

**WSR 14-08-097**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FINANCIAL INSTITUTIONS**  
 (Securities Division)

[Filed April 2, 2014, 10:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-07-089.

Title of Rule and Other Identifying Information: The securities division proposes to amend the investment adviser rules in chapter 460-24A WAC. The amendments would update various provisions of the investment adviser rules, including the rules regarding examination and registration requirements, financial reporting requirements, custody, performance compensation arrangements, books and records requirements, and unethical business practices. The amendments would add new rule sections addressing compliance policies and procedures, proxy voting, and advisory contracts. In addition, the amendments would create exemptions from registration for certain private fund and venture capital fund advisers. The amendments would repeal WAC 460-24A-058, which defines when an application is considered filed; and make additional updates, clarifications, and changes to the rules.

Hearing Location(s): Department of Financial Institutions (DFI), 150 Israel Road S.W., Tumwater, WA 98501, on June 5, 2014, at 10:00 a.m.

Date of Intended Adoption: June 6, 2014.

Submit Written Comments to: Jill Valley, Securities Division, P.O. Box 9033, Olympia, WA 98507-9033, e-mail [jill.valley@dfi.wa.gov](mailto:jill.valley@dfi.wa.gov), fax (360) 704-7035, by June 4, 2014.

Assistance for Persons with Disabilities: Contact Carolyn Hawkey, P.O. Box 9033, Olympia, WA 98507, TTY (360) 664-8126 or (360) 902-8760.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The securities division proposes to amend the rules in chapter 460-24A WAC in order to address changes in federal law and updates to NASAA model rules, and to implement necessary protections for the investing public who may use the services of investment advisers. The proposed rules would make the following changes:

- Amend the definitions section at WAC 460-24A-005;
- Create a new section at WAC 460-24A-035 which clarifies who is a client and specifies how to count clients for the purposes of determining who needs to register as an investment adviser under RCW 21.20.040(3);
- Update the examination and registration requirements at WAC 460-24A-050 to make them consistent with NASAA model rules;
- Amend the financial reporting requirements at WAC 460-24A-060 to require advisers who have custody to file an audited balance sheet with the securities division. In addition, advisers who have custody as defined by WAC 460-24A-005 (1)(a)(iii) and who comply with the safekeeping requirements

in WAC 460-24A-107 (1)(b) by providing audited financial statements of the pooled investment vehicle must file those financial statements with the securities division;

- Create a new section at WAC 460-24A-071 which adds an exemption from investment adviser registration for advisers to qualified private funds (which does not apply to advisers of funds exempt from the definition of "investment company" under Section 3 (c)(1) of the Investment Company Act of 1940);
- Create a new section at WAC 460-24A-072 which adds an exemption from investment adviser registration for venture capital fund advisers;
- Create a new section at WAC 460-24A-080 which provides for the termination of pending applications where the applicants have taken no action for nine months;
- Amend the custody rules at WAC 460-24A-105, 460-24A-106, and 460-24A-107 to require certain written agreements and to clarify the requirements for account statements to pooled investment vehicles;
- Create a new section at WAC 460-24A-120 which requires investment advisers with more than one employee to adopt compliance policies and procedures reasonably designed to prevent violations of the Securities Act by the adviser and its supervised persons;
- Create a new section at WAC 460-24A-125 which requires investment advisers who vote client securities to adopt policies and procedures reasonably designed to ensure that the adviser votes in the best interest of the clients;
- Create a new section at WAC 460-24A-130 which clarifies the requirements for investment advisory contracts;
- Update the brochure rule at WAC 460-24A-145 to make it consistent with the NASAA model rule;
- Amend the performance compensation rule at WAC 460-24A-150 consistent with the NASAA model rule and the Securities and Exchange Commission's amended rule;
- Amend the books and records requirement at WAC 460-24A-200 to clarify additional recordkeeping requirements;
- Amend the unethical business practices rule at WAC 460-24A-220 to specify additional unethical practices;
- Repeal WAC 460-24A-058, which defined when an application was considered filed; and
- Make additional updates, amendments, and clarifications.

Reasons Supporting Proposal: The proposed amendments should be adopted in order to reflect changes in federal law which impact the state regulation of investment advisers. The amendments will incorporate provisions from updated NASAA model rules which will help create uniformity among the states. In addition, the securities division believes the amendments should be adopted because they will provide necessary protections for the investing public who use the

services of investment advisers or invest in pooled investment vehicles managed by investment advisers.

Statutory Authority for Adoption: RCW 21.20.005, [21.20].020, [21.20].030, [21.20].040, [21.20].050, [21.20].060, [21.20].070, [21.20].080, [21.20].090, [21.20].100, [21.20].330, [21.20].340, [21.20].450, and [21.20].702.

Statute Being Implemented: Chapter 21.20 RCW.

Rule is necessary because of federal law, Dodd-Frank Act enacted July 21, 2010, Public Law No. 111-203.

Name of Proponent: DFI, securities division, governmental.

Name of Agency Personnel Responsible for Drafting: Jill Vallely, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760; Implementation: Scott Jarvis, Director, DFI, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760; and Enforcement: William Beatty, Director, Securities, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

### Small Business Economic Impact Statement

**Introduction:** This small business economic impact statement (SBEIS) is written in support of proposed rule amendments drafted by the department of financial institutions, securities division (securities division) to amend the rules in chapter 460-24A WAC pertaining to investment advisers.

The investment adviser rules have not been amended since 2008. Since that time, there have been many changes in the financial industry and in the laws regulating investment advisers. For instance, as a result of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the number of investment advisers subject to state registration has increased. In addition, there have been numerous changes and updates to NASAA model rules, which are adopted by many states for use in the regulation of investment advisers. Many of the proposed amendments to the rules would make Washington's rules consistent with current federal law and NASAA model rules. The securities division has also identified certain rules which could be improved to increase investor protection and to reduce the potential for fraud.

The securities division has involved its registered investment advisers and notice filed investment advisers throughout the rule-making process and has made changes to the proposed rule amendments in response [to] their concerns. The securities division finds that the proposed rule amendments should be adopted in order to better protect clients of investment advisers in Washington.

**Procedural Background:** On March 19, 2010, the Washington securities division filed a CR-101 preproposal statement of inquiry with the code reviser's office stating that it was considering possible updates, amendments, and additions to its investment adviser rules. The securities division subsequently prepared a draft of amendments to its investment adviser rules which was distributed to interested persons in a mailing on August 13, 2012. The securities division also conducted a survey of state registered investment advisers

and notice filed investment advisers to determine the costs associated with the rule amendments.

Since that time, the securities division has made certain changes to the draft amendments in response to feedback received from investment advisers registered or notice filed in the state of Washington. The securities division now intends to proceed with the rule making to amend chapter 460-24A WAC by formally proposing the draft amendments in a CR-102 filing with the code reviser.

**Summary of Proposed Rule Amendments:** The proposed rule amendments would amend twenty-seven rule sections under chapter 460-24A WAC, create seven new sections, and repeal one section.

The amendments would update various provisions of the investment adviser rules, including the rules regarding financial reporting requirements, custody, performance compensation arrangements, books and records, and unethical business practices. The amendments would add new rule sections addressing proxy voting, advisory contracts, and compliance procedures and practices, and would create exemptions from registration for certain private fund advisers and venture capital fund advisers. Many of these changes would make Washington's rules consistent with current federal law and NASAA model rules. Finally, the amendments would repeal WAC 460-24A-058, which defined when an application for investment adviser or investment adviser representative registration is considered filed. The securities division determined that this rule section was unnecessary. The proposed amendments are described in greater detail below:

*Financial Reporting Requirements:* The rule making would amend the financial reporting requirements in WAC 460-24A-060. The amendments would require investment advisers who have custody, or who require payment of advisory fees six months in advance and in excess of \$500 per client, to file an audited balance sheet with the securities division each year. Currently, a balance sheet must be filed but it does not need to be audited. In addition, the amendments would require advisers who have custody as defined in WAC 460-24A-005 (1)(a)(iii) (management of a pooled investment vehicle) and who have indicated they will comply with the safekeeping requirements of WAC 460-24A-107 (1)(b) by providing audited financial statements of the pooled investment vehicle to limited partners, to file the audited statements of the pooled investment vehicle with the securities division. Under the current rules, the annual audited financial statements are provided to investors to fulfill the safekeeping requirements but are not required to be filed with the securities division.

*Custody:* The amendments would make various changes and clarifications to the custody rules for investment advisers at WAC 460-24A-105, 460-24A-106, and 460-24A-107. Under the current WAC 460-24A-105, if the investment adviser sends account statements, rather than the qualified custodian, an independent CPA must verify client funds and securities by examination once per year. The amendments to WAC 460-24A-105 would provide that the investment adviser enter into a written agreement with the CPA who will provide these services. The agreement must contain certain provisions specified in the amendments that are designed to protect against fraud. In addition, an investment adviser who

acts as a qualified custodian must enter into an agreement with an independent CPA to conduct an examination to verify funds and securities.

The amendments will revise WAC 460-24A-106 to clarify that advisers who have the authority to directly deduct fees from client accounts must comply with the custody requirements in WAC 460-24A-105 as well as the additional safekeeping requirements specified in WAC 460-24A-106.

The amendments revise WAC 460-24A-107, which provides additional custody requirements for investment advisers that manage pooled investment vehicles. The amendments would require that if the additional custody requirements in WAC 460-24A-107(1) are met by engaging an independent party to authorize withdrawals, the investment adviser must enter into a written agreement with the independent party. The amendments specify that if the adviser uses an independent party to meet the requirements of WAC 460-24A-107 (1)(a), the investment adviser is not required to comply with the net worth and bonding requirements for an investment adviser with custody. If the adviser meets the additional custody requirements of WAC 460-24A-107(1) by providing audited financial statements, the rule amendments specify to whom and when the audited financial statements must be delivered.

Finally, the amendments to WAC 460-24A-107 clarify that an investment adviser to a pooled investment vehicle must deliver account statements to each limited partner or beneficial owner of the pooled investment vehicle. The account statements must include the total amount of all additions and withdrawals to the fund, the opening and closing value at the end of the quarter, a listing of all long and short positions on the closing date of the statements, the total amount of additions to and withdrawals from the fund by the investor, and the total value of the investor's interest in the fund at the end of the quarter.

*Performance Compensation Arrangements:* The rule making will make several changes to WAC 460-24A-150, which addresses performance compensation arrangements. The amendments adopt the formula for permitted performance compensation arrangements and disclosure requirements found in the current NASAA performance-based compensation exemption for investment advisers model rule. In addition, the amendments add provisions to conform to the proposed revisions to the NASAA performance-based compensation exemption for investment advisers model rule. These provisions state that advisers who are *not* registered or required to be registered may enter into performance-based compensation agreements. They also clarify that a beneficial owner of an equity interest in certain investment vehicles is a client for the purpose of the performance compensation rule. The rule amendments also adopt transition rules that allow performance-based compensation arrangements that were permitted by the rule in place at the time the advisory contract was signed.

*Books and Records:* The rule making will amend WAC 460-24A-200, which specifies the books and records to be maintained by investment advisers. The amendments will add the following to the books and records that must be maintained:

- Written information about each security an adviser recommends a client buy or sell that is the basis for making any recommendation or providing any investment advice to such client;
- Records to be maintained following inadvertent custody of client securities or funds, pursuant to the NASAA custody requirements for investment advisers model rule; and
- A copy of a written business continuity plan which identifies procedures to be followed in the event of an emergency or significant business disruption and which is reasonably designed to enable the investment adviser to meet its fiduciary obligations to clients.

The amendments will require investment advisers who have custody to keep the following additional records:

- A copy of all documents executed by the client under which the adviser is authorized of [or] permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian;
- A copy of each client's quarterly account statements as generated and delivered by the qualified custodian, plus any statements generated by the adviser and delivered to the client;
- Any special examination reports;
- Any findings by the independent CPA of any material discrepancies;
- Evidence of the client's designation of an independent representative, if applicable;
- For investment advisers who manage a pooled investment vehicle: Current account statements, and specific records to demonstrate compliance with either WAC 460-24A-107 (1)(a) or (b); and
- For investment advisers with custody under WAC 460-24A-109(3): A copy of the written statement and signed acknowledgment given to each beneficial owner explaining why the adviser is not complying with WAC 460-24A-105.

In addition, the rule making will revise the provisions regarding records retention and preservation in WAC 460-24A-200(7) in order to conform to the NASAA investment advisers recordkeeping model rule.

*Unethical Practices:* The rule making will amend WAC 460-24A-220, which specifies certain practices as unethical business practices for investment advisers.

The unethical business practices rule currently states that it applies to investment advisers and federal covered advisers. The amendments add that the rule applies to investment adviser representative[s] as well. The amendments clarify that advisers may not disclose any current or former client's financial information unless required by law or consented to by the client. The amendments clarify that the adviser may not enter into an advisory contract that does not comply with the draft rule at WAC 460-24A-130.

In addition, the amendments specify that it is an unethical business practice for investment advisers, investment adviser representatives, and federal covered advisers to make in the solicitation of clients, any untrue statement of fact, or

omitting to state a material fact necessary in order to make the statement made, in light of the circumstances in which it was made, not misleading.

*Proxy Voting:* The rule making will add a new section to the rules, WAC 460-24A-125, which will require investment advisers who exercise voting authority with respect to client securities to adopt policies and procedures that are designed to ensure that the adviser votes client securities in the best interest of the clients. Investment advisers who exercise voting authority must disclose to clients how they can obtain information on how their securities were voted.

*Advisory Contracts:* The rule making will add a new section to the rules, WAC 460-24A-130, which specifies the requirements for the investment advisory contract. The rule is based on the NASAA model rule on the contents of the investment advisory contract and incorporates existing advisory contract requirements currently found in the unethical practices provision at WAC 460-24A-220(16). The draft rule states it is unlawful under RCW 21.20.020 and 21.20.030 to enter into an advisory contract unless it provides in writing:

- The services to be provided, the term of the contract, the investment advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of termination or nonperformance of the contract, and whether and the extent to which the contract grants discretionary authority to the adviser and any limits on such authority;
- That no direct or indirect assignment or transfer [of] the contract may be made without the written consent of the client;
- That the adviser shall not be compensated on the basis of a share of capital gains except as permitted under WAC 460-24A-150;
- That if the adviser is a partnership, it shall notify the client of any change to the membership of the partnership within a reasonable time after the change;
- That if the adviser has custody as a consequence of its authority to make withdrawals from client accounts to pay the adviser's advisory fees, that the contract gives the adviser the authority to deduct fees from the account held by the qualified custodian;
- The nature and extent to which the adviser is granted proxy voting authority with respect to client securities;
- The terms for termination of the contract;
- The nature and extent to which the adviser may electronically deliver documents including account statements and fee invoices, and the extent and manner in which the client may opt out of receiving documents electronically; and
- That the contract shall be governed by the laws of the state in which the client resides.

*Compliance Procedures and Practices:* The rule making would create new section WAC 460-24A-120, concerning compliance procedures and practices. The rule states that it is unlawful for an investment adviser who has more than one employee to provide investment advice unless the adviser adopts and implements written procedures reasonably

designed to prevent violations of the Securities Act of Washington by the investment adviser and its supervised persons. The rule specifies that such policies must be reviewed for adequacy at least annually, and an individual must be designated as responsible for administering the policies and procedures.

*Additional Provisions:* In addition to the changes listed above, the rule making will:

- Create a new section at WAC 460-24A-071 which adds an exemption from investment adviser registration for advisers to qualified private funds (which does not apply to advisers of section 3 (c)(1) funds);
- Create a new section at WAC 460-24A-072 which adds an exemption from investment adviser registration for venture capital fund advisers;
- Create a new section at WAC 460-24A-035 which clarifies who is a client and specifies how to count clients for the purposes of determining who needs to register as an investment adviser under RCW 21.20.040(3);
- Create a new section at WAC 460-24A-080 which provides for the termination of pending applications where the applicants have taken no action for nine months;
- Update the examination and registration requirements at WAC 460-24A-050 to make them consistent with NASAA model rules;
- Update the brochure rule at WAC 460-24A-145 to make it consistent with the NASAA model rule;
- Repeal WAC 460-24A-058, which defined when an application was considered filed; and
- Make additional updates, amendments, and clarifications.

**Need for Economic Impact Statement:** RCW 19.85-030 provides that an agency shall prepare an SBEIS if the rules it is proposing would impose more than minor costs on businesses in an industry. Minor costs are defined by RCW 19.85.020 as a cost per business that is less than three-tenths of one percent of annual revenue or income, or one hundred dollars, whatever is greater; or one percent of annual payroll. The securities division determined that a small business economic impact may be required for this rule making.

**Survey of Investment Advisers:** In order to gather the information to prepare an SBEIS, RCW 19.85.040 provides that an agency may survey a representative sample of affected businesses to assist in the accurate assessment of the costs of a proposed rule. To that end, the securities division prepared a small business economic impact survey to survey its state registered investment advisers and a representative sample of federal registered advisers that are notice filed in the state of Washington.

In general, investment advisers in Washington with assets under management of less than \$100 million must register with the state. Investment advisers with assets under management of \$100 million or more must register with the Securities and Exchange Commission (SEC) and make a notice filing with the securities division if they do business in Washington. At the time of the survey, the securities division had six hundred sixty-three state registered investment advisers.

ers and one thousand five hundred and twenty-seven federal registered notice filed advisers.

On August 13, 2012, the securities division sent a letter by e-mail to all state registered investment advisers (and applicants with a pending investment adviser application) and a random selection of approximately fifty percent of the federal registered investment advisers notice filed in Washington. If a state registered investment adviser did not have an e-mail address on file, the securities division sent a hard copy of the letter by regular mail. The letter contained a link to an online survey designed to determine the economic impact of the proposed amendments to the rules under chapter 460-24A WAC on small businesses. The letter explained the reasons for conducting the survey and requested that recipients complete the survey by following the link provided.

The online survey consisted of thirty-six questions. Each question in the survey focused on a proposed rule amendment and provided a background statement briefly explaining the amendment. The survey asked whether proposed changes to a rule section would cause increased costs. The survey then requested information on the additional costs of the professional services, equipment, supplies, labor, and administrative costs associated with each proposed rule change. Each question also allowed a free form response for survey takers to explain any additional costs. The survey also gathered data on the number of employees each investment adviser had, and questioned whether the rule making as a whole would cause a loss of revenue or the loss or addition of any jobs.

The initial survey period lasted from August 13, 2012, until September 7, 2012. The securities division received three hundred fourteen unique responses. The securities division received responses or partial responses from two hundred seven state registered investment advisers and one hundred seven federal registered advisers notice filed in Washington. Of the respondents, two hundred eighty-six were small businesses as defined by RCW 19.85.020(3) of the Regulatory Fairness Act. All state registered investment advisers who responded to the survey are small businesses because they all have less than fifty employees.

The securities division prepared an SBEIS based on the initial survey results and filed a copy with the code reviser's office. The securities division then received a comment suggesting that exempt reporting advisers should have been included in the survey pool. The securities division agreed that the three exempt reporting advisers doing business in Washington should be included in the survey. The securities division subsequently sent the online survey to these three advisers, all of whom are located out of state. The second survey period lasted from June 7, 2013, to June 28, 2013. The securities division received one response. The response was from an exempt reporting adviser that qualified as a small business for the purposes of the Regulatory Fairness Act. The response indicated that the proposed rule changes would not create additional costs, would not cause lost sales or revenues, and would not cause the elimination of any jobs.

The results of the initial survey are discussed below. The results from the exempt reporting advisers' survey were not included in the analysis because the response received indicated that there would be no economic impact on the adviser.

The securities division determined that averaging a zero into the data would not affect the analysis of the economic impact.

#### REQUIRED ELEMENTS OF SBEIS

**A brief description of the reporting, recordkeeping, and other compliance requirements of the proposed rules and of the kinds of professional services that a small business is likely to need in order to comply with the requirements. An analysis of the costs of compliance for identified industries, including costs of equipment, supplies, and increased administrative costs.**

The proposed rule amendments make a variety of changes to the existing investment adviser rules, some of which will create new recordkeeping, reporting, or compliance requirements for licensees. Registered investment advisers already maintain certain records required of investment advisers under WAC 460-24A-200. As they do currently, investment advisers registered in Washington will need to demonstrate compliance with the amended rules by providing required records during periodic examinations of the investment adviser by the securities division.

The rule making creates certain new recordkeeping and compliance requirements, including the following: Revising and executing advisory contracts to meet the requirements of the new rule; drafting or revising compliance policies and procedures; drafting or revising agreements with independent CPAs and independent parties (if applicable) to meet the specification of the rules; developing proxy voting disclosures (if applicable); drafting business continuity plans; and drafting and maintaining written information on securities that the adviser recommends.

As a result of the rule amendments, investment advisers may incur expenses by the need to review existing procedures, documents, and agreements to ensure compliance with the new rules. Though not required to do so by the proposed rules, investment advisers may choose to hire professional services to assist them in complying with the new rules. Investment advisers may hire legal or other professional services to create or revise advisory agreements, compliance policies and procedures, proxy voting disclosures, account statements for pooled investment vehicles, and other documents and agreements used in the investment adviser's business. Investment advisers may also consult professional services for advice on establishing systems or methods to ensure compliance.

Certain advisers, such as those who have custody, will be required to use the services of an independent CPA in order to file an audited balance sheet for the investment adviser each year.

In addition, the proposed rule making may have an economic impact on investment advisers in the form of increased equipment, supplies, labor, and administrative costs. These costs may relate to postage and other mailing costs, copying expenses, computer or software expenses, and expenses associated with recordkeeping and record retention. The rule making may cause investment advisers to hire additional employees to ensure compliance.

The securities division surveyed investment advisers to determine if the new requirements would add costs to their business, and if so, how much. The survey provided a sum-

mary of the rule changes by section, and asked first whether the proposed changes to each section would create any additional costs for the investment adviser. The following chart provides the responses from the survey question regarding whether compliance with the proposed changes to each rule section would create any additional costs.

<b>Whether Rule Changes Will Create Additional Costs</b>		
<b>Rule Provision</b>	<b>Yes</b>	<b>No</b>
WAC 460-24A-005	24%	76%
WAC 460-24A-010	4%	96%
Plain English Updates	11%	89%
WAC 460-24A-035	5%	95%
WAC 460-24A-040	2%	98%
WAC 460-24A-047	8%	93%
WAC 460-24A-050	11%	89%
WAC 460-24A-059	0%	100%
WAC 460-24A-060	13%	87%
WAC 460-24A-070	0%	100%
WAC 460-24A-071	1%	99%
WAC 460-24A-072	0%	100%
WAC 460-24A-080	4%	96%
WAC 460-24A-100	8%	92%
WAC 460-24A-105	9%	91%
WAC 460-24A-106	13%	87%
WAC 460-24A-107	4%	96%

<b>Whether Rule Changes Will Create Additional Costs</b>		
<b>Rule Provision</b>	<b>Yes</b>	<b>No</b>
WAC 460-24A-108	2%	98%
WAC 460-24A-109	0%	100%
WAC 460-24A-120	19%	81%
WAC 460-24A-125	10%	90%
WAC 460-24A-130	24%	76%
WAC 460-24A-140	1%	99%
WAC 460-24A-145	1%	99%
WAC 460-24A-150	1%	99%
WAC 460-24A-160	1%	99%
WAC 460-24A-170	2%	98%
WAC 460-24A-200	25%	75%
WAC 460-24A-205	6%	94%
WAC 460-24A-220	8%	92%
WAC 460-24A-058	0%	100%

Where the survey takers indicated that the rule changes in a particular section would create additional costs, the survey requested information regarding the amount of increased costs of professional services, equipment, supplies, labor, and administrative costs attributable to each section of the rules. Each survey taker provided information regarding its number of employees, which allowed the securities division to calculate the average cost per employee for each investment adviser. These costs per employee were then averaged together.

The following chart provides the average cost increase per employee for each rule change for all survey respondents.

<b>Average Cost Increase</b>					
<b>Rule Provision</b>	<b>Prof'l Services</b>	<b>Equipment</b>	<b>Supplies</b>	<b>Labor</b>	<b>Admin</b>
WAC 460-24A-005	\$ 370.87	\$ 7.58	\$ 18.52	\$ 209.19	\$ 197.54
WAC 460-24A-010	\$ 15.21	\$ -	\$ 0.34	\$ 4.86	\$ 5.77
Plain English Updates	\$ 101.94	\$ 0.17	\$ 1.82	\$ 37.12	\$ 67.19
WAC 460-24A-035	\$ 25.25	\$ -	\$ 0.37	\$ 7.21	\$ 18.92
WAC 460-24A-040	\$ 0.98	\$ -	\$ 0.90	\$ 0.79	\$ 1.42
WAC 460-24A-047	\$ 25.89	\$ 0.18	\$ 0.26	\$ 8.90	\$ 15.01
WAC 460-24A-050	\$ 118.29	\$ -	\$ 0.42	\$ 9.23	\$ 103.62
WAC 460-24A-059	\$ 3.61	\$ -	\$ -	\$ 3.61	\$ -
WAC 460-24A-060	\$ 313.48	\$ 1.24	\$ 0.01	\$ 82.90	\$ 181.84
WAC 460-24A-070	\$ -	\$ -	\$ -	\$ -	\$ -
WAC 460-24A-071	\$ 129.74	\$ -	\$ 0.01	\$ 0.05	\$ 0.51
WAC 460-24A-072	\$ -	\$ -	\$ -	\$ -	\$ -
WAC 460-24A-080	\$ 29.56	\$ 0.09	\$ 0.10	\$ 16.03	\$ 9.64
WAC 460-24A-100	\$ 72.45	\$ -	\$ 0.57	\$ 40.32	\$ 34.32

Average Cost Increase					
Rule Provision	Prof'l Services	Equipment	Supplies	Labor	Admin
WAC 460-24A-105	\$ 255.34	\$ 9.08	\$ 11.91	\$ 75.76	\$ 119.20
WAC 460-24A-106	\$ 361.52	\$ 8.55	\$ 31.40	\$ 134.33	\$ 188.08
WAC 460-24A-107	\$ 173.03	\$ 1.57	\$ 10.43	\$ 62.01	\$ 111.86
WAC 460-24A-108	\$ 15.79	\$ -	\$ -	\$ 7.80	\$ 6.14
WAC 460-24A-109	\$ -	\$ -	\$ -	\$ -	\$ -
WAC 460-24A-120	\$ 163.94	\$ 2.17	\$ 2.98	\$ 65.66	\$ 97.21
WAC 460-24A-125	\$ 106.69	\$ -	\$ 0.78	\$ 32.09	\$ 42.47
WAC 460-24A-130	\$ 120.78	\$ 0.97	\$ 3.86	\$ 83.43	\$ 58.96
WAC 460-24A-140	\$ 3.97	\$ -	\$ -	\$ 3.97	\$ -
WAC 460-24A-145	\$ 26.03	\$ 0.68	\$ 4.26	\$ 13.30	\$ 10.78
WAC 460-24A-150	\$ 7.85	\$ -	\$ -	\$ -	\$ 1.66
WAC 460-24A-160	\$ 4.94	\$ -	\$ 0.48	\$ 3.28	\$ 1.18
WAC 460-24A-170	\$ 16.80	\$ -	\$ -	\$ 12.00	\$ 6.40
WAC 460-24A-200	\$ 433.80	\$ 17.53	\$ 12.23	\$ 212.75	\$ 282.62
WAC 460-24A-205	\$ 43.59	\$ 0.30	\$ 1.97	\$ 11.13	\$ 19.40
WAC 460-24A-220	\$ 104.94	\$ -	\$ 0.34	\$ 59.42	\$ 59.58
WAC 460-24A-058	\$ 1.05	\$ -	\$ -	\$ 1.05	\$ -

The following chart provides the average cost increase per employee only for those investment advisers who indicated that a particular rule change would create additional costs.

Average Additional Costs					
Rule Provision	Prof'l Services	Equipment	Supplies	Labor	Admin
WAC 460-24A-005	\$ 2,217.79	\$ 566.67	\$ 553.73	\$ 2,156.84	\$ 1,373.60
WAC 460-24A-010	\$ 742.54	\$ -	\$ 100.00	\$ 356.17	\$ 422.54
Plain English Updates	\$ 982.06	\$ 50.00	\$ 105.00	\$ 715.24	\$ 970.89
WAC 460-24A-035	\$ 654.24	\$ -	\$ 52.50	\$ 513.89	\$ 490.10
WAC 460-24A-040	\$ 92.92	\$ 0.20	\$ 85.07	\$ 75.07	\$ 100.94
WAC 460-24A-047	\$ 402.69	\$ 25.10	\$ 14.48	\$ 249.27	\$ 262.67
WAC 460-24A-050	\$ 1,478.63	\$ 0.24	\$ 16.46	\$ 317.15	\$ 1,676.25
WAC 460-24A-059	\$ 1,000.00	\$ -	\$ -	\$ 1,000.00	\$ -
WAC 460-24A-060	\$ 2,800.45	\$ 333.33	\$ 2.00	\$ 1,586.96	\$ 2,866.73
WAC 460-24A-070	\$ -	\$ -	\$ -	\$ -	\$ -
WAC 460-24A-071	\$ 17,644.23	\$ 0.40	\$ 2.00	\$ 14.00	\$ 68.69
WAC 460-24A-072	\$ -	\$ -	\$ -	\$ -	\$ -
WAC 460-24A-080	\$ 800.99	\$ 12.60	\$ 9.46	\$ 543.03	\$ 373.24
WAC 460-24A-100	\$ 963.52	\$ 0.20	\$ 25.43	\$ 975.02	\$ 652.07
WAC 460-24A-105	\$ 2,953.09	\$ 482.91	\$ 633.39	\$ 1,439.37	\$ 1,981.71
WAC 460-24A-106	\$ 2,870.22	\$ 447.93	\$ 913.97	\$ 1,599.80	\$ 2,053.22
WAC 460-24A-107	\$ 4,883.31	\$ 400.00	\$ 1,325.00	\$ 5,250.00	\$ 3,551.41
WAC 460-24A-108	\$ 679.18	\$ -	\$ -	\$ 671.05	\$ 527.78
WAC 460-24A-109	\$ -	\$ -	\$ -	\$ -	\$ -

Average Additional Costs					
Rule Provision	Prof'l Services	Equipment	Supplies	Labor	Admin
WAC 460-24A-120	\$ 1,036.91	\$ 275.00	\$ 125.83	\$ 790.99	\$ 819.78
WAC 460-24A-125	\$ 1,437.48	\$ -	\$ 100.00	\$ 746.94	\$ 776.54
WAC 460-24A-130	\$ 601.48	\$ 120.83	\$ 137.13	\$ 741.93	\$ 458.82
WAC 460-24A-140	\$ 1,000.00	\$ -	\$ -	\$ 1,000.00	\$ -
WAC 460-24A-145	\$ 381.22	\$ 85.00	\$ 117.89	\$ 367.88	\$ 243.97
WAC 460-24A-150	\$ 656.97	\$ -	\$ -	\$ -	\$ 208.23
WAC 460-24A-160	\$ 413.21	\$ -	\$ 121.21	\$ 274.12	\$ 148.03
WAC 460-24A-170	\$ 840.00	\$ -	\$ -	\$ 1,000.00	\$ 533.33
WAC 460-24A-200	\$ 2,232.25	\$ 481.04	\$ 377.62	\$ 1,695.16	\$ 1,837.01
WAC 460-24A-205	\$ 904.39	\$ 75.00	\$ 163.62	\$ 346.47	\$ 536.77
WAC 460-24A-220	\$ 1,639.63	\$ -	\$ 42.50	\$ 1,485.53	\$ 1,354.14
WAC 460-24A-058	\$ 263.16	\$ -	\$ -	\$ 263.16	\$ -

*Analysis of Increased Costs:* The survey results indicated that certain rule changes would create greater costs than others. These were the changes to the definitions section, the plain English updates, the financial reporting requirements and application requirements, the custody requirements, the compliance policies and procedures requirement, the proxy voting section, the advisory contracts section, and the books and records section. The survey results are described in further detail below.

*WAC 460-24A-005 Definitions:* The securities division was surprised that twenty-five percent of survey respondents indicated that the changes to WAC 460-24A-005, the definitions section of the investment adviser rules, would lead to increased costs. The responses indicated an average cost per employee of \$370.87 for professional services, \$209.19 for labor, and \$197.54 for increased administrative costs.

The securities division added several definitions to WAC 460-24A-005, including definitions taken from NASAA model rules or from the Form ADV glossary. The securities division proposed many of these definitions in order to create uniformity with other states. In the instance of definitions taken from the Form ADV glossary, investment advisers were already subject to these definitions as all registered advisers must complete a Form ADV as part of their application.

The survey respondents commented upon the proposed revision of the definition of custody. The current definition allows funds to be returned within three business days without being deemed to have custody of the funds. However, the draft definition stated that an investment adviser has custody of funds if the adviser fails to return customer funds received inadvertently within one business day. Survey respondents indicated this change would cost them money and that returning funds within one business day might be difficult to accomplish.

The survey question regarding the definitions section was the first substantive question of the survey. It appeared from the free form answer responses for this section that many of the respondents may have been providing comments related to other rule subsections, or all of the rule revisions

collectively. For instance, comments in response to this question expressed that providing quarterly statements and updating written supervisory policies would increase costs. These provisions do not appear in definitions section. Therefore, it is not clear whether some survey respondents may have provided dollar figures in response to this question that were intended to apply to the rule making as a whole. It may be that some of the expenses reported in response to this survey question refer to costs associated with other sections of the rules.

*Plain English Updates:* In drafting amendments to the investment adviser rules, the securities division made an effort to revise the text of the rules to use "plain English" style, which is a policy initiative in Washington state. For instance, constructions such as "an investment adviser must ..." were replaced with "if you are an investment adviser, you must ..." Such changes are intended to make the rules easier for laypersons to read and understand. Because the rule making will make substantive changes to multiple sections of the investment adviser rules, the securities division decided to make "plain English" updates to several other sections at this time, namely: WAC 460-24A-020, 460-24A-030, 460-24A-045, 460-24A-057, 460-24A-110, and 460-24A-210. These changes create uniformity in the chapter, but do not substantively change the rules.

The securities division included a combined question in its survey regarding the plain English changes made to WAC 460-24A-020, 460-24A-030, 460-24A-045, 460-24A-057, 460-24A-110, and 460-24A-210. Surprisingly, eleven percent of the respondents indicated that the plain English changes would increase their costs. These costs included an average of \$101.94 per employee for professional services, \$37.12 for labor, and \$67.19 for increased administrative expenses.

Based on the free form answer for this survey question, it appears that several survey respondents did not understand the nature of the plain English amendments. Several respondents appeared to conclude that the changes in the rules would require them to convert their own documents to plain English style. They may have been primed to think this based

on recent changes by the SEC requiring that Form ADV 2 be written in plain English. However, the securities division has *not* proposed that investment advisers rewrite their documents in plain English. The securities division was merely attempting to make the text of the investment adviser rules in chapter 460-24A WAC easier to understand. As the plain English changes require no action on the part of investment advisers or others, the securities division does not believe that making the plain English changes to the investment adviser rules will create any additional costs for investment advisers.

*WAC 460-24A-050 Application and examination requirements:* The survey results indicated that approximately eleven percent of survey respondents believed that changes to the examination and application requirements in WAC 460-24A-050 would result in increased expenses. These expenses would include an average of \$118.29 per employee for professional services and \$103.62 per employee for increased administrative costs.

WAC 460-24A-050 lists the examination and application requirements for investment advisers. The requirements state that investment adviser[s] must file the financial statements required by WAC 460-24A-060 with an application. Under WAC 460-24A-050 and 460-24A-060, investment advisers with custody must submit an audited balance sheet as part of their initial application. Requiring an audited balance sheet provision means that investment advisers with custody must hire the services of a CPA. This may increase costs.

In addition, the changes in the examination requirements may require a limited number of individuals who have never taken a licensing examination to take and receive a passing score. Such individuals may incur expenses for test preparation materials and examination fees.

Finally, the rule change specifies that investment advisers that manage pooled investment vehicles must submit certain additional documents with their applications. These documents include an account agreement with a qualified custodian, an engagement letter with a CPA, a private placement memorandum or other offering circular, a subscription agreement, and an operating agreement for the pooled investment agreement. The submission of these documents may increase costs in postage and copying; however, we note that an investment adviser who manages a pooled investment vehicle would already have these documents prepared. Furthermore, the securities division already requests these documents from investment adviser applicants who manage pooled investment vehicles and has for several years.

*WAC 460-24A-060 Financial reporting requirements:* The survey results indicated that approximately thirteen percent of survey respondents believed that changes to WAC 460-24A-060 would result in increased expenses. These expenses would include an average of \$313.48 per employee for professional services, \$82.90 per employee in labor, and \$181.84 per employee for increased administrative expenses. Of the thirteen percent who indicated that the changes would increase costs, those costs included an average per employee of \$2,800.45 for professional services, \$1,586.96 of labor and \$2,866.73 for increased administrative costs.

The cost increases under WAC 460-24A-060 relate to the requirement that investment advisers with custody submit

an audited balance sheet. Currently, advisers submit a balance sheet but it does not need to be audited. As discussed above under the WAC 460-24A-050 heading, the new requirement will require investment advisers with custody to pay a CPA for audit services.

In addition, the changes to WAC 460-24A-060 will require the filing of audited financial statements for pooled investment vehicles by those investment advisers who choose to satisfy the custody requirements for pooled investment vehicles by provided [providing] audited financial statements for the pooled investment vehicle. There may be postage, copying, and other costs related to filing the statements with the securities division each year. Currently, investment advisers to pooled investment vehicles who choose to satisfy the custody requirements in WAC 460-24A-107 by providing audited financial statements provide these financial statements to investors but are not required to provide a copy to the securities division.

*WAC 460-24A-105 Custody requirements:* The survey results indicated that approximately nine percent of survey respondents believed that changes to the custody requirements at WAC 460-24A-105 would result in increased expenses. These expenses would include an average of \$255.34 per employee for professional services, \$75.76 per employee for labor, and \$119.20 per employee for increased administrative costs. For the nine percent of survey respondents who indicated that the rule changes would create additional costs, the average costs per employee were \$2,953.09 for professional services, \$1,439.37 for labor, and \$1,981.71 for increased administrative costs.

The increase in costs would arise from the need for advisers who satisfy the custody rules by having regular audits to enter into agreements which contain certain provisions. Similarly, investment advisers who act as qualified custodians must comply with new provisions requiring an agreement with a CPA that meet the requirements specified in the rule. These provisions are adopted from the NASAA model custody rule and will create uniformity with other states and with the SEC's custody rules. Furthermore, these provisions serve the goal of protecting client funds which is of utmost concern. However, the professional services, labor and administrative costs to amend or create compliant agreements may create additional costs for advisers.

*WAC 460-24A-106 Additional custody requirements for adviser who deduct fees:* According to the survey, thirteen percent of respondents believed that changes to the additional custody requirements at WAC 460-24A-106 for advisers who directly deduct fees would increase costs. The proposed change clarifies that WAC 460-24A-106 applies to all individuals who have custody under any of the three prongs of the custody definition in WAC 460-24A-005 *and* who deduct fees directly, not just those who have custody solely because they deduct fees directly. In the view of the securities division, the substance of the rule is not changed. However, survey takers responded differently. The survey found that there would be an average increase of \$361.52 in professional services, \$134.33 in labor, and \$188.08 in increased administrative costs.

*WAC 460-24A-107 Additional custody provisions for advisers to pooled funds:* The survey revealed that updates to

WAC 460-24A-107 would increase costs for four percent of survey respondents. Averaged over all respondents, the increased costs include \$173.03 per employee for professional services and \$111.86 for increased administrative costs. However, for the four percent of survey respondents who indicated an increased cost, these costs included \$4,883.31 per employee for administrative costs, \$400 per employee for equipment, \$1,325 per employee for supplies, \$5,250 per employee for labor, and \$3,551.41 per employee for increased administrative costs.

The proposed rule changes specify that the quarterly account statements required by WAC 460-24A-105 be sent to each beneficial owner of an interest in a pooled fund managed by the investment adviser. In addition, the rule amendments specify the information that the account statements must contain. The proposed rule changes provide some relief from the amount of information required by existing rules to be contained in account statements. However, the rule changes may require advisers who manage pooled investment vehicles to hire professional services to revise their account statements in order to comply with the rule changes if they do not already provide quarterly account statements that meet the requirements.

*WAC 460-24A-120 Compliance procedures and policies:* The survey results indicated that approximately nineteen percent of survey respondents believed that the creation of the new rule provision at WAC 460-24A-120 requiring written compliance policies and procedures would result in increased expenses. The survey found that the average cost increases included \$163.94 per employee in professional services, and \$97.21 in increased administrative costs per employee. For the nineteen percent of survey respondents who indicated that the new rule would create additional costs, there was an average increase of \$1,036.91 in professional services, \$790.99 in labor, and \$527.78 in increased administrative costs per employee.

The proposed rule is a new section modeled after federal Rule 206 (4)-7. Investment advisers who do not have compliance policies and procedures reasonably designed to prevent violations of the Securities Act by their employees must adopt them, and must review them at least annually. Advisers may incur costs in professional fees in designing and updating their policies, and may incur expenses in training employees in the new policies and implementing annual review procedures, among other possible expenses.

*WAC 460-24A-125 Proxy voting:* The survey results indicated that ten percent of survey respondents believed that the creation of the new rule provision at WAC 460-24A-125 regarding proxy voting would result in increased expenses. The average cost increase per employee for each survey respondent included \$106.69 per employee for professional services, \$32.09 per employee in labor, and \$43.47 per employee in increased administrative costs. Of the ten percent who stated that the new rule would increase their costs, the average cost increase per employee was \$1,437.48 in professional services, \$100 in supplies, \$746.94 in labor, and \$776.54 in increased administrative costs.

The new rule will require investment advisers who exercise voting authority for their client's securities to adopt written policies and procedures to ensure that voting authority is

exercised in the best interests of the adviser's client. In addition, advisers who exercise voting authority for their client's securities must provide disclosure information to clients as specified in the rule. Advisers who do not exercise voting authority will *not* be required to adopt policies or disclosure documents. However, those that do exercise voting authority may incur costs of developing policies, procedures, and disclosure documents. Advisers may choose to use the professional services of attorneys or consultants to complete these tasks.

*WAC 460-24A-130 Contents of advisory contract:* The survey results indicated that twenty-four percent of survey respondents believed that the creation of the new rule provision at WAC 460-24A-130 concerning the contents of the advisory contract would cause an increase in expenses. The average cost increase according to the survey results includes \$120.78 per employee in professional services. Advisers may choose to use the professional services of an attorney or consultant to ensure that their advisory contracts comply with the rule. However, many of the requirements for advisory contracts in proposed WAC 460-24A-130 represent existing requirements under chapter 21.20 RCW, or requirements under existing rules in WAC 460-24A-200 which are being moved to this new section.

*WAC 460-24A-200 Books and records:* The survey results indicated that twenty-five percent of the survey respondents believed that the revisions to the books and records rule at WAC 460-24A-200 would increase costs. These expenses would include an average of \$433.80 per employee for professional services, \$212.75 per employee for labor, and \$282.62 per employee for increased administrative costs. Of the twenty-five percent of survey respondents who indicated the rule changes would increase their costs, the average increased costs per employee were \$2,232.25 for professional services, \$481.04 for equipment, \$377.62 for supplies, \$1,695.16 for labor, and \$1,837.01 for increased administrative costs.

The proposed changes to the books and records rule will increase the number of records that investment advisers must keep, which may increase costs. Adviser[s] may incur expenses related to recordkeeping, such as costs for records retention and office supplies. Advisers may also incur expenses in developing new recordkeeping procedures and practices, such as the requirement to maintain written information regarding the securities recommended by the investment adviser. There may also be expenses in developing a business continuity plan. However, it should be noted that many investment advisers already maintain the records being added to the rule.

**Whether compliance with the proposed rule will cause businesses to lose sales or revenue:** The proposed rules may result in investment advisers losing sales or revenue. The securities division's survey revealed that ten percent of respondents believed that compliance with the rule changes would result in lost sales or revenue. In contrast, ninety percent of respondents did not believe the rule changes would cause lost sales or revenue. The ten percent who believed the changes would lead to lost sale[s] or revenue estimated they would lose \$8,544 in revenue per employee.

The survey requested a free form answer on what specific provision in the proposed rules would cause the lost sales or revenue. Most of the answers did not address what would cause lost sales or revenue, but instead focused on the increased costs the rule amendments would create. However, at least two survey respondents mentioned that increased time spent on compliance matters would leave less time for working with clients, and might cause an investment adviser to engage fewer clients. Additionally, revenue may be lost if advisers limit the type of services they provide because of the cost of compliance.

**An estimate of the number of jobs that will be created or lost as a result of compliance with the proposed rule:**

The securities division surveyed its state registered investment advisers and federal notice filed investment advisers to determine whether the proposed rule making could result in the addition or elimination [of] any jobs.

Approximately three percent of survey takers anticipated that the rule making would cause them to eliminate jobs. These three percent estimated that they would eliminate between one to four jobs. Approximately ninety-seven percent of survey takers did not anticipate that they would need to eliminate any jobs.

Approximately four percent of respondents indicated that the rule changes would cause them to add jobs. These four percent estimated they would add between .5 to 2 jobs. Approximately ninety-six percent of survey takers did not anticipate adding any jobs.

Based on the survey results, the securities division estimates that the average investment adviser will neither add nor eliminate any jobs as a result of the rule amendments.

**A comparison of compliance costs for the small business segment and the large business segment of the affected industries, and whether the impact on small business is disproportionate:**

RCW 19.85.040 requires that the securities division determine whether compliance with the proposed rules will have a disproportionate impact on small businesses by comparing the cost of compliance for small business with the costs of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules.

The securities division categorized each survey response based on whether it came from a small business or whether it

represented the ten percent of businesses that were the largest businesses that responded. The two categories were then compared to each other. The survey results tended to show that the increased costs per employee of small businesses were disproportionately greater than the increased costs per employee of the largest businesses.

The results may be impacted by the fact that all state registered investment advisers who responded to the survey qualified as small businesses. Many of these businesses have only one employee. The largest ten percent of businesses included federal notice filed investment advisers. The largest advisers, having more employees and typically offering more complicated products and services, may already have compliance policies and procedures, proxy voting disclosures, business continuity plans, and advisory contracts that meet the requirements of the proposed rule amendments. Consequently, they may see less of an increase in the costs for professional services, labor, and administrative costs than smaller advisers.

In order to determine whether the regulatory difference between state and federal notice filed advisers was the cause of the disproportionate expenses, the securities division also compared the increased costs of all state registered investment advisers (all small businesses) with the costs of the largest ten percent of state registered advisers. However, the results still showed that costs per employee of small businesses were disproportionately greater than the increased costs per employee of the largest businesses. This may be because the largest state advisers have more employees and therefore more internal systems, and may have been in business longer than the smallest businesses. In any event, all advisers, large and small, provide investment advice to members of the public. It is imperative that investment advisers be well regulated in order to increase confidence in the markets and to protect the public from financial fraud.

