active-duty for training;

(B) An honorably discharged U.S. veteran;

(C) A veteran of the military forces of the Philippines who served before July 1, 1946, as described in Title 38 U.S.C. Section 107; or

(D) The spouse, unmarried widow or widower, or unmarried dependent child of an honorably discharged U.S. veteran or active-duty member of the U.S. military.

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 182-503-0530 Citizenship and alien status—Definitions.

**WSR 15-07-085**  
**PROPOSED RULES**  
**HEALTH CARE AUTHORITY**

(Washington Apple Health)

[Filed March 17, 2015, 1:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-07-020.

Title of Rule and Other Identifying Information: WAC 182-502-0006 Enrollment for nonbilling providers, 182-502-0010 When the medicaid agency enrolls, 182-502-0012 When the medicaid agency does not enroll, and 182-502-0016 Continuing requirements.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Pear Conference Room, CSP 107, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at [http://www.hca.wa.gov/documents/directions\\_to\\_csp.pdf](http://www.hca.wa.gov/documents/directions_to_csp.pdf) or directions can be obtained by calling (360) 725-1000), on April 21, 2015, at 10:00 a.m.

Date of Intended Adoption: Not sooner than April 22, 2015.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. on April 21, 2015.

Assistance for Persons with Disabilities: Contact Kelly Richters by April 13, 2015, TTY (800) 848-5429 or (360) 725-1307 or e-mail [kelly.richters@hca.wa.gov](mailto:kelly.richters@hca.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is proposing amendments to WAC 182-502-0012 that clarify the scope of the site visit. Additional amendments to WAC 182-502-0006, 182-502-0010 and 182-502-0016, clarify provider liability coverage by adding exemptions for providers covered under the Federal Tort Claims Act (FTCA).

Reasons Supporting Proposal: The agency aligned site visit requirements with federal regulations under 42 C.F.R. 455.432.

The FTCA protects certain individuals acting within the scope of their official duties from liability. The agency added the reference to the FTCA to reflect these protections.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: 42 C.F.R. 455.432.

Rule is necessary because of federal law, 42 C.F.R. 455.432.

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1842; Implementation and Enforcement: Maureen Guzman, P.O. Box 425502, Olympia, WA 98504-5502, (360) 725-1622.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative [rules] review committee has not requested the filing of a small business economic impact statement, and these rules do not impose a disproportionate cost impact on 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.

March 17, 2016 [2015]

Jason R. P. Crabbe

Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-19-037, filed 9/11/13, effective 10/12/13)

**WAC 182-502-0006 Enrollment for nonbilling individual providers.** (1) The agency pays for health care services, drugs, supplies or equipment prescribed, ordered, or referred by a health care professional only when the health care professional has one of the following approved agreements with the agency and all other conditions of payment have been met (see WAC 182-501-0050):

(a) Core provider agreement, in accordance with WAC 182-502-0005; or

(b) Nonbilling provider agreement, in accordance with subsection (4) of this section.

(2) Only a licensed health care professional whose scope of practice under their licensure includes ordering, prescribing, or referring may enroll as a nonbilling provider.

(3) Nothing in this chapter obligates the agency to enroll any health care professional who requests enrollment as a nonbilling provider.

(4) **Enrollment.**

(a) To enroll as a nonbilling provider with the medicaid agency, a health care professional must, on the date of application:

(i) Not already be enrolled with the medicaid agency as a billing or servicing provider;

(ii) Be currently licensed, certified, accredited, or registered according to Washington state laws and rules;

(iii) Be enrolled with medicare, when required in specific program rules;

(iv) Have current professional liability coverage, individually or as a member of a group, to the extent the health care professional is not covered by the Federal Tort Claims Act, including related rules and regulations;

(v) Have a current federal drug enforcement agency (DEA) certificate, if applicable to the profession's scope of practice;

(vi) Pass the agency's screening process, including license verifications, data base checks, site visits, and criminal background checks, including fingerprint-based criminal background checks as required by 42 C.F.R. 455.434 if considered high-risk under 42 C.F.R. 455.450. The agency uses the same screening level risk categories that apply under medicare. For those provider types that are not recognized under medicare, the agency assesses the risk of fraud, waste, and abuse using similar criteria to those used in medicare;

(vii) Meet the conditions in this chapter and other chapters regulating the specific type of health care practitioner; and

(viii) Sign, without modification, a Medicaid Enrollment Application and Agreement for Nonbilling Individual Providers form (HCA 13-002). The medicaid agency and each provider signing a Medicaid Enrollment Application and Agreement for Nonbilling Individual Providers form (HCA 13-002) will hold each other harmless from a legal action based on the negligent actions or omissions of either party under the terms of this agreement.

(b) The medicaid agency does not enroll a nonbilling provider for reasons which include, but are not limited to, the following:

(i) The agency determines that:

(A) There is a quality of care issue with significant risk factors that may endanger client health and/or safety (see WAC 182-502-0030 (1)(a)); or

(B) There are risk factors that affect the credibility, honesty, or veracity of the health care practitioner (see WAC 182-502-0030 (1)(b)).

(ii) The health care professional:

(A) Is excluded from participation in medicare, medicaid or any other federally funded health care program;

(B) Has a current formal or informal pending disciplinary action, statement of charges, or the equivalent from any state or federal professional disciplinary body at the time of initial application;

(C) Has a suspended, terminated, revoked, or surrendered professional license as defined under chapter 18.130 RCW;

(D) Has a restricted, suspended, terminated, revoked, or surrendered professional license in any state;

(E) Is noncompliant with the department of health's or other state health care agency's stipulation of informal disposition, agreed order, final order, or similar licensure restriction;

(F) Is suspended or terminated by any agency within the state of Washington that arranges for the provision of health care;

(G) Fails a background check, including a fingerprint-based criminal background check, performed by the agency.

See WAC 182-502-0014, except that subsection (2) of this section does not apply to nonbilling providers;

(H) Does not have sufficient liability insurance according to (a)(~~(i)~~) (iv) of this subsection for the scope of practice, to the extent the health care professional is not covered by the Federal Tort Claims Act, including related rules and regulations; or

(I) Fails to meet the requirements of a site visit, as required by 42 C.F.R. 455.432.

**(5) Effective date of enrollment of nonbilling provider.** Enrollment of a nonbilling provider applicant is effective on the date the agency approves the nonbilling provider application.

(a) A nonbilling provider applicant may ask for an effective date earlier than the agency's approval of the nonbilling provider application by submitting a written request to the agency's chief medical officer. The request must specify the requested effective date and include an explanation justifying the earlier effective date. The chief medical officer will not authorize an effective date that is:

(i) Earlier than the effective date of any required license or certification; or

(ii) More than three hundred sixty-five days prior to the agency's approval of the nonbilling provider application.

(b) The chief medical officer or designee may approve exceptions as follows:

(i) Emergency services;

(ii) Agency-approved out-of-state services;

(iii) Medicaid provider entities that are subject to survey and certification by CMS or the state survey agency;

(iv) Retroactive client eligibility; or

(v) Other critical agency need as determined by the agency's chief medical officer or designee.

**(6) Continuing requirements.** To continue eligibility, a nonbilling provider must:

(a) Only order, refer, or prescribe for clients consistent with the scope of their department of health (DOH) licensure and agency program rules;

(b) Provide all services without discriminating on the grounds of race, creed, color, age, sex, sexual orientation, religion, national origin, marital status, the presence of any sensory, mental or physical handicap, or the use of a trained dog guide or service animal by a person with a disability;

(c) Document that the client was informed that the provider:

(i) May bill the client for any billable item or service. The rules in WAC 182-502-0160 do not apply; and

(ii) Is enrolled with the agency for the sole purpose of ordering, prescribing, or referring items or services for clients.

(d) Inform the agency of any changes to the provider's Medicaid Enrollment Application and Agreement for Nonbilling Individual Providers form (HCA 13-002) including, but not limited to, changes in:

(i) Address or telephone number;

(ii) Business name.

(e) Retain a current professional state license, registration, certification and applicable business license for the service being provided, and update the agency of all changes;

(f) Inform the agency in writing within seven business days of receiving any informal or formal disciplinary order, decision, disciplinary action or other action(s) including, but not limited to, restrictions, limitations, conditions and suspensions resulting from the practitioner's acts, omissions, or conduct against the provider's license, registration, or certification in any state;

(g) Maintain professional liability coverage requirements, to the extent the nonbilling provider is not covered by the Federal Tort Claims Act, including related rules and regulations;

(h) Not surrender, voluntarily or involuntarily, his or her professional state license, registration, or certification in any state while under investigation by that state or due to findings by that state resulting from the practitioner's acts, omissions, or conduct;

(i) Furnish documentation or other assurances as determined by the agency in cases where a provider has an alcohol or chemical dependency problem, to adequately safeguard the health and safety of medical assistance clients that the provider:

(i) Is complying with all conditions, limitations, or restrictions to the provider's practice both public and private; and

(ii) Is receiving treatment adequate to ensure that the dependency problem will not affect the quality of the provider's practice.

(j) Submit to a revalidation process at least every five years. This process includes, but is not limited to:

(i) Updating provider information;

(ii) Submitting forms as required by the agency including, but not limited to, a new Medicaid Enrollment Application and Agreement for Nonbilling Individual Providers form (HCA 13-002); and

(iii) Passing the agency's screening process as specified in subsection (4)(a)(vi) of this section.

(k) Follow the laws and rules that govern the agency's programs. A nonbilling provider may contact the agency with questions regarding the agency's programs. However, the agency's response is based solely on the information provided to the agency's representative at the time of inquiry, and in no way exempts a nonbilling provider from this requirement.

**(7) Audit or investigation.**

(a) Audits or investigations may be conducted to determine compliance with the rule and regulations of the program.

(b) If an audit or investigation is initiated, the provider must retain all original records and supportive materials until the audit is completed and all issues are resolved even if the period of retention extends beyond the required six year period.

**(8) Inspection; maintenance of records.** For six years from the date of services, or longer if required specifically by law, the nonbilling provider must:

(a) Keep complete and accurate medical records that fully justify and disclose the extent of the services or items ordered, referred or prescribed.

(b) Make available upon request appropriate documentation, including client records, supporting material for review by the professional staff within the agency or the U.S.

Department of Health and Human Services. The nonbilling provider understands that failure to submit or failure to retain adequate documentation may result in the termination of the nonbilling provider's enrollment.

**(9) Terminations.**

(a) The agency may immediately terminate a nonbilling provider's agreement, and refer the nonbilling provider to the appropriate state health professions quality assurance commission for:

(i) Any of the reasons in WAC 182-502-0030 termination for cause (except that subsection (1)(a)(ix) and (b)(i) do not apply); and

(ii) Failure to comply with the requirements of subsections (4), (6), and (8) of this section.

(b) Either the agency or the provider may terminate this agreement for convenience at any time with thirty calendar days' written notification to the other.

(c) If this agreement is terminated for any reason, the agency will pay for services ordered, referred, or prescribed by the provider only through the date of termination.