The following chart compares the average cost increase associated with the proposed changes to the rule provision for both the largest ten percent of businesses required to comply and small businesses. Small businesses are defined as fifty or fewer employees. The largest ten percent of business[es] were likewise determined by the number of employees.

Average Cost Increase – Comparison of Small Business and Largest 10% of Businesses					
Rule Provision	Prof'l Services	Equipment	Supplies	Labor	Admin
<b>WAC 460-24A-005</b>					
Small Businesses	\$ 397.41	\$ 8.12	\$ 19.84	\$ 224.19	\$ 211.65
Largest 10%	\$ 0.37	\$ -	\$ 0.10	\$ -	\$ 0.05
<b>WAC 460-24A-010</b>					
Small Businesses	\$ 16.75	\$ -	\$ 0.38	\$ 5.35	\$ 6.38
Largest 10%	\$ 0.52	\$ -	\$ -	\$ 0.26	\$ -
<b>Plain English Updates</b>					
Small Businesses	\$ 112.45	\$ 0.19	\$ 2.00	\$ 40.95	\$ 3.71
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -

<b>Average Cost Increase – Comparison of Small Business and Largest 10% of Businesses</b>					
<b>Rule Provision</b>	<b>Prof'l Services</b>	<b>Equipment</b>	<b>Supplies</b>	<b>Labor</b>	<b>Admin</b>
<b>WAC 460-24A-035</b>					
Small Businesses	\$ 27.68	\$ -	\$ 0.40	\$ 7.91	\$ 20.73
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
<b>WAC 460-24A-040</b>					
Small Businesses	\$ 1.08	\$ -	\$ 0.99	\$ 0.87	\$ 0.79
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ 6.90
<b>WAC 460-24A-047</b>					
Small Businesses	\$ 28.65	\$ 0.20	\$ 0.29	\$ 9.85	\$ 16.60
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ 0.10
<b>WAC 460-24A-050</b>					
Small Businesses	\$ 128.14		\$ 0.41	\$ 9.97	\$ 112.44
Largest 10%	\$ 4.28		\$ 0.43	\$ 0.61	\$ 1.83
<b>WAC 460-24A-059</b>					
Small Businesses	\$ 3.97	\$ -	\$ -	\$ 3.97	\$ -
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
<b>WAC 460-24A-060</b>					
Small Businesses	\$ 338.76	\$ 1.34	\$ 0.01	\$ 89.59	\$ 196.51
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
<b>WAC 460-24A-070</b>					
Small Businesses	\$ -	\$ -	\$ -	\$ -	\$ -
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
<b>WAC 460-24A-071</b>					
Small Businesses	\$ 143.45		\$ 0.01	\$ 0.06	\$ 0.56
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
<b>WAC 460-24A-072</b>					
Small Businesses	\$ -	\$ -	\$ -	\$ -	\$ -
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
<b>WAC 460-24A-080</b>					
Small Businesses	\$ 29.94	\$ 0.10	\$ 0.10	\$ 16.38	\$ 9.33
Largest 10%	\$ 20.86	\$ -	\$ 0.11	\$ 10.03	\$ 10.71
<b>WAC 460-24A-100</b>					
Small Businesses	\$ 79.83	\$ -	\$ 0.61	\$ 44.50	\$ 37.77
Largest 10%	\$ 1.18	\$ -	\$ 0.24	\$ -	\$ 0.94
<b>WAC 460-24A-105</b>					
Small Businesses	\$ 281.56	\$ 10.02	\$ 13.14	\$ 83.61	\$ 131.30
Largest 10%	\$ 2.38	\$ -	\$ -	\$ -	\$ 2.36
<b>WAC 460-24A-106</b>					
Small Businesses	\$ 397.62	\$ 9.41	\$ 34.56	\$ 147.88	\$ 206.70
Largest 10%	\$ 3.21	\$ -	\$ -	\$ -	\$ 3.21

<b>Average Cost Increase – Comparison of Small Business and Largest 10% of Businesses</b>					
<b>Rule Provision</b>	<b>Prof'l Services</b>	<b>Equipment</b>	<b>Supplies</b>	<b>Labor</b>	<b>Admin</b>
<b>WAC 460-24A-107</b>					
Small Businesses	\$ 189.00	\$ 1.72	\$ 11.42	\$ 67.89	\$ 122.19
Largest 10%	\$ 4.26	\$ -	\$ -	\$ -	\$ 2.65
<b>WAC 460-24A-108</b>					
Small Businesses	\$ 17.49	\$ -	\$ -	\$ 8.64	\$ 6.80
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
<b>WAC 460-24A-109</b>					
Small Businesses	\$ -	\$ -	\$ -	\$ -	\$ -
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
<b>WAC 460-24A-120</b>					
Small Businesses	\$ 181.57	\$ 2.41	\$ 3.31	\$ 72.85	\$ 107.59
Largest 10%	\$ 2.95	\$ -	\$ -	\$ -	\$ 2.36
<b>WAC 460-24A-125</b>					
Small Businesses	\$ 117.96		\$ 0.87	\$ 35.57	\$ 46.79
Largest 10%	\$ 2.36	\$ -	\$ -	\$ -	\$ 2.36
<b>WAC 460-24A-130</b>					
Small Businesses	\$ 133.91	\$ 1.08	\$ 4.29	\$ 92.66	\$ 65.28
Largest 10%	\$ 2.90	\$ -	\$ -	\$ 0.68	\$ 2.18
<b>WAC 460-24A-140</b>					
Small Businesses	\$ 4.35	\$ -	\$ -	\$ 4.35	\$ -
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
<b>WAC 460-24A-145</b>					
Small Businesses	\$ 28.39	\$ 0.75	\$ 4.69	\$ 14.65	\$ 11.59
Largest 10%	\$ 2.45	\$ -	\$ -	\$ -	\$ 2.45
<b>WAC 460-24A-150</b>					
Small Businesses	\$ 8.47	\$ -	\$ -	\$ -	\$ 1.69
Largest 10%	\$ 1.84	\$ -	\$ -	\$ -	\$ 1.22
<b>WAC 460-24A-160</b>					
Small Businesses	\$ 2.99	\$ -	\$ 0.53	\$ 2.39	\$ 0.07
Largest 10%	\$ -	\$ 21.61	\$ -	\$ 10.80	\$ 10.80
<b>WAC 460-24A-170</b>					
Small Businesses	\$ 18.58	\$ -	\$ -	\$ 13.27	\$ 7.08
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
<b>WAC 460-24A-200</b>					
Small Businesses	\$ 478.34	\$ 19.33	\$ 13.49	\$ 234.60	\$ 311.64
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
<b>WAC 460-24A-205</b>					
Small Businesses	\$ 47.88	\$ 0.33	\$ 2.11	\$ 12.18	\$ 21.26
Largest 10%	\$ 3.05	\$ -	\$ 0.61	\$ 1.22	\$ 1.83

Average Cost Increase – Comparison of Small Business and Largest 10% of Businesses					
Rule Provision	Prof'l Services	Equipment	Supplies	Labor	Admin
<b>WAC 460-24A-220</b>					
Small Businesses	\$ 115.57	\$ -	\$ 0.37	\$ 65.44	\$ 65.62
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -
<b>WAC 460-24A-058</b>					
Small Businesses	\$ 1.16	\$ -	\$ -	\$ 1.16	\$ -
Largest 10%	\$ -	\$ -	\$ -	\$ -	\$ -

*Comparison of lost sales or revenue:* The largest ten percent of businesses indicated in their survey responses that they would lose an average of \$8.33 per employee in lost revenue, with only one larger business expecting to lose revenue. Small businesses estimated that they would lose an average of \$876.41 in revenue per employee, with twenty-two small businesses reporting that they expected to lose revenue because of the rule changes.

*Comparison of addition or elimination of jobs:* Approximately four percent of respondents indicated that the rule changes would cause them to add jobs. These represented nine small businesses plus one business that was in the ten percent of the largest businesses. Approximately three percent of respondents indicated that the rule changes would cause them to eliminate jobs. These responses represented eight small businesses. None of the ten percent of the largest business[es] indicated that jobs would be eliminated because of the rule changes.

**Steps taken by the department under RCW 19.85.030 (2) to reduce the costs of the proposed rule on small businesses, or reasonable justification for not doing so, addressing the specified mitigation steps.**

*Investor Protection Purpose:* In drafting the rule amendments, the securities division attempted to balance the business concerns of registered investment advisers with the securities division's mission to protect the investing public and to promote confidence in the capital markets. While the proposed rule changes may increase costs to licensees, the securities division believes the costs will be outweighed by the increased protection for investors. In addition, certain changes to the rules are being made in order to conform with changes to federal law and to create uniformity with other states by adopting provisions from updated NASAA model rules.

As a result of feedback received from affected businesses, the securities division made certain modifications to its initial draft of the rule amendments in order to reduce the cost of compliance for small businesses. These changes are detailed below. The securities division does not believe that it can reduce costs further and still accomplish the investor protection purpose of the rule making.

*Reducing, modifying, or eliminating substantive regulatory requirements:* The securities division received several comments in its economic impact survey which indicated that the change in the definition of custody, which shortened the amount of time an adviser could hold inadvertently received funds, would be burdensome and increase costs. As a result of the survey, the securities division changed the custody

definition at WAC 460-24A-005 to allow for the return of inadvertently received funds within three business days rather than one. The securities division also changed the existing rule to allow advisers to forward checks drawn by clients and made payable to third parties within three business days of receipt (rather than the current twenty-four hours). These changes will provide relief to advisers who were concerned that one business day was not sufficient time to identify client funds and either forward them to third parties or return them as appropriate to avoid being deemed to have custody.

The securities division also received several comments suggesting that the requirement for compliance policies and procedures in new section WAC 460-24A-120 was burdensome and unnecessary for advisers who are solo practitioners. In response, the securities division made amendments to the draft rule to specify that the requirement to implement compliance policies and procedures applies only to advisers who have more than one employee.

In addition, the securities division made changes to the financial reporting requirements in WAC 460-24A-060, the compliance policies and procedures requirement in WAC 460-24A-120, the proxy voting provisions in WAC 460-24A-125, the advisory contract requirements in WAC 460-24A-130, and the performance compensation provisions in WAC 460-24A-150 to clarify that the rules apply only to investment advisers who are registered or required to be registered under the Securities Act. Thus, certain investment advisers who are exempt from registration, such a [as] private fund advisers under new section WAC 460-24A-071 and venture capital fund advisers under new section WAC 460-24A-072, will not be required to comply with these provisions.

To further simplify its rules and to reduce expenses for investment advisers, the securities division removed three new subsections that had been added as unethical business practices in WAC 460-24A-220. The securities division had added as unethical business practices providing investment advice without having implemented compliance policies and procedures in violation of WAC 460-24A-120; exercising voting authority with respect to client securities in violation of WAC 460-24A-125; and failing to keep a written business continuity plan as unethical business practices. After reviewing survey results which indicated that these additions to the unethical practices rule section may increase expenses, the securities division decided to remove these three additions to WAC 460-24A-220 because they are not necessary additions. However, it is important to note that violation of one of [the] rules specified above may still constitute an unethical busi-

ness practice even if it is not specifically listed in WAC 460-24A-220.

*Simplifying, reducing or eliminating recordkeeping and reporting requirements:* The securities division received several comments regarding the proposed changes to WAC 460-24A-060. The draft amendments to WAC 460-24A-060 require that investment advisers with custody of client funds file an annual audited balance sheet. The costs of obtaining an audited balance sheet each year may be significant to a small business owner. However, requiring an audited balance sheet will provide increased protections for the clients whose funds are in the custody of an investment adviser.

To balance these concerns, the securities division decided to relax the audited balance sheet requirement for certain advisers. The securities division revised WAC 460-24A-106 to state that advisers who have custody as defined in WAC 460-24A-005(1) solely because they deduct fees are not required to file an audited balance sheet provided the adviser otherwise meets the requirements of WAC 460-24A-105, 460-24A-060(3), and 460-24A-106(1). This change will reduce the costs of obtaining an audited balance sheet for advisers who have custody solely because they deduct fees.

In addition, the securities division revised WAC 460-24A-107 to state that advisers who have custody as defined in WAC 460-24A-005 (1)(a)(iii) because they manage a pooled investment vehicle, and who provide audited financial statements of the pooled investment vehicle to clients pursuant to WAC 460-24A-107 (1)(b), are not required to file an audited balance sheet for the investment adviser provided they otherwise comply with WAC 460-24A-105, 460-24A-060(3), and 460-24A-107 (1)(b) and (2). This change will reduce the cost [of] obtaining an audited balance sheet for advisers to pooled funds where the pooled funds are subject to annual audits.

*Delaying compliance timetables:* Investment advisers will be allowed adequate time to adjust to the rule changes through processes already in place. Through the exam and deficiency letter process, the securities division will allow reasonable time for investment advisers to fix any deficiencies related to the new rules that the exam staff identify during examinations of investment advisers that occur in the period immediately following enactment of the rules. The securities division will also continue to provide technical assistance visits to newly registered investment advisers to provide feedback on recordkeeping and other compliance matters.

*Other mitigation techniques:* The securities division will develop a frequently asked questions (FAQ) publication for distribution when the amended rules are adopted. The securities division intends to provide guidance through the FAQ to explain what is required for compliance with the rule amendments. The securities division has determined that in many cases, the nature of the compliance envisioned by the securities division is less burdensome than that imagined by the investment advisers taking the small business economic impact survey.

The securities division intends to address the following topics in the FAQ:

- The securities division will clarify that none of the rule changes require that investment advisers revise their contracts or other documents in "plain English"

style. The securities division merely revised the text of its rules in "plain English" so that they would be easier to understand.

- The securities division will provide guidance on the annual review of compliance policies and procedures required by WAC 460-24A-120. The text of this rule provision is adopted from federal Rule 206 (4)-7. The purpose of the review is to ensure that policies are reasonably up to date, for the protection of both the investment adviser and its clients. The review need not be done by outside professional services, but may be conducted by the investment adviser on an as-needed basis when there are changes to the rules and laws affecting investment advisers.
- The securities division will clarify that the proxy voting and electronic delivery provisions required for advisory contracts by WAC 460-24A-130 must be added *only if* the adviser intends to exercise voting authority over client securities or if the adviser intends to deliver documents by electronic means. Advisers not engaging in these activities do not need to add these provisions to their advisory contracts.
- The securities division will provide guidance on the business continuity plan required under WAC 460-24A-200 (1)(y). The business continuity plan should provide instructions in the event of an emergency or the incapacitation of the investment adviser. For instance, the plan should describe what will happen to client funds over which the investment adviser has custody or exercises discretion. The plan need not be more than one page in length and should not require the use of professional services to prepare.
- The securities division will provide guidance regarding the type of written information regarding securities that the adviser should maintain to comply with WAC 460-24A-200 (1)(s). The type of written information will be different depending on the nature of the security recommended. For instance, a publicly traded security for which research information is widely available would require less documentation than an obscure privately offered security. For a privately offered security, the adviser generally must conduct and document more extensive research and analysis in order to determine the suitability of the security for a client. This requirement for written documentation protects both investors and the investment adviser.

In addition to the assistance provided in the anticipated FAQ, the securities division may conduct informational sessions for investment advisers to provide an overview of the rule changes.

**How the department will involve small business in rule development:** Since the beginning of the rule-making process in 2010, the securities division has involved its registered investment advisers and interested persons in the rule-making process.

On March 19, 2010, the securities division filed a pre-proposal statement of inquiry (CR-101) concerning the possible amendment of the investment adviser rules. The securities

division distributed the CR-101 notice to its interested persons list for securities registration matters and to all state registered advisers. This group of recipients included many small businesses and those that advise small businesses.

The CR-101 notice invited interested persons to participate in the rule-making process by submitting comments to the securities division. The securities division took the feedback received into account when preparing the initial draft of the rule amendments. Once a draft was prepared, it was distributed to the interested persons list on August 13, 2012.

The securities division next prepared a survey to determine the economic impact of the proposed rule making on investment advisers. The survey, along with a copy of the draft rule amendments, was sent to all state registered investment advisers and a representative sample of federal notice filed investment advisers. Based on the results received, the securities division made changes to its proposed draft as detailed above. The securities division will continue to seek the feedback of interested parties as the rule-making process continues.

**A list of the industries that will be required to comply with the rule:** Investment advisers doing business in Washington will be required to comply with the amended rules.

A copy of the statement may be obtained by contacting Jill Valley, DFI, Securities Division, P.O. Box 9033, Olympia, WA, 98507-9033, phone (360) 902-8760, fax (360) 704-7035, e-mail [jill.valley@dfi.wa.gov](mailto:jill.valley@dfi.wa.gov).

A cost-benefit analysis is not required under RCW 34.05.328. DFI is not one of the agencies listed in RCW 34.05.328.

April 2, 2014  
Scott Jarvis  
Director

AMENDATORY SECTION (Amending WSR 08-18-033, filed 8/27/08, effective 9/27/08)

**WAC 460-24A-005 Definitions.** For purposes of this chapter:

(1) "**Custody**" means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them or the ability to appropriate them.

(a) "Custody" includes:

(i) Possession of client funds or securities unless received inadvertently and returned to the sender promptly, but in any case within three business days of receiving them;

(ii) Any arrangement (including a general power of attorney) under which an investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon an investment adviser's instruction to the custodian; and

(iii) Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives an investment adviser or its supervised person legal ownership of or access to client funds or securities.

(b) Receipt of checks drawn by clients and made payable to unrelated third parties will not meet the definition of custody if forwarded to the third party within ((twenty-four

hours)) three business days of receipt and the adviser maintains a ledger or other listing of all securities or funds held or obtained inadvertently(~~(, including the following information:~~

~~(i) Issuer;~~

~~(ii) Type of security and series;~~

~~(iii) Date of issue;~~

~~(iv) For debt instruments, the denomination, interest rate, and maturity date;~~

~~(v) Certificate number, including alphabetical prefix or suffix;~~

~~(vi) Name in which registered;~~

~~(vii) Date given to the adviser;~~

~~(viii) Date sent to client or sender;~~

~~(ix) Form of delivery to client or sender, or copy of the form of delivery to client or sender; and~~

~~(x) Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return)) as set forth in WAC 460-24A-200.~~

(2) "**Independent party**" means a person who:

(a) Is engaged by an investment adviser to act as a gatekeeper for the payment of fees, expenses, and capital withdrawals from a pooled investment;

(b) Does not control and is not controlled by and is not under common control with the investment adviser; ((and))

(c) Does not have, and has not had within the past two years, a material business relationship, including acting as an independent representative on behalf of a client of the investment adviser, with the investment adviser;

(d) Shall not negotiate or agree to have material business relations with an investment adviser, or relationships with entities under common control with an investment adviser, for a period of two years after serving as the person engaged in an independent party agreement; and

(e) Is required to act in the best interest of the limited partners, members, or other beneficial owners.

(3) "**Independent representative**" means a person who:

(a) Acts as an agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners or members, or other beneficial owners;

(b) Does not control, is not controlled by, and is not under common control with the investment adviser;

(c) Does not have, and has not had within the past two years, a material business relationship, including acting as an independent party, with the investment adviser.

(4) "**Qualified custodian**" means the following independent institutions or entities:

(a) A bank as defined in section 202 (a)(2) of the Advisers Act, 15 U.S.C. 80b-2 (a)(2), or a savings association as defined in section 3 (b)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1813 (b)(1), that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act, 12 U.S.C. 1811;

(b) A broker-dealer registered in this state and under section 15 (b)(1) of the Securities Exchange Act of 1934, 15

U.S.C. 78o (b)(1), holding the client assets in customer accounts;

(c) A futures commission merchant registered under section 4f(a) of the Commodity Exchange Act, 7 U.S.C. 6f(a), holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon;

(d) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets; and

(e) The transfer agent for an open-end company as defined in section 5 (a)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-5 (a)(1), only with respect to shares of the open-end company.

(5) **"Independent certified public accountant"** means a certified public accountant that meets the standards of independence described in rule 2-01 (b) and (c) of Regulation S-X, 17 C.F.R. 210.2-01 (b) and (c).

(6) **"Related person"** means any person, directly or indirectly, controlling or controlled by the investment adviser, and any person that is under common control with the investment adviser.

(7) **"Control"** means the power, directly or indirectly, to direct the management or policies of a person whether through ownership of securities, by contract, or otherwise. The following persons are presumed to have control:

(a) Each of the investment adviser's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions); and

(b) A person who:

(i) Directly or indirectly has the right to vote twenty-five percent or more of a class of the voting securities of a corporation or limited liability company;

(ii) Has the power to sell or direct the sale of twenty-five percent or more of a class of the voting securities of a corporation or limited liability company;

(iii) Has the right to receive, upon dissolution, or that has contributed, twenty-five percent or more of the capital of a partnership or limited liability company; or

(iv) Is the manager of a limited liability company or the trustee or managing agent of a trust.

(8) **"Private fund adviser"** means an investment adviser who provides advice solely to one or more qualifying private funds.

(9) **"Qualifying private fund"** means a private fund that meets the definition of a qualifying private fund in Securities and Exchange Commission Rule 203 (m)-1, 17 C.F.R. 275.203 (m)-1, other than a private fund that qualifies for the exclusion from the definition of "investment company" provided in section 3 (c)(1) of the Investment Company Act of 1940, 15 U.S.C. 80a-3 (c)(1).

(10) **"Discretionary authority"** means the authority, directly or indirectly, to:

(a) Determine what securities or other property shall be purchased or sold by or on behalf of a client;

(b) Make decisions as to what securities or other property shall be purchased or sold by or for the benefit of a client

even though some other person may have responsibility for such investment decisions; or

(c) Make decisions as to what investment advisers to retain on behalf of a client.

(11) **"FINRA"** means the Financial Industry Regulatory Authority, Inc., the self-regulatory organization for broker-dealers and broker-dealer representatives that is registered as a national securities association with the Securities and Exchange Commission under Section 15A of the Securities Exchange Act of 1934, 15 U.S.C. § 78o.

(12) **"Central Registration Depository" or "CRD"** means the electronic filing system operated by FINRA for the registration of broker-dealers and broker-dealer representatives.

(13) **"Investment Adviser Registration Depository" or "IARD"** means the electronic filing system operated by FINRA for the registration of investment advisers and investment adviser representatives and submission of filings by exempt reporting advisers.

**AMENDATORY SECTION** (Amending Order 304, filed 2/28/75, effective 4/1/75)

**WAC 460-24A-010** (~~Investment advisers—Where rules apply—~~) **Application of rules to out-of-state investment advisers.** If you are an investment adviser or investment adviser representative with your principal office and place of business outside the state of Washington, these rules apply only to that part of ((the investment advisers')) your business within the state of Washington.

**AMENDATORY SECTION** (Amending WSR 12-10-051, filed 4/30/12, effective 5/31/12)

**WAC 460-24A-020 Investment adviser representatives employed by federal covered advisers.** If you are an individual employed by or associated with a federal covered adviser ((is) you are an "investment adviser representative," ((pursuant to)) as defined under RCW 21.20.005, if ((the representative has)) you have a "place of business" in this state, as that term is defined under section 203A of the Investment Advisers Act of 1940, and:

(1) ((Is) You are an "investment adviser representative" ((pursuant to)) as that term is defined in rules or regulations promulgated under the Investment Advisers Act of 1940 by the U.S. Securities and Exchange Commission; or

(2) You solicit((s)), offer((s)), or negotiate((s)) for the sale of or sell((s)) investment advisory services on behalf of a federal covered adviser, but ((is) are not a "supervised person" as that term is defined under the Investment Advisers Act of 1940.

**AMENDATORY SECTION** (Amending Order 304, filed 2/28/75, effective 4/1/75)

**WAC 460-24A-030 Use of the term "investment counsel((s))" is prohibited.** ((No)) If you are an investment adviser or investment adviser representative, you shall not use the title "investment counsel" in the conduct of ((his or its)) your business nor represent that ((he or it is)) you are an "investment counsel" nor use the term "investment counsel"

as descriptive of (~~his or its~~) your business where such use is prohibited under the provisions of the Federal Investment Advisers Act of 1940, as amended.

#### NEW SECTION

**WAC 460-24A-035 Definition of "client" of an investment adviser.** (1) **General.** You may deem the following to be a single client for purposes of RCW 21.20.040(3):

- (a) A natural person; and
- (i) Any minor child of the natural person;
- (ii) Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;
- (iii) All accounts of which the natural person and/or the persons referred to in (a) of this subsection are the only primary beneficiaries; and
- (iv) All trusts of which the natural person and/or the persons referred to in (a) of this subsection are the only primary beneficiaries;
- (b)(i) A corporation, general partnership, limited partnership, limited liability company, trust (other than a trust referred to in subsection (1)(a)(iv) of this section), or other legal organization (any of which are referred to hereinafter as a "legal organization") to which you provide investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries (any of which are referred to hereinafter as an "owner"); and
- (ii) Two or more legal organizations referred to in subsection (1)(b)(i) of this section that have identical owners.

(2) **Special rules.** For purposes of this section:

- (a) You must count an owner as a client if you provide investment advisory services to the owner separate and apart from the investment advisory services you provide to the legal organization; provided, however, that the determination that an owner is a client will not affect the applicability of this section with regard to any other owner;
- (b) You are not required to count an owner as a client solely because you, on behalf of the legal organization, offer, promote, or sell interests in the legal organization to the owner, or report periodically to the owners as a group solely with respect to the performance of or plans for the legal organization's assets or similar matters;
- (c) A limited partnership or limited liability company is a client of any general partner, managing member or other person acting as investment adviser to the partnership or limited liability company;
- (d) You are not required to count as a client any person for whom you provide investment advisory services without compensation;
- (e) If you have your principal office and place of business outside the United States, you are not required to count clients that are not United States residents, but if your principal office and place of business is in the United States, you must count all clients;
- (f) You may not rely on subsection (1)(b)(i) of this section with respect to any company that would be an investment company under section 3(a) of the Investment Company Act of 1940, 15 U.S.C. 80a-3(a), but for the exception from that

definition by either section 3 (c)(1) or 3 (c)(7) of such act, 15 U.S.C. 80a-3 (c)(1) or (7); and

(g) For purposes of (e) of this subsection, a client who is an owner of a private fund is a resident of the place at which the client resides at the time of the client's investment in the fund.

AMENDATORY SECTION (Amending WSR 00-01-001, filed 12/1/99, effective 1/1/00)

**WAC 460-24A-040 Use of certain terms deemed similar to "financial planner" or "investment counselor."** (1) For the purposes of RCW 21.20.040(~~((3))~~) (4), use of any term, or abbreviation for a term, including the word "financial planner" or the word "investment counselor" is considered the same as the use of either of those terms alone.

(2) For the purposes of RCW 21.20.040(~~((3))~~) (4), terms that are deemed similar to "financial planner" and "investment counselor" include, but are not limited to, the following:

- (a) Financial consultant;
- (b) Investment consultant;
- (c) Money manager;
- (d) Investment manager;
- (e) Investment planner;
- (f) Chartered financial consultant or its abbreviation ChFC; or
- (g) The abbreviation CFP®.

AMENDATORY SECTION (Amending WSR 12-10-051, filed 4/30/12, effective 5/31/12)

**WAC 460-24A-045 Holding out as a financial planner.** (~~(A person using)~~) If you use a term deemed similar to "financial planner" or "investment counselor" under WAC 460-24A-040(2), you will not be considered to be holding (~~(himself)~~) yourself out as a financial planner for purposes of RCW 21.20.005 and 21.20.040 under the following circumstances:

- (1) (~~(The person is)~~) You are not in the business of providing advice relating to the purchase or sale of securities, and would not, but for (~~(his)~~) your use of such a term, be an investment adviser required to register pursuant to RCW 21.20.040; and
- (2) (~~(The person does)~~) You do not directly or indirectly receive a fee for providing investment advice. Receipt of any portion of a "wrap fee," that is, a fee for some combination of brokerage and investment advisory services, constitutes receipt of a fee for providing investment advice for the purpose of this section; and
- (3) (~~(The person)~~) You deliver(~~(s)~~) to every customer, at least forty-eight hours before accepting any compensation, including commissions from the sale of any investment product, a written disclosure including the following information:
  - (a) (~~(The person is)~~) You are not registered as an investment adviser or investment adviser (~~(salesperson)~~) representative in the state of Washington;
  - (b) (~~(The person is)~~) You are not authorized to provide financial planning or investment advisory services and (~~(does)~~) do not provide such services; and
  - (c) A brief description (~~(the person's)~~) of your business which description (~~(should)~~) shall include a statement of the

kind of products offered or services provided (e.g., ~~((the person is))~~ you are in the business of selling securities and insurance products) and of the basis on which ~~((the person is))~~ you are compensated for the products sold or services provided; and

(4) ~~((The person has))~~ You have each customer to whom a disclosure described in subsection (3) of this section is given sign a written dated acknowledgment of receipt of the disclosure; and

(5) ~~((The person shall))~~ You retain the executed acknowledgments of receipt required by subsection (4) of this section and of the disclosure given for so long as ~~((the person))~~ you continue~~((s))~~ to receive compensation from such customers, but in no case for less than three years from date of execution of the acknowledgment; and

(6) If ~~((the person))~~ you received compensation from the customer on more than one occasion, ~~((the person))~~ you need give the customer the disclosure described in subsection (3) of this section only on the first occasion unless the information in the disclosure becomes inaccurate, in which case ~~((the person))~~ you must give the customer updated disclosure before receiving further compensation from the customer.

AMENDATORY SECTION (Amending WSR 01-16-125, filed 7/31/01, effective 10/24/01)

**WAC 460-24A-047 Electronic filing with designated entity.** (1) Designation. Pursuant to RCW 21.20.050, the director designates the Investment Adviser Registration Depository (IARD) operated by ~~((the National Association of Securities Dealers (IARD)))~~ FINRA to receive and store filings and collect related fees from investment advisers, federal covered advisers, and investment adviser representatives on behalf of the director.

(2) Use of IARD. Unless otherwise provided, all investment adviser, federal covered adviser, and investment adviser representative applications, amendments, reports, notices, related filings, and fees required to be filed with the director pursuant to the rules promulgated under this chapter, shall be filed electronically with and transmitted to IARD. The following additional conditions relate to such electronic filings:

(a) Electronic signature. When a signature or signatures are required by the particular instructions of any filing to be made through IARD, a duly authorized officer of the applicant or the applicant him or herself, as required, shall affix his or her electronic signature to the filing by typing his or her name in the appropriate fields and submitting the filing to ~~((Web))~~ IARD. Submission of a filing in this manner shall constitute irrefutable evidence of legal signature by any individuals whose names are typed on the filing.

(b) When filed. Solely for purposes of a filing made through IARD, a document is considered filed with the director when all fees are received and the filing is accepted by IARD on behalf of the state.

(3) Electronic filing. Notwithstanding subsection (2) of this section, the electronic filing of any particular document and the collection of related processing fees shall not be required until such time as IARD provides for receipt of such filings and fees and thirty days' notice is provided by the director. Any documents required to be filed with the director

that are not permitted to be filed with or cannot be accepted electronically by IARD shall be filed ~~((in paper))~~ directly with the director.

(4) Hardship exemptions. Notwithstanding subsection (2) of this section, electronic filing is not required under the following circumstances:

(a) Temporary hardship exemption.

(i) Investment advisers registered or required to be registered under RCW 21.20.040, who experience unanticipated technical difficulties that prevent submission of an electronic filing to IARD, may request a temporary hardship exemption from the requirements to file electronically.

(ii) To request a temporary hardship exemption, the investment adviser must:

(A) File Form ADV-H in paper format with the appropriate regulatory authority in the state where the investment adviser's principal place of business is located, no later than one business day after the filing, that is the subject of the Form ADV-H, was due. If the state where the investment adviser's principal place of business is located has not mandated the use of IARD, the investment adviser should file the Form ADV-H with the appropriate regulatory authority in the first state that mandates the use of IARD by the investment adviser; and

(B) Submit the filing that is the subject of the Form ADV-H in electronic format to IARD no later than seven business days after the filing was due.

(iii) Effective date~~((—))~~ — Upon filing. The temporary hardship exemption will be deemed effective by the director upon receipt of the complete Form ADV-H by appropriate regulatory authority noted in (a)(ii)(A) of this subsection. Multiple temporary hardship exemption requests within the same calendar year may be disallowed by the director.

(b) Continuing hardship exemption.

(i) Criteria for exemption. A continuing hardship exemption will be granted only if the investment adviser is able to demonstrate that the electronic filing requirements of this section are prohibitively burdensome.

(ii) To apply for a continuing hardship exemption, the investment adviser must:

(A) File Form ADV-H in paper format with the director at least twenty business days before a filing is due; and

(B) If a filing is due to more than one state, the Form ADV-H must be filed with the appropriate regulatory authority in the state where the investment adviser's principal place of business is located. If the state where the investment adviser's principal place of business is located has not mandated the use of IARD, the investment adviser should file the Form ADV-H with the appropriate regulatory authority in the first state that mandates the use of IARD by the investment adviser. Any applications received by the director will be granted or denied within ten business days after the filing of Form ADV-H.

(iii) Effective date~~((—))~~ — Upon approval. The exemption is effective upon approval by the director. The time period of the exemption may be no longer than one year after the date on which the Form ADV-H is filed. If the director approves the application, the investment adviser must, no later than five business days after the exemption approval date, submit filings in paper format (along with the appropri-

ate processing fees) for the period of time for which the exemption is granted.

(c) Recognition of exemption. The decision to grant or deny a request for a hardship exemption will be made by the appropriate regulatory authority in the state where the investment adviser's principal place of business is located. If the state where the investment adviser's principal place of business is located has not mandated the use of IARD, the decision to grant or deny a request for a hardship exemption will be made by appropriate regulatory authority in the first state that mandates the use of IARD by the investment adviser. The decision will be followed by the director if the investment adviser is registered in this state.

AMENDATORY SECTION (Amending WSR 01-16-125, filed 7/31/01, effective 10/24/01)

**WAC 460-24A-050** (~~Investment adviser and investment adviser representative~~) **Registration and examination requirements.** (1) **Examination requirements.** (~~A person~~) If you are applying to be registered as an investment adviser or investment adviser representative under RCW 21.20.040, you shall provide the director with proof that ~~(he or she has)~~ you have obtained a passing score on ~~(one of the following examinations)~~:

(a) The Uniform Investment Adviser Law Examination (Series 65 examination); or

(b) The General Securities Representative Examination (Series 7 examination) and the Uniform Combined State Law Examination (Series 66 examination).

(2) (~~Grandfathering~~) **Exceptions from examination requirements.**

(a) (~~Any individual who is~~) If you were registered as an investment adviser or investment adviser representative in any jurisdiction in the United States on ~~(the effective date of this amended rule)~~ January 1, 2000, and there has been no period longer than two years since that date in which you were not registered as an investment adviser or investment adviser representative, you shall not be required to satisfy the examination requirements for initial or continued registration, provided that the director may require additional examinations ~~(for any individual)~~ if you are found to have violated the Securities Act of Washington, Chapter 21.20 RCW, or the Uniform Securities Act.

(b) (~~An individual who has not been registered in any jurisdiction for a period of two years shall be required to comply with the examination requirements of subsection (1)~~) Any person who has been registered as an investment adviser or investment adviser representative in any state requiring the licensing, registration, or qualification of investment advisers or investment adviser representatives within the two-year period immediately preceding the date of filing of an application shall not be required to comply with the examination requirement set forth in subsection (1) of this section provided that the person previously met the examination requirement in subsection (1) of this section.

(c) An applicant who has taken and passed the Uniform Investment Adviser State Law Examination (Series 65 examination) within two years prior to the date the application is filed with the director shall not be required to take and pass

the Uniform Investment Adviser State Law Examination again.

(d) An applicant who is an agent for a broker-dealer/investment adviser and who is not required by the agent's home jurisdiction to make a separate filing on CRD as an investment adviser representative but who has previously met the examination requirement in subsection (1) of this section necessary to provide advisory services on behalf of the broker-dealer/investment adviser, shall not be required to take and pass the Uniform Investment Adviser State Law Examination (Series 65 examination) or the Uniform Combined State Law Examination (Series 66 examination) again.

(3) **Examination waivers.** (~~The examination requirements shall not apply to an individual who currently~~) You are not required to take the examinations set forth in subsection (1) of this section if you currently hold~~(s)~~ one of the following professional designations:

(a) Certified Financial Planner (CFP®) issued by the Certified Financial Planner Board of Standards, Inc.;

(b) Chartered Financial Consultant (ChFC) awarded by The American College, Bryn Mawr, Pennsylvania;

(c) Personal Financial Specialist (PFS) administered by the American Institute of Certified Public Accountants;

(d) Chartered Financial Analyst (CFA) granted by the (~~Association for Investment Management and Research~~) CFA Institute;

(e) Chartered Investment Counselor (CIC) granted by the Investment (~~Counsel~~) Adviser Association (~~of America~~); or

(f) Such other professional designation as the director may by order recognize.

(4) If ~~(the person)~~ you are applying for registration as an investment adviser ~~(is)~~ and you are any entity other than a sole proprietor, an officer, general partner, managing member, or other equivalent person of authority in the entity may take the examination on behalf of the entity. If the person ~~(taking)~~ that took the examination ceases to be a person of authority in the entity, then ~~(the investment adviser)~~ you must notify the director of a substitute person of authority who has ~~(passed the examinations required in subsection (1) of this section within two months in order to maintain the investment adviser license)~~ registered with the director as an investment adviser representative.

(5) **Registration requirements.**

(a) (~~A person applying~~) To apply for initial registration as an investment adviser ~~(shall)~~, you must file a completed Form ADV with IARD along with the following:

(i) Proof of complying with the examination or waiver requirements specified in subsections (1) through (4) above;

(ii) (~~A financial statement demonstrating compliance with the requirements of WAC 460-24A-170~~) Such financial statements as are set forth in WAC 460-24A-060, including a copy of the balance sheet for the last fiscal year, and if such balance sheet is as of a date more than ninety days from the date of filing the application, an unaudited balance sheet prepared as set forth in WAC 460-24A-060, if necessary;

(iii) A copy of the surety bond required by WAC 460-24A-170, if applicable;

(iv) The application fee specified in RCW 21.20.340; and

~~((iv))~~ (v) Such other documents as the director may require.

(b) ~~((A person applying))~~ To apply for initial registration as an investment adviser representative, you shall file a completed Form ~~((U-4))~~ U4 with IARD along with the following:

(i) Proof of complying with the examination or waiver requirements specified in subsections (1) through (4) above;

(ii) The application fee specified in RCW 21.20.340; and

(iii) Such other documents as the director may require.

(c) If you advise one or more pooled investment vehicles, then you must also submit to the division as part of your application, copies of the following documents:

(i) Account agreement with each qualified custodian for each pooled investment vehicle pursuant to WAC 460-24A-105;

(ii) Engagement letter with an independent certified public accountant or agreement with an independent party for each pooled investment vehicle pursuant to WAC 460-24A-107;

(iii) Private placement memorandum or other offering circular used to solicit investors to purchase interests in each pooled investment vehicle;

(iv) Subscription agreement for each pooled investment vehicle;

(v) Operating agreement for each pooled investment vehicle; and

(vi) Such other documents as the director may require in order to complete the application.

AMENDATORY SECTION (Amending WSR 01-16-125, filed 7/31/01, effective 10/24/01)

**WAC 460-24A-057 Renewal of investment adviser and investment adviser representative registration—Delinquency fees.** (1) **Application for renewal.** You may renew your registration as an investment adviser or investment adviser representative ~~((may be renewed))~~ by filing the following with IARD:

(a) Any renewal application required by IARD;

(b) The renewal fee required by RCW 21.20.340; and

(c) An electronically submitted Form ~~((U-4))~~ U4, unless:

(i) The Form ~~((U-4))~~ U4 has been previously submitted to IARD electronically; or

(ii) The investment adviser, filing on behalf of the investment adviser representative, has been granted a hardship exemption under WAC 460-24A-047(4).

(2) **Delinquency fees.** For any renewal application received by IARD after the expiration date set forth in WAC 460-24A-055, but on or before March 1 of the following year, the licensee shall pay a delinquency fee in addition to the renewal fee. The delinquency fee for investment advisers shall be one hundred dollars. The delinquency fee for investment adviser representatives shall be fifty dollars.

~~((3))~~ No renewal applications will be accepted after March 1. An investment adviser or investment adviser representative may apply for reregistration by complying with WAC 460-24A-050.

#### NEW SECTION

**WAC 460-24A-059 Pending application—Notice of termination—Application for continuation.** The director may at his or her discretion send notice to an applicant for investment adviser or investment adviser representative registration with respect to any pending application in which no action has been taken for nine months immediately prior to the sending of such notice, advising such applicant that the pending registration will be terminated thirty days from the date of sending such notice unless on or before the termination date the applicant responds in writing to the director showing good cause why the application should be continued as a pending application. If the applicant does not request in writing that the application be continued or show good cause why it should be continued, the director may terminate the pending application.

AMENDATORY SECTION (Amending WSR 01-16-125, filed 7/31/01, effective 10/24/01)

**WAC 460-24A-060 Financial ~~((statements required on))~~ reporting requirements for investment advisers.** ~~((Every))~~ (1) If you are an investment adviser ~~((shall))~~ registered or required to be registered under RCW 21.20.040 who has custody of client funds or securities or you require payment of advisory fees six months or more in advance and in excess of five hundred dollars per client, you must file with the director ~~((a))~~ an audited balance sheet as of the end of ~~((the investment adviser's))~~ your fiscal year. ~~((The))~~ Each balance sheet ~~((shall be prepared in accordance with))~~ filed pursuant to this subsection must be:

(a) Prepared in conformity with generally accepted accounting principles (GAAP) ~~((unless the director, on a case-by-case basis, allows another basis of presentation. The balance sheet shall be filed annually with the director not more than ninety days after the end of the investment adviser's fiscal year end (unless extension of time is granted by the director))~~ and audited in accordance with generally accepted auditing standards by an independent certified public accountant; and

(b) Accompanied by an audit opinion of the accountant on the audit of the balance sheet.

(2) If you are an investment adviser registered or required to be registered under RCW 21.20.040 that has custody as defined in WAC 460-24A-005 (1)(a)(iii) and you have notified the director on Form ADV that you will comply with the safekeeping requirements in WAC 460-24A-107 (1)(b), you must file with the director a copy of the audited financial statements of each pooled investment vehicle for which you are a general partner (or managing member or other comparable position).

(3) If you are an investment adviser registered or required to be registered under RCW 21.20.040 and are not subject to the financial statement reporting requirements in subsection (1) or (2) of this section, you must file with the director a balance sheet, which need not be audited, but which must be prepared in accordance with generally accepted accounting principles and represented by you or the person who prepared the statement as true and accurate, as of the end of your fiscal year.

(4) The financial statements required by this section must be filed with the director within one hundred twenty days following the end of your fiscal year, except for the audited financial statements of pooled investment vehicles you obtain and distribute pursuant to WAC 460-24A-107(1), which must be filed with the director within one hundred twenty days following the end of each pooled investment vehicle's fiscal year.

(5) If you are an investment adviser that has its principal place of business in a state other than this state, you must file only such reports as required by the state in which you maintain your principal place of business, provided that you are licensed in such state and are in compliance with such state's financial reporting requirements.

AMENDATORY SECTION (Amending WSR 01-16-125, filed 7/31/01, effective 10/24/01)

**WAC 460-24A-070 Notice filing(§) requirements for federal covered advisers.** (1) **Notice filing.** If you are a federal covered adviser, you must file the notice filing required ((of a federal covered adviser)) pursuant to RCW 21.20.050 ((shall be filed)) with IARD on a completed Form ADV. ((A) The notice filing ((of a federal covered adviser)) shall be deemed filed when the fee required by RCW 21.20.-340 and the Form ADV are filed with and accepted by IARD on behalf of the state.

(2) ((Portions of Form ADV not yet accepted by IARD. Until IARD provides for the filing of Part 2 of Form ADV, Part 2 will be deemed filed if it is provided to the director within five days of the director's request. The federal covered adviser is not required to submit Part 2 of the Form ADV to the director unless requested.)) **Form ADV Part 2.** The director will accept a copy of Part 2 of Form ADV as filed electronically with IARD.

(3) **Renewal.** If you are a federal covered adviser, you must file the annual renewal of ((the)) your notice filing ((for a federal covered adviser shall be filed)) with IARD. The renewal ((of the notice filing for a federal covered adviser)) shall be deemed filed when the fee required by RCW 21.20.-340 is filed with and accepted by IARD on behalf of the state.

(4) **Updates and amendments.** If you are a federal covered adviser, you must file any amendments to ((its)) your Form ADV with IARD in accordance with the instructions in the Form ADV.

(5) **Hardship exemption.** If you are a federal covered adviser that, because ((it has)) you have received a hardship exemption from the Securities and Exchange Commission (SEC), ((is)) are not required to file ((its)) your Form ADV with the SEC through IARD you shall, in lieu of filing electronically, file the documents and fees required by this section directly with the director.

#### NEW SECTION

**WAC 460-24A-071 Registration exemption for investment advisers to private funds.** (1) **Exemption for private fund advisers.** You are exempt from the registration requirements for investment advisers in RCW 21.20.040 if you are a private fund adviser as defined in WAC 460-24A-005 and you satisfy each of the following conditions:

(a) Neither you nor any of your advisory affiliates are subject to a disqualification as described in WAC 460-44A-505 (2)(d); and

(b) You file with the division each report and amendment thereto that an exempt reporting adviser is required to file with the Securities and Exchange Commission pursuant to Securities and Exchange Commission Rule 204-4, 17 C.F.R. 275.204-4.

(2) **Federal covered investment advisers.** If you are a private fund adviser that is registered with the Securities and Exchange Commission, you are not eligible for the exemption provided in subsection (1) of this section and you must comply with the state notice filing requirements applicable to federal covered investment advisers in WAC 460-24A-070.

(3) **Investment adviser representatives.** You are exempt from the registration requirements for investment adviser representatives set forth in RCW 21.20.040 if you are employed by or associated with an investment adviser that is exempt from registration in this state pursuant to subsection (1) of this section and you do not otherwise act as an investment adviser representative.

(4) **Electronic filing.** You must make the report filings described in subsection (1)(b) of this section electronically through IARD. A report shall be deemed filed when the report is filed and accepted by the IARD on the state's behalf.

(5) **Transition.** If you become ineligible for the exemption provided in subsection (1) of this section, you must comply with all applicable laws and rules requiring registration or notice filing within ninety days from the date your eligibility for this exemption ceases.

(6) **Waiver authority with respect to statutory disqualification.** Subsection (1)(a) of this section shall not apply upon a showing of good cause and without prejudice to any other action of the securities division, if the securities administrator determines that it is not necessary under the circumstances that an exemption be denied.