**(10) Termination disputes.**

(a) To dispute terminations of a nonbilling provider agreement under subsection (9)(a) of this section, the dispute process in WAC 182-502-0050 applies.

(b) Nonbilling providers cannot dispute terminations under subsection (9)(b) of this section.

AMENDATORY SECTION (Amending WSR 13-03-068, filed 1/14/13, effective 2/14/13)

**WAC 182-502-0010 When the medicaid agency enrolls.** (1) Nothing in this chapter obligates the medicaid agency to enroll any eligible health care professional, health care entity, supplier or contractor of service who requests enrollment.

(2) To enroll as a provider with the agency, a health care professional, health care entity, supplier or contractor of service must, on the date of application:

(a) Be currently licensed, certified, accredited, or registered according to Washington state laws and rules, or, if exempt under federal law, according to the laws and rules of any other state. Persons or entities outside of Washington state, see WAC 182-502-0120;

(b) Be enrolled with medicare, when required in specific program rules;

(c) Have current professional liability coverage, individually or as a member of a group, to the extent the health care professional, health care entity, supplier or contractor is not covered by the Federal Tort Claims Act, including related rules and regulations;

(d) Have a current federal drug enforcement agency (DEA) certificate, if applicable to the profession's scope of practice;

(e) Meet the conditions in this chapter and other chapters regulating the specific type of health care practitioner;

(f) Sign, without modification, a core provider agreement (CPA) (HCA 09-015), disclosure of ownership form, and debarment form (HCA 09-016) or a contract with the agency;

(g) Agree to accept the payment from the agency as payment in full (in accordance with 42 C.F.R. § 447.15 acceptance of state payment as payment in full and WAC 182-502-0160 billing a client);

(h) Fully disclose ownership, employees who manage, and other control interests (e.g., member of a board of directors or office), as requested by the agency. Indian health services clinics are exempt from this requirement. If payment for services is to be made to a group practice, partnership, or corporation, the group, partnership, or corporation must enroll and provide its national provider identifier (NPI) (if eligible for an NPI) to be used for submitting claims as the billing provider;

(i) Have screened employees and contractors with whom they do business prior to hiring or contracting to assure that employees and contractors are not excluded from receiving federal funds as required by 42 U.S.C. 1320a-7 and 42 U.S.C. 1320c-5;

(j) Pass the agency's screening process, including license verifications, data base checks, site visits, and criminal background checks, including fingerprint-based criminal background checks as required by 42 C.F.R. 455.434 if considered high-risk under 42 C.F.R. 455.450. The agency uses the same screening level risk categories that apply under medicare. For those provider types that are not recognized under medicare, the agency assesses the risk of fraud, waste, and abuse using similar criteria to those used in medicare; and

(k) Agree to pay an application fee, if required by CMS under 42 C.F.R. 455.460.

**AMENDATORY SECTION** (Amending WSR 13-17-047, filed 8/13/13, effective 10/1/13)

**WAC 182-502-0012 When the medicaid agency does not enroll.** (1) The medicaid agency does not enroll a health care professional, health care entity, supplier, or contractor of service for reasons which include, but are not limited to, the following:

(a) The agency determines that:

(i) There is a quality of care issue with significant risk factors that may endanger client health ~~((and/or))~~, or safety, or both (see WAC 182-502-0030 (1)(a)); or

(ii) There are risk factors that affect the credibility, honesty, or veracity of the health care practitioner (see WAC 182-502-0030 (1)(b)).

(b) The health care professional, health care entity, supplier or contractor of service:

(i) Is excluded from participation in medicare, medicaid or any other federally funded health care program;

(ii) Has a current formal or informal pending disciplinary action, statement of charges, or the equivalent from any state or federal professional disciplinary body at the time of initial application;

(iii) Has a suspended, terminated, revoked, or surrendered professional license as defined under chapter 18.130 RCW;

(iv) Has a restricted, suspended, terminated, revoked, or surrendered professional license in any state;

(v) Is noncompliant with the department of ~~((health's))~~ health or other state health care agency's stipulation of infor-

mal disposition, agreed order, final order, or similar licensure restriction;

(vi) Is suspended or terminated by any agency within the state of Washington that arranges for the provision of health care;

(vii) Fails a background check, including a fingerprint-based criminal background check, performed by the agency. See WAC 182-502-0014 and 182-502-0016; or

(viii) Does not have sufficient liability insurance according to WAC 182-502-0016 for the scope of practice~~((or~~

~~((ix) Fails to meet the requirements of a site visit, as required by 42 C.F.R. 455.432)), to the extent the health care professional, health care entity, supplier or contractor of service is not covered by the Federal Tort Claims Act, including related rules and regulations.~~

(c) A site visit under 42 C.F.R. 455.432 reveals that the provider has failed to comply with a state or federal requirement.

(2) The agency may not pay for any health care service, drug, supply or equipment prescribed or ordered by a health care professional, health care entity, supplier or contractor of service whose application for a core provider agreement (CPA) has been denied or terminated.

(3) The agency may not pay for any health care service, drug, supply, or equipment prescribed or ordered by a health care professional, health care entity, supplier or contractor of service who does not have a current CPA with the agency when the agency determines there is a potential danger to a client's health and/or safety.

(4) Nothing in this chapter precludes the agency from entering into other forms of written agreements with a health care professional, health care entity, supplier or contractor of service.

(5) If the agency denies an enrollment application, the applicant does not have any dispute rights within the agency.

(6) Under 42 C.F.R. 455.470, the agency:

(a) Will impose a temporary moratorium on enrollment when directed by CMS; or

(b) May initiate and impose a temporary moratorium on enrollment when approved by CMS.

**AMENDATORY SECTION** (Amending WSR 13-03-068, filed 1/14/13, effective 2/14/13)

**WAC 182-502-0016 Continuing requirements.** (1) To continue to provide services for eligible clients and be paid for those services, a provider must:

(a) Provide all services without discriminating on the grounds of race, creed, color, age, sex, sexual orientation, religion, national origin, marital status, the presence of any sensory, mental or physical handicap, or the use of a trained dog guide or service animal by a person with a disability;

(b) Provide all services according to federal and state laws and rules, medicaid agency billing instructions, numbered memoranda issued by the agency, and other written directives from the agency;

(c) Inform the agency of any changes to the provider's application or contract, including but not limited to, changes in:

(i) Ownership (see WAC 182-502-0018);

- (ii) Address or telephone number;
- (iii) Professional practicing under the billing provider number; or
- (iv) Business name.
- (d) Retain a current professional state license, registration, certification and applicable business license for the service being provided, and update the agency of all changes;
- (e) Inform the agency in writing within seven calendar days of changes applicable to the provider's clinical privileges;
- (f) Inform the agency in writing within seven business days of receiving any informal or formal disciplinary order, decision, disciplinary action or other action(s), including, but not limited to, restrictions, limitations, conditions and suspensions resulting from the practitioner's acts, omissions, or conduct against the provider's license, registration, or certification in any state;
- (g) Screen employees and contractors with whom they do business prior to hiring or contracting, and on a monthly ongoing basis thereafter, to assure that employees and contractors are not excluded from receiving federal funds as required by 42 U.S.C. 1320a-7 and 42 U.S.C. 1320c-5;
- (h) Report immediately to the agency any information discovered regarding an employee's or contractor's exclusion from receiving federal funds in accordance with 42 U.S.C. 1320a-7 and 42 U.S.C. 1320c-5. See WAC 182-502-0010 (2)(j);
- (i) Pass any portion of the agency's screening process as specified in WAC 182-502-0010 (2)(j) when the agency requires such information to reassess a provider;
- (j) Maintain professional and general liability coverage ((requirements, if not covered)) to the extent the provider is not covered.
- (i) Under agency, center, or facility(~~in the amounts identified by the medicare agency~~) professional and general liability coverage; or
- (ii) By the Federal Tort Claims Act, including related rules and regulations;
- (k) Not surrender, voluntarily or involuntarily, his or her professional state license, registration, or certification in any state while under investigation by that state or due to findings by that state resulting from the practitioner's acts, omissions, or conduct;
- (l) Furnish documentation or other assurances as determined by the agency in cases where a provider has an alcohol or chemical dependency problem, to adequately safeguard the health and safety of medical assistance clients that the provider:
  - (i) Is complying with all conditions, limitations, or restrictions to the provider's practice both public and private; and
  - (ii) Is receiving treatment adequate to ensure that the dependency problem will not affect the quality of the provider's practice; and
- (m) Submit to a revalidation process at least every five years. This process includes, but is not limited to:
  - (i) Updating provider information including, but not limited to, disclosures;
  - (ii) Submitting forms as required by the agency including, but not limited to, a new core provider agreement; and

(iii) Passing the agency's screening process as specified in WAC 182-502-0010 (2)(j).

(2) A provider may contact the agency with questions regarding its programs. However, the agency's response is based solely on the information provided to the agency's representative at the time of inquiry, and in no way exempts a provider from following the laws and rules that govern the agency's programs.

(3) The agency may refer the provider to the appropriate state health professions quality assurance commission.

### WSR 15-07-098

#### PROPOSED RULES

#### DEPARTMENT OF AGRICULTURE

[Filed March 17, 2015, 4:06 p.m.]

#### Original Notice.

Preproposal statement of inquiry was filed as WSR 14-21-038.

Title of Rule and Other Identifying Information: Chapter 16-450 WAC, Controlled atmosphere storage requirements for fruits and vegetables, the purpose of this chapter is to establish standards for the controlled atmosphere storage of fruits and vegetables and provide requirements for obtaining and maintaining a controlled atmosphere license.

Hearing Location(s): Department of Agriculture, 270 9th Street N.E., Wenatchee, WA 98801, on April 21, 2015, at 11 a.m.; and at the Department of Agriculture, Conference Room 238, 21 North 1st Avenue, Yakima, WA 98902, on April 22, 2015, at 11 a.m.

Date of Intended Adoption: May 6, 2015.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2092, by April 22, 2015.

Assistance for Persons with Disabilities: Contact the agency receptionist, by April 7, 2015, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rules on this subject will be amended and have new sections added to promote clarity regarding controlled atmosphere storage and licensing requirements.

Reasons Supporting Proposal: Amending the rule will provide clear explicit language written in plain talk which clearly defines fruit and vegetable controlled atmosphere storage requirements.

Statutory Authority for Adoption: RCW 15.30.050, chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.30 RCW.

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

Name of Proponent: Department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting: Chuck Dragoo, 21 North 1st Avenue, Suite 226, Yakima, WA 98902, (509) 225-6900; Implementation: Karen Cozzetto, 21 North 1st Avenue, Suite 226, Yakima, WA 98902, (509) 225-6900; and Enforcement: Jim Nelson, 270

9th Street N.E., Suite 101-A, East Wenatchee, WA 98802, (509) 662-6161.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed amendments make no significant changes to the rules and will not affect the industry's current practices.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state department of agriculture is not a listed agency under RCW 34.05.328 (5)(a)(i).