#### NEW SECTION

**WAC 460-24A-072 Registration exemption for investment advisers to venture capital funds.** (1) **Exemption for venture capital fund advisers.** You are exempt from the registration requirements for investment advisers in RCW 21.20.040 if you are exempt from registration under Section 203(l) of the Investment Advisers Act of 1940, 15 U.S.C. 80b-3(l), and Rule 203 (l)-1 adopted thereunder, 17 C.F.R. 275.203 (l)-1, provided you satisfy each of the following conditions:

(a) Neither you nor any of your advisory affiliates are subject to a disqualification as described in WAC 460-44A-505 (2)(d); and

(b) You file with the division each report and amendment thereto that an exempt reporting adviser is required to file with the Securities and Exchange Commission pursuant to Securities and Exchange Commission Rule 204-4, 17 C.F.R. 275.204-4.

(2) **Federal covered investment advisers.** If you are a venture capital fund adviser that is registered with the Securities and Exchange Commission, you are not eligible for the exemption provided in subsection (1) of this section and you

must comply with the state notice filing requirements applicable to federal covered investment advisers in WAC 460-24A-070.

(3) **Investment adviser representatives.** You are exempt from the registration requirements for investment adviser representatives set forth in RCW 21.20.040 if you are employed by or associated with an investment adviser that is exempt from registration in this state pursuant to subsection (1) of this section and you do not otherwise act as an investment adviser representative.

(4) **Electronic filing.** You must make the report filings described in subsection (1)(b) of this section electronically through IARD. A report shall be deemed filed when the report is filed and accepted by the IARD on the state's behalf.

(5) **Transition.** If you become ineligible for the exemption provided in subsection (1) of this section, you must comply with all applicable laws and rules requiring registration or notice filing within ninety days from the date your eligibility for this exemption ceases.

(6) **Waiver authority with respect to statutory disqualification.** Subsection (1)(a) of this section shall not apply upon a showing of good cause and without prejudice to any other action of the securities division, if the securities administrator determines that it is not necessary under the circumstances that an exemption be denied.

AMENDATORY SECTION (Amending WSR 01-16-125, filed 7/31/01, effective 10/24/01)

**WAC 460-24A-080 Termination of investment adviser and investment adviser representative registration and federal covered adviser notice filing status.** (1) Investment advisers and federal covered advisers. If you are an investment adviser or federal covered adviser ~~((may))~~ and you want to terminate ~~((its))~~ your registration or notice filing ~~((status))~~, you must do so by complying with the instructions to Form ADV-W and filing a completed Form ADV-W with IARD.

(2) Investment adviser representative. ~~((The termination of))~~ If you are an investment adviser and you terminate an investment adviser representative, you must terminate the registration ~~((as an))~~ of the investment adviser representative pursuant to RCW 21.20.080 ~~((shall be reported))~~ by complying with the instructions to Form ~~((U-5))~~ U5 and filing a completed Form ~~((U-5))~~ U5 with IARD within thirty days of termination.

AMENDATORY SECTION (Amending Order 304, filed 2/28/75, effective 4/1/75)

**WAC 460-24A-100 Advertisements by investment advisers.** (1) ~~((It shall constitute))~~ If you are an investment adviser, federal covered adviser, or investment adviser representative, it is an "act, practice, or course of business" which operates or would operate as a fraud within the meaning of RCW 21.20.020 for ~~((an investment adviser))~~ you, directly or indirectly, to publish, circulate or distribute any advertisement:

(a) Which refers, directly or indirectly, to any testimonial of any kind concerning ~~((the investment adviser))~~ you or con-

cerning any advice, analysis, report or other service rendered by ~~((such investment adviser))~~ you; or

(b) Which refers, directly or indirectly, to any past specific recommendations ~~((of such investment adviser))~~ you made which were or would have been profitable to any person: Provided, however, That this clause (b) does not prohibit ~~((an advertisement which sets))~~ you from setting out or ~~((offers))~~ offering to furnish a list of all recommendations you made ~~((by such investment adviser))~~ within the immediately preceding period of not less than one year if such advertisement, and such list if it is furnished separately:

(i) States the name of each such security recommended, the date and nature of each such recommendation (e.g., whether to buy, sell or hold), the market price at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date~~((;))~~; and

(ii) Contains the following cautionary legend on the first page thereof in print or type as large as the largest print or type used in the body or text thereof: "It should not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list"; or

(c) Which represents, directly or indirectly, that any graph, chart, formula or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula or other device being offered will assist any person in making his own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use; or

(d) Which contains any statement to the effect that any report, analysis, or other service will be furnished free or without charge, unless such report, analysis or other service actually is or will be furnished entirely free and without any condition or obligation, directly or indirectly; or

(e) Which contains any untrue statement of a material fact, or which is otherwise false or misleading.

(2) For the purposes of this section, the term "advertisement" includes any notice, circular, letter or other written communication addressed to more than one person, or any notice or other announcement in any publication or by electronic means, including online, or by radio or television, which offers:

(a) Any analysis, report, or publication concerning securities, or which is to be used in making any determination as to when to buy or sell any security, or which security to buy or sell~~((;))~~; or

(b) Any graph, chart, formula or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell~~((;))~~; or

(c) Any other investment advisory service with regard to ~~((security))~~ securities.

AMENDATORY SECTION (Amending WSR 08-18-033, filed 8/27/08, effective 9/27/08)

**WAC 460-24A-105 Requirements for an investment adviser that has custody or possession of client funds or securities.** If you are an investment adviser registered or required to be registered under RCW 21.20.040, it shall constitute an "act, practice, or course of business" which operates or would operate as a fraud within the meaning of RCW 21.20.020 for you to have custody of client funds or securities unless:

(1) **You notify the director.** You notify the director promptly on Form ADV that you have or may have custody;

(2) **A qualified custodian maintains your clients' funds and securities.**

(a) A qualified custodian maintains your clients' funds and securities:

(i) In a separate account for each client under that client's name; or

(ii) In accounts that contain only your clients' funds and securities, under either your name as agent or trustee for the clients or, in the case of a pooled investment vehicle that you manage, in the name of the pooled investment vehicle; and

(b) You maintain a separate record for each such account which shows the name and address of the qualified custodian where such account is maintained, the dates and amounts of deposits in and withdrawals from such account, and the exact amount of each client's beneficial interest in such account;

(3) **You notify clients of the identity of the qualified custodian.** If you open an account with a qualified custodian on your client's behalf, either under the client's name, under your name as agent, or under the name of a pooled investment vehicle, you notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information. If both you and the qualified custodian send account statements to a client to which you are required to provide this notice, you must include in the notification provided to that client and in any subsequent account statement you send that client a statement urging the client to compare the account statements from the custodian with those from you;

(4) **Either you or a qualified custodian sends account statements to your clients.** You or a qualified custodian sends your clients account statements subject to the following requirements:

(a) **Requirements if qualified custodian sends account statements.** If you do not send account statements to your clients, you have a reasonable basis for believing, after due inquiry, that the qualified custodian sends an account statement, at least quarterly, to each of your clients for which the qualified custodian maintains funds or securities, within a reasonable period of time after the end of the statement period, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period;

(b) **Requirements if you send account statements.** If the qualified custodian does not send account statements to your clients:

(i) You send account statements, at least quarterly, to each of your clients for whom you have custody of funds or

securities, within a reasonable period of time after the end of the statement period, identifying the amount of funds and of each security of which you have custody at the end of the period and setting forth all transactions during that period;

(ii) An independent certified public accountant verifies all client funds and securities by actual examination at least once during each calendar year, pursuant to a written agreement between you and the accountant, at a time that is chosen by the accountant without prior notice or announcement to you and that is irregular from year to year(~~and~~). The written agreement must provide for the first examination to occur within six months of becoming subject to this subsection, except that, if the investment adviser maintains client funds or securities pursuant to this rule as a qualified custodian, the agreement must provide for the first examination to occur no later than six months after obtaining the internal control report. The written agreement must require the accountant to:

(A) File(s) a (copy of the special examination report) certificate on Form ADV-E with the director within (thirty) one hundred twenty days (after the completion of the examination) of the time chosen by the independent certified public accountant to conduct the examination, stating that it has examined the funds and securities and describing the nature and extent of the examination; and

((iii) The independent certified public accountant, upon finding any material discrepancies during the course of the examination, notifies) (B) Notify the director within one business day of the finding of any material discrepancies during the course of the examination, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the director; and

((c) Account statements are sent to limited partners and members of limited liability companies that you advise. If you are a general partner of a limited partnership (or managing member of a limited liability company, or hold a comparable position for another type of pooled investment vehicle), the account statements required under this subsection are sent to each limited partner (or member or other beneficial owner); and) (C) File within four business days of the resignation or dismissal from, or other termination of, the engagement, or removing itself or being removed from consideration for being reappointed, Form ADV-E accompanied by a statement that includes:

(I) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

(II) An explanation of any problems relating to examination scope or procedure that contributed to such resignation, dismissal, removal, or other termination;

(5) **A client may designate an independent representative to receive account statements.** A client may designate an independent representative to receive, on his or her behalf, notices and account statements as required under subsections (3) and (4) of this section;

(6) Investment advisers acting as qualified custodians. If you are an investment adviser that maintains, or if you have custody because a related person maintains, client funds or securities pursuant to this rule as a qualified custodian in connection with the advisory services you provide to clients:

(a) You must enter into an agreement with an independent certified public accountant to conduct an examination to verify client funds and securities as otherwise provided in subsection (4)(b)(ii) of this section. The independent certified public accountant you retain must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules; and

(b) You must obtain, or receive from your related person, within six months of becoming subject to this subsection (6) and thereafter no less frequently than once each calendar year a written internal control report prepared by an independent certified public accountant subject to the following:

(i) The internal control report must include an opinion of an independent certified public accountant as to whether controls have been placed in operation as of a specific date, and are suitably designed and are operating effectively to meet control objectives relating to custodial services, including safeguarding of funds and securities held by either you or a related person on behalf of your clients;

(ii) The independent certified public accountant must verify that the funds and securities are reconciled to a custodian other than you or your related person; and

(iii) The independent certified public accountant must be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules.

**AMENDATORY SECTION** (Amending WSR 08-18-033, filed 8/27/08, effective 9/27/08)

**WAC 460-24A-106 Additional custody requirements for an investment adviser that directly deducts fees from client accounts.** (1) If you are an investment adviser registered or required to be registered under RCW 21.20.040 who has custody as defined in WAC 460-24A-005(1) ~~((solely))~~ because you have the authority to directly deduct fees from client accounts, you must comply with the safekeeping requirements in WAC 460-24A-105 and the following additional safeguards:

(a) **You must have your client's written authorization.** You must have written authorization from your client to deduct advisory fees from the account held with the qualified custodian.

(b) **You must provide notice to the qualified custodian and an itemized invoice to your client.** Each time a fee is directly deducted from your client's account, you must concurrently:

(i) Send the qualified custodian notice of the amount of the fee to be deducted from your client's account; and

(ii) Send your client an invoice itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee.

(c) **You must notify the director that you will comply with these safekeeping requirements.** You must notify the director on Form ADV that you will comply with the safekeeping requirements set forth in this section.

(2) **Waiver of net worth and bonding requirements.** If you have custody as defined in WAC 460-24A-005(1) solely because you have the authority to have fees directly deducted from client accounts and you comply with the safekeeping requirements set forth in this section, you are not required to comply with the net worth and bonding requirements for an investment adviser that has custody set forth in WAC 460-24A-170.

(3) **Waiver of audited balance sheet requirement.** If you have custody as defined in WAC 460-24A-005(1) solely because you have the authority to directly deduct fees from client accounts, you are not required to comply with the requirement to file an audited balance sheet as set forth in WAC 460-24A-060(1) if you comply with WAC 460-24A-060(3), the safekeeping requirements in WAC 460-24A-105, and subsection (1) of this section.

**AMENDATORY SECTION** (Amending WSR 08-18-033, filed 8/27/08, effective 9/27/08)

**WAC 460-24A-107 Additional custody requirements for an investment adviser that manages a pooled investment vehicle or trust.** (1) If you are an investment adviser registered or required to be registered under RCW 21.20.040 that has custody as defined in WAC 460-24A-005 (1)(a)(iii), you must, in addition to complying with the safekeeping requirements set forth in WAC 460-24A-105, either:

(a) ~~((**Comply with additional safekeeping requirements.** In addition to the safekeeping requirements set forth in WAC 460-24A-105, you must comply with the following safekeeping requirements:))~~ **Engage an independent party to authorize withdrawals from the pooled account.**

(i) ~~((**You must engage an independent party to authorize withdrawals from the pooled account.**))~~ You must ~~((hire))~~ enter into a written agreement with an independent party to review all fees, expenses, and capital withdrawals from the pooled accounts;

(ii) ~~((**You must send detailed invoices or receipts to the independent party.**))~~ You must send all invoices or receipts to the independent party, detailing the amount of the fee, expenses, or capital withdrawal and the method of calculation such that the independent party can:

(A) Determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement); and

(B) Forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment adviser; and

(iii) ~~((**You must notify the director that you will comply with these additional safekeeping requirements.**))~~ You must notify the director on Form ADV that you will comply with the safekeeping requirements in (a) of this subsection; or

(b) ~~((**You must**))~~ **Provide audited financial statements of the pooled investment vehicle to all limited partners or members.** ~~((If you do not comply with the safekeeping requirements set forth in WAC 460-24A-105 and (a) of this subsection, you must comply with the following alternative safekeeping requirements:))~~

(i) ~~((**The pooled investment vehicle must be subject to annual audits.**))~~ You must cause the financial statements of

the limited partnership (or limited liability company, or another type of pooled investment vehicle) for which you are a general partner (or managing member or other comparable position) to be subject to audit, at least annually, by an independent certified public accountant to be conducted in accordance with generally accepted auditing standards;

(ii) ~~((You must distribute audited financial statements for the pooled investment vehicle to all beneficial owners.))~~ You must distribute the audited financial statements (prepared in accordance with generally accepted accounting principles for the limited partnership (or limited liability company, or another type of pooled investment vehicle) for which you are a general partner (or managing member or other comparable position)) to all limited partners (or members or other beneficial owners), or the independent representative where one has been designated, within one hundred twenty days of the end of ((its) the pooled investment vehicle's fiscal year. If the limited partners (or members or other beneficial owners) are themselves limited partnerships (or limited liability companies, or another type of pooled investment vehicle) that are related persons to you, you must distribute the audited financial statements to each beneficial owner that is unrelated to you; ((and))

(iii) ~~((You must notify the director that you will distribute audited financial statements of the pooled investment vehicle to all beneficial owners.))~~ You must distribute, upon liquidation, the fund's final audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners), or the independent representative where one has been designated, and the director promptly after the completion of such audit;

(iv) You must enter into a written agreement with the independent certified public accountant who will audit the financial statements of the pooled investment vehicle. The written agreement with the independent certified public accountant must require the independent certified public accountant to, upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed, notify the director within four business days accompanied by a statement that includes:

(A) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the independent certified public accountant; and

(B) An explanation of any problems relating to audit scope or procedure that contributed to such resignation, dismissal, removal, or other termination; and

(v) You must notify the director on Form ADV that you will comply with the safekeeping requirements in (b)(i) and (ii) of this subsection((-);

(2) **You must deliver account statements to each limited partner (or member or other beneficial owner).** If you are an investment adviser registered or required to be registered under RCW 21.20.040 and you are an investment adviser to a limited partnership (or managing member of a limited liability company, or hold a comparable position for another type of pooled investment vehicle), you must:

(a) Send the account statements required under WAC 460-24A-105 to each limited partner (or member or other

beneficial owner). If the limited partners (or members or other beneficial owners) are themselves limited partnerships (or limited liability companies, or another type of pooled investment vehicle) that are your related persons, you must send the account statements required under WAC 460-24A-105 to each beneficial owner of the fund that is unrelated to you; and

(b) Include the following information in the account statements, which will satisfy the requirements under WAC 460-24A-105 (4)(a) and (b)(i):

(i) The total amount of all additions to and withdrawals from the fund as a whole as well as the opening and closing net asset value of the fund at the end of the quarter based on the fund's governing documents;

(ii) A listing of the fund's long and short positions on the closing date of the statement in a form and to the extent required by FASB Rule ASC 946-210-50; and

(iii) The total amount of additions to and withdrawals from the fund by the investor as well as the total value of the investor's interest in the fund at the end of the quarter.

(3) **If you ((comply with the additional safekeeping requirements)) engage an independent party, you are not required to comply with the net worth and bonding requirements for an investment adviser that has custody.** If you have custody solely as defined in WAC ((460-24A-105)) 460-24A-005 (1)(a)(iii) and you comply with the safekeeping requirements in WAC 460-24A-105 and subsection (1)(a) of this section, you are not required to comply with the net worth and bonding requirements for an investment adviser that has custody set forth in WAC 460-24A-170.

((3)) (4) **If you distribute audited financial statements of the pooled investment vehicle to all beneficial owners, you are not required to comply with the surprise examination requirements.** You are not required to comply with the surprise examination requirements set forth in WAC 460-24A-105 (4)(b)(ii) ((and (iii))) with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to audit if you otherwise comply with the safekeeping requirements in WAC 460-24A-105 and subsection (1)(b) of this section.

(5) **If you distribute audited financial statements of the pooled investment vehicle to all beneficial owners, you are not required to file an audited balance sheet.** If you have custody solely as defined in WAC 460-24A-005 (1)(a)(iii), you are not required to comply with the requirement to file an audited balance sheet as set forth in WAC 460-24A-060(1) if you comply with WAC 460-24A-060(3), the safekeeping requirements in WAC 460-24A-105, and subsections (1)(b) and (2) of this section.

AMENDATORY SECTION (Amending WSR 08-18-033, filed 8/27/08, effective 9/27/08)

**WAC 460-24A-108 Additional custody requirements for an investment adviser that acts as trustee and investment adviser to a trust.** If you are an investment adviser registered or required to be registered under RCW 21.20.040 that acts as an investment adviser to a trust and the trust has retained you or one of your representatives, employees,

directors, or owners as trustee, you must comply with the following requirements:

(1) **You must send invoices to the qualified custodian and a person connected to the trust at the same time.** You must send to the grantor of the trust, the attorney for the trust if it is a testamentary trust, the co-trustee (other than you or one of your representatives, employees, directors, or owners); or a defined beneficiary of the trust, at the same time that you send any invoice to the qualified custodian, an invoice showing the amount of the trustees' fee or investment management or advisory fee, the value of the assets on which the fees were based, and the specific manner in which the fees were calculated.

(2) **You must have an agreement with a qualified custodian that contains certain terms.** You must enter into a written agreement with a qualified custodian that complies with the following requirements:

(a) **The agreement must restrict payments to you or persons related to you.** The agreement must specify that the qualified custodian will neither deliver trust securities nor transmit any funds to you or one of your representatives, employees, directors, or owners, except that the qualified custodian may pay trustees' fees to the trustee and investment management or advisory fees to you, provided that:

(i) The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than you or one of your representatives, employees, directors, or owners), or a defined beneficiary of the trust has authorized the qualified custodian in writing to pay those fees;

(ii) The statements for those fees show the amount of the fees for the trustee and, in the case of statements for investment management or advisory fees, show the value of the trust assets on which the fee is based and the manner in which the fee was calculated; and

(iii) The qualified custodian agrees to send to the grantor of the trust, the attorneys for a testamentary trust, the co-trustee (other than you or one of your representatives, employees, directors, or owners); or a defined beneficiary of the trust, at least quarterly, a statement of all disbursements from the account of the trust, including the amount of investment management fees paid to you and the amount of trustees' fees paid to the trustee.

(b) **The agreement must restrict the transfer of funds or securities.** Except as otherwise set forth in subsection (1)(b)(i) of this section, the agreement must specify that the qualified custodian may transfer funds or securities, or both, of the trust only upon the direction of the trustee (who may be you or one of your representatives, employees, directors, or owners), who you have duly accepted as an authorized signatory. The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than you or one of your representatives, employees, directors, or owners), or a defined beneficiary of the trust, must designate the authorized signatory for management of the trust. The agreement must further specify that the direction to transfer funds or securities, or both, can only be made to the following:

(i) To a trust company, bank trust department or brokerage firm independent from you for the account of the trust to which the assets relate;

(ii) To the named grantors or to the named beneficiaries of the trust;

(iii) To a third person independent from you in payment of the fees or charges of the third person including, but not limited to:

(A) Attorney's, accountant's, or qualified custodian's fees for the trust; and

(B) Taxes, interest, maintenance, or other expenses, if there is property other than securities or cash owned by the trust;

(iv) To third persons independent from you for any other purpose legitimately associated with the management of the trust; or

(v) To a broker-dealer in the normal course of portfolio purchases and sales, provided that the transfer is made on payment against delivery basis or payment against trust receipt.

(3) **You must notify the director that you will comply with these safekeeping requirements.** You must notify the director on Form ADV that you will comply with the safekeeping requirements set forth in this section.

(4) **You are not required to comply with the net worth and bonding requirements for an investment adviser that has custody if you comply with these safekeeping requirements.** If you have custody solely as defined in WAC 460-24A-005 (1)(a)(iii) because you are the trustee of a trust and you comply with the safekeeping requirements in WAC 460-24A-105 and this section, you are not required to comply with the net worth and bonding requirements for an investment adviser that has custody set forth in WAC 460-24A-170.

AMENDATORY SECTION (Amending WSR 08-18-033, filed 8/27/08, effective 9/27/08)

**WAC 460-24A-109 Exceptions from custody requirements.** Exceptions from the custody requirements for investment advisers that are registered or required to be registered under RCW 21.20.040 are available in the following circumstances:

(1)(a) **You are not required to ~~((comply with the custody requirements for))~~ engage a qualified custodian to hold certain privately offered securities.** You are not required to comply with WAC 460-24A-105(2) ~~((through 460-24A-108))~~ with respect to securities that are:

(i) Acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(ii) Uncertificated, and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and

(iii) Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(b) Notwithstanding (a) of this subsection, the provisions of this subsection (1) are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if you comply with the requirements in WAC 460-24A-107 (1)(b).

(2) **You are not required to comply with the custody requirements with respect to the account of a registered**

**investment company.** You are not required to comply with WAC 460-24A-105 through 460-24A-108 with respect to the account of an investment company registered under the Investment Company Act of 1940, 15 U.S.C. 80a-1 to 80a-64.

(3) **You are not required to comply with the custody requirements with respect to a trust for the benefit of your relative.** You are not required to comply with the safe-keeping requirements of WAC 460-24A-105 through 460-24A-108 or the net worth and bonding requirements for an investment adviser that has custody set forth in WAC 460-24A-170 if you have custody solely because you or one of your representatives, employees, directors, or owners is a trustee for a beneficial trust, if all of the following conditions are met for each trust:

(a) The beneficial owner of the trust is your parent, a grandparent, a spouse, a sibling, a child, or a grandchild. These relationships shall include "step" relationships.

(b) For each account under (a) of this subsection, you comply with the following:

(i) You provide a written statement to each beneficial owner of the account setting forth a description of the requirements of WAC 460-24A-105 through 460-24A-108 and WAC 460-24A-170 and the reasons why you will not be complying with those requirements;

(ii) You obtain from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement required under (b)(i) of this subsection; and

(iii) You maintain a copy of both documents described in (b)(i) and (ii) of this subsection until the account is closed or you are no longer trustee.

**AMENDATORY SECTION** (Amending WSR 00-01-001, filed 12/1/99, effective 1/1/00)

**WAC 460-24A-110 Agency cross transactions.** ~~((a))~~ (1) For purposes of this rule, "agency cross transaction for an advisory client" means a transaction in which a person acts as an investment adviser in relation to a transaction in which the investment adviser, or any person controlling, controlled by, or under common control with such investment adviser, including an investment adviser representative, acts as a broker-dealer for both the advisory client and another person on the other side of the transaction. When acting in such capacity such person is required to be registered as a broker-dealer in this state unless excluded from the definition.

~~((b))~~ (2) If you are an investment ~~(effecting)~~ adviser or investment adviser representative, it shall be unlawful for you to effect an agency cross transaction for an advisory client ~~(shall be in compliance with)~~ under RCW 21.20.020~~((3))~~ (2) ~~(if the following)~~ unless you satisfy these conditions ~~(are met)~~:

~~((1))~~ (a) You obtain the written consent of the advisory client ~~(executes a written consent)~~ prospectively authorizing ~~(the investment adviser)~~ you to effect agency cross transactions for such client;

~~((2))~~ (b) Before obtaining such written consent from the client, ~~(the investment adviser)~~ you make~~(s)~~ full written disclosure to the client that, with respect to agency cross transactions, ~~(the investment adviser)~~ you will act as bro-

ker-dealer for, receive commissions from and have a potentially conflicting division of loyalties and responsibilities regarding both parties to the transactions;

~~((3))~~ (c) At or before the completion of each agency cross transaction, ~~(the investment adviser)~~ you or any other person relying on this rule sends the client a written confirmation. You must include the following in the written confirmation ~~(shall include (A))~~:

(i) A statement of the nature of the transaction~~((B))~~;

(ii) The date the transaction took place ~~((C))~~;

(iii) An offer to furnish, upon request, the time when the transaction took place; and

~~((D))~~ (iv) The source and amount of any other remuneration the investment adviser received or will receive in connection with the transaction. In the case of a purchase, or, in the case of a sale, if the investment adviser was not participating in a tender offer, the written confirmation may state whether the investment adviser has been receiving or will receive any other remuneration and that the investment adviser will furnish the source and amount of such remuneration to the client upon the client's written request;

~~((4))~~ (3) At least annually, and with or as part of any written statement or summary of the account from the investment adviser, the investment adviser or any other person relying on this rule sends each client a written disclosure statement identifying ~~((A))~~;

(a) The total number of agency cross transactions during the period for the client since the date of the last such statement or summary; and

~~((B))~~ (b) The total amount of all commissions or other remuneration the investment adviser received or will receive in connection with agency cross transactions for the client during the period~~((3))~~;

~~((5))~~ (4) Each written disclosure and confirmation required by this rule must include a conspicuous statement that the client may revoke the written consent required under subsection ~~((b)(1))~~ (2)(a) of this ~~(rule)~~ section at any time by providing written notice to the investment adviser~~((3))~~;

~~((6))~~ (5) No agency cross transaction may be effected in which the same investment adviser recommended the transaction to both any seller and any purchaser.

~~((7))~~ (6) Nothing in this rule shall be construed to relieve an investment adviser or investment adviser representative from acting in the best interest of the client, including fulfilling his duty with respect to the best price and execution for the particular transaction for the client nor shall it relieve any investment adviser or investment adviser representative of any other disclosure obligations imposed by the Securities Act of Washington, chapter 21.20 RCW, and the rules and regulations thereunder.

#### NEW SECTION

**WAC 460-24A-120 Compliance procedures and practices.** If you are an investment adviser registered or required to be registered under RCW 21.20.040, or a federal covered adviser, and have more than one employee, it is unlawful under RCW 21.20.020 for you to provide investment advice to clients unless you:

(1) **Policies and procedures.** Adopt and implement written policies and procedures reasonably designed to prevent violation, by you and your supervised persons, of the Securities Act of Washington, chapter 21.20 RCW, and the rules adopted thereunder, and the federal securities laws;

(2) **Annual review of policies and procedures.** Review, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation; and

(3) **Chief compliance officer.** Designate an individual responsible for administering the policies and procedures that you adopt under subsection (1) of this section.

#### NEW SECTION

**WAC 460-24A-125 Proxy voting.** If you are an investment adviser registered or required to be registered under RCW 21.20.040, or a federal covered adviser, it is unlawful under RCW 21.20.020 for you to exercise voting authority with respect to client securities, unless you:

(1) Adopt and implement written policies and procedures that are reasonably designed to ensure that you vote client securities in the best interest of clients, which procedures must include how you address material conflicts that may arise between your interests and those of your clients;

(2) Disclose to clients how they may obtain information from you about how you voted with respect to their securities; and

(3) Describe to clients your proxy voting policies and procedures and, upon request, furnish a copy of the policies and procedures to the requesting client.

#### NEW SECTION

**WAC 460-24A-130 Contents of investment advisory contract.** If you are an investment adviser registered or required to be registered under RCW 21.20.040, it is unlawful under RCW 21.20.020 and 21.20.030 for you to enter into, extend, or renew any investment advisory contract unless it provides in writing:

(1) The services to be provided, the term of the contract, the investment advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of termination or nonperformance of the contract, and whether and the extent to which the contract grants discretionary authority to you and any limits on such authority;

(2) That no direct or indirect assignment or transfer of the contract may be made by you without the written consent of the client or other party to the contract;

(3) That you shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client except as permitted under WAC 460-24A-150;

(4) That if you are a partnership, you shall notify the client or other party to the investment contract of any change in the membership of the partnership within a reasonable time after the change;

(5) That if you are an investment adviser who has custody as a consequence of your authority to make withdrawals from client accounts to pay your advisory fee, that the con-

tract gives you the authority to deduct your advisory fees from the account held with the qualified custodian;

(6) The nature and extent to which you are granted proxy voting authority with respect to client securities;

(7) The terms for termination of the contract;

(8) The nature and extent to which you may deliver electronically the documents specified in WAC 460-24A-145, account statements, fee invoices, and other documents and the extent and manner in which a client may opt out of receiving documents electronically; and

(9) For clients residing in Washington, the advisory contract shall not waive or limit compliance with, or require indemnification for any violations of, any provision of the Securities Act of Washington, chapter 21.20 RCW.

AMENDATORY SECTION (Amending Order 304, filed 2/28/75, effective 4/1/75)

**WAC 460-24A-140 Guarantees of success are prohibited.** ~~((No representation or statement, whether direct or by implication, should be made guaranteeing the success of investments made pursuant to recommendations of the advisory service concerned.))~~ It is an unlawful act, practice, or course of business which operates or would operate as a fraud or deceit under RCW 21.20.020 (1)(b) to make any representation or statement, whether directly or by implication, guaranteeing the success of investments made pursuant to the recommendations of an investment adviser or investment adviser representative.

AMENDATORY SECTION (Amending WSR 02-19-093, filed 9/17/02, effective 10/18/02)

**WAC 460-24A-145 Investment adviser brochure rule.** (1) **General requirements.** Unless otherwise provided in this rule, if you are an investment adviser(;;) registered or required to be registered pursuant to RCW 21.20.040, you shall, in accordance with the provisions of this section, ((offer and)) deliver to each advisory client and prospective advisory client ((written disclosure materials containing at least the information then so required by Part II of Form ADV and such other information as the director may require. If a federal covered adviser may utilize a copy of Part II of its Form ADV to provide the disclosures required pursuant to 17 CFR 275.204-3, then an investment adviser may use a copy of Part II of its ADV to provide the disclosures required by this section));

(a) A brochure which may be a copy of Part 2A of your Form ADV or written documents containing the information required by Part 2A of Form ADV. The brochure must comply with the language, organizational format and filing requirements specified in the Instructions to Form ADV Part 2;

(b) A copy of your Part 2B brochure supplement for each individual:

(i) Providing investment advice and having direct contact with clients in this state; or

(ii) Exercising discretion over assets of clients in this state, even if no direct contact is involved;

(c) A copy of your Part 2A Appendix 1 wrap fee brochure if you sponsor or participate in a wrap fee account;

(d) A summary of material changes, which may be included in Form ADV Part 2 or given as a separate document; and

(e) Such other information as the director may require.

**(2) Delivery.**

(a) ~~((An investment adviser,))~~ **Initial delivery.** Except as provided in ~~((b))~~ (c) of this subsection, you shall deliver the materials required by this section to an advisory client or prospective advisory client (i) not less than forty-eight hours prior to entering into any investment advisory contract with such client or prospective client, or (ii) at the time of entering into any such contract, if the advisory client has a right to terminate the contract without penalty within five business days after entering into the contract.

(b) ~~((Delivery of the))~~ **Annual delivery.** Except as provided in (c) of this subsection, if there have been any material changes that have taken place since the last summary and brochure delivery to your clients, you must:

(i) Deliver within one hundred twenty days of the end of your fiscal year a free, updated brochure and related brochure supplements which include or are accompanied by a summary of the material changes; or

(ii) Deliver a summary of material changes that includes an offer to provide a copy of the updated brochure and supplements and information on how the client may obtain a copy of the brochure and supplements. You must mail or deliver any materials requested by the client pursuant to such an offer within seven days of the receipt of the request.

(c) **Exception for certain clients.** You are not required to deliver the materials ~~((required by (a)))~~ set forth in (1) of this ~~((subsection need not be made in connection with entering into a contract for impersonal advisory services.~~

**(3) Offer to deliver.**

(a) An investment adviser, except as provided in (b) of this subsection, annually shall, without charge, deliver or offer in writing to deliver upon written request to each of its advisory clients the materials required by this section.

(b) The delivery or offer required by (a) of this subsection need not be made to advisory clients receiving advisory services solely pursuant to a contract for impersonal advisory services requiring a payment of less than \$200.00.

(c) With respect to an advisory client entering into a contract or receiving advisory services pursuant to a contract for impersonal advisory services which requires a payment of \$200.00 or more, an offer of the type specified in (a) of this subsection shall also be made at the time of entering into an advisory contract.

(d) Any materials requested in writing by an advisory client pursuant to an offer required by this subsection must be mailed or delivered within seven days of the receipt of the request.) section to:

(i) Clients receiving advisory services solely pursuant to a contract for impersonal advisory services requiring a payment of less than two hundred dollars;

(ii) An investment company registered under the Investment Company Act of 1940; or

(iii) A business development company as defined in the Investment Company Act of 1940 and whose advisory contract meets the requirements of section 15c of that act.

(3) **Electronic delivery.** You may deliver the materials required by this section electronically if you:

(a) In the case of an initial delivery to a potential client, obtain a verification that readable copies of the materials were received by the client;

(b) In the case of deliveries other than initial deliveries, obtain each client's prior consent to provide the materials electronically;

(c) Prepare the electronically delivered materials in the format prescribed in (a) of this subsection and the instructions to Form ADV Part 2;

(d) Deliver the materials in a format that can be retained by the client in either electronic or paper form; and

(e) Establish procedures to supervise personnel transmitting the materials and prevent violations of this rule.

(4) **Delivery to limited partners.** If ~~((the investment adviser is))~~ you are the ~~((general partner of))~~ adviser to a limited partnership, ~~((the manager of))~~ a limited liability company, or ~~((the trustee of))~~ a trust, then ~~((for purposes of this section, the investment adviser))~~ you must treat each of the partnership's limited partners, the company's members, or the trust's beneficial owners, as a client. For purposes of this section, a limited liability partnership or limited liability limited partnership is a "limited partnership."

(5) ~~((Wrap fee program brochures.~~

(a) If the investment adviser is a sponsor of a wrap fee program, then the materials required to be delivered, by subsection (2) of this section, to a client or prospective client of the wrap fee program, must contain all information required by Form ADV. Any additional information must be limited to information applicable to wrap fee programs that the investment adviser sponsors.

(b) The investment adviser does not have to offer or deliver wrap fee information if another sponsor of the wrap fee program offers or delivers to the client or prospective client of the wrap fee program wrap fee program information containing all the information the investment adviser's wrap fee program brochure must contain.

(6) **Delivery of updates and amendments.** When the disclosure materials required to be delivered pursuant to subsection (2) of this section become materially inaccurate, the investment adviser must amend and promptly deliver to its clients amendments to such disclosure materials. The instructions to Part 2 of Form ADV contain updating and delivery instructions that the investment adviser must follow. An amendment will be considered to be delivered promptly if the amendment is delivered within thirty days of the event that requires the filing of the amendment.

(7)) Omission of inapplicable information. If ~~((an investment adviser))~~ you render~~((s))~~ substantially different types of investment advisory services to different advisory clients, ~~((the investment adviser))~~ you may provide them with different disclosure materials, provided that each client receives all applicable information about services and fees. The disclosure delivered to a client may omit any information required by Part ~~((H))~~ 2 of Form ADV if such information is applicable only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

~~((8))~~ (6) Other disclosure obligations. Nothing in this section shall relieve ~~((any investment adviser))~~ you from any obligation to disclose any information to ~~((its))~~ your advisory clients or prospective advisory clients not specifically required by this rule under chapter 21.20 RCW, the rules and regulations thereunder, or any other federal or state law.

~~((9))~~ (7) Definitions. For the purposes of this rule:

(a) "Contract for impersonal advisory services" means any contract relating solely to the provision of investment advisory services;

(i) By means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;

(ii) Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or

(iii) Any combination of the foregoing services.

(b) "Entering into," in reference to an investment advisory contract, does not include an extension or renewal without material change of any such contract which is in effect immediately prior to such extension or renewal.

~~((c))~~ "Sponsor" of a wrap fee program means an investment adviser that is compensated under a wrap fee program for sponsoring, organizing, or administering the program, or for selecting, or providing advice to clients regarding the selection of other investment advisers in the program.

~~((d))~~ "Wrap fee program" means an advisory program under which a specified fee or fees, not based directly upon transactions in a client's account, is charged for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and the execution of client transactions.)

AMENDATORY SECTION (Amending WSR 00-01-001, filed 12/1/99, effective 1/1/00)

**WAC 460-24A-150 Performance compensation arrangements.** (1) General. If you are an investment adviser you may, without violating RCW 21.20.030(1), enter into ~~((a performance compensation arrangement with a customer that complies with Securities and Exchange Commission Rule 205-3, as made effective in Release No. IA-996 and as amended in Release No. IA-1731, under the Investment Advisers Act of 1940. Rule 205-3 is found in the CCH Federal Securities Law Reports published by Commerce Clearing House. Copies of the rule are also available at the office of the securities administrator.))~~, extend, or renew an investment advisory contract which provides for compensation to you on the basis of a share of capital gains upon or capital appreciation of the funds, or any portion of the funds, of the client if:

(a) You are an investment adviser who is not registered and is not required to be registered under RCW 21.20.040; or

(b) The client is a "qualified client" as defined in subsection (2) of this section and the conditions of subsections (3) through (8) of this section are met.

(2) Definitions. For the purposes of this section:

(a) The term "qualified client" means:

(i) A natural person who, or a company that, immediately after entering into the contract has at least one million dollars under the management of the investment adviser;

(ii) A natural person who, or a company that, the investment adviser entering into the contract (and any person acting on his or her behalf) reasonably believes, immediately prior to entering into the contract, either:

(A) Has a net worth (together, in the case of a natural person, with assets held jointly with a spouse) of more than two million dollars. For purposes of calculating a natural person's net worth:

(I) The person's primary residence must not be included as an asset;

(II) Indebtedness secured by the person's primary residence, up to the estimated fair market value of the primary residence at the time the investment advisory contract is entered into may not be included as a liability (except that if the amount of such indebtedness outstanding at the time of calculation exceeds the amount outstanding sixty days before such time, other than as a result of the acquisition of the primary residence, the amount of such excess must be included as a liability); and

(III) Indebtedness that is secured by the person's primary residence in excess of the estimated fair market value of the residence must be included as a liability; or

(B) Is a qualified purchaser as defined in section 2 (a)(51)(A) of the Investment Company Act of 1940 (15 U.S.C. 80a-2 (a)(51)(A)) at the time the contract is entered into; or

(iii) A natural person who immediately prior to entering into the contract is:

(A) An executive officer, director, trustee, general partner, or person serving in a similar capacity, of the investment adviser; or

(B) An employee of the investment adviser (other than an employee performing solely clerical, secretarial, or administrative functions with regard to the investment adviser) who, in connection with his or her regular functions or duties, participates in the investment activities of such investment adviser, provided that such employee has been performing such functions and duties for or on behalf of the investment adviser, or substantially similar functions or duties for or on behalf of another company for at least twelve months.

(b) The term "company" has the same meaning as in section 202 (a)(5) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2 (a)(5)), but does not include a company that is required to be registered under the Investment Company Act of 1940 but is not registered.

(c) The term "private investment company" means a company that would be defined as an investment company under section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)) but for the exception provided from that definition by section 3 (c)(1) of such Act (15 U.S.C. 80a-3 (c)(1)).

(d) The term "executive officer" means the president, any vice-president in charge of a principal business unit, division or function (such as sales, administration, or finance), any other officer who performs a policy-making function, or any other person who performs similar policy-making functions, for the investment adviser.

(3) **Compensation formula.** The compensation paid to you with respect to the performance of any securities over a given period must be based on a formula with the following characteristics:

(a) In the case of securities for which market quotations are readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940 (Definition of "Current Net Asset Value" for Use in Computing Periodically the Current Price of Redeemable Security), 17 C.F.R. 270.2a-4 (a)(1), the formula must include the realized capital losses and unrealized capital depreciation of the securities over the period:

(b) In the case of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940, 17 C.F.R. 270.2a-4 (a)(1), the formula must include:

(i) The realized capital losses of securities over the period;

(ii) If the unrealized capital appreciation of the securities over the period is included, the unrealized capital depreciation of the securities over the period; and

(c) The formula must provide that any compensation paid to you under this section is based on the gains less the losses (computed in accordance with (a) and (b) of this subsection) in the client's account for a period of not less than one year.

(4) **Client disclosure.** To the extent not otherwise disclosed on Form ADV Part 2, you must disclose in writing to the client all material information concerning the proposed advisory arrangement, including the following:

(a) That the fee arrangement may create an incentive for the investment adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance fee;

(b) Where relevant, that the investment adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;

(c) The period which will be used to measure investment performance throughout the contract and their significance in the computation of the fee;

(d) The nature of any index which will be used as a comparative measure of investment performance, the significance of the index, and the reason the investment adviser believes that the index is appropriate; and

(e) Where your compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available within the meaning of Rule 2a-4 (a)(1) under the Investment Company Act of 1940, 17 C.F.R. 270.2a-4 (a)(1), how the securities will be valued and the extent to which the valuation will be independently determined.

(5) **Equity owners.** In the case of a private investment company, as defined in subsection (2)(c) of this rule, an investment company registered under the Investment Company Act of 1940, or a business development company, as defined in section 202 (a)(22) of the Investment Advisers Act of 1940, each equity owner of any such company (except for the investment adviser entering into the contract and any other equity owners not charged a fee on the basis of a share

of capital gains or capital appreciation) will be considered a client for the purposes of subsection (1) of this rule.

(6) **Informed consent.** You or any of your investment adviser representatives that enter into a contract under this rule, must reasonably believe, immediately before entering into the contract that the contract represents an arm's length arrangement between the parties and that the client, alone or together with the client's independent agent, understands the proposed method of compensation and its risks.

(7) **Nonexclusive.** Any person entering into or performing an investment advisory contract under this section is not relieved of any obligations under RCW 21.20.020 or any other applicable provision of the Securities Act of Washington, chapter 21.20 RCW, or any rule or order thereunder.

(8) **Obligations of independent representative.** Nothing in this section shall relieve a client's independent representative from any obligation to the client under applicable law.

(9) **Transition rules.**

(a) **Registered investment advisers.** If you are a registered investment adviser that entered into a contract and satisfied the conditions of this section that were in effect when the contract was entered into, you will be considered to satisfy the conditions of this section. If a natural person or company who was not a party to the contract becomes a party (including an equity owner of a private investment company advised by the adviser), however, the conditions of this section in effect at that time will apply with regard to that person or company.

(b) **Registered investment advisers that were previously not registered.** This section shall not apply to an advisory contract entered into when you were not required to register and were not registered. If a natural person or a company who was not a party to the contract becomes a party (including an equity owner of a private investment company advised by the adviser) when you are registered or required to register, however, the conditions of this section in effect at that time will apply with regard to that person or company.

(c) **Certain transfers of interest.** Solely for purposes of (a) and (b) of this subsection, a transfer of an equity ownership interest in a private investment company by gift or bequest, or pursuant to an agreement related to a legal separation or divorce, will not cause the transferee to "become a party" to the contract and will not cause this section to apply to such transferee.

AMENDATORY SECTION (Amending Order 304, filed 2/28/75, effective 4/1/75)

**WAC 460-24A-160 Restrictions on advertising refunds.** ((Advisory services should not)) If you are in an investment adviser or investment adviser representative, it is unlawful under RCW 21.20.020 to advertise or represent to subscribers or customers for advisory services that subscriptions, fees or other payments will be refunded if they are not satisfied unless:

(1) Such undertaking to refund is clear and unequivocal and is concerned not with the merit or success of the service, but with the customer's satisfaction therewith; and

(2) ~~((the investment adviser's))~~ Your financial ~~((responsibility))~~ situation is adequate to ~~((insure its))~~ ensure your ability to meet all such refund demands.

AMENDATORY SECTION (Amending WSR 08-18-033, filed 8/27/08, effective 9/27/08)

**WAC 460-24A-170 Minimum financial requirements for investment advisers.** (1) If you are an investment adviser registered or required to be registered under RCW 21.20.040, who has custody of client funds or securities, you shall maintain at all times a minimum net worth of \$35,000 unless provided otherwise in this chapter. If you are an investment adviser registered or required to be registered under RCW 21.20.040, who has discretionary authority over client funds or securities, but does not have custody of client funds or securities, you shall maintain at all times a minimum net worth of \$10,000.

(2) If you are an investment adviser registered or required to be registered under RCW 21.20.040 who has custody or ~~((discretion of))~~ discretionary authority over client funds or securities, but does not meet the minimum net worth requirements in subsection (1) of this section you shall ~~((be bonded))~~ maintain a bond in the amount of the net worth deficiency rounded up to the nearest \$5,000. Any bond required by this section shall be in the form determined by the director, issued by a company qualified to do business in this state, and shall be subject to the claims of all clients of the investment adviser regardless of the ~~((client's))~~ clients' states of residence.

(3) If you are an investment adviser registered or required to be registered under RCW 21.20.040, ~~((who accepts prepayment of more than \$500 per client and six or more months in advance,))~~ you shall maintain at all times a positive net worth.

(4) Unless otherwise exempted, as a condition of the right to transact business in this state, ~~((every))~~ if you are an investment adviser registered or required to be registered under RCW 21.20.040 you shall, by the close of business on the next business day, notify the director if ~~((the investment adviser's))~~ your net worth is less than the minimum required. After transmitting such notice, ~~((each investment adviser))~~ you shall file, by the close of business on the next business day, a report with the director of its financial condition, including the following:

- (a) A trial balance of all ledger accounts;
- (b) A statement of all client funds or securities which are not segregated;
- (c) A computation of the aggregate amount of client ledger debit balances; and
- (d) A statement as to the number of client accounts.

(5) For purposes of this section, the term "net worth" shall mean an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: Prepaid expenses (except as to items properly classified as assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature; primary residence, home furnish-

ings, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

(6) For purposes of this section, if you are an investment adviser you shall not be deemed to be exercising discretion when you place trade orders with a broker-dealer pursuant to a third-party trading agreement if:

(a) You have executed an investment adviser contract exclusively with your client which acknowledges that a third-party trading agreement will be executed to allow you to effect securities transactions for your client in your client's broker-dealer account;

(b) Your contract specifically states that your client does not grant discretionary authority to you and you in fact do not exercise discretion with respect to the account; and

(c) A third-party trading agreement is executed between your client and a broker-dealer which specifically limits your authority in your client's broker-dealer account to the placement of trade orders and deduction of investment adviser fees.