March 17, 2015  
Brad J. Avy  
Assistant Director

AMENDATORY SECTION (Amending WSR 04-05-117, filed 2/18/04, effective 3/20/04)

**WAC 16-450-005** ~~((What))~~ **Definitions** ~~((are important to this chapter?))~~, **"CA number"** means the controlled atmosphere license number assigned to a facility by the director.

**"Certification"** means the complete service performed by the director, from inspection through the issuance of any applicable documentation of the results of the inspection.

**"Controlled atmosphere storage"** means any storage warehouse consisting of one or more rooms, or one or more rooms in any one facility in which atmospheric gases are controlled in their amount and in degrees of temperature for the purpose of controlling the condition and maturity of any fresh fruits or vegetables in order that, upon removal, they may be designated as having been exposed to controlled atmosphere.

**"Department"** means the Washington state department of agriculture (WSDA).

**"Director"** means the director of the ~~((Washington state))~~ department of agriculture or the director's ~~((designee))~~ designated representative. As used in this chapter, WSDA refers to the director unless the context states otherwise.

**"Operator"** means a person who runs, monitors, and records information for a WSDA licensed controlled atmosphere facility.

**"Person"** means an individual, firm, partnership, corporation, or association.

~~(("CA number" means the license number assigned to a facility by the director.))~~

**"Room"** means any distinct separate storage area within a controlled atmosphere facility.

AMENDATORY SECTION (Amending WSR 04-05-117, filed 2/18/04, effective 3/20/04)

**WAC 16-450-010** ~~((What are))~~ **Controlled atmosphere** ~~((fruits and vegetables?))~~ **designation.** ~~((Controlled atmosphere))~~ Fruits and vegetables ~~((are fruits and vegetables that are:~~

(1) Inspected by the director of the Washington state department of agriculture (WSDA) or the director's designee;

(2) Stored in containers or subcontainers marked with a CA number and either a dated state lot number or a sequential state lot number; and

(3) Identified by a certificate documenting:

(a) Their quality and condition;

~~(b) That they have been stored in a CA facility licensed according to the requirements of this chapter; and~~

~~(c) That they comply with all of the requirements of this chapter))~~ may be designated controlled atmosphere when they have been stored in a licensed CA storage and have met all the provisions of this chapter. In conjunction with certification by the director that all requirements have been met, all containers or subcontainers will be marked with the letters CA or similar designation, as well as a state lot identification number.

AMENDATORY SECTION (Amending WSR 04-05-117, filed 2/18/04, effective 3/20/04)

**WAC 16-450-012** ~~((Where must the letters "CA" appear?))~~ **Identification of controlled atmosphere fruits and vegetables.** (1) The ~~((letters))~~ designation "CA" or ~~((a similar designation must appear))~~ words "controlled atmosphere" can only be used on containers or subcontainers of fruits or vegetables that comply with the requirements of this chapter.

(2) All containers or subcontainers intended for controlled atmosphere storage must be marked with either "WSDA" and "year of production" or a department supplied stamp.

AMENDATORY SECTION (Amending WSR 04-05-117, filed 2/18/04, effective 3/20/04)

**WAC 16-450-014** ~~((When must))~~ **Requirements for controlled atmosphere fruit** ~~((enter commercial trade channels?))~~ **and vegetables entering commercial trade.** (1) Controlled atmosphere (CA) fruits or vegetables must enter commercial trade channels within two weeks following ~~((a))~~ CA ~~((inspection and))~~ certification.

(2) ~~((If the CA fruits and/or vegetables do not enter commercial channels within the two weeks following a CA inspection and certification, they must be reinspected to meet controlled atmosphere conditions and maturity requirements before they are shipped.))~~ If CA fruits and vegetables are not shipped within two weeks after initial certification, they must obtain a new CA certification to qualify for an additional two-week shipping period.

(3) If identification of a previously certified lot can be maintained, a new state lot identification number is not required.

AMENDATORY SECTION (Amending WSR 04-05-117, filed 2/18/04, effective 3/20/04)

**WAC 16-450-020** ~~((Is a license required to operate or lease a))~~ **Controlled atmosphere** ~~((storage facility in Washington state?))~~ **licensing requirements.** (1) ~~((Before))~~ Any person ~~((can operate or lease))~~ operating a controlled atmosphere storage ~~((facility, they))~~ must obtain a license from the department. ~~((These are annual licenses that expire each year on August 31.))~~

(2) ~~((When the WSDA director issues a))~~ To apply for an annual controlled atmosphere ~~((storage facility license, the licensee receives a facility number preceded by the letters "WN CA" or "WA CA."))~~

(a) These letters and numbers are the "CA number" of the storage facility.

(b) This CA number verifies that the fruits or vegetables meet the requirements for controlled atmosphere storage.

(c) This CA number must appear on all containers, after they are certified, in which CA fruits or vegetables are packed. operator license, AGR form 6074 must be completed and submitted to the department.

(3) The application must be accompanied by a fee of five dollars per controlled atmosphere storage room, with a minimum fee of twenty-five dollars for five rooms or less.

(4) The initial license application must be completed before September 1st of any given year. Once issued, the license is valid for one year and must be renewed each year on or before August 31st.

(5) A license can be renewed after August 31st but such a renewal is considered "late." Late renewals are regulated by RCW 15.30.070, which requires payment for the original license fee plus a late renewal penalty of two dollars and fifty cents.

AMENDATORY SECTION (Amending WSR 04-05-117, filed 2/18/04, effective 3/20/04)

**WAC 16-450-028** ~~((What requirements affect all licensed))~~ Controlled atmosphere ((storage)) facility ((operators?)) operator requirements. (1) Every licensed operator ((or lessee)) must submit to ((the manager of their local)) WSDA ((fruit and vegetable inspection district)) a signed, completed ((copy of WSDA)) form ((6075A (Storage Closing and Inventory – Operator) or a form approved by the director whenever they close a CA room in one of their facilities. The completed form must contain)) containing the following information:

- (a) Location of the ((room)) storage facility;
- (b) Storage room number;
- (c) Date the room was closed and sealed; and
- (d) Quantity of loose or packed fruit or vegetables in the room identified by variety((; and
- (e) Quantity of packed fruit in the room identified by variety)).

(2) Every licensed operator ((or lessee)) must, at least once a day, record the following information on a form approved by the director:

- (a) The percentage of carbon dioxide and oxygen inside the sealed storage ((area)) room;
- (b) The temperature inside the sealed storage ((area)) room; and
- (c) The time ((the percentages and temperature)) and date readings were ((measured)) recorded for both the air components and temperatures.

(3) ~~((WSDA fruit and vegetable inspectors have the right))~~ The director has the authority to audit ((the forms required in this section. Upon completing an audit, the inspector must report their audit results on WSDA form 6076 (Audit of Daily Log) or a form approved by the director)) and report the results of the controlled atmosphere records.

(4) ~~((All Standard and Red Delicious apple varieties must be stored in sealed controlled atmosphere storage on or~~

~~before December 15 of each year to qualify and be identified as Washington controlled atmosphere storage apples.~~

~~((5))~~ For auditing purposes, all licensed operators must notify ~~((their local))~~ WSDA ~~((inspection office))~~ before they open ~~((any))~~ a controlled atmosphere storage room ~~((s or))~~ and before ((they pack)) any controlled atmosphere storage fruit or vegetable is packed.

NEW SECTION

**WAC 16-450-041 Controlled atmosphere requirements.** (1) The oxygen content of each storage room must be reduced to five percent within twenty calendar days after the room is sealed.

(2) Stored fruits or vegetables must be kept in controlled atmosphere storage under required degrees of temperature and percentage of air components for the specified period listed below:

<b>Apple Varieties</b>	<b>Minimum Storage Period</b>
Gala and Jonagold	Forty-five continuous calendar days
Other	Sixty continuous calendar days
<b>Pear Varieties</b>	<b>Minimum Storage Period</b>
Bartlett	Forty-five continuous calendar days
Other summer	Sixty continuous calendar days
Bosc	Forty-five continuous calendar days
Other winter	Sixty continuous calendar days

AMENDATORY SECTION (Amending WSR 04-05-117, filed 2/18/04, effective 3/20/04)

**WAC 16-450-042** ~~((What are the specific))~~ Controlled atmosphere ((storage)) requirements for Bartlett pears((?)). ~~((To qualify as controlled atmosphere storage pears,))~~ Bartlett pears must comply with the requirements in chapter 15.30 RCW, this chapter and the following additional condition and maturity requirements:

(1) ~~((Oxygen content of each room where the pears are stored must be reduced to five percent within twenty calendar days after the room is sealed.~~

~~((2))~~ The pears must be kept in controlled atmosphere storage, under the required degrees of temperature and percentage of air components, for at least forty-five continuous calendar days.

~~((3))~~ At the time of shipment, the pears marked with a CA number must:

~~((a))~~ Be no further advanced in maturity than "mostly hard—some firm."

~~((b))~~ (2) Not exceed an average of two percent decay ~~((and/or))~~ or breakdown.

~~((4))~~ Pears that fail to meet any requirement in this section:

- (a) Must not be sold as CA storage fruit; and
- (b) Their containers must not be marked with a CA number.))

AMENDATORY SECTION (Amending WSR 04-05-117, filed 2/18/04, effective 3/20/04)

**WAC 16-450-044** ~~((What are the specific))~~ **Controlled atmosphere requirements for winter pears**~~((?))~~  
~~((To qualify as controlled atmosphere storage pears;))~~ All winter pear(s) varieties must comply with the requirements in chapter 15.30 RCW, this chapter and the following additional condition and maturity requirements:

(1) ~~((Oxygen content of each room where the pears are stored must be reduced to five percent within twenty calendar days after the room is sealed.~~

(2) ~~The pears must be kept in controlled atmosphere storage, under the required degrees of temperature and percent age of air components, for:~~

(a) ~~At least forty five continuous calendar days for Bose pears; and~~

(b) ~~At least sixty continuous calendar days for all other varieties of winter pears.~~

(3) ~~All CA marked winter pears must meet the following standards when shipped:~~

~~((a))~~ **Condition standards:**

~~(\*)~~ No more than two percent decay;

~~((\*)~~ (2) No more than two percent scald; and

~~((\*)~~ (3) A five percent maximum aggregate for all condition factors including cork.

~~((b))~~ **Maturity standards:**

~~(\*)~~ (4) No more than five percent must be advanced in maturity beyond "firm."

AMENDATORY SECTION (Amending WSR 04-05-117, filed 2/18/04, effective 3/20/04)

**WAC 16-450-060** ~~((What are the shipping standards for))~~ **Controlled atmosphere** ~~((storage fruits and vegetables?))~~ **requirements for apples.** ~~((1) When shipped, all controlled atmosphere fruits and vegetables must be certified and marked with a CA number and dated state lot stamp.~~

(2) Apples must meet U.S. condition standards for export(:

(3) ~~Pears must meet the maturity requirements of WAC 16-450-042 (3)(a) and (b) or 16-450-044 (3)(b))~~ as stated in the United States standards of grades for apples, 7 C.F.R. Sections 51.300 - 321 (January 1, 2014).