(7) The director may require that a current appraisal be submitted in order to establish the worth of any asset for the purposes of meeting the minimum net worth requirements in subsection (1) of this section or the positive net worth requirement in subsection (3) of this section.

~~((7))~~ (8) If you are an investment adviser that has its principal place of business in a state other than this state, you shall maintain only such minimum net worth as required by the state in which ~~((the investment adviser))~~ you maintain ~~((s its))~~ your principal place of business, provided ~~((the investment adviser is))~~ you are licensed in that state and ~~((is))~~ are in compliance with that state's minimum capital requirements.

AMENDATORY SECTION (Amending WSR 01-16-125, filed 7/31/01, effective 10/24/01)

**WAC 460-24A-200 Books and records to be maintained by investment advisers.** (1) ~~((Every))~~ If you are an investment adviser registered or required to be registered pursuant to RCW 21.20.040, you shall make and keep true, accurate, and current the following books, ledgers, and records:

(a) A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

(b) General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

(c) A memorandum of each order given by ~~((the investment adviser))~~ you for the purchase or sale of any security, of any instruction received by ~~((the investment adviser))~~ you from a client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with ~~((the investment adviser))~~ you who recommended the transaction to the client and the person who placed the order; and shall show the account for which

entered, the date of entry, and the bank or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of a power of attorney shall be so designated.

(d) All check books, bank statements, canceled checks and cash reconciliations of the investment adviser.

(e) All bills or statements (or copies thereof), paid or unpaid, relating to ~~((the))~~ you business ~~((of the investment adviser))~~.

(f) All trial balances, financial statements, and internal audit working papers or other supporting financial records relating to ~~((the investment adviser's))~~ you business as an investment adviser. For purposes of this subsection, "financial statements" shall mean a balance sheet prepared in accordance with generally accepted accounting principles, ~~((and))~~ an income statement, a cash flow statement, and a net worth computation, if applicable, as required by WAC 460-24A-170.

(g) Originals of all written communications received and copies of all written communications sent by ~~((the investment adviser))~~ you relating to your investment advisory business including, but not limited to:

(i) Any recommendation made or proposed to be made and any advice given or proposed to be given~~(-);~~

(ii) Any receipt, disbursement or delivery of funds or securities~~(- or)~~; and

(iii) The placing or execution of any order to purchase or sell any security: Provided, however, That ~~((the investment adviser))~~ you shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for ~~((the investment adviser))~~ you: And provided, That if ~~((the investment adviser))~~ you send~~(s)~~ any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than ten persons, ~~((the investment adviser))~~ you shall not be required to keep a record of the names and addresses of the persons to whom it was sent, except that if such notice, circular or advertisement is distributed to persons named on any list, ~~((the investment adviser))~~ you shall retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof.

(h) A list or other record of all accounts in which ~~((the investment adviser is))~~ you are vested with any discretionary ~~((power with respect to))~~ authority over the funds, securities or transactions of any client.

(i) A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to ~~((the investment adviser))~~ you.

(j) A written copy of each signed agreement entered into by ~~((the investment adviser))~~ you with any client and all other written agreements otherwise relating to ~~((the investment adviser's))~~ your business as an investment adviser.

(k) A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication, including by electronic media, and all amendments thereto, that ~~((the investment advisers))~~ you circulate~~(s)~~ or distribute~~(s)~~, directly or indirectly, to two or more persons (other than persons connected with ~~((the investment adviser))~~ you), and if such communication rec-

ommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum ~~((of the investment adviser))~~ by you indicating the reasons for the recommendation.

(l)(i) A record of every transaction in a security in which ~~((the investment adviser))~~ you or any ~~((advisory representative (as hereinafter defined) of the investment adviser))~~ of your advisory representatives has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except:

(A) Transactions effected in any account over which neither ~~((the investment adviser))~~ you nor any of your advisory representatives ~~((of the investment adviser))~~ has any direct or indirect influence or control; and

(B) Transactions in securities which are direct obligations of the United States.

The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that ~~((the investment adviser))~~ you or your advisory representative has any direct or indirect beneficial ownership in the security. ~~((A))~~ You shall record each transaction ~~((shall be recorded))~~ not later than ten days after the end of the calendar quarter in which the transaction was effected.

(ii) For the purposes of this subsection (1)(l), the following definitions will apply:

(A) "Advisory representative" shall mean any of your partners, officers or directors ~~((of the investment adviser))~~; any employee who participates in any way in the determination of which recommendations shall be made, or whose functions or duties relate to the determination of which recommendation shall be made; any employee who, in connection with his or her duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by ~~((the investment adviser))~~ you prior to the effective dissemination of the recommendations:

(I) Any person in a control relationship to ~~((the investment adviser))~~ you;

(II) Any affiliated person of a controlling person; and

(III) Any affiliated person of an affiliated person.

(B) "Control" shall mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than twenty-five percent of the voting securities of a company shall be presumed to control such company.

(iii) ~~((An investment adviser))~~ You shall not be deemed to have violated the provisions of this subsection (1) because of the failure to record securities transactions of any advisory representative if ~~((the investment adviser establishes))~~ you establish that ~~((#))~~ you instituted adequate procedures, and

used reasonable diligence to obtain promptly, reports of all transactions required to be recorded.

(m)(i) Notwithstanding the provisions of (l) of this subsection, ~~((where the investment adviser is))~~ if you are primarily engaged in a business or businesses other than advising investment advisory clients, you must maintain a record ~~((must be maintained))~~ of every transaction in a security in which ~~((the investment adviser))~~ you or any of your advisory representatives (as hereinafter defined) ~~((of the investment adviser))~~ has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except:

(A) Transactions effected in any account over which neither ~~((the investment adviser))~~ you nor any of your advisory representatives ~~((of the investment adviser))~~ has any direct or indirect influence or control; and

(B) Transactions in securities which are direct obligations of the United States.

The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that ~~((the investment adviser))~~ you or any of your advisory representatives has any direct or indirect beneficial ownership in the security. You shall record a transaction ~~((shall be recorded))~~ not later than ten days after the end of the calendar quarter in which the transaction was effected.

(ii) ~~((An investment adviser is))~~ You are "primarily engaged in a business or businesses other than advising investment advisory clients" ~~((when))~~ if, for each of ~~((its))~~ your most recent three fiscal years or for the period of time since organization, whichever is lesser, ~~((the investment adviser))~~ you derived, on an unconsolidated basis, more than fifty percent of:

(A) ~~((Its))~~ Your total sales and revenues; and

(B) ~~((Its))~~ Your income (or loss) before income taxes and extraordinary items, from such other business or businesses.

(iii) For purposes of this subsection (1)(m) of this section the following definitions will apply:

(A) "Advisory representative," when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, shall mean any partner, officer, director, or employee of the investment adviser who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

(I) Any person in a control relationship to the investment adviser;

(II) Any affiliated person of a controlling person; and

(III) Any affiliated person of an affiliated person.

(B) "Control" shall mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than twenty-five percent of the voting securities of a company shall be presumed to control such company.

(iv) ~~((An investment adviser))~~ You shall not be deemed to have violated the provisions of this subsection (1)(m) because of ~~((the))~~ your failure to record securities transactions of any advisory representative if ~~((the investment adviser establishes))~~ you establish that ~~((it))~~ you instituted adequate procedures, and used reasonable diligence to obtain promptly, reports of all transactions required to be recorded.

(n) The following items related to WAC 460-24A-145 and Part ~~((H))~~ 2 of Form ADV:

(i) A copy of each written statement, and each amendment or revision, given or sent to any of your clients or prospective clients ~~((of the investment adviser))~~ as required by WAC 460-24A-145;

(ii) Any summary of material changes that is required by Part ~~((H))~~ 2 of Form ADV that is not included in the written statement; and

(iii) A record of the dates that each written statement, each amendment or revision thereto, and each summary of material changes was given or offered to any client or prospective client who subsequently becomes a client.

(o) For each client that ~~((was))~~ you obtained ~~((by the adviser))~~ by means of a solicitor to whom you paid a cash fee ~~((was paid by the adviser))~~:

(i) Evidence of a written agreement to which ~~((the adviser is))~~ you are a party related to the payment of such fee;

(ii) A signed and dated acknowledgment of receipt from the client evidencing the client's receipt of ~~((the investment adviser's))~~ your disclosure statement and a written disclosure statement of the solicitor; and

(iii) A copy of the solicitor's written disclosure statement. The written agreement, acknowledgment, and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with Rule 275.206 (4)-3 of the Investment Advisers Act of 1940.

For purposes of this subsection, the term "solicitor" shall mean any person or entity who, for compensation, acts as an agent of an investment adviser in referring potential clients.

(p) All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including, but not limited to, electronic media that ~~((the investment adviser))~~ you circulate~~((s))~~ or distribute~~((s))~~, directly or indirectly, to two or more persons (other than persons connected with ~~((the investment adviser))~~ you); provided however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance

or rate of return of all managed accounts shall be deemed to satisfy the requirements of this subsection.

(q) A file containing a copy of all written communications received or sent regarding any litigation involving ~~((the investment adviser))~~ you or any investment adviser representative or employee, and regarding any written customer or client complaint.

(r) Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

(s) Written information about each security that you recommended a client buy or sell that is the basis for making any recommendation or providing any investment advice to such client.

(t) Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

~~((t))~~ (u) A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self regulatory organization and that pertains to ~~((the registrant))~~ you or ~~((its))~~ your advisory representatives as that term is defined in (m)(iii)(A) of this subsection, which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

~~((u))~~ (v) If you inadvertently held or obtained a client's securities or funds and returned them to the client within three business days or forwarded third-party checks within three business days, you shall keep the following records relating to the inadvertent custody:

(i) Issuer;

(ii) Type of security and series;

(iii) Date of issue;

(iv) For debt instruments, the denomination, interest rate and maturity date;

(v) Certificate number, including alphabetical prefix or suffix;

(vi) Name in which registered;

(vii) Date given to the adviser;

(viii) Date sent to client or sender;

(ix) Form of delivery to client or sender, or copy of the form of delivery to client or sender; and

(x) Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

(w) Copies, with original signatures of ~~((the investment adviser's))~~ your appropriate signatory and the investment adviser representative, of each initial Form ~~((U-4))~~ U4 and each amendment to Disclosure Reporting Pages (DRPs ~~((U-4))~~) must be retained by ~~((the investment adviser))~~ you (filing on behalf of the investment adviser representative) and must be made available for inspection upon regulatory request.

~~((z))~~ (x) If you obtain possession of securities that are acquired from the issuer in a transaction or chain of transactions not involving any public offering that comply with the exception from custody under WAC 460-24A-109(1), you shall keep the following records:

(i) A record showing the issuer or current transfer agent's name, address, phone number, and other applicable contact

information pertaining to the party responsible for recording client interests in the securities; and

(ii) A copy of any legend, shareholder agreement or other agreement showing that those securities are transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(y) A copy of a current written business continuity plan which identifies procedures to be followed in the event of an emergency or significant business disruption and which is reasonably designed to enable you to meet your fiduciary obligations to your clients.

(2)(a) If ~~((an investment adviser))~~ you are subject to subsection (1) of this section ~~((has))~~ and have custody or possession of securities or funds of any client, the records required to be made and kept under subsection (1) of this section shall include:

~~((b))~~ (i) A copy of any and all documents executed by the client (including a limited power of attorney) under which the adviser is authorized or permitted to withdraw a client's funds or securities maintained with a custodian upon the adviser's instruction to the custodian.

(ii) A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts.

~~((b))~~ (iii) A separate ledger account for each such client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase or sale, and all debits and credits.

~~((c))~~ (iv) Copies of confirmations of all transactions effected by or for the account of any client.

~~((d))~~ (v) A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount of interest of each client, and the location of each security.

~~((e))~~ Every investment adviser (vi) A copy of each of the client's quarterly account statements, as generated and delivered by the qualified custodian. If you also generate a statement that is delivered to the client, you shall also maintain copies of such statements along with the date such statements were sent to the clients.

(vii) If applicable to your situation, a copy of the special examination report verifying the completion of the examination by an independent certified public accountant and describing the nature and extent of the examination.

(viii) A record of any finding by the independent certified public accountant of any material discrepancies found during the examination.

(ix) If applicable, evidence of the client's designation of an independent representative.

(b) If you have custody because you advise a pooled investment vehicle, as defined in WAC 460-24A-005 (1)(a)(iii), you shall also keep the following records:

(i) True, accurate and current account statements;

(ii) Where you comply with WAC 460-24A-107 (1)(b) the records required to be made and kept shall include:

(A) The date of the audit;

(B) A copy of the audited financial statements; and

(C) Evidence of the mailing of the audited financial statements to all limited partners, members or other benefi-

cial owners within one hundred twenty days of the end of its fiscal year.

(iii) Where you comply with WAC 460-24A-107 (1)(a) the records required to be made and kept shall include:

(A) A copy of the written agreement with the independent party reviewing all fees and expenses, indicating the responsibilities of the independent party; and

(B) Copies of all invoices and receipts showing the approval by the independent party for payment through the qualified custodian.

(c) If you have custody because you are acting as the trustee for a beneficial trust as it is described in WAC 460-24A-109(3), you shall also keep the following records until the account is closed or the adviser is no longer acting as trustee:

(i) A copy of the written statement given to each beneficial owner setting forth a description of the requirements of WAC 460-24A-105 and the reason why you will not be complying with those requirements; and

(ii) A written acknowledgment signed and dated by each beneficial owner, and evidencing receipt of the statement required under WAC 460-24A-109 (3)(b).

(3) If you are subject to subsection (1) of this section ((who)) and you render((s)) any investment supervisory or management service to any client, you shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by ((the investment adviser)) you, make and keep true, accurate and current:

(a) Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase or sale.

(b) For each security in which any client has a current position, information from which ((the investment adviser)) you can promptly furnish the name of each client, and the current amount ((of)) or the interest of the client.

(4) Any books or records required by this section may be maintained by ((the investment adviser)) you in such manner that the identity of any client to whom ((such investment adviser)) you render((s)) investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

(5) ((Every investment adviser)) If you are subject to subsection (1) of this section, you shall preserve the following records in the manner prescribed:

(a) All books and records required to be made under the provisions of subsections (1) to (3)((a)), inclusive, of this section except for books and records required to be made pursuant to subsection (1)(k) and (p) of this section shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on the record, the first two years in ((the)) your principal office ((of the investment adviser)).

(b) Your partnership articles and any amendments, articles of incorporation, charter documents, minute books and stock certificate books of ((the investment adviser)) you and ((of)) any of your predecessors, shall be maintained in ((the)) your principal office ((of the investment adviser)) and pre-

served until at least three years after termination of the enterprise.

(c) Books and records required to be made pursuant to subsection (1)(k) and (p) of this section shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in ((the)) your principal office ((of the investment adviser)), from the end of the fiscal year during which ((the investment adviser)) you last published or otherwise disseminated, directly or indirectly, including by electronic media, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication.

(d) Notwithstanding other record preservation requirements of this section, you shall maintain the following records or copies ((shall be maintained)) at ((the)) your business location ((of the investment adviser)) from which the customer or client is being provided or has been provided with investment advisory services:

(i) Records required to be preserved under subsections (1)(c), (g) through (j), (n), (o), and (q) through (s), (2), and (3) of this section shall be maintained for the period prescribed in (a) of this subsection; and

(ii) Records or copies required pursuant to subsection (1)(k) and (p) of this section which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number shall be maintained for the period prescribed in (c) of this subsection.

(6) If you are an investment adviser subject to subsection (1) of this section, you shall, before ceasing to conduct or discontinuing business as an investment adviser, ((shall)) arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the director in writing of the exact address where the books and records will be maintained during the period.

(7)(a) ((The records required to be maintained and preserved pursuant to this section may be immediately produced or reproduced by photograph on film or, as provided in (b) of this subsection, on magnetic disk, tape, or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:

(i) Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record;

(ii) Be ready at all times to promptly provide any facsimile enlargement of film or computer printout or copy of the computer storage medium that the director, by its examiners or other representatives, may request;

(iii) Store, separately from the original, one copy of the film or computer storage medium for the time required;

(iv) With respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction; and

(v) ~~With respect to records stored on photographic film, at all times have available for the director's examination of its records pursuant to RCW 21.20.100, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.~~

~~(b) Pursuant to (a) of this subsection, an investment adviser may maintain and preserve on computer tape, disk, or other computer storage medium records which, in the ordinary course of the adviser's business, are created by the adviser on electronic media or received by the adviser solely on electronic media or by electronic data transmission.)~~ The records required to be maintained and preserved pursuant to this section may be immediately produced or reproduced, and maintained and preserved for the required time, by an investment adviser on:

(i) Paper or hard copy form, as those records are kept in their original form;

(ii) Micrographic media, including microfilm, microfiche, or any similar medium; or

(iii) Electronic storage media, including any digital storage medium or system that meets the terms of this section.

(b) If you are an investment adviser required to maintain and preserve records pursuant to this section, you must:

(i) Arrange and index the records in a way that permits easy location, access, and retrieval of any particular record;

(ii) Provide promptly any of the following that the director may request:

(A) A legible, true, and complete copy of the record in the medium and format in which it is stored;

(B) A legible, true, and complete printout of the record; and

(C) Means to access, view, and print the records; and

(iii) Separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by this section.

(c) If the records that the investment adviser is required to maintain and preserve pursuant to this section are created or maintained on electronic storage media, the investment adviser must establish and maintain procedures:

(i) To maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction;

(ii) To limit access to the records to properly authorized personnel and the director; and

(iii) To reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

(8) As used in this section, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and "discretionary authority" shall not include discretion as to the price at which, or the time when, a transaction is or is to be effected, if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

(9) Any book or other record made, kept, maintained, and preserved in compliance with Rules 17a-3 and 17a-4 under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained, and preserved under this section,

shall be deemed to be made, kept, maintained, and preserved in compliance with this section.

(10) ~~(Every)~~ If you are an investment adviser registered or required to be registered in this state and ((that has its)) have your principal place of business in a state other than this state ((shall be)), you are exempt from the requirements of this section, provided ((the investment adviser is)) you are licensed in the state where ((it has its)) you have your principal place of business and ((is)) are in compliance with that state's recordkeeping requirements.

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

**AMENDATORY SECTION** (Amending WSR 01-16-125, filed 7/31/01, effective 10/24/01)

**WAC 460-24A-205 Notice of changes by investment advisers and investment adviser representatives.** (1) ~~(Each licensed investment adviser must)~~ If you are an investment adviser registered or required to be registered pursuant to RCW 21.20.040, you must:

(a) Promptly file with IARD, in accordance with the instructions to Form ADV, any amendments to ~~((its)) your~~ Form ADV. An amendment will be considered promptly filed if it is filed within thirty days of the event that requires the filing of the amendment; ~~((and))~~

(b) File an ~~((updated))~~ annual updating amendment to the Form ADV with IARD within ninety days ((of)) after the end of ((the investment adviser's)) your fiscal year; and

(c) File thirty days prior to use any amendments to your advisory contracts or offering materials for any pooled investment vehicles that you advise.

(2) ~~((Each))~~ If you are an investment adviser representative ((has)) registered or required to be registered pursuant to RCW 21.20.040, you have a continuing obligation to update the information required by Form ~~((U-4)) U4~~ as changes occur and you must promptly file with IARD any amendments to ~~((the representative's)) your Form ((U-4)) U4~~. An amendment will be considered promptly filed if it is filed within thirty days of the event that requires the filing of the amendment.

**AMENDATORY SECTION** (Amending WSR 01-16-125, filed 7/31/01, effective 10/24/01)

**WAC 460-24A-210 Notice of complaint must be filed with director.** ~~((Each licensed))~~ If you are an investment adviser registered or required to be registered pursuant to RCW 21.20.040 who has filed a complaint against any of ((its)) your partners, officers, directors, agents licensed in Washington or associated persons with any law enforcement agency, any other regulatory agency having jurisdiction over the securities industry, or with any bonding company regarding any loss arising from alleged acts of such person, you shall send a copy of such complaint to the director, within ten days following its filing with such other agency or bonding company.

AMENDATORY SECTION (Amending WSR 08-14-006, filed 6/19/08, effective 7/20/08)

**WAC 460-24A-220 Unethical business practices—Investment advisers and federal covered advisers.** ~~((A person who is))~~ If you are an investment adviser, investment adviser representative, or a federal covered adviser ~~((is))~~, you are a fiduciary and ~~((has))~~ have a duty to act primarily for the benefit of ~~((its))~~ your clients. If you are a federal covered adviser, the provisions of this subsection apply ~~((to federal covered advisers))~~ to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290). While the extent and nature of this duty varies according to the nature of the relationship with the client and the circumstances of each case, in accordance with RCW 21.20.020 (1)(c) and 21.20.110 (1)(g) ~~((an investment adviser or a federal covered adviser))~~ you shall not engage in dishonest or unethical business practices ~~((:))~~ including, but not limited to, the following:

(1) Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser, investment adviser representative, or federal covered investment adviser.

(2) Exercising any ~~((discretionary power))~~ discretion in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the ~~((discretionary power))~~ discretion relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

(3) Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account in light of the fact that an investment adviser, investment adviser representative, or federal covered adviser in such situations can directly benefit from the number of securities transactions effected in a client's account. The rule appropriately forbids an excessive number of transaction orders to be induced by an adviser for a "customer's account."

(4) Placing an order to purchase or sell a security for the account of a client without authority to do so.

(5) Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

(6) Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment adviser, or a financial institution engaged in the business of loaning funds.

(7) Loaning money or securities to a client unless ~~((the investment adviser is))~~ you are a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment adviser.

(8) ~~((To misrepresent))~~ Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser representative, federal covered adviser, or any employee ~~((s of the investment adviser))~~, or person affiliated with the investment adviser, or ~~((to misrepresent))~~ misrepresenting the nature of the advisory services being offered or fees to be charged for such service, or to omit to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

(9) Providing a report or recommendation to any advisory client prepared by someone other than ~~((the adviser))~~ you without disclosing that fact. (This prohibition does not apply to a situation where ~~((the adviser))~~ you use ~~((s))~~ published research reports or statistical analyses to render advice or where ~~((an adviser))~~ you order ~~((s))~~ such a report in the normal course of providing service.)

(10) Charging a client an unreasonable advisory fee.

(11) Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment adviser, investment adviser representative, federal covered adviser, or any ~~((of its))~~ employees or affiliated persons thereof which could reasonably be expected to impair the rendering of unbiased and objective advice including:

(a) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(b) Charging a client an advisory fee for rendering advice when ~~((a commission))~~ compensation for ~~((executing))~~ effecting securities transactions pursuant to such advice will be received by the investment adviser, investment adviser representative, federal covered investment adviser, or ~~((its))~~ employees or affiliated persons thereof.

(12) Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered.

(13) Publishing, circulating or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940.

(14) Disclosing the identity, ~~((affairs, or))~~ investments, or other financial information of any client or former client unless required by law to do so, or unless consented to by the client.

(15) Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where ~~((the investment adviser has))~~ you have custody or possession of such securities or funds when the ~~((adviser's))~~ action of the investment adviser, federal covered adviser, or investment adviser representative or employee is subject to and does not comply with ~~((the))~~ applicable custody requirements ~~((of Reg. 206(4)-2 under the Investment Advisers Act of 1940))~~.

(16) Entering into, extending or renewing any investment advisory contract ~~((unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the~~

~~contract grants discretionary power to the adviser and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract)) that does not comply with the requirements set forth in WAC 460-24A-130.~~

(17) Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of Section 204A of the Investment Advisers Act of 1940.

(18) Entering into, extending, or renewing any advisory contract contrary to the provisions of section 205 of the Investment Advisers Act of 1940. This provision shall apply to all advisers and investment adviser representatives registered or required to be registered under the Securities Act of Washington, chapter 21.20 RCW, notwithstanding whether ~~((such adviser))~~ you would be exempt from federal registration pursuant to section 203(b) of the Investment Advisers Act of 1940.

(19) To indicate, in an advisory contract, any condition, stipulation, or provisions binding any person to waive or limit compliance with, or require indemnification for any violations of, any provision of the Securities Act of Washington, chapter 21.20 RCW, or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of section 215 of the Investment Advisers Act of 1940.

(20) Engaging in any act, practice, or course of business which is fraudulent, deceptive, ~~((or))~~ manipulative ~~((contrary to the provisions of section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under section 203 of the Investment Advisers Act of 1940))~~ or unethical.

(21) Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of the Securities Act of Washington, chapter 21.20 RCW, or any rule or regulation thereunder.

(22) Using any term or abbreviation thereof in a manner that misleadingly states or implies that a person has special expertise, certification, or training in financial planning, including, but not limited to, the misleading use of a senior-specific certification or designation as set forth in WAC 460-25A-020.

(23) Making, in the solicitation of clients, any untrue statement of fact, or omitting to state a material fact necessary in order to make the statement made, in light of the circumstances under which they are made, not misleading.

The conduct set forth above is not inclusive. Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices shall be deemed an unethical business practice. The federal statutory and regulatory provisions referenced herein shall apply to investment advisers, investment adviser representatives, and federal covered advisers, to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290).

## REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 460-24A-058 Completion of filing.

**WSR 14-09-011**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**EARLY LEARNING**

[Filed April 4, 2014, 10:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-11-088.

Title of Rule and Other Identifying Information: WAC 170-06-0120 Director's list, removing "carnal knowledge" from the director's list of crimes that permanently disqualify an individual from authorization to care for or have unsupervised access to children.

Hearing Location(s): Department of Early Learning (DEL), Olympia Office, 1110 Jefferson Street S.E., Olympia, WA 98501, on June 2, 2014, at 12 p.m.

Date of Intended Adoption: Not earlier than June 2, 2014.

Submit Written Comments to: Rules Coordinator, DEL, P.O. Box 40970, Olympia, WA 98504-0970, e-mail rules@del.wa.gov, fax (360) 586-0533, by June 2, 2014.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by May 19, 2014, (360) 407-1962.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To align DEL's director's list of crimes that permanently disqualify an individual from authorization to care for or have unsupervised access to children with department of social and health services (DSHS) secretary's list of crimes and negative actions for which a person is denied unsupervised access to vulnerable adults, juveniles, and children.

Reasons Supporting Proposal: Effective February 25, 2014, the crime of carnal knowledge was removed from the DSHS secretary's list of crimes and negative actions list that applies to all programs except aging and long-term support administration (AL TSA) home and community services and AL TSA residential care services. The crime of carnal knowledge was repealed in 1975 and replaced by the current sex crimes that are listed on the secretary's list of crimes and negative actions. This rule making is a housekeeping change intended to align DEL's director's list with DSHS' list and does not affect the crimes that are considered disqualifying under Washington statute and program rule. When a repealed crime is reported, an equivalency review is conducted to determine if the crime is equivalent to a current crime listed on the director's list.

Statutory Authority for Adoption: RCW 43.215.060, 43.215.070, chapter 43.215 RCW.

Statute Being Implemented: Chapter 43.215 RCW.

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Lynne Shanafelt, Licensing Administration, DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 407-1953; Implementation and Enforcement: DEL licensing offices, statewide.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are not expected to impose new costs on businesses that are required to comply. If the rules result in costs, those costs are not expected to be "more than minor" as defined in chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328.

April 4, 2014  
Elizabeth M. Hyde  
Director

**AMENDATORY SECTION** (Amending WSR 12-12-040, filed 5/30/12, effective 7/1/12)

**WAC 170-06-0120 Director's list.** (1) A subject individual's conviction for any crimes listed in column (a) in the table below will permanently disqualify him or her from authorization to care for or have unsupervised access to children in child care.

(2) A subject individual's conviction for any crime listed in column (b) in the table below will disqualify him or her from authorization to care for or have unsupervised access to children in child care for a period of five years from the date of conviction.

(a) Crimes that permanently disqualify a subject individual	(b) Crimes that disqualify a subject individual for five years from date of conviction
Abandonment of a child	Abandonment of a dependent person not against child
Arson	Assault 3 not domestic violence
Assault 1	Assault 4/simple assault
Assault 2	Burglary
Assault 3 domestic violence	Coercion
Assault of a child	Custodial assault
Bail jumping	Custodial sexual misconduct
((Carnal knowledge))	Extortion 2
Child buying or selling	Forgery
Child molestation	Harassment
Commercial sexual abuse of a minor	
Communication with a minor for immoral purposes	Identity theft

(a) Crimes that permanently disqualify a subject individual	(b) Crimes that disqualify a subject individual for five years from date of conviction
Controlled substance homicide	Leading organized crime
Criminal mistreatment	Malicious explosion 3
Custodial interference	Malicious mischief
Dealing in depictions of minor engaged in sexually explicit conduct	Malicious placement of an explosive 2
Domestic violence (felonies only)	Malicious placement of an explosive 3
Drive-by shooting	Malicious placement of imitation device 1
Extortion 1	Patronizing a prostitute
Harassment domestic violence	Possess explosive device
Homicide by abuse	Promoting pornography
Homicide by watercraft	Promoting prostitution 1
Incendiary devices (possess, manufacture, dispose)	Promoting prostitution 2
Incest	Promoting suicide attempt
Indecent exposure/public indecency (felonies only)	Prostitution
Indecent liberties	Reckless endangerment
Kidnapping	Residential burglary
Luring	Stalking
Malicious explosion 1	Theft
Malicious explosion 2	Theft-welfare
Malicious harassment	Unlawful imprisonment
Malicious mischief domestic violence	Unlawful use of a building for drug purposes
Malicious placement of an explosive 1	Violation of the Imitation Controlled Substances Act (manufacture/deliver/intent)
Manslaughter	Violation of the Uniform Controlled Substances Act (manufacture/deliver/intent)
Murder/aggravated murder	Violation of the Uniform Legend Drug Act (manufacture/deliver/intent)
	Violation of the Uniform Precursor Drug Act (manufacture/deliver/intent)
Possess depictions minor engaged in sexual conduct	
Rape	

<b>(a) Crimes that permanently disqualify a subject individual</b>	<b>(b) Crimes that disqualify a subject individual for five years from date of conviction</b>
Rape of child	
Robbery	
Selling or distributing erotic material to a minor	
Sending or bringing into the state depictions of a minor	
Sexual exploitation of minors	
Sexual misconduct with a minor	
Sexually violating human remains	
Use of machine gun in felony	
Vehicular assault	
Vehicular homicide (negligent homicide)	
Violation of child abuse restraining order	
Violation of civil anti-harassment protection order	
Violation of protection/contact/restraining order	
Voyeurism	

**WSR 14-09-014  
PROPOSED RULES  
SECRETARY OF STATE**

[Filed April 4, 2014, 4:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-05-029.

Title of Rule and Other Identifying Information: Notaries in the uniform real property electronic recording standards.

Hearing Location(s): Washington State Archives Building, 1129 Washington Street, Olympia, WA, (360) 586-1492, on May 27, 2014, at 11:00 a.m.

Date of Intended Adoption: May 28, 2014.

Submit Written Comments to: Katie Blinn, P.O. Box 40220, Olympia, WA 98504-0220, e-mail katie.blinn@sos.wa.gov, fax (360) 586-5629, by May 27, 2014.

Assistance for Persons with Disabilities: Contact Katie Blinn by May 23, 2014, (360) 902-4168.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule is to allow electronically recorded documents that require notarization to be notarized by any authorized notary, and to eliminate the requirement that the notary be appointed by the Washington state department of licensing.

Reasons Supporting Proposal: The rule changes allow electronically recorded documents that must be notarized to be notarized by any authorized notary, and eliminate the requirement that the notary be appointed by the Washington state department of licensing. This is consistent with chapter 42.44 RCW.

Statutory Authority for Adoption: RCW 65.24.040.

Statute Being Implemented: RCW 65.24.040.

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

Name of Proponent: Office of the secretary of state, governmental.

Name of Agency Personnel Responsible for Drafting: Katie Blinn, P.O. Box 40220, Olympia, WA 98504-0220, (360) 902-4168; Implementation and Enforcement: Julie Blecha, P.O. Box 40238, Olympia, WA 98504-0238, (360) 586-4902.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable.

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

April 4, 2014  
Kenneth Raske  
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 13-03-070, filed 1/14/13, effective 2/14/13)

**WAC 434-661-020 Definitions.** For the purpose of this chapter:

(1) "Delivery package" means a document, group of documents, related or unrelated, bundled into a single entity for electronic transfer.

(2) "Document" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium, is retrievable in perceivable form, and is eligible to be recorded in the land records maintained by the county recording officer.

(3) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(4) "Electronic document" means a document that is received or sent by the recording officer in an electronic form.

(5) "Electronic signature" means an electronic sound, symbol or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

(6) "Electronic notarization" means a notarial act performed in accordance with chapter 42.44 RCW and chapter 308-30 WAC by a notary public(~~(-appointed by the Washington state department of licensing.)~~) who provides notarial acts using electronic interface.

(7) "Electronic recording standards commission" or "eRecording standards commission" or "ERSC" means the body of stakeholders appointed by the secretary of state to review electronic recording standards and make recommendations to the secretary in accordance with RCW 65.24.040.

(8) "eRecording" means electronic recording of real property documents.

(9) "Metadata" means data describing other data to facilitate the understanding, use, and management of that data.

(10) "Open architecture" means computer architecture or software architecture that employs specifications that are open to the public to allow for adding, upgrading and exchange of components produced by a broad range of manufacturers.

(11) "PDF (portable document format)" means the file format originally created by Adobe Systems for document exchange allowing documents to be viewed as they were intended to appear. PDFs are a common format for image exchange or world wide web presentation.

(12) "Recording" means making a matter of record in the office of the recording officer in accordance with RCW 65.04.030.

(13) "Recording officer" means the county auditor or other official county recording officer.

(14) "TIFF" (tagged image file format) means the variable-resolution bitmapped image format originally developed by the Aldus Corporation (now part of Adobe Systems) and published as ISO 12639:2004, Graphic technology-Prepress digital data exchange-Tag image file format for image technology (TIFF/IT). TIFF is a common format for high-quality black and white, gray-scaled, or color graphics of any resolution and is made up of individual dots or pixels.

(15) "URPERA (Uniform Real Property Electronic Recording Act)" means the body of recommended legislation released in 2004 by the National Conference of Commissioners on Uniform State Laws (NCCUSL) for adoption by state legislatures. URPERA authorizes recording officers to accept electronic documents for recording in accordance with established standards. Washington state adopted a modified version of URPERA in 2008 (chapter 65.24 RCW).

(16) "Washington state archives" means the office of the secretary of state, division of archives and records management.

(17) "Web portal (gateway)" means a site that functions as a point of access to information or services on the world wide web.

(18) "XML (extensible markup language)" means an extensible document language for specifying document content. XML is not a predefined markup language but a meta-language (a language for describing other languages) allowing the user to specify a document type definition (DTD) and design customized markup languages for different classes of documents.

**AMENDATORY SECTION** (Amending WSR 13-03-070, filed 1/14/13, effective 2/14/13)

**WAC 434-661-030 Washington real property electronic recording standards. (1) Technical standards and implementation guidelines.**

(a) Electronic recording of real property documents shall meet technical standards for document formatting and document data fields and follow implementation guidelines as prescribed by the Property Records Industry Association (PRIA) which are hereby incorporated by reference, made a part of this rule, and listed below:

(i) PRIA Request Version 2.4.2, August 2007;

(ii) PRIA Response Version 2.4.2, August 2007;

(iii) Document Version 2.4.1, October 2007;

(iv) Notary Version 2.4.1, October 2007;

(v) eRecording XML Implementation Guide for Version 2.4.1, Revision 2, March 2007;

(vi) URPERA Enactment and eRecording Standards Implementation Guide, December 2005.

These standards are available from the Property Records Industry Association, 2501 Aerial Center Parkway, Ste. 103, Morrisville, NC 27560, and at <http://www.pria.us/>.

(b) eRecording shall be offered and conducted in accordance with the models of submission described in the URPERA Enactment and eRecording Standards Implementation Guide, Section 2.3, eRecording Models.

(c) Each recording officer who accepts documents for eRecording shall provide open architecture for reception of electronic documents. All reception software, including web portals, must support PRIA eRecording SML Implementation Guide for Version 2.4.1 standards.

**(2) Web portals.**

(a) The world wide web will be the most common delivery medium for electronic documents.

(b) A document delivered over the web should provide a minimum amount of information in the delivery package sufficient to identify and authenticate the sender to the recording officer, while also itemizing the contents of the package.

(c) Payment processing, if supplied at the portal, shall comply with the 2012 NACHA Operating Rules & Guidelines, which is hereby incorporated by reference and made a part of this rule. This publication is available from NACHA: The Electronic Payments Association, 13450 Sunrise Valley Drive, Suite 100, Herndon, VA 20171, and at <http://www.nacha.org/>. The recording officer and portal provider shall determine the portal's payment processing capabilities, and each recording officer shall designate approved methods of payment, which may include credit cards, ACH (automated clearing house), escrow accounts, electronic checks, or other methods.

**(3) Business rules.** Recording officers shall establish and publish business rules that govern how eRecording will be conducted. The business rules may be in electronic or hard copy format and may appear on a portal or the recording officer web site. The transmitting parties' electronic acknowledgment of acceptance of the terms of the business rules is acceptable. The business rules must cover the following items:

(a) Memorandum of understanding or contract;

(b) Defined technical specifications;

(c) Document formatting and indexing specifications;

(d) Hours of operations and processing schedules;

(e) Payment options;

(f) Termination terms;

(g) Document rejection rights;

(h) Statement that any amendments and/or alterations to the business rules will be published with adequate notice before taking effect;

(i) Statement clarifying the liability of the recording offices.

**(4) Security.**

(a) All electronic documents must be secured in such a way that both the transmitting and receiving parties are assured of each other's identity and that no unauthorized party can view or alter the electronic document during transmission, processing, and delivery. If followed through the entire electronic document process of execution through recording, the security measures identified in chapter 6 of the eRecording XML Implementation Guide for Version 2.4.1, Revision 2, March 2007, satisfy this requirement.

(b) Each recording officer who elects to accept electronic real property documents for recordation shall implement reasonable measures such that each electronic document accepted for recordation is protected from alteration and unauthorized access.

(5) **Electronic signatures.** Recording officers are only required to accept electronic signatures that they have the technology to support. Recording officers have no responsibility to authenticate electronic signatures embedded within the body of the document.

(6) **Notarizations.** Pursuant to chapter 65.24 RCW, notarizations must:

(a) Be performed by a notary public who has been appointed by the Washington state department of licensing, or a person authorized by the laws of another jurisdiction outside the state of Washington, in accordance with chapter ~~((43.44))~~ 42.44 RCW; and

(b) Comply with all applicable requirements for performing a notarial act as found in chapter 42.44 RCW and chapter 308-30 WAC, as amended from time to time, except that in the case of ~~((an electronic))~~ notarizations performed electronically, an impression of the official seal or stamp is not required.

Recording officers have no responsibility for verifying or authenticating notary signatures and acknowledgments.

(7) **File formats for eRecording.** The electronic recording standards commission recommends that electronic recordings be converted to (if necessary) and preserved as image files along with their associated metadata. If submissions are accepted in XHTML (extensible hypertext markup language) format, they shall be converted to a digital image until the viability of preserving these eRecordings in their native format has been demonstrated. Document images should be submitted as defined in WAC 434-663-305 and meet all state requirements for recorded instruments as defined in RCW 65.04.045.

(8) **Records retention and preservation.** Recording officers must not destroy public records, including electronic records, without the approval of the local records committee, in accordance with RCW 40.14.070.

Recording officers must retain electronic public records in electronic format such that the records remain usable, searchable, retrievable, and authentic for the length of the designated retention period in accordance with WAC 434-662-040.

The local records committee has approved the local government common records retention schedule (CORE) and the county auditor records retention schedule authorizing the minimum retention periods for recording officer records, and designating those records with enduring value as "archival."

Recording officers may transfer public records designated as "archival," including electronic records, to Washington state archives for preservation and for facilitating public access to the records.

(9) **Payment of recording fees.** Electronic payment of recording fees and excise tax, where applicable, shall be collected by the county agency responsible for such as prescribed in accordance with Washington state law and accepted industry standards without incurring unreasonable electronic processing fees.

**WSR 14-09-025**

**PROPOSED RULES**

**LIQUOR CONTROL BOARD**

[Filed April 9, 2014, 10:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-05-037.

Title of Rule and Other Identifying Information: WAC 314-42-110 Brief adjudicative proceedings and 314-42-115 Preliminary record in brief adjudicative proceedings.

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on May 28, 2014, at 10:00 a.m.

Date of Intended Adoption: June 4, 2014.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9689, by May 28, 2014.

Assistance for Persons with Disabilities: Contact Karen McCall by May 28, 2014, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule making is to revise the brief adjudicatory [adjudicative] proceedings (BAP) rules to include marijuana application denials and suspensions in the BAP process.

Reasons Supporting Proposal: This rule making will identify specific instances where the liquor control board may use BAP in lieu of the more formal hearing process for marijuana license denials and suspensions.

Statutory Authority for Adoption: RCW 66.08.030.

Statute Being Implemented: RCW 69.50.331.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not required.

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

April 9, 2014  
Sharon Foster  
Chairman

AMENDATORY SECTION (Amending WSR 12-24-032, filed 11/28/12, effective 12/29/12)

**WAC 314-42-110 Brief adjudicative proceedings.**

The Administrative Procedure Act provides for brief adjudicative proceedings in RCW 34.05.482 through 34.05.494. The board will conduct brief adjudicative proceedings where it does not violate any provision of law and where protection of the public interest does not require the board to give notice and an opportunity to participate to persons other than the parties. If an adjudicative proceeding is requested, a brief adjudicative proceeding will be conducted where the matter involves one or more of the following:

- (1) Liquor license suspensions due to nonpayment of spirits taxes per RCW 66.24.010;
- (2) Liquor license denials per WAC 314-07-065(2);
- (3) Liquor license denials per WAC 314-07-040;
- (4) Special occasion license application denials per WAC 314-07-040;
- (5) Special occasion license application denials per WAC 314-07-065(7);
- (6) MAST provider or trainer denials for noncompliance with a support order in accordance with RCW 66.20.085;
- (7) MAST provider denials or revocations per WAC 314-17-070;
- (8) Liquor license suspensions due to nonpayment of beer or wine taxes per WAC 314-19-015;
- (9) One-time event denials for private clubs per WAC 314-40-080;
- (10) Banquet permit denials per WAC 314-18-030;
- (11) The restrictions recommended by the local authority on a nightclub license are denied per WAC 314-02-039 (a local authority may request a BAP);
- (12) The restrictions recommended by a local authority are approved per WAC 314-02-039 (an applicant for a nightclub license may request a BAP);
- (13) Liquor license suspensions due to noncompliance with a support order per RCW 66.24.010;
- (14) Liquor license suspensions due to noncompliance with RCW 74.08.580(2), electronic benefits cards, per RCW 66.24.013;
- (15) License suspension due to nonpayment of spirits liquor license fees per RCW 66.24.630;
- (16) License suspension due to nonpayment of spirits distributor license fees per RCW 66.24.055; ~~((and))~~
- (17) Tobacco license denials per WAC 314-33-005;
- (18) Marijuana license denials per WAC 314-55-050(2);
- (19) Marijuana license denials per WAC 314-55-050(4);
- (20) Marijuana license denials per WAC 314-55-050(8);
- (21) Marijuana license denials per WAC 314-55-050(10);

(22) Marijuana license suspensions per WAC 314-55-050(11);

(23) Marijuana license denials per WAC 314-55-050(12); and

(24) Marijuana license denials per WAC 314-55-050(13).

AMENDATORY SECTION (Amending WSR 12-24-032, filed 11/28/12, effective 12/29/12)

**WAC 314-42-115 Preliminary record in brief adjudicative proceedings.** (1) The preliminary record with respect to a liquor license suspension due to nonpayment of spirits taxes in RCW 66.24.010 shall consist of:

(a) All correspondence from department of revenue requesting missing taxes or reports; and

(b) Request from department of revenue to the liquor control board requesting suspension of the liquor license.

(2) The preliminary record with respect to a liquor license intent to deny under WAC 314-07-065(2) where the applicant has failed to submit information or documentation shall consist of:

(a) All correspondence between the applicant and the board pertaining to requests for information or documentation; and

(b) A copy of the application report prepared by licensing division staff.

(3) The preliminary record with respect to a liquor license application intent to deny where the applicant failed to meet the criminal history standards outlined in WAC 314-07-040 shall consist of:

(a) A copy of the application report prepared by licensing division staff;

(b) The personal/criminal history statement(s) submitted by the applicant;

(c) Any interoffice correspondence reporting criminal history of applicant(s); and

(d) Copies of any correspondence submitted by the applicant explaining or rebutting the criminal history findings.

(4) The preliminary record with respect to a special occasion liquor license application (chapter 314-05 WAC) intent to deny where the applicant failed to meet the criminal history standards outlined in WAC 314-07-040 shall consist of:

(a) A copy of the application report prepared by licensing division staff;

(b) The personal/criminal history statement(s) submitted by the applicant(s);

(c) Any interoffice correspondence reporting criminal history of applicant(s); and

(d) Copies of any correspondence submitted by the applicant explaining or rebutting the criminal history findings.

(5) The preliminary record with respect to a special occasion liquor license application (chapter 314-05 WAC) intent to deny where the application was objected to by the local authority wherein the event is scheduled (WAC 314-07-065(7)) shall consist of:

(a) A copy of the special occasion license application and supporting materials;

(b) A copy of the notice sent to the local authority by licensing division staff;

(c) A copy of the objection received from the local authority; and

(d) A copy of any correspondence from the applicant rebutting the objection from the local authority.

(6) The preliminary record with respect to suspension of mandatory alcohol server, provider or trainer, for noncompliance with a support order in accordance with RCW 66.20.085 shall consist of:

(a) A copy of the license suspension certification from the department of social and health services; and

(b) A copy of all documents received from or on behalf of the permit holder rebutting the identification of the server, provider, or trainer.

(7) The preliminary record with respect to suspension of mandatory alcohol server, provider or trainer, for failing to meet the criminal history standards outlined in WAC 314-07-070(1) shall consist of:

(a) A copy of the personal/criminal history statement submitted by the applicant;

(b) Any interoffice correspondence reporting criminal history of applicant; and

(c) Copies of any correspondence submitted by the applicant, permit holder, provider or trainer explaining or rebutting the criminal history findings.

(8) The preliminary record with respect to liquor license suspensions due to nonpayment of beer or wine taxes per WAC 314-19-015 shall consist of:

(a) Copies of any correspondence requesting missing taxes, fees, or penalties when identified after processing reporting form monthly; and

(b) Copies of backup documentation including envelopes showing late filing, corrections on reporting form, and audit findings.

(9) The preliminary record with respect to one-time event denials for private clubs in WAC 314-40-080 shall consist of:

(a) A copy of the written request for a one-time event;

(b) A copy of the written denial including the reason(s) for the denial; and

(c) Copies of all correspondence.