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 16-450-016 What is controlled atmosphere storage?
- WAC 16-450-022 How can I obtain a license to operate or lease a controlled atmosphere storage facility in Washington state?
- WAC 16-450-024 When must I apply for a license to operate or lease a controlled atmosphere storage facility in Washington state?

- WAC 16-450-026 Can I renew my license after August 31?
- WAC 16-450-032 Violations of this chapter and/or chapter 15.30 RCW.
- WAC 16-450-040 What requirements apply to controlled atmosphere storage facilities?
- WAC 16-450-046 When must controlled atmosphere fruits and vegetables be identified for certification?
- WAC 16-450-048 What inspection, certification and marking requirements apply to controlled atmosphere fruits and vegetables?
- WAC 16-450-050 When is a reinspection of controlled atmosphere fruit and vegetables required?
- WAC 16-450-070 What if my fruit does not comply with the requirements of this chapter?

**WSR 15-07-099**

**PROPOSED RULES**

**DEPARTMENT OF AGRICULTURE**

[Filed March 17, 2015, 4:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-21-039.

Title of Rule and Other Identifying Information: Chapter 16-461 WAC, Inspection requirements for fruits and vegetables, the purpose of this chapter is to establish standards for the inspection of fruits and vegetables and provide definitions for a commercial lot, fruit and produce stands, zone of production, certificate of compliance requirements and/or shipping permits requirements.

Hearing Location(s): Department of Agriculture, 270 9th Street N.E., Wenatchee, WA 98801, on April 21, 2015, at 11 a.m.; and at the Department of Agriculture, Conference Room 238, 21 North 1st Avenue, Yakima, WA 98902, on April 22, 2015, at 11 a.m.

Date of Intended Adoption: May 6, 2015.

Submit Written Comments to: Teresa Norman, P.O. Box 42560, Olympia, WA 98504-2560, e-mail WSDARulesComments@agr.wa.gov, fax (360) 902-2092, by April 22, 2015.

Assistance for Persons with Disabilities: Contact the agency receptionist by April 7, 2015, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rules on this subject will be amended and have new sections added to promote clarity regarding exemptions, shipping permits, certificates of compliance, compliance agreements, and penalties for violations.



Reasons Supporting Proposal: The existing rules do not provide a mechanism for auditing the volume of commodities shipped on certificate of compliance forms.

Statutory Authority for Adoption: RCW 15.17.030, [15.17.]050, [15.17.]060, chapter 34.05 RCW.

Statute Being Implemented: Chapter 15.17 RCW.

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

Name of Proponent: Department of agriculture, governmental.

Name of Agency Personnel Responsible for Drafting: Chuck Drago, Yakima, Washington, (509) 249-6910; Implementation: Karen Cozzetto, Yakima, Washington, (509) 249-6906; and Enforcement: Jim Nelson, Wenatchee, Washington, (509) 668-1284.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

**SUMMARY OF PROPOSED RULES:** The Washington state department of agriculture's (WSDA) fruit and vegetable inspection program is proposing to amend chapter 16-461 WAC, Inspection requirements for fruits and vegetables.

The purpose of this chapter is to establish standards for the inspection of fruits and vegetables which clearly defines a commercial lot, fruit and produce stands, zone of production, and inspection certificate and/or permit. The rule was last amended on May 1, 2009. This proposal is for housekeeping only and falls under the departments four year rule[s] review process. No new requirements will be added as these are housekeeping changes necessary under our four year rules review process.

The proposed amendments to this chapter: WAC 16-461-006, 16-461-010, 16-461-014, 16-461-015, 16-461-020, 16-461-030, 16-461-040, and 16-461-050.

#### SMALL BUSINESS ECONOMIC IMPACT STATEMENT (SBEIS) - DETERMINATION OF NO SIGNIFICANT IMPACT

Chapter 19.85 RCW, the Regulatory Fairness Act, requires an analysis of the economic impact proposed rules will have on regulated small businesses. Preparation of an SBEIS is required when proposed rules will impose more than minor costs on businesses in an industry.

"Minor cost" means a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whichever is greater, or one percent of annual payroll. "Small business" means a business that employs fifty or fewer employees.

The WSDA fruit and vegetable inspection program has analyzed the proposed rule amendments and the costs of compliance and has determined that the proposed rule amendments will not impose more than minor costs on WSDA regulated businesses.

X No new costs will be incurred.

□ Some costs will be incurred but will not be "more than minor."

A review of chapter 16-461 WAC, Inspection requirements for fruits and vegetables, supports the four year rule[s] review process which clearly defines a commercial lot, fruit and produce stands, zone of production, and inspection certifi-

cate and/or permit required for inspection requirements for fruits and vegetables in Washington state.

A copy of the statement may be obtained by contacting Cameron Crump, P.O. Box 42560, Olympia, WA 98504-2560, phone (360) 902-1933, fax (360) 902-2085, e-mail [ccrump@agr.wa.gov](mailto:ccrump@agr.wa.gov).

A cost-benefit analysis is not required under RCW 34.05.328. The WSDA is not a listed agency under RCW 34.05.328 (5)(a)(i).

March 17, 2015

Brad J. Avy

Assistant Director

**Reviser's note:** WAC 16-461-014 is referred to in the agency's notice; however, the proposed text of the section was not included with the filing by the agency. cf. RCW 34.08.020 (1)(a).

**AMENDATORY SECTION** (Amending WSR 92-18-103, filed 9/2/92, effective 10/3/92)

**WAC 16-461-006 Definitions.** ~~((+))~~ "Certificate of compliance" means a shipping document issued by the fruit and vegetable industry attesting that the identified fruits or vegetables are known to be in full compliance with provisions of chapter 15.17 RCW. The member of the fruit and vegetable industry issuing the certificate of compliance has the sole responsibility of fairly and accurately representing the quality and quantity of fruits and vegetables listed on the certificate of compliance.

"Civil penalty" means a monetary penalty administratively issued by the director for noncompliance with chapter 15.17 RCW and the rules adopted under that chapter. The term does not include any criminal penalty, damage assessment, wages, premiums, or taxes owed, or interest or late fees on any existing obligation.

"Commercial lot" ~~((shall))~~ means any number ~~((of any))~~ and type of containers or any quantity in bulk of agricultural products listed in WAC 16-461-010, which are sold or bartered ~~((: Provided, That quantities))~~. Any quantity of less than five hundred pounds net weight, when grown and sold by ~~((any))~~ the producer ~~((where grown by the producer and sold))~~ directly to the ultimate consumer, ~~((shall))~~ is not ~~((be))~~ considered ~~((as))~~ a commercial lot.

~~((2))~~ "Department" means the Washington state department of agriculture (WSDA).

"Director" means the director of the Washington state department of agriculture or the director's designated representative.

"First violation" means the alleged violator has committed no same or similar violation within three years of committing the current alleged act(s).

"Fruit or vegetable stand ~~((s, as used in this chapter, shall))~~" means any ~~((facilities))~~ facility from which ~~((the predominance of the edible commodity sales to the public are of))~~ seasonal fresh fruits ~~((and/or))~~ or vegetables produced within the state of Washington ~~((, and shall))~~ are sold to the public. Fruit or vegetable stand includes roadside stands, farmer's markets, trucks or other conveyances ~~((from which sales of commodities are made,))~~ and temporary open air parking lot stands other than those owned or operated by

retail grocery stores. Such facilities may or may not be owned, leased, or otherwise operated by the producer of the fruits ~~((and/or))~~ or vegetables.

~~((3))~~ "Notice of correction" means a document issued by the department that describes a violation under chapter 15.17 RCW or the rules adopted under that chapter. A notice of correction identifies a violation but is not a formal enforcement action. It is not subject to appeal and is a public record. A violation identified in a notice of correction can be a "first violation" even though not subject to a civil penalty if the correction requirements are met.

"Second violation" means the alleged violator committed one same or similar violation within three years of committing the current violation.

"Shipping permit" means a shipping document issued by the director attesting that the fruits or vegetables are known to be in compliance with the provisions of chapter 15.17 RCW and this chapter.

"Third violation" means the alleged violator committed two same or similar violations within three years of committing the current violation.

"Violation" means commission of an act or acts prohibited by chapter 15.17 RCW, this chapter, or rules adopted under chapter 15.17 RCW. Failure to perform any act required by chapter 15.17 RCW, this chapter, or rules adopted under chapter 15.17 RCW is a violation.

"Zone of production" ~~((shall be defined as one of two geographical areas:))~~ means for Zone 1~~((:))~~ all counties west of the Cascade Mountain Range~~((:))~~ and for Zone 2~~((:))~~ the following counties ~~((:))~~: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Skamania, Spokane, Stevens, Walla Walla, Whitman, and Yakima.

**AMENDATORY SECTION** (Amending WSR 09-10-047, filed 5/1/09, effective 6/1/09)

**WAC 16-461-010 (~~(Inspection certificate and/or permit required.)~~) Certificate of compliance and shipping permit requirements.** ~~((4))~~ No person ~~((shall))~~ may ship, transport, accept for shipment, or accept delivery of~~((:))~~ any commercial lot of ~~((the following agricultural products without an inspection and the issuance of a certificate and/or a permit by the commodity inspection division of the department of agriculture allowing such shipment, movement or delivery:~~

(a) ~~Apriots in closed or open containers for fresh market.~~

(b) ~~Italian prunes in closed or open containers for fresh market.~~

(c) ~~Peaches in closed or open containers for fresh market.~~

(d) ~~Cherries in closed or open containers for fresh market. No permit will be issued on cherries infested with live cherry fruit fly larvae.~~

(e) ~~Apples in closed or open containers for fresh market.~~

(f) ~~Apples may be shipped or transported if accompanied by a certificate of compliance issued by the shipper or packer of apples having the approval of the director to issue the certificates of compliance.~~

~~(g) Pears in closed or open containers for fresh market. Pears may be shipped or transported if accompanied by a certificate of compliance issued by the shipper or packer of pears having the approval of the director to issue the certificates of compliance.~~

~~(h) Asparagus in closed or open containers for fresh market. Asparagus may be shipped or transported if accompanied by a certificate of compliance issued by the shipper or packer of the asparagus having the approval of the director to issue the certificates of compliance.~~

~~(i) Apples in containers or bulk, for processing.~~

~~(i) Apples for processing may be shipped or transported if accompanied by a certificate of compliance issued by the shipper of apples having the approval of the director to issue the certificates of compliance.~~

~~(ii) Apples for processing entering in-state commerce do not require a permit.~~

~~(j) Pears in containers or bulk, for processing.~~

~~(i) Pears for processing may be shipped or transported if accompanied by a certificate of compliance issued by the shipper of pears having the approval of the director to issue the certificates of compliance.~~

~~(ii) Pears for processing entering in-state commerce do not require a permit.~~