(10) The preliminary record with respect to banquet permit denials in WAC 314-18-030 shall consist of:

(a) The application for a banquet permit;

(b) A copy of the written denial including the reason(s) for denial; and

(c) All correspondence.

(11) The preliminary record with respect to denial of restrictions requested on a nightclub license by a local authority under the provisions in WAC 314-02-039 shall consist of:

(a) A copy of the application report prepared by licensing division staff and the threshold decision by the licensing director or his/her designee;

(b) A copy of all correspondence from the local authority requesting restrictions on the nightclub premises; and

(c) Copies of any correspondence submitted by the nightclub applicant or license holder rebutting the request for restrictions.

(12) The preliminary record with respect to licensing's approval of a request for restrictions on a nightclub license under the provisions of WAC 314-02-039 shall consist of:

(a) A copy of the application report prepared by licensing division staff and the threshold decision by the licensing director or his/her designee;

(b) A copy of all correspondence from the local authority requesting restrictions on the nightclub premises; and

(c) Copies of any correspondence submitted by the nightclub applicant or license holder rebutting the request for restrictions.

(13) The preliminary record with respect to a liquor license suspension due to noncompliance with a support order from the department of social and health services under RCW 66.24.010 shall consist of:

(a) The written request from department of social and health services to suspend the liquor license;

(b) A copy of the written liquor control board suspension order; and

(c) Copies of all correspondence.

(14) The preliminary record with respect to a liquor license suspension due to noncompliance with RCW 74.08.-580, electronic benefits cards, per RCW 66.24.013 shall consist of:

(a) The written request from department of social and health services to suspend the liquor license;

(b) The complete investigation from department of social and health services to support the suspension;

(c) A copy of the written liquor control board suspension order; and

(d) Copies of all correspondence.

(15) The preliminary records with respect to liquor license suspension due to nonpayment of spirits liquor license fees per RCW 66.24.630 shall consist of:

(a) All correspondence relating to discrepancies in fees and/or penalties when identified after processing reporting forms; and

(b) All backup documentation including envelopes showing late filing, corrections on reporting forms, and audit findings.

(16) The preliminary records with respect to liquor license suspensions due to nonpayment of spirits distributor license fees per RCW 66.24.055 shall consist of:

(a) All correspondence requesting missing fees and/or penalties when identified after processing reporting forms; and

(b) All backup documentation including envelopes showing late filing, corrections on reporting forms, and audit findings.

(17) The preliminary record with respect to tobacco license denials shall consist of:

(a) The license application from business license services;

(b) The personal/criminal history statement submitted by the applicant;

(c) The judicial information system criminal history and division recommendation;

(d) The letter of denial from the liquor control board;

(e) The notice of intent to deny statement to the applicant; and

(f) All correspondence.

(18) The preliminary record with respect to a marijuana license intent to deny due to failure or refusal to submit information per WAC 314-55-050(2) shall consist of:

(a) All correspondence between the applicant and the board pertaining to requests for information or documentation; and

(b) A copy of the application report prepared by licensing division staff.

(19) The preliminary record with respect to a marijuana license application intent to deny where the applicant failed to meet the criminal history standards outlined in WAC 314-55-050(4) shall consist of:

(a) A copy of the application report prepared by licensing division staff;

(b) The personal/criminal history statement(s) submitted by the applicant;

(c) Any communication from the Washington state patrol or Federal Bureau of Investigation pertaining to the criminal history of the applicant;

(d) Any interoffice correspondence reporting criminal history of applicant(s); and

(e) Copies of any correspondence submitted by the applicant explaining or rebutting the criminal history findings.

(20) The preliminary record with respect to a marijuana license intent to deny due to denial, suspension, or cancellation of a marijuana license in another jurisdiction per WAC 314-55-050(8) shall consist of:

(a) A copy of the application report prepared by licensing division staff; and

(b) Documentation from any other state or jurisdiction demonstrating the action taken against the applicant.

(21) The preliminary record with respect to a marijuana license intent to deny due to proximity to the perimeter of entities listed in WAC 314-55-050(10) shall consist of:

(a) A copy of the application report prepared by licensing division staff;

(b) Any interoffice correspondence reporting the measurement from the proposed business location to the facility within one thousand feet;

(c) Documentation of measurement data including Geographic Positioning System (GPS) and related calculations; and

(d) Correspondence from the applicant illustrating alternative measurement data and/or rebuttal of the LCB's measurement data.

(22) The preliminary record with respect to a marijuana license intent to suspension due to nonpayment of marijuana excise taxes per WAC 314-55-050(11) shall consist of:

(a) All correspondence relating to discrepancies in fees and/or penalties when identified after processing reporting forms; and

(b) All backup documentation including envelopes showing late filing, corrections on reporting forms, and audit findings.

(23) The preliminary record with respect to a marijuana license intent to deny due to failure to submit an attestation concerning current tax obligations per WAC 314-55-050(12) shall consist of:

(a) A copy of the application report prepared by licensing division staff; and

(b) All correspondence with the applicant related to the request for this information.

(24) The preliminary record with respect to a marijuana license intent to deny due to denial, suspension, or revocation of a liquor license per WAC 314-55-050(13) shall consist of:

(a) A copy of the application report prepared by licensing division staff; and

(b) Documentation from liquor control board records or any other state demonstrating the action taken against the applicant.

### WSR 14-09-033

#### PROPOSED RULES DEPARTMENT OF EARLY LEARNING

[Filed April 10, 2014, 12:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-05-019.

Title of Rule and Other Identifying Information: WAC 170-296A-0010 Definitions, updating the definition of "preschool age child."

Hearing Location(s): Department of Early Learning (DEL), Olympia Office, 1110 Jefferson Street S.E., Olympia, WA 98501, on May 28, 2014, at 12 p.m.

Date of Intended Adoption: Not earlier than May 28, 2014.

Submit Written Comments to: Rules Coordinator, DEL, P.O. Box 40970, Olympia, WA 98504-0970, e-mail rules@del.wa.gov, fax (360) 586-0533, by May 28, 2014.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by May 14, 2014, (360) 407-1962.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To revise family home child care licensing minimum standards rules to include children age six in the definition of "preschool age child."

Reasons Supporting Proposal: The proposed rules will provide licensed child care programs greater flexibility as to groupings of mixed age preschool and school-age children. Research into accepted child care standards does not contradict the approach in terms of developmental criteria or safety.

Statutory Authority for Adoption: RCW 43.215.060, 43.215.070, chapter 43.215 RCW.

Statute Being Implemented: Chapter 43.215 RCW.

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Lynne Shanafelt, Licensing Administration, DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 407-1953; Implementation and Enforcement: DEL licensing offices, statewide.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are not expected to impose new costs on businesses that are

required to comply. If the rules result in costs, those costs are not expected to be "more than minor" as defined in chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328.

April 10, 2014  
Elizabeth M. Hyde  
Director

AMENDATORY SECTION (Amending WSR 12-21-050, filed 10/12/12, effective 11/12/12)

**WAC 170-296A-0010 Definitions.** The following definitions apply throughout this chapter unless the context clearly indicates otherwise. Certain definitions appear in the section the term is used if the definition applies only to a specific section or sections:

**"Accessible to children"** means areas of the facility and materials that the children can easily get to on their own.

**"Agency"** as used in this chapter, has the same meaning as in RCW 43.215.010 (1)(c).

**"Available"** means accessible and ready for use or service.

**"Bathroom"** means any room containing a built-in flush-type toilet.

**"Capacity"** means the maximum number of children the licensee is authorized by the department to have in care at any given time.

**"Child"** means an individual who is younger than age thirteen, including any infant, toddler, preschool-age child, or school-age child as defined in this chapter.

**"Child abuse or neglect"** has the same meaning as "abuse or neglect" under RCW 26.44.020 and chapter 388-15 WAC.

**"Child care"** means the developmentally appropriate care, protection, and supervision of children that is designed to promote positive growth and educational experiences for children outside the child's home for periods of less than twenty-four hours a day.

**"Clean"** or **"cleaning"** means to remove dirt and debris (such as soil, food, blood, urine, or feces) by scrubbing and washing with a soap or detergent solution and rinsing with water. Cleaning is the first step in the process of sanitizing or disinfecting a surface or item.

**"Confidential"** means the protection of personal information, such as the child's records, from persons who are not authorized to see or hear it.

**"Denial of a license"** means an action by the department to not issue a child care license to an applicant for an initial license, or to a licensee operating under an initial license seeking a nonexpiring full license, based on the applicant's or initial licensee's inability or failure to meet the requirements of chapter 43.215 RCW or requirements adopted by the department pursuant to chapter 43.215 RCW.

**"Department"** or **"DEL"** means the Washington state department of early learning.

**"Developmentally appropriate"** means curriculum, materials or activities provided at a level that is consistent with the abilities or learning skills of the child.

**"Discipline"** means a method used to redirect a child in order to achieve a desired behavior.

**"Disinfect"** or **"disinfecting"** means to eliminate virtually all germs on a surface by the process of cleaning and rinsing, followed by:

(a) A chlorine bleach and water solution of one table-spoon of chlorine bleach to one quart of cool water, allowed to stand wet for at least two minutes; or

(b) Other disinfectant product if used strictly according to the manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, adequate time to allow the product to dry or rinsing if applicable, and appropriateness for use on the surface to be disinfected. Any disinfectant used on food contact surfaces or toys must be labeled safe for food contact surfaces.

**"DOH"** means the Washington state department of health.

**"DSHS"** means the Washington state department of social and health services.

**"Enforcement action"** means a department issued:

(a) Denial, suspension, revocation or modification of a license;

(b) Probationary license;

(c) Civil monetary penalty (fine); or

(d) Disqualification from having unsupervised access to children in care.

**"Family home child care"** means a facility licensed by the department where child care is provided for twelve or fewer children in the family living quarters where the licensee resides as provided in RCW 43.215.010 (1)(c).

**"Family living quarters"** means a licensee's or license applicant's residence and other spaces or buildings on the premises that meet the facility requirements of this chapter and are approved by the department for child care.

**"Fine"** has the same meaning as "civil monetary penalty," "civil fines," or "monetary penalty" under chapter 43.215 RCW.

**"Inaccessible to children"** means an effective method or barrier that reasonably prevents a child's ability to reach, enter, or use items or areas.

**"Infant"** means a child age birth through eleven months of age.

**"Licensed space"** means the indoor and outdoor space on the premises approved by the department for the purpose of providing licensed child care.

**"Licensee"** for the purposes of this chapter, means the individual listed on a family home child care license issued by the department of early learning authorizing that individual to provide child care under the requirements of this chapter and chapter 43.215 RCW.

**"Licensor"** means an individual employed by the department and designated by the director to inspect and monitor an agency or other child care facility for compliance with the requirements of this chapter and chapter 43.215 RCW.

**"MERIT"** means the managed education registry information tool used to track professional development for early learning professionals. See also "STARS."

**"Modification of a license"** means department action to change the conditions identified on a current license.

**"Nonexpiring full license"** or **"nonexpiring license"** means a full license that is issued to a licensee following the initial licensing period as provided in WAC 170-296A-1450.

**"Nonprescription medication"** means any of the following:

- (a) Nonaspirin fever reducers or pain relievers;
- (b) Nonnarcotic cough suppressants;
- (c) Cold or flu medications;
- (d) Antihistamines or decongestants;
- (e) Vitamins;
- (f) Ointments or lotions specially intended to relieve itching;
- (g) Diaper ointments and talc free powders specially used in the diaper area of children;
- (h) Sun screen;
- (i) Hand sanitizer gels; or
- (j) Hand wipes with alcohol.

**"One year of experience"** means at least twelve months of early learning experience as demonstrated by a resume and references:

- (a) In a supervisory role in a child care setting where the individual was responsible for supervising staff and complying with licensing standards; or
- (b) As a Washington state:
  - (i) Child care center or school age center director, program supervisor, or lead teacher as defined in chapters 170-151 and 170-295 WAC; or
  - (ii) Family home child care licensee or qualified primary staff person.

**"Overnight care"** means child care provided for a child anytime between the hours of eight o'clock at night and six o'clock in the morning that includes a sleep period for the child.

**"Personal needs"** means an individual's hygiene, toileting, medication, cleansing, eating or clothing needs. "Personal needs" does not mean smoking or use of tobacco products, illegal drug use or misuse of prescription drugs, conducting business or related activities, sleeping or napping, screen time, or leaving children in care unattended.

**"Physical restraint"** means the practice of rendering a child helpless or keeping a child in captivity.

**"Poison"** for the purposes of this chapter includes, but is not limited to, substances, chemicals, chemical compounds (other than naturally occurring compounds such as water or salt), or similar items, that even in small quantities are likely to cause injury or illness if it is swallowed or comes into contact with a child's skin, eyes, mouth, or mucus membranes.

**"Premises"** means the licensed or unlicensed space at the licensed address including, but not limited to, buildings, land and residences.

**"Preschool age child"** means a child age thirty months through ~~(five)~~ six years of age who is not attending kindergarten or elementary school.

**"Primary staff person"** means a staff person other than the licensee who has been authorized by the department to care for and have unsupervised access to children in care.

**"RCW"** means Revised Code of Washington.

**"Revocation"** or **"revoke"** means the formal action by the department to close a child care business and take the license due to the licensee's failure to comply with chapter

43.215 RCW or requirements adopted pursuant to chapter 43.215 RCW.

**"Sanitize"** means to reduce the number of microorganisms on a surface by the process of:

- (a) Cleaning and rinsing, followed by using:
  - (i) A chlorine bleach and water solution of three-quarters teaspoon of chlorine bleach to one quart of cool water, allowed to stand wet for at least two minutes; or
  - (ii) Another sanitizer product if used strictly according to manufacturer's label instructions including, but not limited to, quantity used, time the product must be left in place, and adequate time to allow the product to dry, and appropriateness for use on the surface to be sanitized. If used on food contact surfaces or toys, a sanitizer product must be labeled as safe for food contact surfaces; or
- (b) For laundry and dishwasher use only, "sanitize" means use of a bleach and water solution or temperature control.

**"School age child"** means a child not less than five years of age through twelve years of age who is attending kindergarten or school.

**"Screen time"** means watching, using or playing television, computers, video games, video or DVD players, mobile communication devices, and similar devices.

**"Sleeping equipment"** includes a bed, cot, mattress, mat, crib, bassinet, play yard or "pack and play." "Sleeping equipment" does not include any car seat or infant swing.

**"Staff"** unless referring specifically to a "primary staff person," means any primary staff person, assistant, or volunteer helping to provide child care, or a household member acting in the capacity of a primary staff person, assistant or volunteer, whether compensated or not compensated.

**"STARS"** means the state training and registry system.

**"Suspension of a license"** means a formal department action to stop a license pending a department decision regarding further enforcement action.

**"Toddler"** means a child age twelve months through twenty-nine months of age.

**"Unlicensed space"** means the indoor and outdoor areas of the premises, not approved as licensed space by DEL, that the licensee must make inaccessible to the children during child care hours.

**"Unsupervised access"** has the same meaning as "unsupervised access" in WAC 170-06-0020.

**"WAC"** means the Washington Administrative Code.

**"Weapons"** means an instrument or device of any kind that is used or designed to be used to inflict harm including, but not limited to, rifles, handguns, shotguns, antique firearms, knives, swords, bows and arrows, BB guns, pellet guns, air rifles, electronic or other stun devices, or fighting implements.

**WSR 14-09-034**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**EARLY LEARNING**

[Filed April 10, 2014, 12:21 p.m.]

April 10, 2014  
Elizabeth M. Hyde  
Director

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-05-046.

Title of Rule and Other Identifying Information: WAC 170-290-0003 Definitions, 170-290-0185 WCCC subsidy rates—Five-year-old children, 170-290-0200 Daily child care rates—Licensed or certified child care centers and DEL contracted seasonal day camps, 170-290-0205 Daily child care rates—Licensed or certified family home child care providers, 170-290-0225 Special needs rates—Licensed or certified child care centers and seasonal day camps and 170-290-0230 Special needs rates—Licensed or certified family home child care providers. Inserting definitions of the terms "preschool age child" and "school-age child."

Hearing Location(s): Department of Early Learning (DEL), Olympia Office, 1110 Jefferson Street S.E., Olympia, WA 98501, on May 29, 2014, at 12 p.m.

Date of Intended Adoption: Not earlier than May 29, 2014.

Submit Written Comments to: Rules Coordinator, DEL, P.O. Box 40970, Olympia, WA 98504-0970, e-mail rules@del.wa.gov, fax (360) 586-0533, by May 29, 2014.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by May 15, 2014, (360) 407-1962.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To define the terms "preschool age child" and "school-age child" consistent with concurrent updates to chapters 170-295 and 170-296A WAC revising the definition of "preschool age child."

Reasons Supporting Proposal: The proposed revision to the definition of "preschool age child" will provide licensed child care programs greater flexibility as to groupings of mixed age preschool and school-age children. Research into accepted child care standards does not contraindicate the approach in terms of developmental criteria or safety. Definitions of affected terms in chapter 170-290 WAC are needed to align it with those revisions.

Statutory Authority for Adoption: RCW 43.215.060, 43.215.070, chapter 43.215 RCW.

Statute Being Implemented: Chapter 43.215 RCW.

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Lynne Shanafelt, Licensing Administration, DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 407-1953; Implementation and Enforcement: DEL licensing offices, statewide.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are not expected to impose new costs on businesses that are required to comply. If the rules result in costs, those costs are not expected to be "more than minor" as defined in chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328.

AMENDATORY SECTION (Amending WSR 12-11-025, filed 5/8/12, effective 6/8/12)

**WAC 170-290-0003 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

**"Able"** means being physically and mentally capable of caring for a child in a responsible manner.

**"Authorization"** means the documentation that DSHS gives to providers specifying units of full-day, half-day or hourly child care a family may receive during their eligibility period, which may be adjusted based on the family's need for care or changes in eligibility.

**"Available"** means being free to provide care when not participating in an approved work activity under WAC 170-290-0040, 170-290-0045, 170-290-0050, or 170-290-0055 during the time child care is needed.

**"Calendar year"** means those dates between and including January 1st and December 31st.

**"Collective bargaining agreement"** or **"CBA"** means the most recent agreement that has been negotiated and entered into between the exclusive bargaining representative for all licensed and license-exempt family child care providers as defined in chapter 41.56 RCW.

**"Consumer"** means the person receiving:

(a) WCCC benefits as described in part II of this chapter; or

(b) SCC benefits as described in part III of this chapter.

**"Copayment"** means the amount of money the consumer is responsible to pay the child care provider toward the cost of child care each month.

**"Days"** means calendar days unless otherwise specified.

**"DEL"** means the department of early learning.

**"DSHS"** means the department of social and health services.

**"Eligibility"** means that a consumer has met all of the requirements of:

(a) Part II of this chapter to receive WCCC program subsidies; or

(b) Part III of this chapter to receive SCC program subsidies.

**"Employment"** or **"work"** means engaging in any legal, income generating activity that is taxable under the United States Tax Code or that would be taxable with or without a treaty between an Indian Nation and the United States. This includes unsubsidized employment, as verified by an employee's pay stubs or DSHS employer verification form, and subsidized employment, such as:

(a) Working in a federal or state paid work study program; or

(b) VISTA volunteers, AmeriCorps, JobCorps, and Washington Service Corps (WSC) if the income is taxed.

**"In-home/relative provider"** or **"license-exempt provider,"** referred to in the collective bargaining agreement as **"family, friends and neighbors provider"** or **"FFN pro-**

**vider,"** means a provider who meets the requirements in WAC 170-290-0130 through 170-290-0167.

**"In loco parentis"** means the adult caring for an eligible child in the absence of the biological, adoptive, or step-parents, and who is not a relative, court-ordered guardian, or custodian, and is responsible for exercising day-to-day care and control of the child.

**"Night shift"** means employment for a minimum of six hours between the hours of 8 p.m. and 8 a.m.

**"Preschool age child"** means a child age thirty months through six years of age who is not attending kindergarten or elementary school.

**"SCC"** means the seasonal child care program, which is a child care subsidy program described in part III of this chapter that assists eligible families who are seasonally employed in agriculturally related work outside of the consumer's home to pay for licensed or certified child care.

**"School age child"** means a child not less than five years of age through twelve years of age who is attending kindergarten or elementary school.

**"Seasonally available labor" or "seasonally available agricultural related work"** means work that is available only in a specific season during part of the calendar year. The work is directly related to the cultivation, production, harvesting or processing of fruit trees or crops.

**"Self-employment"** means engaging in any legal income generating activity that is taxable under the United States Tax Code or that would be taxable with or without a

treaty between an Indian Nation and the United States, as verified by Washington state business license, or a tribal, county, or city business or occupation license, as applicable, and a uniform business identification (UBI) number for approved self-employment activities that occur outside of the home. Incorporated businesses are not considered self-employment enterprises.

**"Waiting list"** means a list of families who are currently working and waiting for child care subsidies when funding is not available to meet the requests from all eligible families.

**"WCCC"** means the working connections child care program, which is a child care subsidy program described in part II of this chapter that assists eligible families in obtaining child care subsidies for approvable activities that enable them to work, attend training, or enroll in educational programs outside the consumer's home.

AMENDATORY SECTION (Amending WSR 13-21-113, filed 10/22/13, effective 11/22/13)

**WAC 170-290-0200 Daily child care rates—Licensed or certified child care centers and DEL contracted seasonal day camps.** (1) **Base rate.** DSHS pays the lesser of the following to a licensed or certified child care center or DEL contracted seasonal day camp:

- (a) The provider's private pay rate for that child; or
- (b) The maximum child care subsidy daily rate for that child as listed in the following table:

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - ( <del>5</del> -yrs)) <u>6 yrs not attending kindergarten or school</u>	School-age (5 - 12 yrs <u>attending kindergarten or school</u> )
Region 1	Full-Day	\$29.10	\$24.47	\$23.12	\$21.77
	Half-Day	\$14.57	\$12.24	\$11.57	\$10.88
Spokane County	Full-Day	\$29.76	\$25.03	\$23.65	\$22.27
	Half-Day	\$14.90	\$12.53	\$11.84	\$11.13
Region 2	Full-Day	\$29.39	\$24.53	\$22.75	\$20.12
	Half-Day	\$14.70	\$12.27	\$11.37	\$10.08
Region 3	Full-Day	\$38.89	\$32.43	\$28.01	\$27.20
	Half-Day	\$19.45	\$16.21	\$14.00	\$13.61
Region 4	Full-Day	\$45.27	\$37.80	\$31.71	\$28.56
	Half-Day	\$23.08	\$18.91	\$15.86	\$14.28
Region 5	Full-Day	\$33.19	\$28.56	\$25.14	\$22.32
	Half-Day	\$16.59	\$14.28	\$12.57	\$11.17
Region 6	Full-Day	\$32.63	\$28.01	\$24.47	\$23.93
	Half-Day	\$16.33	\$14.00	\$12.24	\$11.97

(i) Centers in Clark County are paid Region 3 rates.

(ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates.

(2) The child care center WAC 170-295-0010 allows providers to care for children from one month up to and including the day before their thirteenth birthday. The provider must obtain a child-specific and time-limited exception from their child care licensor to provide care for a child outside the age listed on the center's license. If the provider has

an exception to care for a child who has reached his or her thirteenth birthday, the payment rate is the same as subsection (1) of this section, and the five through twelve year age range column is used for comparison.

(3) If the center provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited exception and the child must meet the special needs requirement according to WAC 170-290-0220.

AMENDATORY SECTION (Amending WSR 13-21-113, filed 10/22/13, effective 11/22/13)

**WAC 170-290-0205 Daily child care rates—Licensed or certified family home child care providers. (1) Base rate.** DSHS pays the lesser of the following to a licensed or certified family home child care provider:

- (a) The provider's private pay rate for that child; or
- (b) The maximum child care subsidy daily rate for that child as listed in the following table.

		Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - <del>((5-<u>yrs</u>))</del> ) <u>6 yrs not attending kin-</u> <u>dergarten or school</u>	School-age (5 - 12 yrs <u>attending kin-</u> <u>dergarten or school</u> )
Region 1	Full-Day	\$24.78	\$24.78	\$21.54	\$21.54	\$19.16
	Half-Day	\$12.38	\$12.38	\$10.77	\$10.77	\$ 9.58
Spokane County	Full-Day	\$25.34	\$25.34	\$22.03	\$22.03	\$19.59
	Half-Day	\$12.67	\$12.67	\$11.02	\$11.02	\$ 9.79
Region 2	Full-Day	\$26.16	\$26.16	\$22.75	\$20.35	\$20.35
	Half-Day	\$13.08	\$13.08	\$11.37	\$10.17	\$10.17
Region 3	Full-Day	\$34.71	\$34.71	\$29.92	\$26.33	\$23.93
	Half-Day	\$17.36	\$17.36	\$14.96	\$13.17	\$11.97
Region 4	Full-Day	\$40.84	\$40.84	\$35.51	\$29.92	\$28.72
	Half-Day	\$20.43	\$20.43	\$17.77	\$14.96	\$14.36
Region 5	Full-Day	\$27.53	\$27.53	\$23.93	\$22.75	\$20.35
	Half-Day	\$13.77	\$13.77	\$11.97	\$11.37	\$10.17
Region 6	Full-Day	\$27.53	\$27.53	\$23.93	\$23.93	\$22.75
	Half-Day	\$13.77	\$13.77	\$11.97	\$11.97	\$11.37

(2) The family home child care WAC 170-296A-0010 and 170-296A-5550 allows providers to care for children from birth up to and including the day before their thirteenth birthday.

(3) If the family home provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited exception and the child must meet the special needs requirement according to WAC 170-290-0220.

(4) DSHS pays family home child care providers at the licensed home rate regardless of their relation to the children (with the exception listed in subsection (5) of this section). Refer to subsection (1) and the five through twelve year age range column for comparisons.

(5) DSHS cannot pay family home child care providers to provide care for children in their care if the provider is:

- (a) The child's biological, adoptive or step-parent;

(b) The child's legal guardian or the guardian's spouse or live-in partner; or

(c) Another adult acting in loco parentis or that adult's spouse or live-in partner.

AMENDATORY SECTION (Amending WSR 14-03-060, filed 1/13/14, effective 2/13/14)

**WAC 170-290-0225 Special needs rates—Licensed or certified child care centers and seasonal day camps. (1)**

In addition to the base rate for licensed or certified child care centers and seasonal day camps listed in WAC 170-290-0200, DSHS may authorize the following additional special needs daily rates which are reasonable and verifiable as provided in WAC 170-290-0220:

- (a) **Level 1.** The daily rate listed in the table below:

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - <del>((5-<u>yrs</u>))</del> ) <u>6 yrs not attending</u> <u>kindergarten or school</u>	School-age (5 - 12 yrs <u>attending kinder-</u> <u>garten or school</u> )
Region 1	Full-Day	\$7.30	\$6.14	\$5.80	\$5.45
	Half-Day	\$3.65	\$3.07	\$2.90	\$2.73
Region 2	Full-Day	\$7.36	\$6.15	\$5.70	\$5.05
	Half-Day	\$3.68	\$3.08	\$2.85	\$2.52
Region 3	Full-Day	\$9.75	\$8.13	\$7.02	\$6.82
	Half-Day	\$4.88	\$4.06	\$3.51	\$3.41
Region 4	Full-Day	\$11.35	\$9.48	\$7.95	\$7.16
	Half-Day	\$5.67	\$4.74	\$3.98	\$3.58

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - <del>(5-yr)</del> ) <u>6 yrs not attending kindergarten or school</u>	School-age (5 - 12 yrs <u>attending kinder- garten or school</u> )
Region 5	Full-Day	\$8.32	\$7.16	\$6.30	\$5.59
	Half-Day	\$4.16	\$3.58	\$3.15	\$2.80
Region 6	Full-Day	\$8.18	\$7.02	\$6.14	\$6.00
	Half-Day	\$4.09	\$3.51	\$3.07	\$3.00

(i) Centers in Clark County are paid Region 3 rates;  
 (ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates;

(b) **Level 2.** A rate greater than Level 1, not to exceed \$15.89 per hour.

(2) If a provider is requesting one-on-one supervision or direct care for the child with special needs the person providing the one-on-one care must:

- (a) Be at least eighteen years of age; and
- (b) Meet the requirements for being an assistant under chapter 170-295 WAC and maintain daily records of one-on-one care provided, to include the name of the employee providing the care.

(3) If the provider has an exception to care for a child who:

- (a) Is thirteen years or older; and

(b) Has special needs according to WAC 170-290-0220, DSHS authorizes the special needs payment rate as described in subsection (1) of this section using the five through twelve year age range for comparison.

AMENDATORY SECTION (Amending WSR 14-03-060, filed 1/13/14, effective 2/13/14)

**WAC 170-290-0230 Special needs rates—Licensed or certified family home child care providers.** (1) In addition to the base rate for licensed or certified family home child care providers listed in WAC 170-290-0205, DSHS may authorize the following additional special needs daily rates which are reasonable and verifiable as provided in WAC 170-290-0220:

(a) **Level 1.** The daily rate listed in the table below:

		Infants (Birth - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - <del>(5-yr)</del> ) <u>6 yrs not attending kindergarten or school</u>	School-age (5 - 12 yrs <u>attending kindergarten or school</u> )
Region 1	Full-Day	\$6.00	\$5.40	\$5.40	\$4.80
	Half-Day	\$3.00	\$2.70	\$2.70	\$2.40
Region 2	Full-Day	\$6.00	\$5.70	\$5.10	\$5.10
	Half-Day	\$3.00	\$2.85	\$2.55	\$2.55
Region 3	Full-Day	\$8.70	\$7.50	\$6.60	\$6.00
	Half-Day	\$4.35	\$3.75	\$3.30	\$3.00
Region 4	Full-Day	\$9.00	\$8.90	\$7.50	\$7.20
	Half-Day	\$4.50	\$4.45	\$3.75	\$3.60
Region 5	Full-Day	\$6.60	\$6.00	\$5.70	\$5.10
	Half-Day	\$3.30	\$3.00	\$2.85	\$2.55
Region 6	Full-Day	\$6.60	\$6.00	\$6.00	\$5.70
	Half-Day	\$3.30	\$3.00	\$3.00	\$2.85

(b) **Level 2.** A rate greater than Level 1, not to exceed \$15.89 per hour.

(2) If the provider has an exception to care for a child who:

- (a) Is thirteen years or older; and
- (b) Has special needs according to WAC 170-290-0220, DSHS authorizes the special needs payment rate as described in subsection (1) of this section using the five through twelve year age range for comparison.

(3) If a provider is requesting one-on-one supervision/direct care for the child with special needs, the person providing the one-on-one care must:

- (a) Be at least eighteen years old; and

(b) Meet the requirements for being an assistant under chapter 170-296A WAC and maintain daily records of one-on-one care provided, to include the name of the employee providing the care.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 170-290-0185 WCCC subsidy rates—Five-year-old children.

**WSR 14-09-035**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**EARLY LEARNING**

[Filed April 10, 2014, 12:22 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-05-046.

Title of Rule and Other Identifying Information: WAC 170-295-0010 What definitions under this chapter apply to licensed child care providers?, 170-295-2090 What are the required staff to child ratios and maximum group sizes for my center?, 170-295-2100 What are the exceptions to group sizes and staff to child ratios?, and 170-295-5100 What are the requirements for toilets, handwashing sinks and bathing facilities?, updating the definition of "preschool age child" and allowing ambulatory infants in mixed age groups under certain circumstances.

Hearing Location(s): Department of Early Learning (DEL), Olympia Office, 1110 Jefferson Street S.E., Olympia, WA 98501, on May 27, 2014, at 12 p.m.

Date of Intended Adoption: Not earlier than May 27, 2014.

Submit Written Comments to: Rules Coordinator, DEL, P.O. Box 40970, Olympia, WA 98504-0970, e-mail rules@del.wa.gov, fax (360) 586-0533, by May 27, 2014.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by May 13, 2014, (360) 407-1962.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To revise child care center licensing minimum standards rules to include children age six in the definition of "preschool age child" and to allow mixed age groups to include ambulatory infants under certain circumstances, and to reorganize certain affected sections for greater clarity.

Reasons Supporting Proposal: The proposed rules will provide licensed child care programs greater flexibility as to groupings of mixed age preschool and school-age children and allow them to move ambulatory infants into mixed age groups based on the child's development and individual needs. Research into accepted child care standards does not contraindicate either approach in terms of developmental criteria or safety.

Statutory Authority for Adoption: RCW 43.215.060, 43.215.070, chapter 43.215 RCW.

Statute Being Implemented: Chapter 43.215 RCW.

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Lynne Shanafelt, Licensing Administration, DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 407-1953; Implementation and Enforcement: DEL licensing offices, statewide.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are not expected to impose new costs on businesses that are required to comply. If the rules result in costs, those costs are not expected to be "more than minor" as defined in chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328.

April 10, 2014  
Elizabeth M. Hyde  
Director

AMENDATORY SECTION (Amending WSR 13-21-109, filed 10/22/13, effective 11/22/13)

**WAC 170-295-0010 What definitions under this chapter apply to licensed child care providers? "American Indian child"** means any unmarried person under the age of eighteen who is:

(1) A member or eligible for membership in a federally recognized Indian tribe, or who is Eskimo, Aleut, or other Alaska native and a member of an Alaskan native regional corporation or Alaska native village;

(2) Determined or eligible to be found Indian by the Secretary of the Interior, including through issuance of a certificate of degree of Indian blood, or by the Indian health service;

(3) Considered to be Indian by a federally recognized or nonfederally recognized Indian tribe; or

(4) A member or entitled to be a member of a Canadian tribe or band, Metis community, or nonstatus Indian community from Canada.

**"Anti-bias"** is an approach that works against biases and recognizes when others are treated unfairly or oppressively based on race, color, national origin, marital status, gender, sexual orientation, class, religion, creed, disability, or age.

**"CACFP"** means child and adult care food program established by congress and funded by the United States Department of Agriculture (USDA).

**"Capacity"** means the maximum number of children that a licensee is authorized to have on the premises of the child care at any one time.

**"Center"** means the same as **"child care center."**

**"Certification"** means department approval of a person, home, or facility that does not legally need to be licensed, but wants evidence that they meet the minimum licensing requirements (also see **"Tribal certification"**).

**"Child abuse or neglect"** means the physical abuse, sexual abuse, sexual exploitation, abandonment or negligent treatment or maltreatment of a child by any person indicating the child's health, welfare, and safety is harmed.

**"Child-accessible"** means areas where children regularly have access such as: Entrances and exits to and from the center, classrooms or child care areas, playground area including equipment and fencing, parking areas, walkways, decks, platforms, stairs and any items available for children to use in these areas.

**"Child care center"** means the same as a **"child day care center"** or a facility providing regularly scheduled care for a group of children one month of age through twelve years of age for periods less than twenty-four hours.

**"Clean"** means to remove dirt and debris from a surface by scrubbing and washing with a detergent solution and rins-

ing with water. This process must be accomplished before sanitizing a surface.

**"Commercial kitchen equipment"** means equipment designed for business purposes such as restaurants.

**"Contagious disease"** means as provided in WAC 246-110-010.

**"Cultural relevancy"** creates an environment that reflects home cultures, communities and lives of children enrolled in the program.

**"Department," "we," "us," or "our"** refers to and means the state department of early learning (DEL) and its predecessor agency the department of social and health services (DSHS).

**"Developmentally appropriate practice":**

(1) Means that the provider should interact with each child in a way that recognizes and respects the child's chronological and developmental age;

(2) Is based on knowledge about how children grow and learn; and

(3) Reflects the developmental level of the individual child, and interactions and activities must be planned with the needs of the individual child in mind.

**"Director"** means the person responsible for the overall management of the center's facility and operation, except that "DEL director" means the director of the department of early learning.

**"Disinfect"** means to eliminate virtually all germs from inanimate surfaces through the use of chemicals or physical agents.

**"Domestic kitchen"** means a kitchen equipped with residential appliances.

**"External medication"** means a medication that is not intended to be swallowed or injected but is to be applied to the external parts of the body, such as medicated ointments, lotions, or liquids applied to the skin or hair.

**"I," "you," and "your"** refer to and mean the licensee or applicant for a child care license.

**"Inaccessible to children"** means stored or maintained in a manner preventing children from reaching, entering, or using potentially hazardous items or areas. Examples include but are not limited to: Quantities of water, sharp objects, medications, chemicals, electricity, fire, mechanical equipment, entrapment or fall areas.

**"Individual plan of care"** means that the center's health policies and procedures do not cover the needs of the individual child so an individual plan is needed. Examples may include children with allergies, asthma, Down syndrome, tube feeding, diabetes care such as blood glucose monitoring, or nebulizer treatments.

**"Infant"** means a child one-month through eleven months of age.

**"Lead teacher"** means the person who is the lead child care staff person in charge of a child or group of children and implementing the activity program.

**"License"** means a permit issued by the department authorizing a licensee by law to operate a child care center and certifying that the licensee meets the minimum requirements under licensure.

**"Licensee" or "you"** means the person, organization, or legal entity responsible for operating the center.

**"Maximum potential capacity based on square footage"** is the maximum number of children a licensee can be licensed for based on the amount of usable space (square footage) in the licensee's center. The licensee may be licensed for less than the maximum potential capacity. A licensee may not be licensed for more than the maximum potential capacity.

**"Moisture impervious" or "moisture resistant"** means a surface incapable of being penetrated by water or liquids.

**"Nonexpiring license" or "nonexpiring full license"** means a full license that is issued to a licensee following the initial licensing period as provided in WAC 170-295-0095.

**"Parent"** means birth parent, custodial parent, foster parent, legal guardian, those authorized by the parent or other entity legally responsible for the welfare of the child.

**"Pesticides"** means chemicals that are used to kill weeds, pests, particularly insects.

**"Potable water"** means water suitable for drinking by the public as determined by the state department of health or local health jurisdiction.

**"Potentially hazardous food"** means any food or ingredient that requires temperature control because it supports rapid growth of infectious or toxin forming microorganisms.

~~(**"Potable water"** means water suitable for drinking by the public as determined by the state department of health or local health jurisdiction.)~~

**"Premises"** means the building where the center is located and the adjoining grounds over which the licensee has control.

**"Preschool age child"** means a child thirty months through ((five)) six years of age not attending kindergarten or elementary school.

**"Program supervisor"** means the person responsible for planning and supervising the center's learning and activity program.

**"Sanitize"** means a surface must be clean and the number of germs reduced to a level that disease transmissions by that surface are unlikely. This procedure is less vigorous than disinfection.

**"Satellite kitchen"** means a food service establishment approved by a local health jurisdiction where food is stored, prepared, portioned or packaged for service elsewhere.

**"School-age child"** means a child not less than five years through twelve years of age who has begun attending kindergarten or elementary school.

**"Staff"** means a child care giver or group of child care givers employed by the licensee to supervise children served at the center who are authorized by DEL to care for or have unsupervised access to children under chapter 170-06 WAC.

**"Supervised access"** refers to those individuals at a child care center who have no responsibility for the operation of the center and do not have unsupervised access to children. These individuals are not required to submit a background check form. This includes those persons on the premises for "time limited" activities whose presence is supervised by a center employee and does not affect provider/child ratios or the normal activities or routine of the center. Examples include:

(1) A person hired to present an activity to the children in care such as a puppet show, cooking activity, and story telling;

- (2) Parent participation as part of a special theme; or
- (3) A relative visiting a child on the premises.

**"Terminal room cleaning"** means thorough cleaning of walls, ceiling, floor and all equipment, and disinfecting as necessary, in a room which has been used by a person having a contagious disease before it is occupied by another person.

**"The Washington state training and registry system (STARS)"** means the entity approved by the department to determine the classes, courses, and workshops licensees and staff may take to satisfy training requirement.

**"Toddler"** means a child twelve months through twenty-nine months of age.

**"Tribal certification"** means that the department has certified the tribe to receive state payment for children eligible to receive child care subsidies.

**"Unsupervised access"** refers to those individuals at a child care center who can be left alone with children in the child care center. These individuals must have received a full background authorization clearance under chapter 170-06 WAC.

**"Usable space"** means the areas that are available at all times for use by the children that do not cause a health or safety hazard.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

**WAC 170-295-2090 What are the required staff to child ratios and maximum group sizes for my center? The following requirements apply to centers licensed for any number of children:**

(1) You must ensure the required staff to child ratios are met at all times when children are in your care. ~~((In centers licensed for thirteen or more children,))~~ The licensee must conduct group activities within the group size and staff to child ratio requirements, according to the age of the children:

If the age of the children is:	Then the staff to child ratio is:	And the maximum group size is:
(a) One month, through 11 months (infant)	1:4	8
(b) Twelve months through 29 months (toddler)	1:7	14
(c) Thirty months through <del>((5 years (preschooler)))</del> <u>six years not attending kindergarten or elementary school (preschool age child)</u>	1:10	20
(d) Five years through 12 years <u>attending kindergarten or elementary school</u> (school-age child)	1:15	30

~~(2) ((In centers licensed for twelve or fewer children, you may combine children of different age groups, provided you: (a) Maintain the staff to child ratio designated for the youngest child in the mixed group; and~~

~~(b) Provide a separate care area when four or more infants are in care. In such case the maximum group size is eight infants.~~

~~(3)) You must conduct activities for each group in a specific room or other defined space within a larger area.~~

~~((4)) (3) You must ensure each group is under the direct supervision of a qualified staff person or team of staff involved in directing the child's activities.~~

~~((5) We may approve reasonable variations to group size limitations if you maintain required staff to child ratios, dependent on:~~

- ~~(a) Staff qualifications;~~
- ~~(b) Program structure; and~~
- ~~(c) Useable square footage.~~

~~(6) After consulting with the child's parent, you may place the individual child in a different age group and serve the child within the different age group's required staff to child ratio based on the child's:~~

- ~~(a) Developmental level; and~~
- ~~(b) Individual needs.~~

~~(7) You may combine children of different age groups for no more than one hour, provided you maintain the staff to child ratio and group size designated for the youngest child in the mixed group.~~

~~(8) In centers licensed for thirteen or more children, you may group ambulatory children between one year and two years of age with older children, provided:~~

- ~~(a) The total number of children in the group does not exceed twelve; and~~
- ~~(b) Two staff are assigned to the group.~~

~~(9)) (4) You must ensure the staff person providing direct care and supervision of the child is free of other duties at the time of care.~~

~~((10)) (5) You must maintain required staff-to-child ratios indoors, outdoors, on field trips, and during rest periods. During rest periods, staff may be involved in other activities if:~~

- ~~(a) Staff remain on the premises; and~~
- ~~(b) Each child is within continuous visual and auditory range of a staff person.~~

~~((11)) (6) You must ensure staff:~~

- ~~(a) Attend to the group of children at all times; and~~
- ~~(b) Keep each child (including school age children) within continuous visual and auditory range of center staff. Toilet trained children using the toilet must be within auditory range of a center staff member.~~

~~((12)) (7) When only one staff person is present, you must ensure a second staff person is readily available in case of emergency.~~

~~((13)) (8) When only one caregiver is required to meet the staff to child ratio, you must be sure there is coverage for emergencies to meet both ratios and worker qualifications by either:~~

- ~~(a) Posting the name, address, and telephone number of a person who meets the qualifications of at least a lead~~

teacher, who has agreed in writing to be available to provide emergency relief and who can respond immediately; or

(b) Having a second person that meets the qualifications of at least a lead teacher on the premises who is not needed for the staff to child ratio, but is available to provide emergency relief.

~~((14))~~ (9) Service staff, such as cooks, janitors, or bus drivers, may be counted in the required staff to child ratio if they meet all child care worker qualifications.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

**WAC 170-295-2100 What are the exceptions to group sizes and staff to child ratios?** (1) If the center is licensed for twelve or fewer children, you may combine children (excluding nonambulatory infants) of different age groups if you:

(a) Maintain the staff to child ratio for the youngest child in the mixed group; and

(b) Provide a separate area when infants are in care.

(2) ~~((You must conduct activities for each group in a specific room or other specifically defined space within a larger area;))~~ In centers licensed for thirteen or more children, you may group ambulatory children between one year and two years of age with older children, provided:

(a) The total number of children in the group does not exceed twelve; and

(b) Two staff are assigned to the group.

(3) Excluding nonambulatory infants, you may place an individual child in a different age group and serve the child within the different age group's required staff to child ratio ~~((; based on the child's individual needs and developmental level)).~~ Prior to making the change, you must:

(a) Consult with the child's parent ((prior to making the change)); and

(b) Document that the change is appropriate to the child's individual needs and developmental level.

(4) You may combine children of different age groups for periods of no more than one hour at the beginning and end of the day provided you maintain the staff to child ratio and group size designated for the youngest child in the mixed group;

(5) You may have nine infants in a classroom with appropriate square footage if you maintain a ratio of one staff to three infants; and

(6) You can request a waiver to group size limitations. If we approve variations to group size limitations, you must maintain the required staff-to-child ratios. Our approval will depend on factors including, but ~~((is))~~ not limited to:

(a) Staff qualifications;

(b) Program structure;

(c) Square footage; and

(d) Lower staff to child ratios.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

**WAC 170-295-5100 What are the requirements for toilets, handwashing sinks and bathing facilities?** (1) You must provide:

(a) A toilet room that is vented to the outdoors;

(b) A room with flooring that is moisture resistant and washable;

(c) One flush-type toilet and one adjacent sink for handwashing within auditory (hearing) range of the child care classrooms for every fifteen children and staff;

(d) Toileting privacy for children of opposite genders who are six years of age and older, or when a younger child demonstrates a need for privacy; and

(e) A mounted toilet paper dispenser within arms reach of the user with a constant supply of toilet paper for each toilet.

(2) Children eighteen months of age or younger are not included when determining the number of required flush-type toilets.

(3) If urinals are provided, the number of urinals must not replace more than one-third of the total required toilets.

(4) Toilet fixture heights must be as follows:

If the age group is:	The toilet fixture height must be:
(a) Toddler: Eighteen months through 29 months	(i) Ten - 12 inches (child size); or (ii) Fourteen - 16 inches (adult size) with a safe, easily cleanable platform that is moisture impervious and slip resistant.
(b) Preschool or older: Thirty months of age through <del>((five))</del> <u>six</u> years of age not enrolled in kindergarten or elementary school	(i) Ten - 12 inches (child size); or (ii) Fourteen - 16 inches (adult size) with a safe, easily cleanable platform that is moisture impervious and slip resistant.

(5) Handwashing sink heights must be as follows:

If the age group is:	The sink height must be:
(a) Toddler: Twelve months through 29 months	(i) Eighteen - 22 inches; or (ii) Provide a moisture and slip resistant platform for children to safely reach and use the sink.
(b) Preschool or older: Thirty months of age through <del>((five))</del> <u>six</u> years of age not enrolled in kindergarten or elementary school	(i) Twenty-two - 26 inches; or (ii) Provide a moisture and slip resistant platform for children to safely reach and use the sink.
(c) School age: Over five years of age or enrolled in kindergarten or elementary school	(i) Twenty-six - 30 inches; or (ii) Provide a moisture and slip resistant platform for children to safely reach and use the sink.