~~(2) Fruits and vegetables listed in WAC 16-461-010 are exempted from requirements for inspection and issuance of a certificate or permit:~~

~~(a) When the product is being transported from the premises where grown or produced to a horticultural facility other than wholesale or retail for the purpose of storing, grading, packing, packaging, labeling, or processing prior to entering commercial channels for resale.~~

~~(b) When sold or transported to a fruit/produce stand within the zone of production, not to exceed daily quantities of two thousand pounds net weight of a single commodity nor six thousand pounds net weight of any combination of commodities other than cherries, listed in subsection (1) of this section, when on a single conveyance. Exempt sales by the producer within a farmer's market shall not be restricted to the zone of production.~~

~~(c) When daily quantities do not exceed one hundred pounds net weight of dark or light sweet varieties of sweet cherries sold for home use and not for resale, and the containers are marked "not for resale" in letters at least one-half inch in height.~~

~~(3)(a) Any shipper or packer of apples, apricots, cherries, pears, peaches, prunes, or asparagus may petition the director for authority to issue certificates of compliance for each season. The director may issue certificate of compliance agreements, granting authority, on terms and conditions that the director deems appropriate. The authority shall be limited to the issuance of certificates of compliance for apples, apricots, cherries, pears, peaches, prunes, and asparagus under the applicant's direct control or being handled at the shipper's or packer's facilities.~~

~~(b) The certificate of compliance shall be issued at time of shipment by the shipper or packer authorized to do so.~~

~~(i) Apples, pears, cherries, and asparagus about to be shipped or transported must be in full compliance with the requirements of chapter 15.17 RCW, Standards of grades and~~

packs, rules adopted under chapter 15.17 RCW, and administrative directives of the director.

(ii) Apricots, cherries, peaches, prunes, or pears about to be shipped or transported must be in full compliance with an existing federal marketing order requiring quality and condition certification and Washington state lot identification or federal state lot identification.

(iii) Cherries of the dark sweet varieties must be certified as to quality, condition, and size and shall meet all of the requirements of chapter 16-414 WAC, Washington standards for cherries. Cherries of the Rainier variety or other varieties of "light colored sweet cherries" must meet only the requirements of WAC 16-414-005 "mature" and WAC 16-414-011(3) size requirement.

(e) The director's approval to issue certificates of compliance may be suspended, revoked, or denied for cause, subject to RCW 34.05.422(3). Cause shall be the shipper's or packer's failure to comply with the requirements of subsection (3)(b) of this section, or for the shipper's or packer's actions which impede the department's abilities to ascertain full compliance with requirements of chapter 15.17 RCW, Standards of grades and packs, or rules adopted under chapter 15.17 RCW, or for violation of the terms of the certificate of compliance agreement. The period of any suspension will be determined by the director and will be commensurate with the seriousness of the violation.

(d) Any shipper or packer whose authority to issue certificates of compliance has been suspended, revoked, or denied by the director will be subject to those provisions of chapter 15.17 RCW and the regulations requiring the issuance of a shipping permit by the director before apples, apricots, cherries, pears, peaches, prunes, and asparagus may be shipped or transported.

(e) Certificates of compliance must be on forms approved and issued by the director of agriculture.

(f) Any shipper or packer authorized to issue certificates of compliance shall deposit with the director of agriculture the regular base fee equivalent to that charged by the director for a shipping permit for each certificate of compliance issued by the authorized shipper or packer. The base fees shall be deposited with the director of agriculture in the same manner as fees for shipping permits.) apples, apricots, asparagus, Italian prunes, peaches, pears, or sweet cherries for which a certificate of compliance or a shipping permit has not been issued, except that apples and pears for processing entering in-state commerce are not required to have a certificate of compliance or shipping permit issued.

#### NEW SECTION

**WAC 16-461-020 Exempt fruit and vegetables.** Fruit and vegetables listed in WAC 16-461-010 are exempt from the requirements of this chapter when:

(1) The product is being transported from the premises where grown or produced to a facility other than wholesale or retail for the purpose of storing, grading, packing, packaging, labeling, or processing prior to entering commercial channels for resale.

(2) The product is sold or transported on a single conveyance to a fruit or vegetable stand within the zone of produc-

tion, not exceeding daily quantities of two thousand pounds net weight of a single commodity or six thousand pounds net weight of any combination of commodities other than cherries. Sales by the producer from a fruit or vegetable stand are not restricted to the zone of production.

(3) Daily quantities do not exceed one hundred pounds net weight of sweet cherry varieties sold for home use and not for resale, and the containers are marked "not for resale" in letters at least one-half inch in height.

#### NEW SECTION

**WAC 16-461-030 Cherries infested with Western cherry fruit fly.** Cherries in any type of containers for fresh market may not be shipped if infested with live Western cherry fruit fly (*Rhagoletis indifferens*) larvae as prohibited under WAC 16-463-010. The exemptions in WAC 16-461-020 do not apply to this section.

#### NEW SECTION

**WAC 16-461-040 Compliance with federal marketing order or state requirements.** Prior to shipment, fruits and vegetables must meet the applicable federal marketing order requirements or Washington state requirements specific to each commodity. Containers must be marked at time of certification with a Washington state lot identification, a federal-state lot identification, or an identification method approved by the director.

#### NEW SECTION

**WAC 16-461-050 Certificate of compliance agreements and issuance of certificates of compliance.** (1) A shipper or packer of apples, apricots, asparagus, Italian prunes, peaches, pears, or sweet cherries may petition the director for authority to issue certificates of compliance for each season. Under RCW 15.17.143, the director may issue certificate of compliance agreements under terms and conditions provided in this section. The authority granted to the applicant is limited to the identified commodities handled under the applicant's direct control or handled at the shipper's or packer's facilities. A compliance agreement will include technical provisions appropriate for the certificate of compliance activities, provisions for the applicant's requests for service from the department, and the following conditions:

(a) The applicant must grant the director the right of entry to its facilities as provided under RCW 15.17.190;

(b) The applicant must grant the director the right to audit an applicant's certificate of compliance records for the purpose of determining compliance with chapter 15.17 RCW, chapter 16-390 WAC, and this chapter;

(c) The applicant must grant the director the right to request and obtain a yearly total hundredweight (CWT) report to verify the volume of commodities shipped for all certificates of compliance issued by the applicant;

(d) Shipper or packer reports may be verified by WSDA for accurate reporting on certificates of compliance. WSDA may determine that a report may be inaccurate if there is a five percent variance in the reported hundredweight, as veri-

fied against historical certificate of compliance data and current crop size data or estimates; and

(e) The applicant must indemnify and hold harmless the director and WSDA for claims related to the applicant's activities related to issuance of certificates of compliance.

(2) Certificates of compliance must be on forms approved and issued by the director.

(3) Any shipper or packer authorized to issue certificates of compliance must deposit with the director the fee required under chapter 16-390 WAC for each certificate.

(4) Apples, apricots, asparagus, Italian prunes, peaches, pears, or sweet cherries about to be shipped or transported must be in full compliance with the applicable requirements of chapter 15.17 RCW, chapter 16-390 WAC, and this chapter as a condition for issuance of a certificate of compliance.

(5) A certificate of compliance will be issued at the time of shipment.

NEW SECTION

**WAC 16-461-060 Civil penalty for violations and suspension of compliance agreements for violations.**

(1) A person who violates the provisions of chapter 15.17 RCW, or the rules adopted under chapter 15.17 RCW including chapter 16-390 WAC and this chapter, may be subject to a civil penalty in an amount of not more than one thousand dollars for each violation. Each violation is a separate and distinct offense. Every person who, through an act of omission, procures, aids, or abets in the violation is in violation of this chapter or its rules and may be subject to the civil penalty provided in this section. A penalty amount will be determined by the director based upon the seriousness of any violation and in consideration of any aggravating or mitigating factors.

(2) A person granted a compliance agreement may be subject to suspension of the agreement for a period not to exceed twelve consecutive months for violation of the provisions of chapter 15.17 RCW, or the rules adopted under chapter 15.17 RCW including chapter 16-390 WAC and this chapter. A period of suspension will be determined by the director based on the seriousness of any violation and in consideration of any aggravating or mitigating factors.

(3) Penalty matrix:

Violation	Penalty/Suspension*
First	Up to \$250 civil penalty and up to 90 day suspension of compliance agreement
Second	Up to \$500 civil penalty and up to 180 day suspension of compliance agreement
Third	Up to \$1,000 civil penalty and up to one year suspension of compliance agreement

\* Penalties and suspensions under this subsection are subject to aggravating or mitigating circumstances as noted in subsections (1) and (2) of this section.

- (4) Nothing herein shall prevent the director from:
  - (a) Choosing not to pursue a civil penalty or suspension of a compliance agreement.
  - (b) Issuing a notice of correction in lieu of pursuing a civil penalty or suspension of a compliance agreement.
  - (c) Negotiating settlements of cases on such terms and for such reasons as deemed appropriate. Prior violations covered by a prior settlement agreement may be used by the director for the purpose of determining the appropriate penalty for the current alleged violation(s) if not prohibited by the agreement.
  - (d) Referring violations or alleged violations to any federal, state or county authority with jurisdiction over the activities in question including, but not limited to, the United States Department of Agriculture (USDA) and federal, state or local law enforcement agencies.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 16-461-015 Effective date.

**WSR 15-07-100  
PROPOSED RULES  
PUGET SOUND  
CLEAN AIR AGENCY**  
[Filed March 17, 2015, 5:08 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: Amend Regulation III, Section 2.02 (National Emission Standards for Hazardous Air Pollutants).

Hearing Location(s): Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, on April 23, 2015, at 8:45 a.m.

Date of Intended Adoption: April 23, 2015.

Submit Written Comments to: Rob Switalski, Puget Sound Clean Air Agency, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, e-mail robs@pscleanair.org, fax (206) 343-7522, by April 22, 2015.

Assistance for Persons with Disabilities: Contact agency receptionist, (206) 689-4010, by April 16, 2015, TTY (800) 833-6388 or (800) 833-6385 (Braille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The intention of the proposed technical amendment is to delete language regarding perchloroethylene dry cleaners to agree with a December 2014 amendment to Regulation I, Section 6.03. The agency will then submit another delegation request to Environmental Protection Agency (EPA) to achieve full program delegation for this regulation dealing with dry cleaners.

Reasons Supporting Proposal: There are no benefits or costs associated with the proposed amendments. The agency intends to achieve full EPA program delegation for this regulation dealing with dry cleaners.

Statutory Authority for Adoption: Chapter 70.94 RCW.  
Statute Being Implemented: RCW 70.94.141.

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

Name of Proponent: Puget Sound Clean Air Agency, governmental.

Name of Agency Personnel Responsible for Drafting: Steve Van Slyke, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4052; Implementation and Enforcement: Laurie Halvorson, 1904 3rd Avenue, Suite 105, Seattle, WA 98101, (206) 689-4030.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedures [Procedure] Act, and the agency is not a school district.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

March 17, 2015  
Craig Kenworthy  
Executive Director

Submit Written Comments to: Allan J. Jones, Director, OSPI, Student Transportation, P.O. Box 47200, Olympia, WA 98504-7200, e-mail allan.jones@k12.wa.us, by April 28, 2015.

Assistance for Persons with Disabilities: Contact Kristin Murphy by April 28, 2015, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revisions have been made to this chapter to define and include student transportation for charter schools.

Statutory Authority for Adoption: RCW 28A.150.290.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Allan J. Jones, OSPI, Student Transportation, (360) 725-6122; and Enforcement: JoLynn Berge, OSPI, Financial Resources and Governmental Relations, (360) 725-6300.

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

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

March 18, 2015  
Randy Dorn  
State Superintendent  
of Public Instruction

**AMENDATORY SECTION**

**REGULATION III, SECTION 2.02 NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS**

It shall be unlawful for any person to cause or allow the operation of any source in violation of any provision of Part 61 or Part 63, Title 40, of the Code of Federal Regulations (excluding Part 61, Subparts B, H, I, K, Q, R, T, and W; and Part 63, Subpart LL, ~~((the provisions of Subpart M pertaining to area source perchloroethylene dry cleaners,))~~) the provisions of Subparts S and MM pertaining to kraft and sulfite pulp mills, and Subparts WWWW, CCCCC, HHHHH, WWWW, XXXXX, YYYYY, and ZZZZZ) in effect as of the federal regulation reference date listed in Section 3.25 of Regulation I herein incorporated by reference.

**WSR 15-07-103**  
**PROPOSED RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**  
[Filed March 18, 2015, 9:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-01-148.

Title of Rule and Other Identifying Information: Chapter 392-142 WAC, Replacement and depreciation allocation.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Brouillet Conference Room, 600 South Washington, Olympia, WA 98504-7200, on May 5, 2015, at 1:30 p.m.

Date of Intended Adoption: May 6, 2015.

**AMENDATORY SECTION** (Amending WSR 12-19-098, filed 9/19/12, effective 10/20/12)

**WAC 392-142-100 Definitions.** For the purposes of this chapter, the following definitions apply:

(1) **"Superintendent"** means the superintendent of public instruction.

(2) **"~~((School))~~ District"** means a public school district or educational service district.

(3) **"Charter school"** means a public school operating under the provisions of chapter 28A.710 RCW.

(4) **"School bus"** means a vehicle:

(a) With a seating capacity of more than ten persons including the driver;

(b) Used for transportation of students to and from school or in connection with school activities; and

(c) That meets the requirements of the school bus specifications manual published by the superintendent.

~~((4))~~ (5) **"Replacement system"** is the reimbursement process used for school buses when a ~~((school))~~ district is the legal owner.

~~((5))~~ (6) **"Depreciation system"** is the reimbursement process used for contractor-owned school buses operated under a contract with a ~~((school))~~ district to provide regularly scheduled to-and-from student transportation services.

~~((6))~~ (7) **"Charter school system"** is the reimbursement process used when a charter school is contracting transportation services.

(8) **"School bus categories"** are defined annually by the superintendent, taking into account such factors as student capacity, fuel type, and special equipment.

~~((7))~~ (9) **"System lifetime"** means the minimum number of months that a category of school bus is expected to be in use as determined by the superintendent.

~~((8))~~ (10) **"Eligible months"** are defined as the number of months a school bus is eligible for reimbursement payments within a school year. If a newly acquired school bus is eligible for reimbursement, such eligibility is determined by the issue date of the school bus operation permit as defined in WAC 392-143-010(4). If the issue date is prior to the 15th of any month, eligibility begins with the first of the month; otherwise eligibility begins with the first of the following month. The total number of eligible months in all school years shall not be more than the system lifetime.

~~((9))~~ (11) A school bus is defined as **"improperly maintained or operated"** when it is unable to pass the Washington state patrol inspection process within ninety days of the date requested for presentation. The school district may request the superintendent for an additional ninety days to arrange for repairs to the school bus. Improper operation includes use of a school bus without a valid school bus operation permit issued by the superintendent.

~~((10))~~ (12) The **"state school bus quote"** means the annual sealed bid process used by the superintendent as authorized by RCW 28A.160.195 to establish prices for ~~((school))~~ districts to purchase school buses for a school year. ~~((School))~~ Districts may purchase school buses from any school bus dealer's accepted bid.

~~((11))~~ (13) The **"low price quote"** means the lowest competitive price quote for each category of school bus received from school bus dealers in the state school bus quote. The low price quote is determined prior to the inclusion of any sales or use tax. Included in the low price quote are:

- (a) Freight to the ~~((school))~~ district; and
- (b) Cost associated with full payment within thirty days of delivery.

In the state school bus quote process, the superintendent may include options for ~~((school))~~ districts to purchase that are not included in the low price quote.

~~((12))~~ (14) **"State-determined purchase price"** is defined as the low price quote including any sales and use taxes at the highest rate that could be charged to any ~~((school))~~ district in the state by the school bus dealer submitting that quote.

~~((13))~~ (15) **"Average price"** is defined as the five-year average of the low price quote for each school bus category. The average price is determined using the current and four previous school years' state school bus quote.

~~((14))~~ (16) **"System price"** means the price used to calculate the payment in a given school year, as follows:

(a) For the replacement system, the system price for a school bus for all years except the final year is the average price. For the final year, the system price is the current state determined purchase price.

(b) For the depreciation system, the system price for a school bus for all years is the first year's state determined purchase price.

~~((15))~~ (17) **"Total school bus replacement payments"** means the sum of all replacement payments for a school bus for prior school years.

~~((16))~~ (18) **"Assumed interest earnings"** means the sum of interest which is assumed to be earned on money assumed to be available in the transportation vehicle fund from any prior replacement payments and any previous interest earnings for a school bus. The rate used to calculate assumed interest earnings shall be the average of the ninety-day treasury bill rate during the previous state fiscal year calculated on the basis of simple interest.

~~((17))~~ (19) The **"salvage value"** of a school bus is defined as twenty-five percent of the first year's state determined purchase price divided by the system lifetime in years.

AMENDATORY SECTION (Amending WSR 12-19-098, filed 9/19/12, effective 10/20/12)

**WAC 392-142-214 Alternative bid process.** ~~((School))~~ Districts are not required to use the state school bus quote process to purchase a school bus. However, a ~~((school))~~ district using another process shall only be reimbursed for a school bus if the school district uses a lowest-price competitive bid process conducted in accordance with the requirements of RCW 28A.335.190. Regardless of purchase process, all school buses must meet the requirements established in the school bus specifications manual.

AMENDATORY SECTION (Amending WSR 12-19-098, filed 9/19/12, effective 10/20/12)

**WAC 392-142-240 Calculation of replacement system payments.** To calculate the replacement system payment for a ~~((school))~~ district-owned school bus, the superintendent shall:

- (1) Assign the school bus to the appropriate category;
- (2) Divide the current year system price by the system lifetime;
- (3) Multiply by the total number of past and current year eligible months;
- (4) Subtract the total amount of all school bus replacement payments made in prior school years (if any);
- (5) Subtract the assumed interest earnings (if any); and
- (6) Subtract the salvage value if the current school year is the final year of the school bus's system life.

NEW SECTION

**WAC 392-142-248 Calculation of charter school system payments.** To calculate the charter school system payment for a charter school, the superintendent shall:

- (1) Calculate the total amount of replacement system and depreciation system payments for the prior school year for the district in which the charter school is located.
- (2) Calculate the combined student count for the prior year as defined in chapter 392-141 WAC for the district in which the charter school is located.
- (3) Divide the amount in subsection (1) of this section by the number in subsection (2) of this section.
- (4) Multiply the amount in subsection (3) of this section by the charter school's current year combined student count.

AMENDATORY SECTION (Amending WSR 12-19-098, filed 9/19/12, effective 10/20/12)

**WAC 392-142-250 Calculation and allocation schedule.** The superintendent shall calculate annual school bus reimbursement payments for existing school buses by September 15th of each year. Calculation of reimbursement for a school bus entering the system during a school year shall be based on the number of remaining eligible months in the school year. The superintendent shall apportion school bus reimbursement payments as follows:

(1) Replacement system payments shall be distributed to school districts on the final business day of August of each year; ~~(and)~~

(2) Depreciation system payments shall be distributed to school districts in accordance with the schedule set forth in RCW 28A.510.250; and

(3) Charter school system payments shall be distributed in accordance with the schedule set forth in RCW 28A.510.-250.

AMENDATORY SECTION (Amending WSR 12-19-098, filed 9/19/12, effective 10/20/12)

**WAC 392-142-255 Deposit of payments in the transportation vehicle fund.** ~~(School)~~ Districts shall deposit net proceeds for the rent, sale, lease, or other disposition of school buses and replacement payments for school district-owned vehicles in the transportation vehicle fund. Depreciation system and charter system payments are not required to be deposited in the transportation vehicle fund.

AMENDATORY SECTION (Amending WSR 12-19-098, filed 9/19/12, effective 10/20/12)

**WAC 392-142-260 Allowable uses of the transportation vehicle fund.** ~~(School)~~ Districts shall only use money in the transportation vehicle fund for the following purposes:

(1) The purchase of school buses;

(2) Performing major repairs to a school bus receiving prior approval by the superintendent.

Funds may be transferred from the transportation vehicle fund to the debt service fund for the payment of debt and interest associated with purchase agreements for school buses, including lease purchase agreements.

AMENDATORY SECTION (Amending WSR 12-19-098, filed 9/19/12, effective 10/20/12)

**WAC 392-142-265 Improper maintenance and operation.** (1) If a school bus is otherwise eligible for reimbursement payments and is determined to have been improperly maintained or operated, the superintendent shall discontinue reimbursement system payments effective the first of the month following the initial determination. The superintendent shall use the following process for any future payments:

(a) For school buses that are restored to operational condition, the superintendent shall:

(i) Return the school bus to the reimbursement system effective the first of the month following the date of the Washington state patrol inspection; and

(ii) Not provide reimbursement for any months the school bus was determined to have been improperly maintained or operated. However, such months shall be included as eligible months in the calculation of the system lifetime of the vehicle.

(b) For school buses that the ~~(school)~~ district disposes of without returning the vehicle to operational condition, the superintendent shall:

(i) Divide the total number of eligible months by the system life;

(ii) Multiplying the result by the current state-determined purchase price;

(iii) Subtract the total of all previous school bus replacement payments;

(iv) Subtract the total assumed interest earnings; and

(v) Subtract the salvage value.

(2) Such factors as fire, flood, explosion, storm, earthquake, or volcanic eruption shall not result in a school bus being determined to have been improperly maintained or operated. However, reimbursement payments shall be discontinued effective the first of the month following any such occurrence. Any future payments shall be calculated using the procedures listed in subsection (1) of this section. The superintendent shall assume any such school bus will be returned to service until such time as the ~~(school)~~ district disposes of the school bus.