(6) Infants are not included when determining the number of sinks required for handwashing.

(7) The sink for handwashing must:

(a) Be located in or immediately outside of each toilet room;

(b) Have water controls that are accessible by the intended user; and

(c) Not be used for food preparation, as a drinking water source or a storage area.

(8) You must have:

(a) Single-use paper towels and dispensers; or

(b) Heated air-drying devices.

(9) You must use soap from some type of dispenser to prevent the spread of bacteria from the soap.

(10) If the center is equipped with a bathing facility, you must:

(a) Have parent permission to bathe children;

(b) Equip the bathing facility with a conveniently located grab bar and a nonskid pad or surface; and

(c) Provide constant supervision for the child five years of age and younger and older children who require supervision.

(11) You must make the bathing facility inaccessible to children when not in use.

### WSR 14-09-039

#### PROPOSED RULES

#### GAMBLING COMMISSION

[Filed April 11, 2014, 11:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-24-054.

Title of Rule and Other Identifying Information: Amending WAC 230-03-025 Applying for a manufacturer's special sales permit and new section WAC 230-16-187 Accounting records for manufacturer's special sales permit holders.

Hearing Location(s): Grand Mound Great Wolf Lodge, 20500 Old Highway 99 S.W., Grand Mound, WA 98531, (360) 273-7718, on July 11, 2014, at 9:00 a.m. NOTE: Meeting dates and times are tentative. Visit our web site at [www.wsgc.wa.gov](http://www.wsgc.wa.gov) and select public meeting about ten days before the meeting to confirm meeting date/location/start time.

Date of Intended Adoption: July 11, 2014.

Submit Written Comments to: Susan Newer, P.O. Box 42400, Olympia, WA 98504-2400, e-mail [Susan.Newer@wsgc.wa.gov](mailto:Susan.Newer@wsgc.wa.gov), fax (360)486-3625, by July 1, 2014.

Assistance for Persons with Disabilities: Contact Michelle Rancour by July 1, 2014, TTY (360) 486-3637 or (360) 486-3453.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed change would provide clarity as to which businesses would be required to get a manufacturer's license and which would qualify for a manufacturer's special sales permit.

Staff is adding language to answer questions received from applicants about this permit:

- Who can apply for this permit;
- How long the permit is good for;
- The activity allowed with this permit; and
- The rules that the permit holder must follow.

Staff is also proposing a new rule outlining recordkeeping requirements for permit holders.

Statutory Authority for Adoption: RCW 9.46.070(4).

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington state gambling commission, governmental.

Name of Agency Personnel Responsible for Drafting: Susan Newer, Lacey, (360) 486-3466; Implementation: David Trujillo, Director, Lacey, (360) 486-3512; and Enforcement: Mark Harris, Assistant Director, Lacey, (360) 486-3579.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

**Rules Package:** WAC 230-03-025 Applying for a manufacturer's special sales permit and 230-16-187 Accounting records for manufacturer's special sales permit holders.

**Involvement of Small Businesses:** We currently have no active special sales permit holders. Instead, we notified former special sales permit holders. They were provided notification of the proposed changes on March 25, 2014. Additionally, notification included discussion during study sessions in February and March 2014. We also filed the CR-101 on November 26, 2013, under WSR 13-24-054.

If filed for discussion in April 2014, the rules package will be discussed at the April and May 2014 study sessions. Comments will be solicited at the open, public meeting of the gambling commission on April 10, 2014. The rules package was published in the March 2014 edition of the Focus on Gambling newsletter. The rules package will also be posted on our web site for viewing by the general public. This process provided small businesses opportunities to comment on the development of the rules.

#### 1. Description of the Reporting, Recordkeeping and Other Compliance Requirements of the Proposed Rule:

We closely control the use and possession of gambling equipment, as defined in WAC 230-03-200. Manufacturer special sales permit holders are authorized to sell gambling equipment they manufacture. With the rule changes proposed, special sales permit holders will be required to keep the following accounting records: Sales invoices of all gambling equipment sales in the format we require, agreements relating to the sale or lease of gambling equipment, check register, cash receipts, and copies of all financial data that supports tax reports to governmental agencies.

Gambling equipment must be approved by us and is tracked through identification stamps (I.D. stamps) that the special sales permit holders purchase from us. The I.D. stamps are affixed to the gambling equipment they produce for sale to licensees. These I.D. stamps are a way for us to know the gambling equipment in use is approved. The permit holders must keep records of the I.D. stamps they purchase and attach to equipment as outlined in our rules.

Special sales permit holders will also have to comply with the manufacturing requirements of gambling equipment outlined in chapter 230-16 WAC. These requirements protect

the public from being defrauded and prevent cheating and other schemes.

This rules package will also require special sales permit holders to submit activity reports to us twice a year, in which they report the gross sales of gambling equipment in Washington.

**2. Kinds Of Professional Services That a Small Business is Likely to Need in Order to Comply:** All businesses, as an ordinary course of doing business, maintain a check register, sales invoices, cash receipts register, etc. Special sales permit holders will be required to maintain these same accounting records.

In addition to these accounting records, special sales permit holders will need to record I.D. stamps purchased and affixed to gambling equipment and submit two reports to us a year containing their gross gambling equipment sales per quarter.

Given that each business owner has a different skill level and the volume of business will vary, a bookkeeper may be needed to maintain the accounting records and complete the activity report for the business.

Each special sales permit holder will have varying sales volume based on the type of gambling equipment they manufacture, and may not exceed \$25,000 in gambling equipment sales in the permit year. For example, one roulette wheel sale may account for a \$25,000 sale, whereby it would take multiple sales of punch boards or pull-tabs to get to \$25,000. For special sales permit holders with a larger volume of sales, there will, of course, be more records to maintain.

**3. The Actual Costs to Small Businesses of Compliance, Including Costs of Equipment, Supplies, Labor and Increased Administrative Costs:** We cannot determine the actual costs to small businesses of complying with the additional gambling equipment compliance, reporting and recordkeeping requirements as proposed by this rule package because there are too many variables based on the specific gambling equipment manufactured and competency or experience of the staffing of the business.

Future special sales permit holders may already have knowledgeable staff, such as a bookkeeper, to comply with recordkeeping and accounting functions and with the gambling equipment approval process.

If the future special sales permit holder does not have knowledgeable staff, then they would likely need to hire a bookkeeper to assist them with the recordkeeping and accounting functions. We cannot determine the actual costs to small businesses for hiring a bookkeeper to assist with the recordkeeping and accounting functions because there are too many variables that would play into determining the costs, such as experience level needed, size of the company, sales volume, and location of business.

If a future special sales permit holder does not have the equipment necessary to comply with gambling equipment standards, we cannot determine the actual costs to small businesses to comply. Variables that prevent us from determining the actual costs for compliance include, but are not limited to, the type of gambling equipment manufactured, the level of changes or reconfiguration of existing manufacturing equipment needed to comply, ability to lease new manufacturing equipment versus purchase, etc.

**4. Whether Compliance with the Rule, Based on Feedback Received from Licensees, will Cause Businesses to Lose Sales or Revenue:** We have not yet received feedback from former permit holders indicating that compliance with this rule will cause businesses to lose sales or revenue.

The manufacturer's special sales permit is a one-time, one year permit for gross sales of gambling equipment during the permit year to be more than \$25,000. This affords small businesses an opportunity to see if the market in Washington will support future sales before getting a more expensive manufacturer's license.

Over the last ten years, we have issued twenty permits. One permit holder got a manufacturer's license after their permit expired and three permit holders received a fundraising equipment distributor's license after their permit expired.

**5. A Determination of Whether the Proposed Rule will have a Disproportionate Impact on Small Businesses:** *The statutory method for determining disproportionate impact is: The costs of compliance for a small business must be compared with the cost of compliance for ten percent of businesses that are the largest businesses required to comply with the proposed rule using one or more of the following as a basis for comparing costs:*

- a. Cost per employee; or
- b. Cost per hour of labor; or
- c. Cost per one hundred dollar[s] of sales.

We cannot make this determination because we do not track the size of the businesses that apply for special sales permits. We cannot determine the costs, if any, to comply with the gambling equipment standards in the state because it depends upon the type of gambling equipment they will produce. Lastly, we do not know if a potential special sales permit holder will already maintain the records we require as a normal course of their business or have to hire additional help.

The permit is only valid for one year and limits gross sales to \$25,000 during the permit year.

In the last ten years, we have issued twenty special sales permits. Four were to companies out of the country, such as the United Kingdom, Russia, and England. Nine were out-of-state, but in the United States. The remaining seven were to companies located in Washington.

**6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses or Reasonable Justification for Not Doing So. Agencies "must consider, without limitation, each of the following methods of reducing the impact of the proposed rule on small businesses:"**

a. **Reducing, modifying, or eliminating substantive regulatory requirements:** We have proposed reduced recordkeeping requirements for special sales permit holders than what is required for manufacturers.

b. **Simplifying, reducing, or eliminating recordkeeping and reporting requirements:** We have proposed reduced recordkeeping requirements for special sales permit holders compared to what is required from manufacturers.

c. **Reducing the frequency of inspections:** Unless we receive a complaint, we do not have routine inspections we perform on special sales permit holders. The special sales permit is a one-time, nonrenewable permit.

d. **Delaying compliance timetables:** Reporting violations are given additional compliance time through the Paperwork Reduction Act.

e. **Reducing or modifying fine schedules for noncompliance:** For reporting requirements, first-time reporting violations are afforded seven days to come into compliance prior to being assessed civil or administrative penalties.

f. **Any other mitigation techniques including those suggested by small businesses or small business advocates:** We delayed the effective date of the proposed rule package to allow potential special sales permit holders more time to comment and gain an understanding of the new rules.

**7. A Description Of How the Gambling Commission will Involve Small Businesses in the Development of the Rule:** The proposed special sales permit rule change was published in the March 2014 edition of our Focus on Gambling newsletter and was discussed at the February and March 2014 commission study session meetings, which were open to the public. We plan on discussing the rule at the April 2014 study session. The public will be able to provide public testimony on the rules package at the commission meeting on April 10, 2014. On March 25, 2014, we sent notification letters of the proposed rules package to six former special sales permit holders to solicit their feedback. The proposed rules package is also posted on our web site for public comment.

**8. A List Of Industries That will be Required to Comply with the Rule:** See code 7132.

**9. An Estimate of the Number of Jobs That will be Created or Lost as the Result Of Compliance with the Proposed Rule:** Keeping in mind that the special sales permit is a one-time permit that is only valid for one year and/or gross sales up to \$25,000 during the permit period, the number of jobs that would be potentially created or lost would be minimal.

A copy of the statement may be obtained by contacting Susan Newer, Rules Coordinator, Washington State Gambling Commission, P.O. Box 42400, Olympia, WA 98504, phone (360) 486-3466, fax (360) 486-3625, e-mail Susan.Newer@wsgc.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington state gambling commission is not an agency that is statutorily required to prepare a cost-benefit analysis under RCW 34.05.328.

April 11, 2014  
Susan Newer  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-07-157, filed 3/22/06, effective 1/1/08)

**WAC 230-03-025 Applying for a manufacturer's special sales permit.** (1) You may apply for a one-time manufacturer's special sales permit if (~~you~~):

(a) You want to sell authorized gambling equipment as set forth in WAC 230-03-200; and

(b) (~~Demonstrate that the anticipated profits from your sales will be below the cost of obtaining a manufacturer license.~~

(2) ~~Otherwise, you must apply for a manufacturer license.))~~ Gross sales from authorized gambling equipment

will be less than twenty-five thousand dollars during your permit year; and

(c) You will not have an ongoing vendor/customer relationship after the sale or installation of the gambling equipment.

(2) You may be assessed additional fees after an estimate of the permit investigation costs have been established.

(3) The manufacturer's special sales permit will be issued for one year and is not renewable.

(4) Manufacturer's special sales permittees must comply with all rules, including those for manufacturers in chapter 230-16 WAC.

(5) You will need a manufacturer's license if you:

(a) Fail to meet the requirements of a special sales permit; or

(b) Want a renewable, annual license.

#### NEW SECTION

**WAC 230-16-187 Accounting records for manufacturer's special sales permit holders.** Holders of a manufacturer's special sales permit must keep and maintain a complete set of records for their licensed activity. They must, at least:

(1) Keep a:

(a) **Cash disbursements book (check register)** – Permit holders must document all expenses, both gambling and non-gambling related, with invoices or other appropriate supporting documents. They must enter information monthly and include, at least:

(i) The date the check was issued or payment made; and

(ii) The number of the check; and

(iii) The name of the payee; and

(iv) Type of expense; and

(b) **Cash receipts** – Permit holders must keep a record of cash sales and cash received from all sources. They must enter information for each payment received monthly and include, at least, the:

(i) Date; and

(ii) Name of the person paying; and

(iii) Amount; and

(c) **Copies of all financial data** – Permit holders must keep copies of all financial data that supports tax reports to governmental agencies; and

(2) Maintain copies of all agreements regarding sales or leasing of gambling equipment and supplies that fully disclose all terms.

(3) Comply with the recordkeeping requirements outlined in chapter 230-16 WAC, except for WAC 230-16-185, 230-16-200, and 230-16-215.

**WSR 14-09-047**  
**PROPOSED RULES**  
**DEPARTMENT OF REVENUE**

[Filed April 14, 2014, 10:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-02-109.

Title of Rule and Other Identifying Information: WAC 458-20-263 presently entitled: Fuel cell, wind, landfill gas, and solar energy electric generating facilities sales and use tax exemption, and proposed as Sales and use tax exemptions for qualifying electrical generating and heat producing systems using renewable energy sources.

Hearing Location(s): Capital Plaza Building, Fourth Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA, on May 28, 2014, at 10:00 a.m. Copies of draft rules are available for viewing and printing on our web site at Rules Agenda. *Call-in option can be provided upon request no later than three days before the hearing date.*

Date of Intended Adoption: June 5, 2014.

Submit Written Comments to: Mark E. Bohe, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, by May 28, 2014.

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: RCW 82.08.962, 82.08.963, 82.12.962, and 82.12.963 provide retail sales and use tax exemptions for machinery and equipment used directly in generating electricity or producing heat using qualified renewable energy sources. The department is proposing to amend the rule to incorporate legislative changes, including chapter 13, Laws of 2013 2nd sp. sess., recognizing new technology.

Reasons Supporting Proposal: These updates are necessary to incorporate legislative changes, including the most recent at chapter 13, Laws of 2013 2nd sp. sess.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: RCW 82.08.962, 82.08.963, 82.12.962, and 82.12.963.

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

Name of Proponent: [Department of revenue], governmental.

Name of Agency Personnel Responsible for Drafting: Mark Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1574; Implementation: Dylan Waits, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1583; and Enforcement: Alan Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not impose performance requirements or administrative burdens on any small business not required by statute or the state and/or federal constitution.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is not a significant legislative rule as defined by RCW 34.05.328.

April 14, 2014  
Dylan Waits  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 05-02-036, filed 12/30/04, effective 1/30/05)

**WAC 458-20-263 (~~Fuel cell, wind, landfill gas, and solar energy electric generating facilities sales and use tax exemption.~~) Exemptions from retail sales and use taxes for qualifying electric generating and thermal heat producing systems using renewable energy sources. ((†) ~~Introduction:~~ This rule explains the retail sales and use tax exemptions provided by RCW 82.08.02567 and 82.12.02567 for the sale and/or use of machinery and equipment used directly in generating electricity using fuel cells, wind, landfill gas, or solar energy as the principal source of power. These exemptions expire June 30, 2009.**

~~Introduction:~~ This rule explains the retail sales and use tax exemptions provided by RCW 82.08.02567 and 82.12.02567 for the sale and/or use of machinery and equipment used directly in generating electricity using fuel cells, wind, landfill gas, or solar energy as the principal source of power. These exemptions expire June 30, 2009.

**(2) ~~Retail sales and use tax exemptions.~~** The following exemptions apply for retail sales and use taxes.

~~(a) For periods before July 1, 2001, the retail sales tax does not apply to the purchase or lease of machinery and equipment used directly in generating electricity using wind, landfill gas, or solar energy as the principal power source, but only if the purchaser develops with such machinery and equipment a facility capable of generating at least two hundred kilowatts of electricity.~~

~~For this period, RCW 82.12.02567 provided a corresponding use tax exemption for the use of machinery and equipment for these purposes.~~

~~(b) Effective July 1, 2001, the retail sales tax does not apply to the purchase or lease of machinery and equipment used directly in generating electricity using fuel cells, wind, landfill gas, or solar energy as the principal power source, but only if the purchaser develops with such machinery and equipment a facility capable of generating at least two hundred watts of electricity. See RCW 82.08.02567.~~

~~For this period, RCW 82.12.02567 provides a corresponding use tax exemption for the use of machinery and equipment for these purposes, except that no use tax exemption existed with regard to fuel cells until June 10, 2004. Between July 1, 2001, and June 10, 2004, although the purchase of machinery and equipment used directly in generating electricity using fuel cells is exempt from sales tax, the purchaser owes use tax upon the first use in this state of the machinery and equipment.~~

**(3) ~~What is "machinery and equipment"?~~** "Machinery and equipment" means industrial fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using fuel cells, wind, landfill gas, or solar energy as the principal source of power.

A "support facility" is a part of a building, or a structure or improvement, used to contain or steady an industrial fixture or device. A support facility must be specially designed and necessary for the proper functioning of the industrial fixture or device and must perform a function beyond being a building or a structure or an improvement. It must have a function relative to an industrial fixture or a device. To determine if some portion of a building is a support facility, the parts of the building are examined. For example, a highly specialized structure, like a vibration reduction slab under generators in a landfill gas generating facility, is a support facility. Without the slab, the generators would not function properly. The ceiling and walls of the building housing the generator are not support facilities if they only serve to define

the space and do not have a function relative to an industrial fixture or a device.

"Machinery and equipment" does not include:

- (a) The utility grid system;
- (b) Hand-powered tools;
- (c) Property with a useful life of less than one year;
- (d) Repair parts required to restore machinery and equipment to normal working order;
- (e) Replacement parts that do not increase productivity, improve efficiency, or extend the useful life of the machinery and equipment;
- (f) Buildings; or
- (g) Building fixtures that:
  - (i) Are permanently affixed to and become a physical part of a building; but
  - (ii) Are not integral and necessary to the generation of electricity.

~~(4) When is machinery and equipment "used directly" in generating electricity?~~ Machinery and equipment is used directly to generate electricity when it is used to:

- (a) Capture the energy of fuel cells, the wind, landfill gas, or solar energy;
- (b) Convert that energy to electricity; or
- (c) Store, transform, or transmit that electricity for entry into or operation in parallel with electric transmission and distribution systems.

~~(5) Examples of qualifying machinery and equipment.~~ This subsection provides examples of machinery and equipment that is used directly in generating electricity and qualifies for the retail sales tax exemption provided by RCW 82.08.02567 and the use tax exemption provided by RCW 82.12.02567. This list is illustrative only and is not intended to provide an exhaustive list of possible qualifying machinery and equipment.

(a) Where solar energy is the principal source of power: Solar modules; power conditioning equipment; batteries; transformers; power poles; power lines; and connectors to the utility grid system or point of use.

(b) Where wind is the principal source of power: Turbines; blades; generators; towers and tower pads; substations; guy wires and ground stays; power conditioning equipment; anemometers; recording meters; transmitters; power poles; power lines; and connectors to the utility grid system or point of use.

(c) Where landfill gas is the principal source of power: Turbines; blades; blowers; burners; heat exchangers; generators; towers and tower pads; substations; guy wires and ground stays; pipe; valves; power conditioning equipment; pressure control equipment; recording meters; transmitters; power poles; power lines; and connectors to the utility grid system or point of use.

(d) Where fuel cells are the principal source of power: Fuel cell assemblies; fuel storage and delivery systems; power inverters; transmitters; transformers; power poles; power lines; and connectors to the utility grid system or point of use.

~~(6) Installation charges.~~ Retail sales and use taxes do not apply to installation charges for qualifying machinery and equipment. This includes charges for labor and services rendered to install the machinery and equipment. However, there

is no exemption for charges for labor and services rendered in respect to constructing buildings or access roads that may be necessary to install or use qualifying machinery and equipment. Nor is there an exemption for tangible personal property, such as a crane or forklift, used by the buyer to install qualifying machinery and equipment.

~~(7) Required documentation.~~ The prior approval of the department of revenue is not required to claim the retail sales tax exemption. The seller, at the time of sale, must retain in its records an exemption certificate completed by the buyer to document the exempt nature of the sale. This requirement may be satisfied by using the department's "buyer's retail sales tax exemption certificate," or another certificate with substantially the same information as it relates to the exemption provided by RCW 82.08.02567.

A blank exemption certificate can be obtained through the following means:

(a) From the department's internet web site at <http://dor.wa.gov>;

(b) By facsimile by calling Fast Fax at 360-705-6705 or 800-647-7706 (using menu options); or

(c) By writing to: Taxpayer Services, Washington State Department of Revenue, P.O. Box 47478, Olympia, Washington 98504-7478.)) RCW 82.08.962, 82.08.963, 82.12.962, and 82.12.963 provide exemptions from the "retail sales tax" described in chapter 82.08 RCW and the "use tax" described in chapter 82.12 RCW paid with respect to the sale or use of machinery and equipment used directly in generating electricity or producing thermal heat using qualified renewable energy sources. This rule explains how these exemptions apply and is divided into four parts as follow:

**PART 1: Exemptions as applied to qualified solar systems.**

**PART 2: Exemptions as applied to qualified nonsolar renewable energy systems.**

**PART 3: Exemptions as applied to qualifying solar-heat systems.**

**PART 4: General provisions.**

#### **PART 1**

**Exemptions as applied to qualified solar systems.**

**(101) Solar systems that generate ten kilowatts or less.**

(a) Exemptions. RCW 82.08.963 and 82.12.963 provide exemptions from retail sales and use taxes paid with the respect to the sale or use of machinery and equipment that is used directly in a solar energy system capable of generating ten kilowatts of electricity or less. The nameplate DC power rating of a system, which is an industry standard, is used to determine whether the energy system is capable of generating ten kilowatts of electricity or less. Labor charges to install the qualified machinery and equipment are also exempt from retail sales and use taxes. Both state and local retail sales and use taxes are exempt. These exemptions are effective from July 1, 2009, and expire June 30, 2018.

(b) Exemption certificate required. The buyer must document this exemption at the time of sale by providing the seller (and installer, if different from the seller), a completed *Buyers' Retail Sales Tax Exemption Certificate*. The seller or

installer must keep the completed form in its records for five years.

**(c) Instructions for sellers that E-file.** For sellers that E-file, the exemption permitted under Part 1, (101)(a) of this subsection should be listed on the line entitled *Sales of Solar Machinery/Equipment; Install Labor* on the retail sales tax deduction page of E-file.

**(102) Solar systems that generate more than ten kilowatts.**

**(a) Partial exemptions.** For buyers that do not qualify for the full exemption described in Part 1, subsection (101)(a) of this section, there is an alternative partial exemption. RCW 82.08.962 and 82.12.962 provide an exemption, in the form of a remittance (refund) from the department, equal to seventy-five percent of the retail sales and use taxes paid with respect to the sale or use of machinery and equipment used directly in solar energy systems capable of generating at least 1000 watts (one kilowatt) of electricity. The exemption also applies to amounts paid for labor and services rendered in respect to installing such machinery and equipment, and may only be claimed if the exemption permitted in Part 1, subsection (101)(a) of this section has not been claimed. The nameplate DC power rating of a system, which is an industry standard, is used to determine whether the solar energy system is capable of generating 1000 watts (one kilowatt) or more of electricity. The buyer must pay the total amount of the retail sales or use taxes paid with the respect to the sale or use of the qualifying machinery, equipment, and labor charges to install the same. The buyer may then apply to the department for a refund of seventy-five percent of the state and local retail sales and use taxes paid. This partial exemption is effective from July 1, 2011, and expires January 1, 2020.

**(b)** From July 1, 2009, through June 30, 2011, these systems qualified for a one hundred percent exemption for retail sales and use taxes paid with the respect to the sale and use of qualified machinery, equipment, and labor charges to install the same at the point of sale. For documentation requirements see subsection (101) of this section.

**(c) Required annual survey.** Beginning July 1, 2013, buyers applying for a refund must complete and submit an annual tax incentive survey. The survey must be filed with the department by April 30th, following the year for which the refund is claimed. For more information see Part 4, subsection (401)(c) of this section.

## **PART 2**

### **Exemptions as applied to qualified nonsolar renewable energy systems.**

**(201) Qualified nonsolar renewable energy systems generating one kilowatt or more.**

**(a) Partial exemptions.** RCW 82.08.962 and 82.12.962 provide an exemption equal to seventy-five percent of the retail sales and use taxes paid with respect to the sale or use of machinery and equipment used directly in a renewable energy system employing a qualified power source that generates at least 1000 watts (one kilowatt) or more of electricity. This exemption also applies to amounts paid for labor and services rendered in respect to installing such machinery and equipment. The buyer is eligible for the exemption in the form of a remittance (refund) from the department and must

have paid to the seller or to the department the total amount of retail sales or use taxes paid with the respect to the sale or use of the machinery, equipment, and labor charges to install the same. To claim the exemption, the buyer must apply to the department for a refund. See Part 4, subsection (401) of this section for instructions on how to file a claim for refund. This partial exemption is effective from July 1, 2011, and expires January 1, 2020.

**(b) Refund procedure.** Beginning July 1, 2011, the buyer is eligible for the exemption in the form of a remittance (refund) from the department. The buyer must pay the total amount of the retail sales or use taxes due with the respect to the sale or use of qualifying machinery or equipment and labor charges to install the same. The buyer may then apply to the department for a refund of seventy-five percent of the state and local retail sales and use taxes paid. These exemptions expire on January 1, 2020.

**(c) Required survey.** Beginning July 1, 2013, buyers applying for a refund must complete and submit an annual tax incentive survey. The survey must be filed with the department by April 30th, following the year for which the refund is claimed. For more information see Part 4, subsection (401)(c) of this section.

**(202) Qualified power sources.** The partial exemption permitted under Part 2, subsection (201)(a) of this section applies only with respect to a renewable energy system that employs one of the following qualified power sources:

- Fuel cells;
- Wind;
- Biomass energy;
- Tidal or wave energy;
- Geothermal resources;
- Anaerobic digestion;
- Technology that converts otherwise lost energy from exhaust; and
- Landfill gas.

**(203) Definitions for these power sources.** For purposes of Part 2, the terms below are defined as or include within their definition the following:

- (a) Biomass energy.** "Biomass energy" includes:
- (i) By-products of pulping and wood manufacturing processes;
  - (ii) Animal waste;
  - (iii) Solid organic fuels from wood;
  - (iv) Forest or field residues;
  - (v) Wooden demolition or construction debris;
  - (vi) Food waste;
  - (vii) Liquors derived from algae and other sources;
  - (viii) Dedicated energy crops;
  - (ix) Biosolids; and
  - (x) Yard waste.

"Biomass energy" does not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; wood from old growth forests; or municipal solid waste.

**(b) Fuel cell.** "Fuel cell" means an electrochemical reaction that generates electricity by combining atoms of hydrogen and oxygen in the presence of a catalyst.

(c) Landfill gas. "Landfill gas" means biomass fuel, of the type that qualifies for federal tax credits under Title 26 U.S.C. § 45K (formerly Title 26 U.S.C. § 29) of the federal Internal Revenue Code, collected from a "landfill" as defined in RCW 70.95.030.

### **PART 3**

#### **Exemptions as applied to qualifying solar-heat systems.**

##### **(301) Solar-heat systems.**

(a) Exemption. RCW 82.08.963 and 82.12.963 provide exemptions from retail sales and use taxes paid with the respect to the sale and use of machinery and equipment used directly in producing thermal heat using solar energy and the labor charges to install the qualified equipment, if the buyer installs a system capable of producing no more than three million BTU per day. These exemptions are valid July 1, 2013, and expire June 30, 2018.

(b) Exemption certificate required. The buyer must document this exemption at the time of sale by providing the seller (and installer if different from the seller) a completed *Buyers' Retail Sales Tax Exemption Certificate*. The seller or installer must keep the completed form in its records for five years.

(c) Instructions for sellers that E-file. For sellers that E-file, the exemption permitted under Part 3, (a) of this subsection should be listed on the line entitled *Sales of Solar Machinery/Equipment; Install Labor* on the retail sales tax deduction page of E-file.

### **PART 4**

#### **General provisions.**

##### **(401) Requirements for a refund from the department of taxes paid, referred to as the seventy-five percent remittance.**

(a) Required application. This exemption, in the form of a remittance (refund) from the department, equals seventy-five percent of the retail sales and use taxes paid with respect to the sale or use of the qualifying machinery and equipment. The form that the buyer must submit to the department is the *Application for Sales Tax Refund on Purchases & Installation of Qualified Renewable Energy Equipment*. This form is available through the department's web site at [dor.wa.gov](http://dor.wa.gov) under *Get a form or publication*. The application must be completed in full and mailed to the address provided on the form.

(b) Required records. The purchaser must provide records that will allow the department to determine whether the purchaser is entitled to a refund. The records include:

- Invoices;
  - Proof of tax paid;
  - Documents describing the machinery and equipment;
- and
- Electrical capacity of the system.

(c) File annual tax incentive survey. Effective July 1, 2013, any person claiming a seventy-five percent refund must electronically file an annual tax incentive survey with the department each year. This applies to buyers of solar systems generating electricity of more than ten kilowatts and other qualified renewable energy systems generating electricity of one kilowatt or more.

(d) Separate survey for each system. The buyer must file a separate survey for each system owned or operated in Washington. The annual survey is due April 30th, following the year for which the exemption is claimed. (Systems installed in 2013 require a survey to be completed by April 30, 2014.)

(e) Limitation on frequency for claiming exemption. A buyer may not apply to the department for a remittance (refund) more frequently than once a quarter.

(f) Qualified retail sales and use taxes. These exemptions apply to both state and local retail sales and use taxes.

(402) What is "machinery and equipment"? For purposes of RCW 82.08.962 and 82.12.962, "machinery and equipment" means fixtures, devices, and support facilities that are integral and necessary to the generation of electricity from qualifying sources of power. For purposes of RCW 82.08.963 and 82.12.963, "machinery and equipment" means fixtures, devices, and support facilities that are integral to the generation of electricity or production and use of thermal heat from solar energy.

A "support facility" is a part of a building, structure, or improvement used to contain or steady a fixture or device. A support facility must be specially designed and necessary for the proper functioning of the fixture or device and must perform a function beyond being a building, structure, or improvement. It must have a function relative to a fixture or a device. To determine if some portion of a building is a support facility, the parts of the building are examined. For example, a highly specialized structure, like a vibration reduction slab under generators in a landfill gas generating facility, is a support facility. Without the slab, the generators would not function properly. The ceiling and walls of the building housing the generator are not support facilities if they only serve to define the space and do not have a function relative to a fixture or a device.

"Machinery and equipment" does not include:

- (a) The utility grid system;
- (b) Hand-powered tools;
- (c) Property with a useful life of less than one year;
- (d) Repair parts required to restore machinery and equipment to normal working order;
- (e) Replacement parts that do not increase productivity, improve efficiency, or extend the useful life of the machinery and equipment;
- (f) Buildings; or
- (g) Building fixtures that:
  - (i) Are permanently affixed to and become a physical part of a building; but
  - (ii) Are not integral and necessary to the generation of electricity.

(403)(a) When is machinery and equipment "used directly" in generating electricity? Machinery and equipment is used directly to generate electricity when it is used to:

- (i) Capture the energy of the qualifying source of power;
- (ii) Convert that energy to electricity; and
- (iii) Store, transform, or transmit that electricity for entry into or operation in parallel with electric transmission and distribution systems.

(b) When is machinery and equipment "used directly" in producing thermal heat? Machinery and

equipment is "used directly" in producing thermal heat with solar energy if it uses a solar collector or a solar hot water system that:

(i) Meets the certification standards for solar collectors and solar hot water systems developed by the solar rating and certification corporation; or

(ii) The Washington State University extension energy program determines a solar collector or solar hot water system is an equivalent collector or system.

**(404) Examples of qualifying machinery and equipment.** This section provides examples of machinery and equipment that may be used directly in generating electricity and could qualify for the exemptions from retail sales and use taxes. This list is illustrative only and is not intended to provide an exhaustive list of possible qualifying machinery and equipment.

**(a) Solar.** Where solar energy is the principal source of power: Solar modules; inverters; Stirling converters; power conditioning equipment; batteries; transformers; power poles; power lines; and connectors to the utility grid system or point of use.

**(b) Wind.** Where wind is the principal source of power: Turbines; blades; generators; towers and tower pads; substations; guy wires and ground stays; power conditioning equipment; anemometers; recording meters; transmitters; power poles; power lines; and connectors to the utility grid system or point of use.

**(c) Landfill.** Where landfill gas is the principal source of power: Turbines; blades; blowers; burners; heat exchangers; generators; towers and tower pads; substations; guy wires and ground stays; pipe; valves; power conditioning equipment; pressure control equipment; recording meters; transmitters; power poles; power lines; and connectors to the utility grid system or point of use.

**(d) Fuel cells.** Where fuel cells are the principal source of power: Fuel cell assemblies; fuel storage and delivery systems; power inverters; transmitters; transformers; power poles; power lines; and connectors to the utility grid system or point of use.

**(405) Installation charges.** The exemptions from retail sales and use taxes addressed in this rule apply to installation charges for qualifying machinery and equipment, including charges for labor and services. There are no exemptions from retail sales and use taxes for charges for labor and services rendered in respect to constructing buildings or access roads that may be necessary to install or use qualifying machinery and equipment. Further, there are no exemptions from retail sales and use taxes paid with respect to tangible personal property, such as a crane or forklift, purchased or rented by the buyer, the contractor, or the installer to be used to install qualifying machinery and equipment. Further, there are no exemptions from retail sales and use taxes for services that were included in the construction contract for design, planning, studies, project management, or other charges not directly related to the actual labor for installing the qualifying machinery and equipment.

## WSR 14-09-049

### PROPOSED RULES

#### STUDENT ACHIEVEMENT COUNCIL

[Filed April 14, 2014, 1:41 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-05-002.

Title of Rule and Other Identifying Information: Chapter 250-61 WAC, Degree-Granting Institutions Act rules.

Hearing Location(s): Washington Student Achievement Council, 917 Lakeridge Way S.W., Olympia, WA 98502, on May 29, 2014, at 10:00 a.m.-noon.

Date of Intended Adoption: June 11, 2014.

Submit Written Comments to: Michael J. Ball, Associate Director, P.O. Box 43430, Olympia, WA 98504-3430, e-mail michaelb@wsac.wa.gov, fax (360) 704-6239, by May 28, 2014.

Assistance for Persons with Disabilities: Contact Kristin Ritter by May 23, 2014, (360) 753-7810 or kristinr@wsac.wa.gov.

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

- Reflect the accurate name of the agency in the rules.
- Changes in the rules to reflect reciprocity agreements created between Washington and other states regarding the authorization of degree-granting institutions.

Reasons Supporting Proposal:

- To comply with a provision in HB 1736, which changed RCW 28B.85.020 providing for the ability to enter into interstate reciprocity agreements with other states, multi-state entities or degree-granting institutions within the state.
- Broad-based support from Washington degree-granting institutions.

Statutory Authority for Adoption: RCW 28B.76.120 and 28B.85.020.

Statute Being Implemented: RCW 28B.85.020 (1)(c) and (d).

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

Name of Proponent: Washington student achievement council, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Michael J. Ball, 917 Lakeridge Way S.W., Olympia, WA 98502, (360) 753-7866.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The primary impact will be on existing in-state and out-of-state degree-granting institutions.

A cost-benefit analysis is not required under RCW 34.05.328. There are no costs associated with implementations of the revised rules.

April 14, 2014  
Michael J. Ball  
Associate Director

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

**WAC 250-61-010 Purpose.** The Degree-Granting Institutions Act, chapter 28B.85 RCW requires that degree-granting institutions operating in Washington obtain authorization from the (~~(higher education coordinating board)~~) Washington student achievement council, unless specifically exempted from the authorization requirement by the act. This chapter is declared by the (~~(board)~~) council as a supplement to the act in order to establish necessary regulations for the authorization of degree-granting institutions.

The purpose of the act is to ensure fair business practices and adequate quality among degree-granting institutions operating in the state of Washington and to protect citizens against substandard, fraudulent, and deceptive practices.

AMENDATORY SECTION (Amending WSR 09-20-033, filed 9/30/09, effective 10/31/09)

**WAC 250-61-020 Applicability.** A degree-granting institution shall not operate, conduct business, grant or offer to grant any academic courses or degree programs unless the institution has obtained authorization from the (~~(board)~~) council, been granted a waiver of the requirements of authorization, or been determined by the (~~(board)~~) council to be exempt.

The act applies to:

- (1) Institutions granting or offering to grant degree programs and/or academic credit courses either at or from a location within the state; and
- (2) Institutions maintaining or advertising a Washington location, mailing address, or telecommunications number for any purpose or any function of a degree-granting institution other than contact with the institution's former students; and
- (3) Institutions specifically targeting Washington citizens with promotion of their degree programs and/or academic credit courses.

The act does not apply to degree programs and academic credit courses offered exclusively from outside the state through individual and private interstate communication.

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

**WAC 250-61-030 Delegation and (~~(board)~~) council supervision.** Unless otherwise indicated, the (~~(board)~~) council delegates authority for administering the act and these rules to the executive director.

Actions taken pursuant to these rules by the executive director or designee shall be subject to supervision by the (~~(board)~~) council.

Such actions shall be reported periodically to the (~~(board)~~) council for its review.

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

**WAC 250-61-040 Duties of executive director.** In addition to other administrative responsibilities vested in the executive director of the (~~(higher education coordinating~~

~~board)~~) Washington student achievement council under the act and this chapter, the executive director shall carry out the following administrative responsibilities:

(1) Process authorization applications, fee payments, bonds or security deposits, to include the denial and issuance of authorization, signed by the executive director or designee.

(2) Cause the payment of any unsatisfied final judgment against an authorized institution, from the resources available through the institution's surety bond or other security deposit.

(3) Upon written notice from an authorized institution, release the surety on the institution's bond or return the institution's security deposit, as prescribed in RCW 28B.85.070.

(4) In the event of impaired liability of the security, notify the institution of suspension until the security liability in the required amount, unimpaired by unsatisfied judgment claims, shall have been furnished.

(5) To the extent that there is a payment, release the security to the extent of the payment.

(6) Establish and maintain all records called for under the provisions of the act and this chapter.

(7) Maintain a current inventory of degree-granting institutions authorized or exempted under this chapter, including student complaints against such institutions.

AMENDATORY SECTION (Amending WSR 12-09-037, filed 4/11/12, effective 5/12/12)

**WAC 250-61-050 Definitions.** The definitions set forth in this section are intended to supplement the definitions in chapter 28B.85 RCW and shall apply throughout this chapter.

(1) "Act" means the Degree-Granting Institutions Act, chapter 28B.85 RCW.

(2) "~~(Board)~~ Council" means the Washington (~~(higher education coordinating board)~~) student achievement council.

(3) "Executive director" means the executive director of the (~~(board)~~) council or the executive director's designee.

(4) "Accrediting association" means a national or regional accrediting association that is recognized by the (~~(board)~~) council and the Secretary of the U.S. Department of Education.

(5) "Degree-granting institution" means an entity that offers educational credentials, instruction, or services prerequisite to or indicative of a degree.

(6) "College" means an institution which offers two-year and/or four-year programs culminating with associate and/or baccalaureate degrees. In some instances, a college may also offer first professional degree programs and/or graduate programs culminating with master's degrees.

(7) "University" means a multiunit institution with varied educational roles including instruction, promotion of scholarship, preservation and discovery of knowledge, research and public service. Such institutions provide a wide range of undergraduate and graduate studies, programs in professional fields, and may also provide programs leading to a doctorate.

(8) "Private vocational school" means a nonpublic entity that offers postsecondary programs designed to prepare individuals with the skills and training required for employment in a specific trade, occupation, or profession related to the educational program.

(9) "Seminary" means an institution which offers one or more professional programs to candidates for the ministry, rabbinate, or priesthood.

(10) "Degree" means any designation, appellation, letters, or words including but not limited to "associate," "bachelor," "master," "doctor," or "fellow" which signify or imply satisfactory completion of the requirements of an academic program of study at the postsecondary level.

(11) "Associate degree" means a lower division undergraduate degree that requires no fewer than 60 semester hours or 90 quarter hours.

(12) "Bachelor's degree" or "baccalaureate degree" means an undergraduate degree that requires no fewer than 120 semester hours or 180 quarter hours.

(13) "Master's degree" means a graduate degree that requires no fewer than 24 semester hours or 36 quarter hours beyond the baccalaureate degree.

(14) "Doctor's degree" or "doctorate" means a postgraduate degree that requires no fewer than 60 semester hours or 90 quarter hours beyond the baccalaureate degree.

(15) "False academic credential" means a document that signifies or implies satisfactory completion of the requirements of an academic program of study beyond the secondary level issued by a person or entity that:

(a) Is not accredited by a ~~((board-recognized))~~ council-recognized accrediting association or does not have the international equivalent to such accreditation; or

(b) Is not authorized by the ~~((board))~~ council; or

(c) Has not been exempted or granted a waiver from the requirements of authorization by the ~~((board))~~ council.

Additionally, it can mean a credential falsely claimed to have been earned from an institution accredited by a ~~((board-recognized))~~ council-recognized accrediting association; authorized by the ~~((board))~~ council; or that has been exempted or granted a waiver by the ~~((board))~~ council.

(16) "Program of study" means any course or grouping of courses prerequisite to or indicative of a degree.

(17) "Resident-based instruction" means a course or series of courses or degree programs which are taught by faculty at a specific location where students physically attend the course or program.

(18) "Distance learning" means a form of educational instruction other than classroom instruction, to include, but not limited to, correspondence, video-conferencing, television, internet transmission, or other electronic communication.

(19) "Credit" means the unit by which an institution measures its course work. The number of credit assigned to a course is generally defined by the number of hours per week in class and preparation and the number of weeks in a term. One credit is usually assigned for three hours of student work per week or its equivalent. The three hours of student work per week is usually comprised of a combination of one hour of lecture and two of homework or three hours of laboratory. Semester and quarter credits are the most common systems of measuring course work. A semester credit is generally based on at least a fifteen week calendar or 45 hours of student work. A quarter credit is generally based on at least a ten week calendar or 30 hours of student work.

(20) "Faculty" means personnel who are appointed by the institution for purposes of teaching, research, mentoring, advisory roles and/or other activities relating to the development and delivery of the instructional programs of the institution.

(21) "To operate" means but is not limited to the following:

(a) Offering courses for academic credit at any Washington location or via distance learning from a Washington location.

(b) Granting or offering to grant degrees in Washington for credit obtained within or outside the state.

(c) Maintaining or advertising a Washington location, mailing address, or telecommunications number ~~((or internet server))~~ for any purpose or any other function of a degree-granting institution, other than contact with the institution's former students for any legitimate purpose related to their having attended.

(d) Advertising, promoting, publicizing, soliciting or recruiting for the institution or its offerings that is targeted specifically at Washington citizens, excluding multi-institutional college fairs.

(22) "Suspend" means that, due to deficiencies, the ~~((board))~~ council interrupts for a stated time the institution's authority to recruit and enroll new students, but it may continue serving currently enrolled students for the remainder of the term. Authorization or exemption may be reinstated, provided the deficiencies have been resolved to the satisfaction of the ~~((board))~~ council.

(23) "Withdraw" means that, due to significant deficiencies or failure to meet the criteria of authorization or exemption, the ~~((board))~~ council has withdrawn the authorization or exemption granted to an institution. Upon withdrawal, the institution must cease all degree-granting operations immediately.

(24) "Accredited institution" means an institution that has been accredited by an accrediting association recognized by the ~~((board))~~ council and the Secretary of the U.S. Department of Education.

(25) "Additional program" means a degree program that:

(a) Differs in title and curriculum from any currently authorized program; or

(b) Is comprised of a curriculum that is twenty-five percent or more different in content than any currently authorized program.

(26) "Additional site" means a site at which the institution will provide both administrative services as well as educational instruction.

(27) State authorization reciprocity agreement (SARA) means an agreement among member states, districts and territories that establishes comparable standards for interstate offering of postsecondary distance education courses and programs. SARA is overseen by a national council and is administered by four regional education compacts.

AMENDATORY SECTION (Amending WSR 12-09-037, filed 4/11/12, effective 5/12/12)

**WAC 250-61-060 Exemption criteria.** No exemption from the requirements for degree authorization is considered

to be permanent. The exemption granted is dependent upon the institution's maintenance of the conditions under which the exemption was granted.

The provisions of this chapter do not apply to:

(1) Honorary credentials clearly designated as such on the front side of the diploma or certificate and awarded by institutions offering other educational credentials in compliance with state law.

(2) Any public college, public university, public community college, or public technical college or institute operating as part of the public higher education system of this state.

(3) Institutions that have received institutional accreditation from an association recognized by the ~~((board))~~ council and the Secretary of the U.S. Department of Education, Provided:

(a) The institution has been continuously offering degree program(s) in Washington for fifteen years or more; and

(b) The institution was established originally within the state of Washington and has operated as the same organization continuously from that date until the present. An institution is considered to have operated as the same organization continuously if it has no significant alteration of primary location, ownership, or incorporation and no closure involving cessation of substantially all organized instructional and administrative activity; and

(c) The institution has been accredited as a degree-granting institution for ten years or more by an accrediting association recognized by the ~~((board))~~ council and the Secretary of the U.S. Department of Education, and maintains such accreditation status; and

(d) The institution maintains eligibility to participate in Title IV financial aid programs.

(4) A branch campus, extension center, or off-campus facility operating within the state of Washington, which is affiliated with an institution domiciled outside this state, Provided:

(a) It has continuously offered degree programs in Washington for fifteen years or more; and

(b) It has held separate institutional accreditation as a free-standing institution for ten years or more by an accrediting association recognized by the ~~((board))~~ council and the Secretary of the U.S. Department of Education, and maintains such accreditation status; and

(c) It maintains eligibility to participate in Title IV financial aid programs.

(5) Institutions offering instruction on a federal enclave solely to federal employees and their dependents. If the institution offers or advertises instruction for other persons, the institution shall be subject to authorization.

(6) Institutions recognized by the Washington state legislature as an accredited Washington degree-granting institution, provided the institution maintains all conditions specified in the legislation as part of the recognition.

(7) Tribally controlled Native American colleges.