(3) If a ~~(school)~~ district disposes of a school bus prior to the end of its useful lifetime, the superintendent shall discontinue reimbursement system payments as of the month of the sale of the school bus and adjust any final payment using the process in subsection (1) of this section.

(4) If a ~~(school)~~ district operates a school bus without an operation permit, the superintendent shall not provide reimbursement for that time period. However, any such months shall be included as eligible months in the calculation of the system lifetime of the vehicle.

AMENDATORY SECTION (Amending WSR 12-19-098, filed 9/19/12, effective 10/20/12)

**WAC 392-142-270 Disposition of school buses.** When a ~~(school)~~ district sells or otherwise disposes of a school bus, the ~~(school)~~ district shall notify the superintendent within thirty days using SPI Form 1020B.

#### WSR 15-07-104

#### PROPOSED RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed March 18, 2015, 9:57 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-01-147.

Title of Rule and Other Identifying Information: Chapter 392-141 WAC, Transportation—State allocation for operations.

Hearing Location(s): Office of Superintendent of Public Instruction (OSPI), Brouillet Conference Room, 600 South

Washington, Olympia, WA 98504-7200, on May 5, 2015, at 1:30 p.m.

Date of Intended Adoption: May 6, 2015.

Submit Written Comments to: Allan J. Jones, Director, OSPI, Student Transportation, P.O. Box 47200, Olympia, WA 98504-7200, e-mail allan.jones@k12.wa.us, by April 28, 2015.

Assistance for Persons with Disabilities: Contact Kristin Murphy by April 28, 2015, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Revisions have been made to this chapter to define and include student transportation for charter schools.

Statutory Authority for Adoption: RCW 28A.150.290.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Allan J. Jones, OSPI, Student Transportation, (360) 725-6122; and Enforcement: JoLynn Berge, OSPI, Financial Resources and Governmental Relations, (360) 725-6300.

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

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

March 18, 2015

Randy Dorn

State Superintendent  
of Public Instruction

AMENDATORY SECTION (Amending WSR 11-15-007, filed 7/7/11, effective 8/7/11)

**WAC 392-141-300 Authority and purpose.** The authority for this chapter is RCW 28A.150.290 which authorizes the superintendent of public instruction to adopt rules and regulations for the administration of chapter 28A.150 RCW, which includes student transportation programs, RCW 28A.160.030, which includes individual and in lieu transportation arrangements, RCW 28A.160.160 which includes hazardous walking conditions, and RCW 28A.160.1921 which includes the transportation reporting requirements. The purpose of this chapter is to establish the method for the allocation of funding for the operation of public school (~~district~~) student transportation programs.

AMENDATORY SECTION (Amending WSR 13-17-110, filed 8/21/13, effective 9/21/13)

**WAC 392-141-310 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise:

(1) "Superintendent" means the superintendent of public instruction.

(2) "District" means either a school district or an educational service district.

(3) "Charter school" means a public school operating under the provisions of chapter 28A.710 RCW.

(4) The definition of "school" includes learning centers or other agencies where educational services are provided.

~~((4))~~ (5) "Eligible student" means any student served by a district or charter school transportation program either by bus, district car, or individual arrangements meeting one or more of the following criteria:

(a) A student whose route stop is outside the walk area of the student's enrollment school site; or

(b) A student whose disability is defined by RCW 28A.155.020 and who is either not ambulatory or not capable of protecting his or her own welfare while traveling to or from school.

Districts determine which students are provided with transportation services; however, only eligible students qualify for funding under the operations allocation.

~~((5))~~ (6) "To and from transportation" means all transportation between route stops and schools both before and after the school day. To and from transportation includes transportation between home and school and transportation between schools, commonly referred to as shuttles. Transportation not authorized for state allocations under this definition includes, but is not limited to, transportation for students participating in nonacademic extended day programs, field trips, and extracurricular activities.

~~((6))~~ (7) "Home to school transportation" means all student transportation between route stops and schools both before and after the school day. Home to school transportation does not include transportation between schools.

~~((7))~~ (8) "Basic program transportation" means students transported between home and school for their basic education. Basic program transportation includes those students who qualify under RCW 28A.155.020 for special services and are capable of protecting his or her own welfare while traveling to or from school and those students who are enrolled in gifted or bilingual programs or homeless students that do not require specialized transportation. Also included in basic program transportation is transportation required to comply with the school choice provisions of the Elementary Secondary Education Act.

~~((8))~~ (9) "Special program transportation" means home to school transportation for one of the following specialized programs:

(a) Special education programs provided for by chapter 28A.155 RCW and where transportation as a related service is included on the student's individual education plan or where transportation is required under the provisions of Section 504 of the Rehabilitation Act of 1973; or

(b) Students who require special transportation to a bilingual program in a centralized location; or

(c) Students who require special transportation to a gifted program in a centralized location; or

(d) Students who require special transportation to their school of origin as required by the provisions of the McKinney-Vento Homeless Assistance Act; or

(e) Students who require special transportation to a district operated head start, district operated early childhood education assistance program, or other district operated early education program.

~~((9))~~ (10) "Kindergarten route" means a school bus providing home to school transportation for basic education



kindergarten students operated between the beginning and end of the school day.

~~((10))~~ (11) "Private party contract" means the provision of home to school transportation service using a private provider (not in a school bus). Private party contracts shall require criminal background checks of drivers and other adults with unsupervised access to students and assurances that any students transported be provided with child safety restraint systems that are age and weight appropriate. Vehicles used must meet school bus specifications established in chapter 392-143 WAC if they have a manufacturer's design capacity of greater than ten passengers, including the driver. However, a vehicle manufactured to meet the federal specifications of a multifunction school activity bus may be used.

~~((11))~~ (12) "In lieu transportation" means a contract to provide home to school transportation with a parent, guardian or adult student, including transportation on rural roads to access a school bus stop.

~~((12))~~ (13) "Count period" is the three consecutive school day window used for establishing the reported student count on home to school routes.

~~((13))~~ (14) The school year is divided into three "report periods," as follows: September - October, November - January, and February - April. These report periods are also referred to respectively as the fall, winter and spring reports. The count period must not fall within five school days of the end of the report period.

~~((14))~~ (15) "Combined student count" is the total number of basic program or special program eligible student riders reported during each report period. The combined student counts for the determination of funding consist of the prorated basic program and special program student counts from the prior year's spring report and the current year's fall and winter reports. The prior school year's fall, winter and spring student counts are used for the determination of the efficiency rating. The combined student counts are prorated based on the number of months in the respective report period. For a charter school in the first year of operation, the current year fall count shall be used as the prior year spring count to determine the combined student count.

~~((15))~~ (16) "Average distance to school" means the average of the distances from each school bus stop measured by the shortest road path to the assigned student's school of enrollment.

~~((16))~~ (17) "Prorated average distance" is calculated by taking the average distance to school weighted by the number of months in the corresponding report period. The prorated average distance used in calculating district allocation consists of the prorated average distance from the prior year's spring report and the current year's fall and winter reports. The prior school year's fall, winter and spring average distances are used for the determination of the efficiency rating.

~~((17))~~ (18) "Prorated number of destinations" is calculated by taking the number of learning centers a school district provides with home-to-school transportation service weighted by the number of months in the corresponding report period. The prorated number of destinations used in calculating district allocation consists of the prorated number of destinations from the prior year's spring report and the current year's fall and winter reports. The prior school year's fall,

winter, and spring number of destinations are used for the determination of the efficiency rating.

~~((18))~~ (19) "Land area" is the area of the school district in square miles, excluding water and public lands, as determined by the superintendent. For educational service districts, the land area value will be determined by the superintendent from the contiguous area provided with transportation service.

~~((19))~~ (20) "Roadway miles" refers to the number of public roadway miles within the land area of the school district, as determined by the superintendent. For educational service districts, the roadway mile value will be determined by the superintendent from the roadway miles within the contiguous area provided with transportation service.

~~((20))~~ (21) "Walk area" is defined as the area around a school where the shortest safe walking route to school is less than one mile.

~~((21))~~ (22) "District car route" means home to school transportation where a district motor pool vehicle (not a school bus) is used to transport an eligible student or students. Any regularly scheduled home to school transportation in a district car is required to be driven by an authorized school bus driver.

~~((22))~~ (23) "District car allocation" is calculated by multiplying the total annual district car route mileage by the rate of reimbursement per mile that is authorized for state employees for the use of private motor vehicles in connection with state business in effect on September 1st of each year.

~~((23))~~ (24) A "low ridership district" is defined as a district with an annual student count less than two hundred eighteen students.

~~((24))~~ (25) A "nonhigh" district is defined as a district meeting the eligibility requirements for a nonhigh district as established by the superintendent of public instruction's school apportionment and financial services section.

~~((25))~~ (26) A "transportation cooperative" is defined as two or more districts sharing transportation operations administrative functions. An interdistrict agreement for the provision of maintenance services on school buses does not constitute a transportation cooperative for the purposes of this chapter, regardless if the agreement qualifies as a transportation cooperative under the provisions of chapter 392-346 WAC, unless shared operations administrative functions are also included in the interdistrict agreement. A transportation cooperative has the option of reporting as a single entity.

~~((26))~~ (27) "Alternate funding system" means an additional funding system as provided in RCW 28A.160.191, defined by OSPI to adjust the allocation for low enrollment school districts, nonhigh school districts, school districts participating in interdistrict transportation cooperatives, and educational service districts operating special transportation services.

~~((27))~~ (28) "Expected allocation" means the initial amount of funding resulting from the regression analysis calculation.

~~((28))~~ (29) "Adjusted allocation" means the expected allocation plus any alternate funding system, calendar, or legislative adjustments.

~~((29))~~ (30) For a district, "actual allocation" means the lesser of the previous year's actual reported transportation

expenditures including adjustments by the legislature or the adjusted allocation. For a charter school, the actual allocation is a final amount to be allocated for transportation services using the process described in this chapter, plus any funding provided under chapter 392-142 WAC.

~~((30))~~ (31) "Efficiency evaluation" refers to the statistical evaluation of efficiency of a district's transportation operation using linear programming of the data required by the funding formula and the number of buses used on home-to-school routes. Each district is separately compared to an individualized statistical model of a district having similar site characteristics. The efficiency evaluation is expressed as a percentage efficiency rating.

~~((31))~~ (32) A ~~((school))~~ district's "transportation funding percentage" is calculated by dividing the district's actual allocation by the district's approved to-and-from transportation expenditures.

~~((32))~~ (33) The "state median percent funded" is determined by calculating each ~~((school))~~ district's transportation funding percentage and taking the median value by sorting the total number of reporting districts in descending order and selecting the middle value. If there is an even number of districts, the bottom value in the top half shall be used.

AMENDATORY SECTION (Amending WSR 13-17-110, filed 8/21/13, effective 9/21/13)

**WAC 392-141-320 (~~(District)~~) Reporting requirements.** (1) Reports shall be submitted by each district or charter school to the superintendent no later than the last business day in October, the first business day in February, and the first business day in May. These reports shall reflect to the extent practical the planned student transportation program for the entire report period and which is in operation during the ridership count period. The superintendent shall have the authority to make modifications or adjustments in accordance with the intent of RCW 28A.160.150. Each district or charter school shall submit the data required on a timely basis as a condition to the continuing receipt of student transportation allocations.

(2) In each report period, districts shall report such operational data and descriptions, as required by the superintendent to determine the operations allocation for each district, including:

- (a) School bus route information;
- (b) Student count information; and
- (c) An update to the estimated total car mileage for the current school year.

(3) For the fall report, districts shall report to the superintendent as required:

(a) An annual school bus mileage report including the total to and from school bus miles for the previous school year, and other categories as requested;

(b) An annual report of each type of fuel purchased for student transportation service for the previous school year, including quantity and cost; and

(c) An annual report as required by RCW 28A.300.540 of the number of students transported to their school of origin as required by the McKinney-Vento Homeless Assistance Act for the previous school year, and the total mileage and

additional cost of such transportation. These costs may include, but are not limited to:

(i) Transportation service that serves only student(s) under McKinney-Vento. Districts may determine costs based upon route mileage and an average per mile cost for operation of the bus or vehicle. Driver time may be taken from actual driver costs records if such records are maintained, or may be determined using an average driver costs factor.

(ii) Incremental revisions in route at the start or end of a route to accommodate McKinney-Vento transportation, if separately identified, may be included based upon route mileage and an average per mile cost for operation of the bus or vehicle.

(iii) Costs for public transportation or other contracted services for transporting McKinney-Vento student(s).

(iv) Nondriver transportation staff positions whose job duties are predominately overseeing or routing services to McKinney-Vento students. If the position duties encompass other non-McKinney-Vento areas, then only the costs directly related to McKinney-Vento transportation shall be included and such costs shall be determined using federal time and effort reporting procedures.

No indirect or allocated costs may be included in this reporting.

(4) In each report period, charter schools shall report student counts.

AMENDATORY SECTION (Amending WSR 11-15-007, filed 7/7/11, effective 8/7/11)

**WAC 392-141-330 School bus driver daily logs.** Districts shall require drivers to maintain a daily route log that includes the school bus driver's name, bus number, route number, destinations and student counts by destination, pre-trip and ~~((post-trip))~~ posttrip verification, with the date and school bus driver's signature. These daily route logs shall be completed in ink and shall be maintained in the ~~((school))~~ district files in accordance with the ~~((school))~~ district record retention schedule. Electronic data collection systems or files may be used for any of this information.

Daily route logs are required to be completed at least once each week. If a district does not require daily route logs on a daily basis, the district must ensure that during each report period a daily log is collected on at least one additional weekday corresponding to each of the days of the count period.

AMENDATORY SECTION (Amending WSR 11-15-007, filed 7/7/11, effective 8/7/11)

**WAC 392-141-340 Determination of the walk area.**

(1) Each district or charter school shall determine the walk area for each school building or learning center where students are enrolled, attend class and transportation is provided. The district or charter school is required to use a process to determine the walk area that involves as many of the following groups as possible: Parents, school administrators, law enforcement representatives, traffic engineers, public health or walking advocates and other interested parties. Hazardous conditions requiring transportation service will be documented and will include all roadways, environmental and

social conditions included in the evaluation process. The ((~~district~~)) process will be consistent with the one described in *School Walk and Bike Routes: A Guide for Planning and Improving Walk and Bike to School Options for Students* published by the Washington state department of transportation.

(2) The process will identify preferred walking routes from each neighborhood to each elementary school as required by RCW 28A.160.160(5). Walk areas will be reviewed as conditions change or every two years.

(3) ((~~School~~)) Districts and charter schools are allowed to provide transportation service within the walk area, but basic program students who are provided transportation from school bus stops within the walk area are not eligible for funding. It is the responsibility of each ((~~school~~)) district or charter school to ensure that noneligible students who are provided with transportation service within the walk area are correctly reported during the count period.

(4) A ((~~school~~)) district or charter school is not required to document the process used to determine that transportation will not be provided from an area. ((~~School~~)) Districts and charter schools are only required to document the process used to make a decision to transport within one road mile of a school if ((~~the district is providing~~)) such transportation is provided due to hazardous conditions and ((~~reports~~)) those students are reported for funding.

AMENDATORY SECTION (Amending WSR 13-17-110, filed 8/21/13, effective 9/21/13)

**WAC 392-141-360 Operation allocation computation.** (1) The operation allocation shall be calculated using the following factors:

- (a) The combined student count of basic program students;
- (b) The combined student count of special program students;
- (c) The district's prorated average distance;
- (d) The district's total land area;
- (e) The district's prorated number of destinations;
- (f) If the ((~~school~~)) district is a nonhigh district, the answer to the following question: Does the district provide transportation service for the high school students residing in the district?
- (g) Any other district data element as described by the superintendent in the annual operations bulletin. In order for a data element to be included, it must be found to be statistically significant for two consecutive school years.

For each district, an expected allocation is determined using the coefficients resulting from a regression analysis of (a) through (g) of this subsection, evaluated statewide against the prior school year's total to and from transportation expenditures. If a data element is determined not to be statistically significant, it shall not be included in the calculation of the allocation. The coefficients will be determined using the prior school year fall, winter, and spring reports and prior school year expenditures.

(2) For the calculation of the regression analysis coefficients, the allowable transportation expenditures for each district shall be adjusted as required by the legislature.

(3) The adjusted allocation is the result of modifying the expected allocation by:

- (a) Adding any district car mileage reimbursement; and
  - (b) Adding any adjustment resulting from the alternate funding systems identified in WAC 392-141-380; and
  - (c) Making any deduction resulting from an alternate school year calendar approved by the state board of education under the provisions of RCW 28A.305.141; and
  - (d) Making any adjustment as required by the legislature.
- (4) Each district's actual allocation for student transportation operations is the lesser of the prior school year's total allowable student transportation expenditures adjusted as required by the legislature or the adjusted allocation. ((~~School~~)) Districts contracting for student transportation operations shall have any payments in lieu of depreciation under the provisions of WAC 392-142-245 deducted from the district's allowable transportation expenditures.

(5) The funding assumption for the transportation operation allocation is that kindergarten through twelfth grade (K-12, or whatever grades are enrolled in district schools) school transportation services are provided by the district five days per week, to and from school, before and after the regular school day and operating one hundred eighty days per school year. K-12 service being provided on any other basis is subject to corresponding proration of the operation allocation.

#### NEW SECTION

**WAC 392-141-375 Funding calculation for charter schools.** For a charter school, the per-student allocation for student transportation is calculated using the actual allocation for the previous school year for the district in which the charter school is located, divided by the district's prior year's combined student count. This per-student amount is provided to the charter school based on the charter school's current year combined student count.

AMENDATORY SECTION (Amending WSR 13-17-110, filed 8/21/13, effective 9/21/13)

**WAC 392-141-380 Alternate funding systems for low enrollment districts, nonhigh districts, districts participating in interdistrict transportation cooperatives, and educational service districts operating special transportation services.** After the transition period described in WAC 392-141-370, the superintendent shall adjust the amount of the transportation operation allocation for low ridership, non-high, districts in interdistrict transportation cooperatives, and educational service districts operating special transportation services in the following manner:

- (1) The ((~~school~~)) district's prior school year's transportation funding percentage is compared to the state median percent funded;
- (2) If the district's prior year transportation funding percentage is greater than the state median percent funded no adjustment is made; and
- (3) If the district's prior year transportation funding percentage is less than the state median percent funded, the allocation shall be adjusted by the difference between the state median percent funded and the district's prior year transportation funding percentage.

AMENDATORY SECTION (Amending WSR 11-15-007, filed 7/7/11, effective 8/7/11)

**WAC 392-141-390 Allocation schedule for state payments.** The superintendent shall apportion the transportation operation allocation according to the schedule in RCW 28A.510.250. Such allocation may be based on estimated amounts for payments made in September, October, November, December, and January. Prior to the 15th of January of each year the superintendent shall notify ((~~school~~)) districts of the regression analysis coefficients to be used in the calculation of district transportation allocation.

AMENDATORY SECTION (Amending WSR 11-15-007, filed 7/7/11, effective 8/7/11)

**WAC 392-141-400 Efficiency evaluation review.** (1) Each district's efficiency evaluation will be reviewed annually by the regional transportation coordinators. If a ((~~school~~)) district's efficiency rating is less than ninety percent, the regional transportation coordinator shall review the district's transportation operation to identify the factors impacting the ability of the district to operate an efficient student transportation system. Such factors will include those within the district's controls and those factors that are beyond the district's control.

(2) Completed regional transportation coordinator reports on the review of ((~~school~~)) district efficiency evaluation will be provided to the legislature prior to December 1st of each year. Districts will be provided an opportunity to respond to the conclusions of the regional transportation coordinator evaluation and such comments will be included in the report to the legislature. Also included in the report are any actions identified by a district in response to the regional transportation coordinator evaluation.

AMENDATORY SECTION (Amending WSR 11-15-007, filed 7/7/11, effective 8/7/11)

**WAC 392-141-420 District recordkeeping requirements.** All data and forms necessary to develop the district's student transportation report shall be maintained in accordance with the district record retention schedule and shall include the following:

(1) All school bus route logs and school bus driver daily logs including those required in WAC 392-141-330. If student lists are maintained for each school bus route, a copy (electronic or paper) of the list in effect for each count period;

(2) All documentation used to verify the number of students boarding the bus at bus stops within the walk area of their school of enrollment;

(3) All documentation used to report and verify the location of school bus stops used in home to school transportation, including school destinations and transfer points;

(4) All documentation used to develop the annual school bus mileage report;

(5) All documentation used to develop the annual fuel report;

(6) All documentation used to develop the annual report of McKinney-Vento Homeless Act transportation;

(7) All documentation used to develop the district car mileage report;

(8) Copies of any and all correspondence, publications, or other materials distributed to parents describing the transportation funding process. ((~~School~~)) Districts may provide educational material regarding the funding process for student transportation. However, ((~~school~~)) districts may not promote or publicize specific count periods. Districts shall not utilize incentive programs that provide tangible gifts to reward increases in ridership counts; and

(9) Other operational data and descriptions, as required by the superintendent to determine the operation allocation requirements for each district.

#### NEW SECTION

**WAC 392-141-430 Charter school recordkeeping requirements.** All data and forms necessary to develop the charter school's student transportation report shall be maintained in accordance with the charter school's record retention schedule and shall include the following:

(1) Any school bus route logs or school bus driver daily logs for each count period;

(2) All documentation used to calculate the combined student count for each report period; and

(3) All documentation used to calculate the number of students boarding the bus at bus stops within the walk area of their school of enrollment.

Charter schools shall not promote or publicize specific count periods or utilize incentive programs that provide tangible gifts to reward ridership during specific time periods.