(8) Institutions which offer program(s) of study whose sole stated objective is training in the religious beliefs of the controlling religious organization and/or preparation of students for occupations that are primarily church-related, Provided:

(a) The institution's mission reflects its religious nature; and

(b) The institution's degree program(s) in title and abbreviation, curriculum content, and objectives reflect the strictly religious nature of the institution; and

(c) The institution's program(s) require a prescribed program of study, which must be successfully completed prior to the granting of a degree; and

(d) The institution's program(s) of study are represented in an accurate manner in institutional catalogs, web sites, and other official published materials; and

(e) The institution does not claim or publicize accreditation from an accrediting association that is not recognized by the ~~((board))~~ council and the Secretary of the U.S. Department of Education.

(9) In the case of institutions which offer both religious and secular programs, the secular programs shall be subject to the requirements of chapter 28B.85 RCW.

(10) Institutions not otherwise exempt which offer only workshops and seminars and institutions offering only credit-bearing workshops or seminars lasting no longer than three calendar days.

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

**WAC 250-61-063 Exemption requirements.** In order to apply for and maintain an exemption from the requirements for degree authorization, an institution must comply with the following:

(1) The chief academic officer of the institution shall contact ~~((board))~~ council staff and arrange for a preliminary conference to discuss the exemption criteria and procedures pertaining to the request for exemption.

(2) Any institution granted exemption from the requirements for degree authorization may be subject to periodic review by the ~~((board))~~ council to ensure that all criteria for the exemption continue to be met. The institution is to provide all information requested by the ~~((board))~~ council to assist in making this determination.

(3) The institution shall inform the ~~((board))~~ council immediately of any proposed changes within the institution and/or its offerings that may affect the exemption granted.

(4) The executive director may suspend or withdraw the exemption granted to an institution that fails to maintain the conditions under which the exemption was granted; engages in false advertising; or allows misleading representations to be made on its behalf. Suspension shall allow the institution a prescribed period of time to address the issues that may have brought the suspension. Withdrawal shall require the institution to cease all degree-granting activities immediately.

(5) In the case of religious exemption, a religious institution shall be required to place the following statement in a prominent position within any catalog, general bulletins, web sites, and course schedules: "The Washington (~~Higher Education Coordinating Board~~) student achievement council has determined that (name of institution) qualifies for religious exempt status from the Degree-Granting Institutions Act for the following programs: (List). The ~~((HECB))~~ council makes no evaluation of the administration, faculty, business prac-

tices, financial condition or quality of the offerings by this institution. Any person desiring information about the requirements of the act or the applicability of those requirements to the institution may contact the ((HECB)) council at P.O. Box 43430, Olympia, WA 98504-3430."

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

**WAC 250-61-065 Waiver of requirements.** The executive director or the director's designee may waive or modify the authorization requirements contained in this chapter for a particular institution if the executive director or the director's designee finds that such waiver or modification will not frustrate the purposes of this chapter; and (1) that literal application of this chapter creates a manifestly unreasonable hardship on the institution; or (2) is an institution based out-of-state that provides distance learning courses and/or programs to Washington state residents under a state authorization reciprocity agreement entered into by the Washington student achievement council. No waiver granted under this chapter is permanent. The ((board)) council will periodically review institutions granted waivers and continue the waiver only if the conditions under which the waiver was initially granted remain in effect.

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

**WAC 250-61-070 Applicability to private vocational schools.** Degree-granting private vocational schools' programs shall be regulated pursuant to the terms of an inter-agency agreement between the ((higher education coordinating board)) Washington student achievement council and the work force training and education coordinating board. As stipulated in the interagency agreement, degree programs shall be regulated by the ((higher education coordinating board)) Washington student achievement council and nondegree programs shall be regulated by the work force training and education coordinating board. Copies of the agreement are available from either agency upon request.

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

**WAC 250-61-080 Authorization standards.** These standards form the basis for the review of an institution by the ((board)) council staff and guide the decisions of the executive director and the ((board)) council. To receive authorization, the institution shall meet all of the specific requirements of this chapter.

AMENDATORY SECTION (Amending WSR 12-09-037, filed 4/11/12, effective 5/12/12)

**WAC 250-61-085 Accreditation requirements.** An institution operating in Washington shall:

(1) Be accredited by an accrediting association recognized by the ((board)) council and the Secretary of the U.S. Department of Education; or

(2) Have applied for accreditation to an accrediting association recognized by the ((board)) council and the Secretary of the U.S. Department of Education and such application is pending before the accrediting association; or

(3) Have been granted a temporary waiver by the ((board)) council of the requirement for accreditation based upon submission of a plan for accreditation as outlined in the initial authorization application; or

(4) Have been granted an exemption by the ((board)) council of the requirement for accreditation based upon the following condition: The school has filed, and kept current with appropriate amendments, at the ((higher education coordinating board)) Washington student achievement council an affidavit by each president of two separate accredited colleges or universities accredited by an accrediting association recognized by the ((board)) council and the Secretary of the U.S. Department of Education stating that the majority of course credits offered by the unaccredited institution are generally acceptable or transferable to the accredited college or university which each president represents.

AMENDATORY SECTION (Amending WSR 12-09-037, filed 4/11/12, effective 5/12/12)

**WAC 250-61-100 Academic requirements.** (1) Educational programs. Each program shall require the completion of a prescribed program of study leading to the attainment of competence in an interdisciplinary area or specific field of study. Programs shall generally meet the guidelines or standards of an accrediting association recognized by the ((board)) council and the Secretary of the U.S. Department of Education that accredits similar programs of study.

(a) Associate degrees:

(i) An associate degree shall require at least ninety quarter credits or sixty semester credits.

(A) An associate degree intended for occupational preparation shall require, as a minimum, general education requirements that comprise a recognizable body of instruction in three program-related areas:

- (I) Communications;
- (II) Computation; and
- (III) Human relations.

(B) The general education requirements of all other associate degrees shall be consistent with the current guidelines of the Washington inter-college relations commission.

(ii) The following associate degree designations shall be acceptable:

(A) The associate of arts (A.A.), and associate of science (A.S.) for programs which emphasize the liberal arts and sciences. These programs generally satisfy the general education requirements for a baccalaureate degree and are transfer oriented.

(B) The associate in applied technology (A.A.T.), associate in applied science (A.A.S.), associate of occupational science (A.O.S.) and other such applied or technology-related degree designations for programs which emphasize preparation for occupations at the technical level. These programs generally do not satisfy the general education requirements for a baccalaureate degree and are not transfer-oriented.

(b) Baccalaureate degrees: A baccalaureate degree shall require at least one hundred eighty quarter credits or one hundred twenty semester credits. The degree shall require a distinct major and, as a minimum, twenty-five percent of the program shall be in general education curricula.

(c) Master's degrees:

(i) A master's degree program shall require at least thirty-six quarter credits or twenty-four semester credits, specialization in an academic or professional area, and a demonstration of mastery.

(ii) The following master's degree designations shall be acceptable:

(A) The master of arts (M.A.) and master of science (M.S.) for programs which advance study and exploration in the discipline. The majority of credit for M.A. and M.S. degrees shall be at the graduate level in the major field.

(B) The master of business administration (M.B.A.), master of fine arts (M.F.A.), master of education (M.Ed.), etc. for programs which emphasize professional preparation.

(d) Doctoral degrees:

(i) Doctoral degree programs shall provide a broad range of advanced course offerings, faculty in ancillary and supporting fields, access to adequate laboratory and research facilities, and a wide range of current reference materials in the subject field. A doctoral degree shall require at least three full academic years of specialized postbaccalaureate study. To obtain a doctoral degree a student shall be required to demonstrate, through comprehensive examination, the ability to perform research at the level of the professional scholar or perform the work of a professional that involves the highest levels of knowledge and expertise.

(ii) The following doctoral degree designations shall be acceptable:

(A) The doctor of philosophy (Ph.D.) degree for programs which are oriented toward original research and require a dissertation.

(B) A professional doctoral degree (J.D., Ed.D., etc.) for programs which emphasize technical knowledge and professional competence and require either a research thesis or a project involving the solution of a substantial problem of professional interest.

(e) Distance learning program(s) of study must be comparable in content, faculty, and resources to those offered in residence, and include regular student-faculty interaction by computer, telephone, mail, or face-to-face meetings.

(f) Noncollegiate learning.

(i) Undergraduate credit for noncollegiate learning may be awarded when validated through a portfolio or similar procedure. The institution shall maintain copies of examinations, portfolios, and evaluations used in this process. Noncollegiate learning credit shall constitute no more than twenty-five percent of an undergraduate degree program.

(ii) Credit awarded for noncollegiate learning at the graduate level must be consistent with the minimum standards as published by the ~~((schools))~~ institution's accrediting association.

(2) Faculty.

(a) Faculty shall be professionally prepared and graduates of accredited institutions and, as a group, the institutions from which they earned their degrees shall be diverse.

(b) Faculty shall be sufficient in number and kind and in the proportion of full-time and part-time positions to sustain rigorous courses, programs, and services.

(c) Faculty teaching academic courses at the undergraduate degree level shall have a master's degree in the assigned or related program area from an accredited institution. Faculty assigned to teach in vocational-technical subjects shall have educational credentials and experience compatible with their teaching assignment. Faculty assigned to teach general education courses within any undergraduate program shall have a master's degree in a related area from an accredited institution.

(d) Faculty teaching at the master's degree level in programs which emphasize advanced study and exploration in a discipline shall have an earned doctorate in a related field from an accredited institution and experience in directing independent study and research. Faculty teaching in master's programs which emphasize professional preparation shall have, as a minimum, a master's degree from an accredited institution and documented achievement in a related field.

(e) Faculty teaching at the doctoral level shall have an earned doctorate in a related field from an accredited institution and experience in teaching and directing independent study and research.

(3) Admissions. Admission requirements shall be based on the institution's objectives and consistently applied to each program of study. Through preenrollment assessments, testing and advising, the institution shall determine the readiness and ability of each student to succeed in his/her degree program. Institutions shall use only those tests reviewed and approved by the U.S. Department of Education.

High school graduation or the equivalent shall be required for undergraduate admission. A baccalaureate degree or the equivalent shall be required for admission into graduate programs. Special undergraduate admission may be granted, based on the applicant's general educational development.

(4) Enrollment contract. If an enrollment contract is utilized, the institution shall discuss all terms and provisions of the contract with the student prior to the student's execution of the contract. The contract shall contain an acknowledgment section directly above the student's signature blank for the student to acknowledge that the institution discussed all terms and provisions of the contract with the student and that the student understands all financial obligations and responsibilities.

(5) Evaluation. The institution shall provide evidence that it has procedures for continuing evaluation and improvement of educational programs, quality of instruction, and overall operations of the institution.

(a) Student, alumni, and employer evaluations of the effectiveness of the curricula shall be considered in these evaluations.

(b) The institution's chief academic officer or designee shall periodically evaluate all areas of the institution to determine their effectiveness in fulfilling institutional objectives and meeting the standards set forth in these regulations or implied in the statute. The results of those evaluations shall be submitted to ~~((board))~~ council staff upon request.

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

**WAC 250-61-110 Student services and instructional resources requirements.** (1) Student services. The institution shall provide adequate services for students in addition to formal instruction. These services shall normally include admissions, advising and guidance, financial assistance, student records, and disability accommodation.

(a) Advising and guidance services shall be readily available to students to assist them in program planning, course selection, and other academic activities.

(b) Financial aid administration and distribution, if provided, shall be performed according to institutional, state, and federal policies.

(c) Student records shall be maintained in accordance with the guidelines established by the U.S. Department of Education.

(d) Students with disabilities shall have access to, and reasonable accommodations in, all programs for which they are qualified consistent with the provisions of the Americans with Disabilities Act.

(e) Placement services and employment opportunities, if provided, shall be accurately described.

(2) Facilities for site-based instruction.

(a) The institution shall have adequate space, facilities and equipment, instructional materials, and staff to support quality education and services.

(b) The institution shall comply with all applicable ordinances, laws, codes, and regulations concerning the safety, health, and access of all persons on its premises.

(3) Disability accommodations. The institution shall provide reasonable accommodations for students and employees with disabilities. The institution shall inform students and employees of local, state, and federal laws regarding discrimination against people with disabilities.

(4) Library. The institution shall provide adequate and accessible library resources and facilities to support the educational needs of students and faculty. If the institution, educational site, or academic center does not maintain its own library on site, it must demonstrate that it can provide sufficient library resources to meet the needs of the program(s) through a written agreement with another institution or organization, or through other mechanisms.

(5) Financial resources.

(a) The institution shall have adequate financial resources necessary to sustain its purpose and commitment to students.

(b) In the case of an institution seeking initial authorization, it shall have sufficient financial resources to sustain itself for one full academic year without the assistance of revenue from tuition and fees.

(6) Financial records.

(a) The institution shall maintain financial records in conformity to generally accepted accounting principles.

(b) The institution shall be audited annually by an independent certified public accountant according to generally accepted auditing standards.

(c) Such records shall be made available to the ~~((board))~~ council upon request.

(7) Recruitment and publications. All publications relating to the institution, including advertisements, catalogs, and other communications shall be accurate and not misleading. Any catalog and/or web site that is made available to students describing the educational services offered shall include the statement of authorization as provided by the ~~((board))~~ council upon the granting of authorization.

Authorized institutions shall not advertise or publicize that they are approved, recommended, accredited, or otherwise endorsed by the ~~((board))~~ council. Such institutions may only state that they are authorized by the ~~((board))~~ council.

(8) Transcripts and academic credentials. The institution shall provide accurate and appropriate transcripts of credit for enrolled students and diplomas for graduates.

(a) For each student, the institution shall maintain and make available a transcript that specifies the name of the institution, the name of the student, all courses completed, and an explanation of the institution's evaluation system. Each course entry shall include a title, the number of credits awarded, and a grade or written evaluation. The transcript shall distinguish credits awarded by transfer, for prior learning experience, and credit by examination.

(b) The institution shall not be required to make copies of transcripts available unless all tuition and fees and other expenses owed by the student to the institution have been paid.

(c) In addition to transcripts, the institution shall maintain records to document the performance and progress of each student, including, but not limited to: Financial transactions, admissions records, and records of interruption for unsatisfactory progress or conduct. Transcripts shall be kept permanently after a student has discontinued enrollment. All other records and accounts shall be kept for a minimum of six years after a student has discontinued enrollment.

AMENDATORY SECTION (Amending WSR 12-09-037, filed 4/11/12, effective 5/12/12)

**WAC 250-61-120 Catalog requirements.** (1) An institution granted authorization shall publish a catalog supplemented as necessary by other published materials, providing sufficient information for students to obtain an adequate understanding of the institution, its programs, policies and procedures. Institutional catalogs shall be published at least once every two years and be provided to students at the time of their enrollment. Electronic catalogs must be archived and students must have access to the archived information.

(2) An institution granted authorization shall print a statement in a prominent position in the catalog and on its web site that reads: "(Name of institution) is authorized by the Washington ~~((higher education coordinating board (HECB)))~~ student achievement council (the council) and meets the requirements and minimum educational standards established for degree-granting institutions under the Degree-Granting Institutions Act. This authorization is subject to periodic review and authorizes (name of institution) to offer specific degree programs. The ~~((HECB))~~ council may be contacted for a list of currently authorized programs. Authorization by the ~~((HECB))~~ council does not carry with it an endorsement by the ~~((board))~~ council of the institution or its

programs. Any person desiring information about the requirements of the act or the applicability of those requirements to the institution may contact the ((HECB)) council at P.O. Box 43430, Olympia, WA 98504-3430."

(3) The catalog shall include elements as required by the ((board)) council in application materials such that a prospective student may become reasonably informed about the institution, its offerings, policies and procedures.

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

**WAC 250-61-140 Security requirements.** The institution is required to have on file with the ((board)) council an original surety bond or other security acceptable to the ((board)) council in lieu of the bond.

(1) For institutions seeking initial authorization, the surety bond or security amount for the initial period of authorization shall be twenty-five thousand dollars.

(2) For institutions seeking renewal authorization, the surety bond or security amount shall be ten percent of the preceding fiscal year's total tuition and fee revenue received for educational services in Washington, but not less than twenty-five thousand dollars nor more than two hundred fifty thousand dollars. For private vocational schools that offer nondegree programs as well as degree programs, the amount required shall be based only on the degree program portion of its revenue from tuition and fees.

(3) Release of surety bonds and other securities shall be made in compliance with chapter 28B.85 RCW.

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

**WAC 250-61-160 Discontinuance or closure requirements.** (1) In the event an institution chooses to discontinue a program and/or site currently available to Washington residents, but maintain other operations, it shall notify the ((board)) council well in advance of any such proposed action and provide information to the ((board)) council pertaining to accommodations to be made for any currently enrolled students to ensure they are provided the opportunity to complete their studies.

(2) In the event an institution proposes to discontinue all its operation, the chief administrative officer of the institution shall:

(a) Notify the executive director immediately by certified mail; and

(b) Furnish enrolled students with a written notice explaining the reasons for closure and what procedures they are to follow to secure refunds and their official records, and what arrangements have been made for providing continuing instruction at other institutions; and

(c) The institution shall make all reasonable efforts to ensure that current students are provided with alternative opportunities to complete their studies; and

(d) Provide for the permanent maintenance of official records in a manner acceptable to the executive director.

In the event it appears to the executive director that the official records of an institution discontinuing its operation are in danger of being destroyed, secreted, mislaid, or other-

wise made unavailable to the students and the ((board)) council, the executive director may seek a court order to take possession of the records and provide for their permanent maintenance.

AMENDATORY SECTION (Amending WSR 12-09-037, filed 4/11/12, effective 5/12/12)

**WAC 250-61-170 Application requirements.** (1) Initial application.

(a) Institutions seeking initial standard authorization shall contact the ((board)) council staff to arrange for a preliminary conference to discuss the authorization criteria, application procedures and the review process.

(b) An institution shall submit a fully completed application packet using forms provided by ((board)) council staff. The application packet will not be considered complete until all required elements have been received by the ((board)) council.

(c) For standard authorization, an initial application fee in the amount of five thousand dollars is to be submitted along with the application packet. The check is to be made payable to the Washington ((state treasurer)) student achievement council.

(d) For field placement authorization, an initial application fee in the amount of two thousand dollars is to be submitted along with the application packet. The check is to be made payable to the Washington ((state treasurer)) student achievement council.

(2) Renewal application.

(a) Authorized institutions must submit an application for renewal of authorization on a biennial basis when requested by ((board)) council staff.

(b) No later than the due date provided by the ((board)) council, an institution seeking renewal must submit a fully completed renewal application packet using the forms provided by ((board)) council staff. Failure to provide all requested materials by the due date may result in temporary suspension of the institution's authorization.

(c) For standard authorization, a renewal application fee in the amount of two thousand five hundred dollars is to be submitted along with the application packet. The check is to be made payable to the Washington ((state treasurer)) student achievement council.

(d) For field placement authorization, a renewal application fee in the amount of one thousand dollars is to be submitted along with the application packet. The check is to be made payable to the Washington ((state treasurer)) student achievement council.

(3) Additional program(s).

(a) If an institution proposes to offer additional program(s) of study during the current authorization period, the institution shall submit a new program application well in advance of the proposed offering.

(b) An additional program application fee in the amount of one thousand dollars per program is to be submitted along with the application packet. The check is to be made payable to the Washington student achievement council.

(c) The program(s) of study may not be offered, advertised or promoted prior to the granting of authorization.

(4) Additional site(s).

(a) If an institution proposes to offer programs at a new site in Washington, the institution shall submit a new site application well in advance of the proposed start of operations at that site.

(b) An additional site application fee in the amount of five hundred dollars per site is to be submitted along with the application packet. The check is to be made payable to the Washington student achievement council.

(c) The site may not be utilized, advertised or promoted prior to the granting of authorization.

(5) Change of ownership or control. A significant change of ownership or control of an institution shall nullify any previous authorization. The chief administrator, representing the new owner(s), shall notify the ~~((board))~~ council as soon as the change is known. If the chief administrator asserts in a written statement that all conditions set forth in the act and these rules are being met or will be met before offering instruction, the executive director may issue a temporary certificate of authorization for a maximum of one hundred eighty days. The new ownership shall complete an application for initial authorization and submit the application to the ~~((board))~~ council no later than sixty days prior to the expiration of the temporary certificate of authorization.

AMENDATORY SECTION (Amending WSR 12-09-037, filed 4/11/12, effective 5/12/12)

**WAC 250-61-180 Application review procedures.** (1) Staff analysis. Following receipt of a fully completed application, ~~((board))~~ council staff shall review and analyze the material submitted.

(2) Additional documentation and site visit. If ~~((board))~~ council staff determines it is necessary to verify or supplement the information provided in the application, the staff may require additional written documentation and/or arrange for a site visit. The expense for any site visits shall be paid by the institution applying for authorization.

(3) External consultants. At the discretion of the executive director, the expertise of other higher education experts may be used to assist in the evaluation of the documentation submitted. The cost for the services of the evaluation expert(s) shall be paid by the institution applying for authorization. The fee for such services is five hundred dollars per program per consultant, to be submitted by the institution upon request by the ~~((board))~~ council during the review process. The check is to be made payable to the ~~((higher education coordinating board))~~ Washington student achievement council.

(4) Comment period. Upon completion of a preliminary review, the ~~((board))~~ council shall post a notification of the request for authorization on its web site for a set period of time. Any persons having knowledge as to why the institution or its program(s) may not meet the requirements for degree authorization may provide comment to the ~~((board))~~ council on the proposal.

(5) Staff recommendations. After the final review has been completed, ~~((board))~~ council staff shall summarize its findings and develop a recommendation to the executive

director regarding the application. This recommendation will take one of the following forms:

(a) That the institution be granted authorization, subject to biennial reporting and maintenance of the conditions under which authorization has been granted.

(b) That the institution be granted conditional authorization, subject to additional conditions as established by the ~~((board))~~ council, and maintenance of the conditions under which authorization has been granted.

(c) That the institution be denied authorization.

(6) Notification. Following the executive director's decision to authorize or deny the institution's request, a letter signifying the action shall be sent from the executive director to the chief administrative officer of the institution.

(a) The letter of authorization will serve as official authorization for the institution to operate in Washington for the specific programs and locations designated in the letter.

(b) An institution denied authorization shall be provided with an explanation as to how the institution and/or its programs failed to meet the criteria for authorization. Any institution denied standard authorization that wishes to reapply within one year of the denial date may submit a new fully completed initial application packet and pay a reapplication fee of four thousand dollars. Any institution denied field placement authorization that wishes to reapply within one year of the denial date may submit a new fully completed initial application packet and pay a reapplication fee of one thousand dollars. The check is to be made payable to the Washington ~~((state treasurer))~~ student achievement council.

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

**WAC 250-61-190 Complaints.** A student with a complaint against an authorized institution concerning loss of tuition and/or fees due to unfair or deceptive business practices by the institution shall make a reasonable effort to resolve the complaint directly with the institution. If a mutually satisfactory solution cannot be reached, the following procedure shall be pursued:

(1) Upon receipt of a written complaint that an institution has failed or is failing to comply with the provisions of the act or this chapter, and documentation that the student has made a reasonable effort to resolve the complaint directly with the institution, the executive director shall notify the institution by mail of the nature of the complaint and shall conduct an investigation.

(2) If preliminary findings indicate that a violation(s) may have occurred or are occurring, the executive director shall attempt, through mediation and conciliation, to effect compliance and bring about a settlement.

(3) If no agreement is reached, the executive director shall file a formal complaint with the ~~((board))~~ council and notify the institution of the conduct which warrants the complaint. Final resolution of the complaint shall be subject to hearing procedures provided for in this chapter and the institution may be subject to a summary suspension of its authorization, pending further proceedings for suspension, withdrawal or other actions deemed proper after the hearing.

(4) Any complaints must be filed within one year after the student's last recorded date of attendance in order to be considered by the ((board)) council. Only the student or the student's legal guardian may file a complaint on behalf of the student.

(5) Complaints may also be filed with the ((board)) council by an authorized staff member of the ((board)) council or by the attorney general.

**AMENDATORY SECTION** (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

**WAC 250-61-200 Suspension or withdrawal of authorization.** (1) The executive director may suspend or withdraw an institution's authorization if it finds that:

(a) Any statement contained in the application for authorization is untrue; or

(b) The institution has failed to maintain the standards for authorization as detailed in the act and this chapter; or

(c) Advertising or representations made on behalf of, and sanctioned by, the institution is deceptive or misleading; or

(d) The institution has violated any provision of this chapter.

(2) The executive director may suspend the institution's authorization for a period of time if, in the executive director's judgment, the deficiencies can be corrected within the given time period. Upon suspension, the institution must immediately cease the recruitment and/or enrollment of new students. The institution may continue serving currently enrolled students for the remainder of the term. Authorization may be reinstated after any deficiencies have been resolved to the satisfaction of the ((board)) council.

(3) Authorization shall be withdrawn only after the institution has been informed in writing of its deficiencies and been given reasonable time to meet the required standards. Upon withdrawal, the institution must immediately cease all degree-granting operations. To seek reinstatement of authorization, the institution must apply for initial authorization.

(4) The executive director's and ((board's)) council's actions are subject to due process hearing procedures of the Washington Administrative Procedure Act.

**AMENDATORY SECTION** (Amending WSR 09-20-033, filed 9/30/09, effective 10/31/09)

**WAC 250-61-210 Hearing process.** (1) A party subject to the following actions may request a hearing:

(a) A denial of exemption from the Degree-Granting Institutions Act;

(b) A denial of authorization under the Degree-Granting Institutions Act;

(c) A cease and desist order issued under chapter 28B.85 RCW; or

(d) Other final action as defined in chapter 34.05 RCW, by the executive director that adversely affects the institution or student and which is contrary to the intent and purpose of the Degree-Granting Institutions Act or this chapter.

(2) A party must submit a request for a hearing to the executive director at the ((board)) council office no later than thirty days following receipt of the notice of final agency

action. In the written request, the party must identify the final action in dispute and state that a hearing is requested.

(3) Any hearing called for under the act shall be conducted in accordance with the Washington Administrative Procedure Act, chapter 34.05 RCW, as follows:

(a) The presiding officer, who shall be the executive director or the hearing officer designated by the executive director, shall conduct the hearing under the provisions of chapter 34.05 RCW and shall enter an initial order under RCW 34.05.461 (2) through (9).

(b) The ((board)) council shall review the initial order under RCW 34.05.464 and either enter a final order or remand the matter for further proceedings under RCW 34.05.464(7).

(c) If the challenged agency action is upheld, the party that initiated the hearing process shall pay the costs of the administrative hearing within sixty days following final disposition of the matter.

(d) Any further review of final action must be taken in accordance with RCW 34.05.510 et seq.

## WSR 14-09-052

### PROPOSED RULES

### DEPARTMENT OF ECOLOGY

[Order 13-09—Filed April 15, 2014, 1:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-22-088.

Title of Rule and Other Identifying Information: The department of ecology (ecology) proposes to repeal existing chapter 173-322 WAC, Remedial action grants and loans, and adopt new chapter 173-322A WAC, Remedial action grants and loans. The new chapter would replace the repealed chapter. The new chapter would modify the existing program of grants and loans to local governments for investigating and cleaning up hazardous waste sites.

Hearing Location(s): Department of Ecology, Headquarters, 300 Desmond Drive S.E., Lacey, WA 98503, on May 29, 2014, at 10:00 a.m.

Ecology will hold one public hearing on this rule proposal. The hearing will begin with a short presentation followed by a question and answer (Q&A) session. Testimony will start at the end of the Q&A session.

Webinar: Ecology is also offering the presentation, Q&A session, and public hearing through a webinar. A webinar is [an] online meeting forum that you can join from any computer using internet access. To participate and provide comments through the webinar, you also need to have a phone or a computer with phone modem capability. For more information about the webinar and instructions on how to join and participate through the webinar, visit [www.ecy.wa.gov/programs/tcp/regs/wac173322/1309-proposal.html](http://www.ecy.wa.gov/programs/tcp/regs/wac173322/1309-proposal.html).

Comments: During the public hearing, ecology will accept comments: At the hearing location; and through the webinar.

Date of Intended Adoption: July 30, 2014.

Submit Written Comments to: Adrienne Dorrah, Department of Ecology, Toxics Cleanup Program, P.O. Box 47600,

Olympia, WA 98504-7600, e-mail RAGrule@ecy.wa.gov, fax (360) 407-7154, by June 6, 2014.

Assistance for Persons with Disabilities: Contact Adrienne Dorrah at (360) 407-7195, by May 16, 2014. Persons with hearing loss, call TTY 711 for Washington relay service. Persons with a speech disability, call 877-833-6341.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to:

1. Implement changes to the Model Toxics Control Act, chapter 70.105D RCW, passed by the Washington state legislature in 2013 affecting the remedial action grant and loan program. The legislation establishes new funding priorities for the program and directs ecology to make several changes to the program, including:

- Enter into extended grant agreements with local governments for projects exceeding \$20 million and occurring over multiple budget cycles. Such projects would receive priority for grant funds.
- Provide integrated planning grants to local governments for studies that facilitate the cleanup and reuse of contaminated sites.
- Eliminate methamphetamine lab site assessment and cleanup grants and derelict vessel remedial action grants as separate types of grants.
- Provide area-wide groundwater remedial action grants without requiring local governments to be a potentially liable person or seek reimbursement of grant funds from such persons.
- Enter into grant agreements with local governments before they acquire or secure access to a property, provided they include a schedule.
- Provide periodic reimbursement of the costs of independent remedial actions.
- Implement cash management principles to ensure budgeted funds are put to work.

2. Make other appropriate changes to the requirements governing remedial action grants and loans (such as updating funding limits and recipient match requirements).

3. Streamline existing requirements, improve rule clarity, and improve consistency with other requirements in this chapter or with other state and federal laws and rules (such as coordinating with agency-wide efforts to streamline and standardize grant processes).

Reasons Supporting Proposal: The proposal is necessary to:

1. Comply with changes to the Model Toxics Control Act, chapter 70.105D RCW, passed by the Washington state legislature in 2013, and continue to implement those changes after June 30, 2014.

2. Encourage and expedite the cleanup and reuse of contaminated sites by local governments.

3. Make the rule easier to use and understand.

The proposed replacement of chapter 173-322 WAC with chapter 173-322A WAC is necessary to streamline and clarify the rule.

Statutory Authority for Adoption: Chapter 70.105D RCW.

Statute Being Implemented: Chapter 70.105D RCW.

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

Name of Proponent: Department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting: Michael Feldcamp, Department of Ecology, Lacey, Washington, (360) 407-7531; Implementation: Angie Wirkkala, Department of Ecology, Lacey, Washington, (360) 407-7219; and Enforcement: Jim Pendowski, Department of Ecology, Lacey, Washington, (360) 407-7177.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required under chapter 19.85 RCW because:

1. The persons impacted by the proposed rule changes are government bodies and therefore no businesses are impacted. RCW 19.85.030 (1)(a); and

2. The proposed rule changes relate only to internal governmental operations that are not subject to violation by a nongovernment party. RCW 19.85.025(3), based on RCW 34.05.310 (4)(b).

A school district fiscal impact statement is not required under chapter 28A.305 RCW because the rule is proposed by the department of ecology, not the office of the superintendent of public instruction.

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

1. The proposed rule changes relate only to internal governmental operations that are not subject to violation by a nongovernment party. RCW 34.05.328 (5)(b)(ii); and

2. The proposed rule changes only set forth the agency's interpretation of statutory provisions, and violation of the rule does not subject a person to a penalty or sanction. RCW 34.05.328 (5)(c)(ii) and (iii).

April 15, 2014

Polly Zehm

Deputy Director

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 173-322-010	Purpose and authority.
WAC 173-322-020	Definitions.
WAC 173-322-030	Relation to other legislation and administrative rules.
WAC 173-322-040	Administration.
WAC 173-322-050	Fiscal controls.
WAC 173-322-060	Site hazard assessment grants.
WAC 173-322-070	Oversight remedial action grants.
WAC 173-322-080	Independent remedial action grants.
WAC 173-322-090	Area-wide groundwater remedial action grants.
WAC 173-322-100	Safe drinking water action grants.

- WAC 173-322-110 Methamphetamine lab site assessment and cleanup grants.  
 WAC 173-322-120 Derelict vessel remedial action grants.  
 WAC 173-322-130 Loans.

### Chapter 173-322A WAC

#### REMEDIAL ACTION GRANTS AND LOANS

##### NEW SECTION

**WAC 173-322A-010 Purpose and authority.** (1) This chapter recognizes that:

(a) The state contains thousands of hazardous waste sites that present serious threats to human health and the environment, including the state's water resources;

(b) Many of these hazardous waste sites, such as landfills and port facilities, are owned or operated by local governments;

(c) Many of the properties affected by these hazardous waste sites are brownfield properties, where economic development and other community reuse objectives are hindered by the presence of contamination; and

(d) The cost of cleaning up these hazardous waste sites in many cases is beyond the financial means of local governments and ratepayers.

(2) This chapter establishes requirements for a program of grants and loans to local governments for remedial action pursuant to RCW 70.105D.070 (4) and (8).

(3) The purpose of the remedial action grants and loans program established by this chapter is to expedite the cleanup and redevelopment of hazardous waste sites and to lessen the impact of the cleanup on ratepayers and taxpayers. The remedial action grants and loans shall be used to supplement local government funding and funding from other sources to carry out remedial actions.

##### NEW SECTION

#### **WAC 173-322A-020 Relation to other laws and rules.**

(1) Nothing in this chapter shall influence, affect, or modify department programs, regulations, or enforcement of applicable laws relating to hazardous waste site investigation and cleanup.

(2) Nothing in this chapter shall modify the order or decree the department has secured with potentially liable persons or prospective purchasers for remedial action. The execution of remedial actions pursuant to the order or decree shall in no way be contingent upon the availability of grant funding.

(3) All grants and loans shall be subject to existing accounting and auditing requirements of state laws and regulations applicable to the issuance of grants and loans.

##### NEW SECTION

**WAC 173-322A-100 Definitions.** Unless otherwise defined in this chapter, words and phrases used in this chapter shall be defined according to WAC 173-340-200 and 173-204-505.

(1) "**Agreement signature date**" means, for the purposes of grant and loan agreements, the date the agreement document is signed by the department.

(2) "**Applicant**" means a local government that applies for a grant or loan.

(3) "**Area-wide groundwater contamination**" means groundwater contamination on multiple adjacent properties with different ownerships consisting of hazardous substances from multiple sources that have resulted in commingled plumes of contaminated groundwater that are not practicable to address separately.

(4) "**Average market rate**" means the average market rate for tax-exempt general obligation municipal bonds for the month of June preceding the agreement signature date, as determined using rates published by *Bond Buyer*.

(5) "**Biennium**" means the twenty-four-month fiscal period extending from July 1st of odd-numbered years to June 30th of odd-numbered years.

(6) "**Brownfield property**" means previously developed and currently abandoned or underutilized real property and adjacent surface waters and sediment where environmental, economic, or community reuse objectives are hindered by the release or threatened release of hazardous substances that the department has determined requires remedial action under this chapter or that the United States Environmental Protection Agency has determined requires remedial action under the federal cleanup law.

(7) "**Budget**" means, for the purpose of grant and loan agreements, a breakdown of eligible costs by task.

(8) "**Cleanup action**" means the term as defined in WAC 173-340-200 or 173-204-505.

(9) "**Construction completion**" means physical construction of a cleanup action component is complete.

(10) "**Coordinated water system plan**" means a plan for public water systems within a critical water supply service area which identifies the present and future water system concerns and sets forth a means for meeting those concerns in the most efficient manner possible pursuant to chapter 246-293 WAC.

(11) "**Decree**" or "**consent decree**" means a consent decree issued under WAC 173-340-520 or the federal cleanup law.

(12) "**Department**" means the department of ecology.

(13) "**Department share**" means the department's share of eligible costs.

(14) "**Director**" means the director of the department of ecology.

(15) "**Economically disadvantaged county**" means a county whose per capita income is equal to or below the median county per capita income, as determined on July 1st of each odd-numbered year using the latest official American Community Survey five-year estimates of the U.S. Department of Commerce.

(16) "**Economically disadvantaged city or town**" means a city or town whose per capita income is equal to or below the median city or town per capita income, as determined on July 1st of each odd-numbered year using the latest official American Community Survey five-year estimates of the U.S. Department of Commerce.

(17) "**Eligible cost**" means a project cost that is eligible for funding under this chapter and the terms of the grant or loan agreement.

(18) "**Extended grant agreement**" means a grant agreement entered into under RCW 70.105D.070 (4)(e)(i).

(19) "**Feasibility study**" means the term as defined in chapter 173-340 or 173-204 WAC.

(20) "**Federal cleanup law**" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601 et seq.

(21) "**Grant agreement**" means a binding agreement between the local government and the department that authorizes the disbursement of funds to the local government to reimburse it for a portion of expenditures in support of a specified scope of services.

(22) "**Hazardous substances**" means any hazardous substance as defined in WAC 173-340-200.

(23) "**Hazardous waste site**" means any facility where there has been confirmation of a release or threatened release of a hazardous substance that requires remedial action.

(24) "**Highly impacted community**" means a community that the department has determined is likely to bear a disproportionate burden of public health risks from environmental pollution.

(25) "**Independent remedial actions**" means remedial actions conducted without department oversight or approval and not under an order or consent decree.

(26) "**Initial investigation**" means a remedial action that consists of an investigation under WAC 173-340-310.

(27) "**In-kind contributions**" means property or services that benefit a project and are contributed to the recipient by a third party without direct monetary compensation. In-kind contributions include interlocal costs, donated or loaned real or personal property, volunteer services, and employee services donated by a third party.

(28) "**Innovative technology**" means new technologies that have been demonstrated to be technically feasible under certain site conditions, but have not been widely used under the conditions that exist at the hazardous waste site. Innovative technology has limited performance and cost data available.

(29) "**Interim action**" means a remedial action conducted under WAC 173-340-430.

(30) "**Loan agreement**" means a binding agreement between the local government and the department that authorizes the disbursement of funds to the local government that must be repaid. The loan agreement includes terms such as interest rates and repayment schedule, scope of work, performance schedule, and project budget.

(31) "**Local government**" means any political subdivision of the state, including a town, city, county, special purpose district, or other municipal corporation, including brownfield renewal authority created under RCW 70.105D.-160.

(32) "**No further action determination**" or "**NFA determination**" means a written opinion issued by the department under WAC 173-340-515(5) that the independent remedial actions performed at a hazardous waste site or property meet the substantive requirements of chapter 173-340

WAC and that no further remedial action is required at the hazardous waste site or property. The opinion is advisory only and not binding on the department.

(33) "**Order**" means an order issued under chapter 70.105D RCW, including enforcement orders issued under WAC 173-340-540 and agreed orders issued under WAC 173-340-530, or an order issued under the federal cleanup law, including unilateral administrative orders (UAO) and administrative orders on consent (AOC).

(34) "**Oversight remedial actions**" means remedial actions conducted under an order or decree.

(35) "**Partial funding**" means funding less than the maximum department share allowed under this chapter.

(36) "**Potentially liable person**" or "**PLP**" means any person whom the department finds, based on credible evidence, to be liable under RCW 70.105D.040.

(37) "**Potentially responsible party**" or "**PRP**" means "covered persons" as defined under section 9607 (a)(1) through (4) of the federal cleanup law (42 U.S.C. Sec. 9607(a)).

(38) "**Property**" means, for the purposes of independent remedial action grants, the parcel or parcels of real property affected by a hazardous waste site and addressed as part of the independent remedial action.

(39) "**Prospective purchaser**" means a person who is not currently liable for remedial action at a facility and who proposes to purchase, redevelop, or reuse the facility.

(40) "**Public water system**" means a Group A water system as defined in WAC 246-290-020.

(41) "**Purveyor**" means an agency or subdivision of the state or a municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other entity that owns or operates a public water system, or the authorized agent of such entities.

(42) "**Recipient**" means a local government that has been approved to receive a grant or loan.

(43) "**Recipient share**" or "**match**" means the recipient's share of eligible costs.

(44) "**Remedial action**" means any action or expenditure consistent with the purposes of chapter 70.105D RCW to identify, eliminate, or minimize any threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

(45) "**Remedial investigation**" means the term as defined in chapter 173-340 or 173-204 WAC.

(46) "**Retroactive costs**" means costs incurred before the agreement signature date.

(47) "**Safe drinking water**" means water meeting drinking water quality standards set by chapter 246-290 WAC.

(48) "**Scope of work**" means the tasks and deliverables of the grant or loan agreement.

(49) "**Site**" means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehi-

cle, rolling stock, vessel, or aircraft; or any site or area where a hazardous substance, other than a legal consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(50) "**Site hazard assessment**" means a remedial action that consists of an investigation performed under WAC 173-340-320.

(51) "**Voluntary cleanup program**" means the program authorized under RCW 70.105D.030 (1)(i) and WAC 173-340-515.

#### NEW SECTION

**WAC 173-322A-200 Funding cycle.** (1) **Project solicitation.** Annually, the department will solicit project proposals from local governments to develop its budget and update its ten-year financing plan for remedial action grants and loans. Project proposals for each type of grant or loan must be submitted on forms provided by the department and include sufficient information to make the determinations in subsection (3) of this section. To be considered for inclusion in the department's budget for remedial action grants and loans, project proposals should be submitted by the dates published by the department.

(2) **Application submittal.** Applications for each type of grant or loan must be submitted on forms provided by the department and include sufficient information to make the determinations in subsections (3) and (4) of this section. Completed applications should be submitted by the dates published by the department.

(3) **Project evaluation and ranking.** Project proposals and applications for each type of grant or loan will be reviewed by the department for completeness and evaluated to determine:

- (a) Project eligibility; and
- (b) Funding priority under WAC 173-322A-210.

(4) **Agreement development.** The department will make funding decisions only after funds have been appropriated. After deciding to fund a project, the department will negotiate with the applicant the scope of work and budget for the grant and develop the agreement. The department will consider:

- (a) Funding priority under WAC 173-322A-210;
- (b) Cost eligibility;
- (c) Allowable funding of eligible costs; and
- (d) Availability of state funds and other funding sources.

#### NEW SECTION

**WAC 173-322A-210 Funding priorities.** (1) **Among types of grants and loans.** The department will fund remedial action grants and loans in the following order of priority:

- (a) Oversight remedial action grants and loans under an existing extended grant agreement;
- (b) Site assessment grants and other remedial action grants and loans for previously funded projects, provided that substantial progress has been made; and
- (c) Remedial action grants and loans for new projects.

(2) **For each type of grant or loan.** For each type of remedial action grant or loan, the department will further prioritize projects for funding or limit funding for projects based

on the factors specified in WAC 173-322A-300 through 173-322A-350, as applicable.

(3) **Oversight remedial action loans.** The department will fund an oversight remedial action loan from the same fund allocation used to fund the associated oversight remedial action grant. When the demand for funds exceeds the amount allocated, the department will give the oversight remedial action grant and loan the same priority.

#### NEW SECTION

**WAC 173-322A-220 Fiscal controls.** (1) **General.** The department will establish reasonable costs for all grants and loans, require local governments to manage projects in a cost-effective manner, and ensure that all potentially liable persons assume responsibility for remedial action.

(2) **Funding discretion.** The department retains the discretion to not provide a grant or loan for an eligible project or to provide less funding for an eligible project than the maximum allowed under this chapter.

(3) **Funding limits.** The department may not provide more funding for an eligible project than the maximum allowed under this chapter for each type of grant or loan.

(4) **Retroactive funding.** Retroactive costs are not eligible for funding, except as provided under this chapter for each type of grant or loan.

(5) **Cash management of grants.** For oversight remedial action grants, the department may not:

(a) Allocate more funds for a project each biennium than are estimated to be necessary to complete the scope of work for that biennium. The biennial scope of work must be approved by the department; or

(b) Allocate more funds for a project unless the local government has demonstrated to the department that funds awarded during the previous biennium have been substantially expended or contracts have been entered into to substantially expend the funds.

(6) **Consideration of insurance, contribution, and cost recovery claims.** A recipient may use proceeds from an insurance claim or a contribution or cost recovery claim under RCW 70.105D.080 or the federal cleanup law to meet recipient share requirements, provided that the recipient complies with the following conditions.

(a) **Notice of action.** Upon application or within thirty days of taking an action to recover the claim, whichever is later, the recipient must notify the department of the action.

(b) **Notice of resolution.** Upon application or within thirty days of resolving a claim, whichever is later, the recipient must:

- (i) Notify the department of the resolution;
- (ii) Specify the amount of proceeds received under the resolution and the portion of the proceeds attributable to eligible costs; and
- (iii) Provide the department a copy of the settlement, judgment, or other document resolving the claim.

(c) **Repayment of grant funds.** If the proceeds from a claim exceed the following costs, then the department may reduce the department share or require repayment of costs reimbursed by the department under a grant agreement by up to the amount of the exceedance:

(i) The cost incurred by the recipient to pursue the claim;  
 (ii) The cost of remedial actions not funded by the department at the hazardous waste site; and

(iii) If approved by the department, the cost of remedial actions not funded by the department for an eligible project at a hazardous waste site that is not the basis for the claim.

(d) **Eligibility of payments to other recipients.** Contribution and cost recovery claim payments are not eligible costs if the payments are made for remedial actions previously funded by a grant to another jurisdiction.

(7) **Reimbursement request deadlines.**

(a) Requests for reimbursement and adequate documentation of eligible retroactive costs incurred before the application date must be submitted to the department in the application.

(b) Requests for reimbursement and adequate documentation of eligible retroactive costs incurred between the application date and the agreement signature date must be submitted to the department within ninety days of the agreement signature date.

(c) Requests for reimbursement and adequate documentation of eligible costs incurred after the agreement signature date must be submitted to the department within ninety days of incurring the costs.

(d) If requests for reimbursement are not submitted by the deadlines in (a) through (c) of this subsection, as applicable, the department may deny reimbursement of the costs.

(8) **Spending plans for grant or loan agreements.** The department may require grant or loan recipients to provide and periodically update a spending plan for the grant or loan.

(9) **Financial responsibility.** As established by the Model Toxics Control Act, chapter 70.105D RCW, and implementing regulations, potentially liable persons bear financial responsibility for remedial action costs. The remedial action grant and loan programs may not be used to circumvent the responsibility of a potentially liable person. Remedial action grants and loans shall be used to supplement local government funding and funding from other sources to carry out required remedial action.

(10) **Puget Sound action agenda.** The department may not fund projects designed to address the restoration of Puget Sound that are in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

## NEW SECTION

**WAC 173-322A-300 Site assessment grants.** (1) **Purpose.** The purpose of site assessment grants is to provide funding to local governments that conduct initial investigations and site hazard assessments on behalf of the department. The department retains the authority to review and verify results and make determinations based on the initial investigations and site hazard assessments conducted by local governments.

(2) **Project eligibility.** To be eligible for a site assessment grant, a project must meet all of the following requirements:

(a) The applicant must be a local health district or department;

(b) The department has agreed the applicant may conduct initial investigations or site hazard assessments on its behalf; and

(c) The scope of work for initial investigations and site hazard assessments must conform to WAC 173-340-310 and 173-340-320 and applicable department guidelines.

(3) **Funding priority.** The department will prioritize eligible projects for funding or limit funding for eligible projects based on the priorities in WAC 173-322A-210 and the following factors:

(a) The need for initial investigations or site hazard assessments within the jurisdiction of the applicant, as determined by the department;

(b) The population within the jurisdiction of the applicant; and

(c) The performance of the applicant under prior site assessment grant agreements.

(4) **Application process.**

(a) **Project solicitation.** Annually, the department will solicit project proposals from local governments to develop its budget and update its ten-year financing plan for remedial action grants and loans. Project proposals must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) of this subsection. To be considered for inclusion in the department's budget for remedial action grants and loans, project proposals should be submitted by the dates published by the department.

(b) **Application submittal.** Applications must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) and (d) of this subsection. Completed applications should be submitted by the dates published by the department.

(c) **Project evaluation and ranking.** Project proposals and applications will be reviewed by the department for completeness and evaluated to determine:

(i) Project eligibility under subsection (2) of this section; and

(ii) Funding priority under subsection (3) of this section.

(d) **Agreement development.** The department will make funding decisions only after funds have been appropriated. After deciding to fund a project, the department will negotiate with the applicant the scope of work and budget for the grant and develop the agreement. The department will consider:

(i) Funding priority under subsection (3) of this section;

(ii) Cost eligibility under subsections (5) and (6) of this section;

(iii) Allowable funding under subsection (7) of this section; and

(iv) Availability of state funds and other funding sources.

(5) **Cost eligibility.** To be eligible for funding, a project cost must be eligible under this subsection and the terms of the grant agreement and be approved by the department.

(a) **Eligible costs.** Eligible costs for a site assessment grant include reasonable costs for the following:

(i) Initial investigations under WAC 173-340-310;

(ii) Site hazard assessments under WAC 173-340-320;

and

(iii) Administrative or technical support for initial investigations or site hazard assessments performed by the department.

(b) **Ineligible costs.** Ineligible costs for a site assessment grant include, but are not limited to, the following:

(i) The cost of developing the grant application or negotiating the grant agreement;

(ii) The cost of dispute resolution under the grant agreement;

(iii) Retroactive costs, except as provided under subsection (6) of this section;

(iv) Legal costs including, but not limited to, the cost of seeking legal advice, pursuing cost recovery, contribution, or insurance claims, participating in administrative hearings, pursuing penalties or civil or criminal actions against persons, defending actions taken against the recipient, penalties incurred by the recipient, and any attorney fees incurred by the recipient;

(v) The cost of testing buildings and other structures for drug use residuals;

(vi) The cost of testing buildings and other structures for lead paint or asbestos that is not required as a remedial action under chapter 70.105D RCW or the federal cleanup law; and

(vii) In-kind contributions.

(6) **Retroactive cost eligibility.** Retroactive costs are eligible for funding if the costs are incurred between the start of the biennium and the agreement signature date and are eligible under subsection (5) of this section.

(7) **Funding of eligible costs.**

(a) **Department share.** The department may fund up to one hundred percent of the eligible costs.

(b) **Recipient share.** The recipient shall fund the percentage of the eligible costs not funded by the department under (a) of this subsection. The recipient may not use in-kind contributions to meet this requirement.

#### NEW SECTION

##### **WAC 173-322A-310 Integrated planning grants. (1)**

**Purpose.** The purpose of integrated planning grants is to provide funding to local governments to conduct assessments of brownfield properties and develop integrated projects plans for their cleanup and adaptive reuse. The grants are intended to encourage and expedite the cleanup of brownfield properties and to lessen the impact of the cleanup cost on ratepayers and taxpayers.

(2) **Project eligibility.** For the purposes of this grant, a project consists of integrated planning for a single hazardous waste site or for an area affected by multiple hazardous waste sites. A project may extend over more than one biennium. To be eligible for a grant, the project must meet the following requirements:

(a) The applicant must be a local government;

(b) The hazardous waste site must be located within the jurisdiction of the applicant;

(c) The applicant must have the necessary access to complete the project or obtain such access in accordance with the schedule in the grant agreement; and

(d) The applicant must not be required to conduct the actions under an order or decree.

(3) **Funding priority.** The department will prioritize eligible projects for funding or limit funding for eligible projects based on the priorities in WAC 173-322A-210 and the following factors:

(a) The threat posed by the hazardous waste site to human health and the environment;

(b) The land reuse potential of the hazardous waste site;

(c) Whether the hazardous waste site is located within a highly impacted community;

(d) The readiness of the applicant to start and complete the work to be funded by the grant and the performance of the applicant under prior grant agreements;

(e) The ability of the grant to expedite the cleanup of the hazardous waste site;

(f) The ability of the grant to leverage other public or private funding for the cleanup and reuse of the hazardous waste site;

(g) The distribution of grants throughout the state and to various types and sizes of local governments; and

(h) Other factors as determined and published by the department.

(4) **Application process.**

(a) **Project solicitation.** Annually, the department will solicit project proposals from local governments to develop its budget and update its ten-year financing plan for remedial action grants and loans. Project proposals must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) of this subsection. To be considered for inclusion in the department's budget for remedial action grants and loans, project proposals should be submitted by the dates published by the department.

(b) **Application submittal.** Applications must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) and (d) of this subsection. Completed applications should be submitted by the dates published by the department.

(c) **Project evaluation and ranking.** Project proposals and applications will be reviewed by the department for completeness and evaluated to determine:

(i) Project eligibility under subsection (2) of this section; and

(ii) Funding priority under subsection (3) of this section.

(d) **Agreement development.** The department will make funding decisions only after funds have been appropriated. After deciding to fund a project, the department will negotiate with the applicant the scope of work and budget for the grant and develop the agreement. The department will consider:

(i) Funding priority under subsection (3) of this section;

(ii) Cost eligibility under subsections (5) and (6) of this section;

(iii) Allowable funding under subsections (7) and (8) of this section; and

(iv) Availability of state funds and other funding sources.

(5) **Cost eligibility.** To be eligible for funding, a project cost must be eligible under this subsection and the terms of the grant agreement and be approved by the department.

(a) **Eligible costs.** Eligible costs for an integrated planning grant include, but are not limited to, reasonable costs for the following:

- (i) Environmental site assessments;
- (ii) Remedial investigations;
- (iii) Health assessments;
- (iv) Feasibility studies;
- (v) Site planning;
- (vi) Community involvement;
- (vii) Land use and regulatory analyses;
- (viii) Building and infrastructure assessments;
- (ix) Economic and fiscal analyses; and
- (x) Any environmental analyses under chapter 43.21C RCW.

(b) **Ineligible costs.** Ineligible costs for an integrated planning grant include, but are not limited to, the following:

- (i) The cost of developing the grant application or negotiating the grant agreement;
  - (ii) The cost of dispute resolution under the grant agreement;
  - (iii) Retroactive costs, except as provided under subsection (6) of this section;
  - (iv) Legal costs including, but not limited to, the cost of seeking client advice, pursuing cost recovery, contribution, or insurance claims, participating in administrative hearings, pursuing penalties or civil or criminal actions against persons, penalties incurred by the recipient, defending actions taken against the recipient, and any attorney fees incurred by the recipient; and
  - (v) In-kind contributions.
- (6) **Retroactive cost eligibility.** Retroactive costs are eligible for reimbursement if the costs are incurred during the period of a prior grant agreement, the costs are eligible under subsection (5) of this section, and the costs have not been reimbursed by the department.

(7) **Limit on eligible costs for a project.**

(a) For a project consisting of a study of a single hazardous waste site, the eligible costs for the project may not exceed two hundred thousand dollars.

(b) For a project consisting of a study area involving more than one hazardous waste site, the eligible costs for the project may not exceed three hundred thousand dollars.

(c) A hazardous waste site may not be included in more than one project.

(8) **Funding of eligible costs.**

(a) **Department share.** The department may fund up to one hundred percent of the eligible costs.

(b) **Recipient share.** The recipient shall fund the percentage of the eligible costs not funded by the department under (a) of this subsection. The recipient may not use in-kind contributions to meet this requirement.

(9) **Administration of multiple grants.** The department may provide integrated planning grants to a local government for more than one project under a single grant agreement.

## NEW SECTION

**WAC 173-322A-320 Oversight remedial action grants.** (1) **Purpose.** The purpose of oversight remedial action grants is to provide funding to local governments that

investigate and clean up hazardous waste sites under an order or decree. The grants are intended to encourage and expedite remedial action and to lessen the impact of the cost of such action on ratepayers and taxpayers.

(2) **Project eligibility.** For the purposes of this grant, a project consists of remedial actions conducted under an order or decree at a single hazardous waste site. A project may extend over more than one biennium. To be eligible for a grant, a project must meet all of the following requirements:

- (a) The applicant must be a local government;
- (b) The applicant must be a potentially liable person, potentially responsible party, or prospective purchaser at the hazardous waste site;
- (c) The applicant must meet one of the following criteria:
  - (i) The applicant is required by the department to conduct remedial action under an order or decree issued under chapter 70.105D RCW;
  - (ii) The applicant is required by the U.S. Environmental Protection Agency to conduct remedial action under an order or decree issued under the federal cleanup law and the order or decree has been signed or acknowledged in writing by the department as a sufficient basis for remedial action grant funding; or
  - (iii) The applicant has signed an order or decree issued under chapter 70.105D RCW requiring a potentially liable person or prospective purchaser other than the applicant to conduct remedial action at a hazardous waste site and the applicant has entered into an agreement with the other person to reimburse the person for a portion of the remedial action costs incurred under the order or decree; and
- (d) The project must be included in the department's ten-year financing plan required under RCW 70.105D.030(5).

(3) **Funding priority.** The department will prioritize eligible projects for funding or limit funding for eligible projects based on the priorities in WAC 173-322A-210 and the following factors:

- (a) The threat posed by the hazardous waste site to human health and the environment;
- (b) The land reuse potential of the hazardous waste site;
- (c) Whether the hazardous waste site is located within a highly impacted community;
- (d) The readiness of the applicant to start and complete the work to be funded by the grant and the performance of the applicant under prior grant agreements;
- (e) The ability of the grant to expedite the cleanup of the hazardous waste site;
- (f) The ability of the grant to leverage other public or private funding for the cleanup and reuse of the hazardous waste site;
- (g) The distribution of grants throughout the state and to various types and sizes of local governments; and
- (h) Other factors as determined and published by the department.

(4) **Application process.**

(a) **Project solicitation.** Annually, the department will solicit project proposals from local governments to develop its budget and update its ten-year financing plan for remedial action grants and loans. Project proposals must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) of this subsection.

tion. To be considered for inclusion in the department's budget for remedial action grants and loans, project proposals should be submitted by the dates published by the department.

(b) **Application submittal.** Applications must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) and (d) of this subsection. Completed applications should be submitted by the dates published by the department.

(c) **Project evaluation and ranking.** Project proposals and applications will be reviewed by the department for completeness and evaluated to determine:

(i) Project eligibility under subsection (2) of this section; and

(ii) Funding priority under subsection (3) of this section.

(d) **Agreement development.** The department will make funding decisions only after funds have been appropriated. After deciding to fund a project, the department will negotiate with the applicant the scope of work and budget for the grant and develop the agreement. The department will consider:

(i) Funding priority under subsection (3) of this section;

(ii) Cost eligibility under subsections (5) and (6) of this section;

(iii) Allowable funding under subsections (7) and (8) of this section; and

(iv) Availability of state funds and other funding sources.

(5) **Cost eligibility.** To be eligible for funding, a project cost must be eligible under this subsection and the terms of the grant agreement and be approved by the department.

(a) **Eligible costs.** Eligible costs for an oversight remedial action grant include, but are not limited to, reasonable costs for the following:

(i) Emergency or interim actions;

(ii) Remedial investigations;

(iii) Feasibility studies and selection of the remedy;

(iv) Engineering design and construction of the selected remedy; and

(v) Operation and maintenance or monitoring of a cleanup action component for up to one year after construction completion of the component.

(b) **Ineligible costs.** Ineligible costs for an oversight remedial action grant include, but are not limited to, the following:

(i) The cost of developing the grant application or negotiating the grant agreement;

(ii) The cost of dispute resolution under the order or decree or the grant agreement;

(iii) The costs incurred under an order or decree by a potentially liable person, potentially responsible party, or prospective purchaser other than the recipient, except as provided under subsection (2)(c)(iii) of this section;

(iv) Retroactive costs, except as provided under subsection (6) of this section;

(v) The remedial action costs of the department or the U.S. Environmental Protection Agency reasonably attributable to the administration of an order or decree for remedial action at the hazardous waste site, including reviews of reimbursement requests;

(vi) Natural resource damage assessment and restoration costs and liability for natural resource damages under chapter 70.105D RCW or the federal cleanup law;

(vii) Site development and mitigation costs not required as part of a remedial action;

(viii) Legal costs including, but not limited to, the cost of seeking client advice, pursuing cost recovery, contribution, or insurance claims, participating in administrative hearings, pursuing penalties or civil or criminal actions against persons, penalties incurred by the recipient, defending actions taken against the recipient, and any attorney fees incurred by the recipient; and

(ix) In-kind contributions.

(6) **Retroactive cost eligibility.** The following retroactive costs are eligible for reimbursement if they are also eligible under subsection (5) of this section:

(a) Costs incurred under the order or decree between the effective date of the order or decree and the agreement signature date;

(b) Costs incurred under the order or decree during the period of a prior grant agreement that have not been reimbursed by the department;

(c) Costs incurred negotiating the order or decree, provided that the costs were incurred within ninety days before the effective date of the order or decree; and

(d) Costs incurred before the effective date of the order or decree conducting independent remedial actions, provided that the actions are:

(i) Conducted within five years before the effective date of the order or decree;

(ii) Consistent with the remedial actions required under the order or decree;

(iii) Compliant with the substantive requirements of chapter 173-340 WAC; and

(iv) Incorporated as part of the order or decree.

(7) **Funding of eligible costs.**

(a) **Department share.** The department may fund up to fifty percent of the eligible costs. Except for extended grant agreements, the department may fund a higher percentage of the eligible costs as follows.

(i) The department may fund up to an additional twenty-five percent of the eligible costs if the applicant is:

(A) An economically disadvantaged county, city, or town; or

(B) A special purpose district with a hazardous waste site located within an economically disadvantaged county, city, or town.

(ii) The department may fund up to an additional fifteen percent of the eligible costs if the applicant uses innovative technology.

(iii) The department may fund up to a total of ninety percent of the eligible costs if the eligible costs for the project are less than five million dollars and the director or designee determines the additional funding would:

(A) Prevent or mitigate unfair economic hardship imposed by cleanup liability;

(B) Create new substantial economic development, public recreational opportunities, or habitat restoration opportunities that would not otherwise occur; or

(C) Create an opportunity for acquisition and redevelopment of brownfield property under RCW 70.105D.040(5) that would not otherwise occur.

(b) **Recipient share.** The recipient shall fund the percentage of the eligible costs not funded by the department under (a) of this subsection. The recipient may not use in-kind contributions to meet this requirement.

(8) **Cash management of grants.**

(a) The department may not allocate more funds for a project each biennium than are estimated to be necessary to complete the scope of work for that biennium. The biennial scope of work must be approved by the department.

(b) The department may not allocate more funds for a project unless the local government has demonstrated to the department that funds awarded during the previous biennium have been substantially expended or contracts have been entered into to substantially expend the funds.

(9) **Administration of multiple grants.** Except for extended grant agreements, the department may provide oversight remedial action grants to a local government for more than one project under a single grant agreement.

(10) **Extended grant agreements.**

(a) **Project eligibility.** The department may provide an oversight remedial action grant to a local government for a hazardous waste site under an extended grant agreement if, in addition to meeting the eligibility requirements in subsection (2) of this section, the project extends over multiple biennia and the eligible costs for the project exceed twenty million dollars.

(b) **Agreement duration.** The initial duration of an extended grant agreement may not exceed ten years. The department may extend the duration of the agreement upon finding substantial progress has been made on remedial actions at the site.

(c) **Department share.** Under an extended grant agreement, the department may not fund more than fifty percent of the eligible costs.

NEW SECTION

**WAC 173-322A-325 Oversight remedial action loans.** (1) **Purpose.** The purpose of oversight remedial action loans is to supplement local government funding and funding from other sources to meet the recipient share requirements for oversight remedial action grants under WAC 173-322A-320. The loans are intended to encourage and expedite the cleanup of hazardous waste sites and to lessen the impact of the cleanup cost on ratepayers and taxpayers.

(2) **Types of loans.** There are two different types of oversight remedial action loans, a standard loan and an extraordinary financial hardship loan. The two types of loans have different project eligibility requirements and different terms and conditions for repayment based upon the applicant's ability to repay the loan.

(a) **Standard loan.** A standard loan is a loan that includes the terms and conditions for repayment.

(b) **Extraordinary financial hardship loan.** An extraordinary financial hardship loan is a loan that includes deferred terms and conditions for repayment. Deferred terms

and conditions may not be indefinite. Any such loan must be approved by the director or designee.

(3) **Project eligibility.** For the purposes of this loan, a project consists of remedial actions conducted under an order or decree at a single hazardous waste site. A project may extend over more than one biennium. To be eligible for a loan, a project must meet all of the following requirements:

(a) The applicant must have an oversight remedial action grant for the project under WAC 173-322A-320; and

(b) The applicant must demonstrate the following to the department's satisfaction. The department may require an independent third-party financial review to make the demonstration:

(i) For a standard loan, the applicant's financial need for the loan and ability to repay the loan; or

(ii) For an extraordinary financial hardship loan, the applicant's financial need for the loan, inability to repay the loan under present circumstances, and ability to repay the loan in the future.

(4) **Funding priority.** The department will assign an oversight remedial action loan the same priority as the associated oversight remedial action grant.

(5) **Application process.**

(a) **Project solicitation.** Annually, the department will solicit project proposals from local governments to develop its budget and update its ten-year financing plan for remedial action grants and loans. Project proposals must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) of this subsection. To be considered for inclusion in the department's budget for remedial action grants and loans, project proposals should be submitted by the dates published by the department.

(b) **Application submittal.** Applications must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) and (d) of this subsection. Completed applications should be submitted by the dates published by the department.

(c) **Project evaluation and ranking.** Project proposals and applications will be reviewed by the department for completeness and evaluated to determine:

(i) Project eligibility under subsection (3) of this section. If the department determines the applicant meets the eligibility requirements for an extraordinary financial hardship loan, then the department may, upon the approval by the director, provide such a loan to the applicant instead of a standard loan; and

(ii) Funding priority under subsection (4) of this section.

(d) **Agreement development.** The department will make funding decisions only after funds have been appropriated. After deciding to fund a project, the department will negotiate with the applicant the scope of work and budget for the loan and develop the agreement. The department will consider:

(i) Funding priority under subsection (4) of this section;

(ii) Cost eligibility under subsections (6) and (7) of this section;

(iii) Allowable funding under subsection (8) of this section; and

(iv) Availability of state funds and other funding sources.

(6) **Cost eligibility.** The eligible costs for oversight remedial action loans shall be the same as the eligible costs for oversight remedial action grants under WAC 173-322A-320(5).

(7) **Retroactive cost eligibility.** The eligibility of retroactive costs for oversight remedial action loans shall be the same as the eligibility of retroactive costs for the oversight remedial action grants under WAC 173-322A-320(6).

(8) **Funding by department.** The department may provide the recipient of an oversight remedial action loan for up to one hundred percent of the recipient share under WAC 173-322A-320 (7)(b). The loan shall be used by the recipient to supplement local government funding and funding from other sources to meet the recipient share requirement.

(9) **Repayment by recipient.** The terms and conditions for repayment of a loan shall be specified in the loan agreement.

(a) **Standard loans.** For a standard loan, the following terms and conditions shall apply. Additional terms and conditions may be specified in the loan agreement.

(i) **Repayment periods and interest rates.**

(A) If the repayment period is less than or equal to five years, the interest rate shall be thirty percent of the average market rate.

(B) If the repayment period is more than five years and less than or equal to twenty years, the interest rate shall be sixty percent of the average market rate.

(ii) **Interest accrual.** Interest shall accrue on each disbursement as it is paid to the recipient.

(b) **Extraordinary financial hardship loans.** For an extraordinary financial hardship loan, the repayment terms and conditions specified in (a) of this subsection may be adjusted or deferred. Deferred terms and conditions are dependent on periodic review of the recipient's ability to pay. Terms and conditions may not be deferred indefinitely.

#### NEW SECTION

**WAC 173-322A-330 Independent remedial action grants.** (1) **Purpose.** The purpose of independent remedial action grants is to provide funding to local governments that investigate and clean up hazardous waste sites independently under the voluntary cleanup program. The grants are intended to encourage and expedite independent remedial action and to lessen the impact of the cost of such action on ratepayers and taxpayers.

(2) **Types of grants.** The department may provide the following types of independent remedial action grants:

(a) **Post-cleanup reimbursement grant.** Under this grant, the department may reimburse the recipient after the department has issued a no further action determination for the hazardous waste site or property under the voluntary cleanup program.

(b) **Periodic reimbursement grant.** Under this grant, the department may reimburse the recipient periodically during the investigation and the cleanup of a hazardous waste site or property under the voluntary cleanup program.

(3) **Project eligibility.** For the purposes of these grants, a project consists of independent remedial actions at a single hazardous waste site. A project may extend over more than one biennium. To be eligible for a grant, the project must meet all of the following requirements:

(a) The applicant must be a local government;

(b) The applicant must be a potentially liable person, potentially responsible party, or prospective purchaser at the hazardous waste site or have an ownership interest in the hazardous waste site;

(c) For post-cleanup reimbursement grants, the applicant must have completed independent remedial actions at the hazardous waste site or property and received a no further action determination for the site or property under the voluntary cleanup program;

(d) For periodic reimbursement grants, the applicant must:

(i) Enroll the hazardous waste site in the voluntary cleanup program before entering into a grant agreement for the site;

(ii) Conduct independent remedial actions at the hazardous waste site or property in accordance with work plans authorized by the department under the voluntary cleanup program; and

(iii) Have necessary access to conduct independent remedial actions at the hazardous waste site or obtain such access in accordance with a schedule in the grant agreement.

(4) **Funding priority.** The department will prioritize eligible projects for funding or limit funding for eligible projects based on the priorities in WAC 173-322A-210 and the following factors:

(a) The threat posed by the hazardous waste site to human health and the environment;

(b) The land reuse potential of the hazardous waste site;

(c) Whether the hazardous waste site is located within a highly impacted community;

(d) The readiness of the applicant to start and complete the work to be funded by the grant and the performance of the applicant under prior grant agreements;

(e) The ability of the grant to expedite the cleanup of the hazardous waste site;

(f) The ability of the grant to leverage other public or private funding for the cleanup and reuse of the hazardous waste site;

(g) The distribution of grants throughout the state and to various types and sizes of local governments; and

(h) Other factors as determined and published by the department.

(5) **Application process.**

(a) **Project solicitation.** Annually, the department will solicit project proposals from local governments to develop its budget and update its ten-year financing plan for remedial action grants and loans. Project proposals must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) of this subsection. To be considered for inclusion in the department's budget for remedial action grants and loans, project proposals should be submitted by the dates published by the department.

(b) **Application submittal.** Applications must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) and (d) of this subsection. Completed applications should be submitted by the dates published by the department.

(c) **Project evaluation and ranking.** Project proposals and applications will be reviewed by the department for completeness and evaluated to determine:

(i) Project eligibility under subsection (3) of this section; and

(ii) Funding priority under subsection (4) of this section.

(d) **Agreement development.** The department will make funding decisions only after funds have been appropriated. After deciding to fund a project, the department will negotiate with the applicant the scope of work and budget for the grant and develop the agreement. The department will consider:

(i) Funding priority under subsection (4) of this section;

(ii) Cost eligibility under subsections (6) and (7) of this section;

(iii) Allowable funding under subsections (8) and (9) of this section; and

(iv) Availability of state funds and other funding sources.

(6) **Cost eligibility.** To be eligible for funding, a project cost must be eligible under this subsection and the terms of the grant agreement and be approved by the department.

(a) **Eligible costs.** Eligible costs for an independent remedial action grant include, but are not limited to, reasonable costs for the following:

(i) Emergency or interim actions;

(ii) Remedial investigations;

(iii) Feasibility studies and selection of the remedy;

(iv) Engineering design and construction of the selected remedy;

(v) Operation and maintenance or monitoring of a cleanup action component for up to one year after construction completion of the component; and

(vi) Development of independent remedial action plans or reports submitted to the department for review under the voluntary cleanup program.

(b) **Ineligible costs.** Ineligible costs for an independent remedial action grant include, but are not limited to, the following:

(i) The cost of developing the grant application or negotiating the grant agreement;

(ii) The cost of dispute resolution under the voluntary cleanup program or the grant agreement;

(iii) Retroactive costs, except as provided under subsection (7) of this section;

(iv) Cost of technical consultations provided by the department under the voluntary cleanup program, including reviews of reimbursement requests;

(v) Natural resource damage assessment and restoration costs and liability for natural resource damages under chapter 70.105D RCW or the federal cleanup law;

(vi) Site development and mitigation costs not required as part of a remedial action;

(vii) Legal costs including, but not limited to, the cost of seeking client advice, pursuing cost recovery, contribution,

or insurance claims, participating in administrative hearings, pursuing penalties or civil or criminal actions against persons, penalties incurred by the recipient, defending actions taken against the recipient, and any attorney fees incurred by the recipient; and

(viii) In-kind contributions.

(7) **Retroactive cost eligibility.** The following retroactive costs are eligible for reimbursement if they are also eligible under subsection (5) of this section:

(a) Costs incurred within five years before the date of the completed grant application; and

(b) Costs incurred during the period of a prior grant agreement that have not been reimbursed by the department.

(8) **Limit on eligible costs for a project.** The eligible costs for a project may not exceed six hundred thousand dollars.

(9) **Funding of eligible costs.**

(a) **Department share.** Except as otherwise provided in this subsection, the department may only fund up to fifty percent of the eligible costs.

(i) The department may fund up to an additional twenty-five percent of the eligible costs if the applicant is:

(A) An economically disadvantaged county, city, or town; or

(B) A special purpose district with a hazardous waste site located within an economically disadvantaged county, city, or town.

(ii) The department may fund up to a total of ninety percent of the eligible costs if the director or designee determines the additional funding would:

(A) Prevent or mitigate unfair economic hardship imposed by the cleanup liability;

(B) Create new substantial economic development, public recreational opportunities, or habitat restoration opportunities that would not otherwise occur; or

(C) Create an opportunity for acquisition and redevelopment of brownfield property under RCW 70.105D.040(5) that would not otherwise occur.

(b) **Recipient share.** The recipient shall fund the percentage of the eligible costs not funded by the department under (a) of this subsection. The recipient may not use in-kind contributions to meet this requirement.

(10) **Reimbursement of eligible costs.**

(a) **Post-cleanup reimbursement grants.** For post-cleanup reimbursement grants, the department may reimburse the recipient for eligible costs only after the department has issued a no further action determination for the hazardous waste site or property under the voluntary cleanup program.

(b) **Periodic reimbursement grants.** For periodic reimbursement grants, the department may reimburse the recipient for eligible costs in accordance with the following terms and conditions.

(i) **Remedial action work plans.** The recipient must submit independent remedial action work plans to the department for review and authorization under the voluntary cleanup program.

(ii) **Periodic reimbursement of remedial actions.** The department may reimburse the recipient no more frequently than quarterly for the following:

(A) The development of independent remedial action work plans and reports;

(B) Independent remedial actions performed in accordance with a work plan authorized by the department in writing; and

(C) Any other independent remedial actions authorized by the department in writing.

(iii) **Performance guarantee for periodic reimbursement.** The department may withhold twenty percent of each periodic reimbursement payment as security for the recipient's performance. Any funds withheld by the department may be paid to the recipient when the department issues a no further action determination for the hazardous waste site or property.

(iv) **Post-cleanup reimbursement of retroactive costs.** The department may reimburse the recipient for the retroactive costs specified in subsection (7)(a) of this section, but only after the department has issued a no further action determination for the hazardous waste site or property.

(11) **Administration of multiple grants.** The department may provide independent remedial action grants to a local government for more than one project under a single grant agreement.

#### NEW SECTION

**WAC 173-322A-340 Area-wide groundwater investigation grants.** (1) **Purpose.** The purpose of area-wide groundwater investigation grants is to provide funding to local governments that investigate known or suspected areas of area-wide groundwater contamination. The investigations are intended to facilitate the cleanup and redevelopment of properties affected by area-wide groundwater contamination.

(2) **Project eligibility.** For the purposes of this grant, a project consists of an investigation of area-wide groundwater contamination in a single study area. A project may extend over more than one biennium. To be eligible for a grant, a project must meet all of the following requirements:

(a) The applicant must be a local government;

(b) The project must involve the investigation of known or suspected area-wide groundwater contamination;

(c) The applicant must not be required to conduct the investigation under an order or decree;

(d) The applicant must have the necessary access to conduct the remedial actions or obtain such access in accordance with a schedule in the grant agreement; and

(e) The project must be included in the ten-year financing plan required under RCW 70.105D.030(5).

(3) **Funding priority.** The department will prioritize eligible projects for funding or limit funding for eligible projects based on the priorities in WAC 173-322A-210 and the following factors:

(a) The threat posed by the hazardous waste sites to human health and the environment;

(b) The land reuse potential of the hazardous waste sites;

(c) Whether the hazardous waste sites are located within a highly impacted community;

(d) The readiness of the applicant to start and complete the work to be funded by the grant and the performance of the applicant under prior grant agreements;

(e) The ability of the grant to expedite the cleanup of the hazardous waste sites;

(f) The ability of the grant to leverage other public or private funding for the cleanup and reuse of the hazardous waste sites;

(g) The distribution of grants throughout the state and to various types and sizes of local governments; and

(h) Other factors as determined and published by the department.

#### (4) **Application process.**

(a) **Project solicitation.** Annually, the department will solicit project proposals from local governments to develop its budget and update its ten-year financing plan for remedial action grants and loans. Project proposals must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) of this subsection. To be considered for inclusion in the department's budget for remedial action grants and loans, project proposals should be submitted by the dates published by the department.

(b) **Application submittal.** Applications must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) and (d) of this subsection. Completed applications should be submitted by the dates published by the department.

(c) **Project evaluation and ranking.** Project proposals and applications will be reviewed by the department for completeness and evaluated to determine:

(i) Project eligibility under subsection (2) of this section; and

(ii) Funding priority under subsection (3) of this section.

(d) **Agreement development.** The department will make funding decisions only after funds have been appropriated. After deciding to fund a project, the department will negotiate with the applicant the scope of work and budget for the grant and develop the agreement. The department will consider:

(i) Funding priority under subsection (3) of this section;

(ii) Cost eligibility under subsections (5) and (6) of this section;

(iii) Allowable funding under subsections (7) and (8) of this section; and

(iv) Availability of state funds and other funding sources.

(5) **Cost eligibility.** To be eligible for funding, a project cost must be eligible under this subsection and the terms of the grant agreement and be approved by the department.

(a) **Eligible costs.** Eligible costs for an area-wide groundwater investigation grant include, but are not limited to, the reasonable costs for the following:

(i) Identifying the sources of the area-wide groundwater contamination;

(ii) Determining the nature and extent of the area-wide groundwater contamination;

(iii) Identifying the preferential groundwater contaminant migration pathways;

(iv) Identifying area-wide geologic and hydrogeologic conditions; and

(v) Establishing area-wide natural groundwater quality, including aquifer classification under WAC 173-340-720.

(b) **Ineligible costs.** Ineligible costs for an area-wide groundwater remedial action grant include, but are not limited to, the following:

(i) The cost of developing the grant application or negotiating the grant agreement;

(ii) The cost of dispute resolution under the grant agreement;

(iii) Retroactive costs, except as provided under subsection (6) of this section;

(iv) Natural resource damage assessment and restoration costs and liability for natural resource damages under chapter 70.105D RCW or the federal cleanup law;

(v) Site development and mitigation costs not required as part of the remedial action;

(vi) Legal costs including, but not limited to, the costs of seeking client advice, pursuing cost recovery, contribution, or insurance claims, participating in administrative hearings, pursuing penalties or civil or criminal actions against persons, penalties incurred by the recipient, the cost of defending actions taken against the recipient, and any attorney fees incurred by the recipient; and

(vii) In-kind contributions.

(6) **Retroactive cost eligibility.** Retroactive costs are eligible for reimbursement if the costs are incurred during the period of a prior grant agreement, the costs are eligible under subsection (5) of this section, and the costs have not been reimbursed by the department.

(7) **Limit on eligible costs for a project.** The eligible costs for a project may not exceed five hundred thousand dollars.

(8) **Funding of eligible costs.**

(a) **Department share.** The department may fund up to one hundred percent of the eligible costs.

(b) **Recipient share.** The recipient shall fund the percentage of the eligible costs not funded by the department under (a) of this subsection. The recipient may not use in-kind contributions to meet this requirement.

#### NEW SECTION

**WAC 173-322A-350 Safe drinking water action grants.** (1) **Purpose.** The purpose of safe drinking water action grants is to assist local governments, or a local government applying on behalf of a purveyor, in providing safe drinking water to areas contaminated by, or threatened by contamination from, hazardous waste sites.

(2) **Project eligibility.** For the purposes of this grant, a project consists of safe drinking water actions at a single hazardous waste site. A project may extend over more than one biennium. To be eligible for a grant, a project must meet all of the following requirements:

(a) The applicant must be a local government;

(b) The applicant must be a purveyor or the applicant must be applying on behalf of a purveyor;

(c) The applicant or purveyor must be in substantial compliance, as determined by the department of health, with applicable rules of the state board of health or the department of health, including chapter 246-290 WAC (Group A public water supplies), chapter 246-292 WAC (Waterworks operator certification), chapter 246-293 WAC (Water System

Coordination Act), and chapter 246-294 WAC (Drinking water operating permits);

(d) The drinking water source must be affected or threatened by one or more hazardous substances originating from a hazardous waste site;

(e) The drinking water source must:

(i) Exhibit levels of hazardous substances that exceed the primary maximum contaminant levels (MCLs) established by the state board of health and set forth in WAC 246-290-310;

(ii) Exhibit levels of hazardous substances that exceed the cleanup levels established by the department of ecology under Part VII of chapter 173-340 WAC; or

(iii) Be threatened to exceed the levels of hazardous substances identified in (e)(i) or (ii) of this subsection;

(f) If the safe drinking water action includes water line extensions, the extensions must be consistent with the coordinated water system plan prepared under chapter 70.116 RCW and any plans for new development prepared under chapter 36.70 or 36.70A RCW for the geographic area containing the affected water supplies; and

(g) The applicant must not be required to conduct the safe drinking water action under an order or decree.

(3) **Funding priority.** The department will prioritize eligible projects for funding or limit funding for eligible projects based on the priorities in WAC 173-322A-210 and the following factors:

(a) The threat posed by the hazardous waste site to drinking water;

(b) Whether the drinking water serves a highly impacted community;

(c) The per capita cost of providing safe drinking water;

(d) The ability of the grant to expedite the provision of safe drinking water;

(e) The readiness of the applicant to start and complete the work to be funded by the grant and the performance of the applicant under prior grant agreements; and

(f) Other factors as determined and published by the department.

(4) **Application process.**

(a) **Project solicitation.** Annually, the department will solicit project proposals from local governments to develop its budget and update its ten-year financing plan for remedial action grants and loans. Project proposals must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) of this subsection. To be considered for inclusion in the department's budget for remedial action grants and loans, project proposals should be submitted by the dates published by the department.

(b) **Application submittal.** Applications must be submitted on forms provided by the department and include sufficient information to make the determinations in (c) and (d) of this subsection. Completed applications should be submitted by the dates published by the department.

(c) **Project evaluation and ranking.** Project proposals and applications will be reviewed by the department for completeness and evaluated to determine:

(i) Project eligibility under subsection (2) of this section; and

(ii) Funding priority under subsection (3) of this section.

(d) **Agreement development.** The department will make funding decisions only after funds have been appropriated. After deciding to fund a project, the department will negotiate with the applicant the scope of work and budget for the grant and develop the agreement. The department will consider:

(i) Funding priority under subsection (3) of this section;

(ii) Cost eligibility under subsections (5) and (6) of this section;

(iii) Allowable funding under subsection (7) of this section; and

(iv) Availability of state funds and other funding sources.

(5) **Cost eligibility.** To be eligible for funding, a project cost must be eligible under this subsection and the terms of the grant agreement and be approved by the department.

(a) **Eligible costs.** Eligible costs for a safe drinking water action grant include, but are not limited to, reasonable costs for the following, if needed:

(i) Water supply source development and replacement, including pumping and storage facilities, source meters, and reasonable appurtenances;

(ii) Transmission lines between major system components, including interties with other water systems;

(iii) Treatment equipment and facilities;

(iv) Distribution lines from major system components to system customers or service connections;

(v) Bottled water, as an interim action;

(vi) Fire hydrants;

(vii) Service meters;

(viii) Project inspection, engineering, and administration;

(ix) Individual service connections, including any connection fees and charges;

(x) Drinking water well decommissioning under WAC 173-160-381; and

(xi) Other costs identified by the department of health as necessary to provide a system that operates in compliance with federal and state standards.

(b) **Ineligible costs.** Ineligible costs for a safe drinking water action grant include, but are not limited to, the following:

(i) The cost of developing the grant application or negotiating the grant agreement;

(ii) The cost of dispute resolution under the grant agreement;

(iii) Retroactive costs, except as provided under subsection (6) of this section;

(iv) The cost of oversizing or extending a water system for future development;

(v) The cost of individual service connections for undeveloped lots;

(vi) Local improvement district assessments;

(vii) Operation and maintenance costs;

(viii) Natural resource damage assessment and restoration costs and liability for natural resource damages under chapter 70.105D RCW or the federal cleanup law;

(ix) Legal costs including, but not limited to, the costs of seeking client advice, pursuing cost recovery, contribution,

or insurance claims, participating in administrative hearings, pursuing penalties or civil or criminal actions against persons, penalties incurred by the recipient, defending actions taken against the recipient, and any attorney fees incurred by the recipient; and

(x) In-kind contributions.

(6) **Retroactive cost eligibility.** Retroactive costs are eligible for reimbursement if the costs are incurred during the period of a prior grant agreement, the costs are eligible under subsection (5) of this section, and the costs have not been reimbursed by the department.

(7) **Funding of eligible costs.**

(a) **Department share.** The department may fund up to ninety percent of the eligible costs.

(b) **Recipient share.** The recipient shall fund the percentage of the eligible costs not funded by the department under (a) of this subsection. The recipient may not use in-kind contributions to meet this requirement.

#### WSR 14-09-056

#### WITHDRAWAL OF PROPOSED RULES PARKS AND RECREATION COMMISSION

(By the Code Reviser's Office)

[Filed April 16, 2014, 9:00 a.m.]

WAC 352-44-020 and 352-44-080, proposed by the parks and recreation commission in WSR 13-20-039, appearing in issue 13-20 of the Washington State Register, which was distributed on October 16, 2013, 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 14-09-068

#### PROPOSED RULES DEPARTMENT OF LICENSING

[Filed April 17, 2014, 1:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-23-085.

Title of Rule and Other Identifying Information: Chapter 308-14 WAC, Court Reporting Practice Act.

Hearing Location(s): Department of Licensing, Business and Professions Division, Building 2, Conference Room 209, 405 Black Lake Boulevard S.W., Olympia, WA 98502, on May 27, 2014, at 10:30 a.m.

Date of Intended Adoption: June 3, 2014.

Submit Written Comments to: Cameron Dalmas, Department of Licensing, Court Reporter Program, P.O. Box 9026, Olympia, WA 98507, e-mail plssunit@dol.wa.gov, fax (360) 664-6643, by May 26, 2014.

Assistance for Persons with Disabilities: Contact Cameron Dalmas by May 26, 2014, TTY (360) 664-0116 or (360) 664-6643.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments: Clarify the preparation, administration and grading of the certified court reporter examination, clarify who is penalized when an individual fails to renew their certification by the expiration date, clarifies standards of professional practice and adds language that personal backup tapes or electronic audio files may be released.

**WAC 308-14-085 Examination.**

Subsection (1), amended to include administration and grading by a recognized entity approved by the department.

Subsection (2)(a), amended tape recording to audio recording.

Subsection (2)(e), amended to clarify examination results will be sent to the applicant by the department.

Subsection (2)(h), removed requirement that the department is supplied with the examination tape and individual examination papers with grading marks and comments for review.

Subsection (3), removed recognition of Washington state examinations held April 1990, October 1990, and April 1991 as qualifying for state certification. Also removed statement that previous passing scores for the Washington examination within three years may be used for certification.

**WAC 308-14-090 Application**, removed the requirement that applications for examination must be received eight weeks prior to the examination.

**WAC 308-14-100 License renewal—Continuing education—Penalties.**

Subsection (7), removed the words "shorthand reporter, court reporter, certified shorthand reporter."

**WAC 308-14-130 Standards of professional practice.**

Subsection (1), amended language to clarify offering arrangements on a case concerning court reporting services.

Subsection (6), amended language requiring court reporters shall not go "off the record" during a deposition or court proceeding unless agreed to by all parties or their attorneys or as ordered by the court.

Subsection (7), amended language that no deposition shall be taken before a CCR who is a relative or employee or attorney or counsel of any of the parties, a relative or employee of such attorney or counsel or is financially interested in the outcome of the case without the agreement of all parties.

Subsection (9), amended language to allow CCRs personal backup tapes or electronic audio files if retained to be released to parties of the case at the discretion of the CCR after "off the record discussions" if any have been removed.

Subsection (10), added language to notify all involved parties when transcripts or personal backup tapes or electronic audio files are ordered or provided.

Reasons Supporting Proposal: Stakeholders and the department conducted open workshops to review chapter 308-14 WAC for necessary amendments.

Statutory Authority for Adoption: RCW 18.145.050, 43.24.023.

Statute Being Implemented: Chapter 18.145 RCW.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Susan Colard, Administrator, 405 Black Lake Boulevard S.W., Olympia, WA 98502, (360) 664-6647.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are exempt under RCW 34.05.310 (4)(g)(ii).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

April 17, 2014  
Damon Monroe  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-22-123, filed 11/3/04, effective 12/4/04)

**WAC 308-14-085 Examination.** (1) The examination for (~~("court reporter," "shorthand reporter,"")~~) certified court reporter (~~("," or "certified shorthand reporter")~~) shall be an examination developed, administered, and graded by the department (~~(with the advice of the board)~~) or any examination prepared, administered, and graded by a recognized person (institution, organization, corporation) approved by the department that meets the requirements stated in this regulation.

(2) (~~(Recognition of an examination as)~~) The Washington certification examination (~~(is conditioned upon the examination meeting)~~) shall meet the following requirements:

(a) Be a timed (~~(tape)~~) audio recording with content, speed, and quality approved by the department (~~(with the advice of the board,)~~) prior to use;

(b) The examination requires the applicant be able to report and transcribe at least two hundred words per minute of two-voice testimony for five consecutive minutes;

(c) At least ninety-five percent accuracy is needed to pass the examination;

(d) Be offered at least twice a year;

(e) (~~(The pass/fail scores of the state certification applicants are)~~) A letter of notification of examination results will be provided to the ((department)) applicant within four weeks of the date of the examination (~~(to include a complete list of all the applicants));~~

(f) Examinations statistics are supplied following each examination: The number scheduled, passed, failed, and failed to appear;

(g) The procedures for security and confidentiality of the examination and applicants must meet the requirements of the department of licensing; and

(h) (~~(The department will be supplied with the examination tape and all the individual examination papers with grading marks and comments on them for review.))~~ The department reserves the final authority for examination results. The department may retain the examination papers for thirty days after final determination regarding scores to allow appeals and review of papers. Sixty days after the examination results

are released all examination papers will be destroyed, except those under appeal, which will be held until final disposition.

~~(3) ((The Washington state statutory examinations which were held April 1990, October 1990, and April 1991, are recognized as the qualifying examinations for state certification as a shorthand or court reporter.~~

~~(4) State applicants who have previously passed the Washington state department of licensing recognized examination within three years of application may be issued certification without additional examination if certified documentation of the passed examination is provided.~~

~~(5)) Applicants who have failed the examination may apply by submission of a reexamination application and the required fee.~~

AMENDATORY SECTION (Amending WSR 04-17-072, filed 8/13/04, effective 9/13/04)

**WAC 308-14-090 Application.** Applications for certification must be complete in every detail and submitted with the required fee. ~~((The applications for examination must be received at least eight weeks prior to the examination.))~~ Complete applications will contain the following information:

- (1) Name and address;
- (2) Birth date;
- (3) Social Security number;
- (4) Professional licensure/certification, including any action taken against the license or certificate; and
- (5) Personal affidavit ~~((+))~~.

AMENDATORY SECTION (Amending WSR 11-01-119, filed 12/20/10, effective 7/1/11)

**WAC 308-14-100 License renewal—Continuing education—Penalties.** (1) Certification must be renewed on or before the expiration date shown on the certificate. The expiration date is the certificate holder's birth date. Effective July 1, 2011, each certified court reporter shall verify they have completed a minimum of five continuing education units annually at renewal in a manner defined by the director. Excess continuing education units from the previous reporting year shall not be carried over. Failure to renew the certificate by the expiration date will result in a penalty fee in an amount determined by the director. Certification may be reinstated for up to three years by payment of all renewal fees and a penalty fee for the period for which the certification had lapsed and documentation of five continuing education units completed in the past year.

(2) Continuing education units shall have direct relevance to the professional development of the certified court reporter. The program must be led by an instructor, be interactive, and involve assessment or evaluation. Approved programs include, but are not limited to, the following:

- (a) Language skills:
  - (i) English or a foreign language;
  - (ii) American Sign Language;
  - (iii) Grammar;
  - (iv) Punctuation;
  - (v) Proofreading;
  - (vi) Spelling;
  - (vii) Vocabulary;

(viii) Linguistics, including regional dialects or colloquialisms;

(ix) Etymology;

(x) Word usage.

(b) Academics:

(i) Medical terminology and abbreviations related to any medical or medically related discipline (e.g., anatomy, psychiatry, psychology, dentistry, chiropractic, podiatry);

(ii) Pharmacology;

(iii) Surgical procedures and instruments, with emphasis on terminology and concepts encountered in litigation;

(iv) Pathology and forensic pathology, including DNA and other terminology encountered in litigation;

(v) Legal terminology and etymology;

(vi) Legal research techniques;

(vii) Presentations on various legal specialty areas (e.g., torts, family law, environmental law, admiralty, corporate law, patent law);

(viii) History of legal systems;

(ix) Technical subjects, with emphasis on terminology and concepts encountered during litigation (e.g., construction, accident reconstruction, insurance, statistics, product testing and liability, various engineering fields).

(c) Case law, federal and state statutes, and regulations:

(i) Federal and state rules of civil and criminal procedure and rules of evidence;

(ii) Codes of federal and/or state regulations;

(iii) Presentations on legal proceedings (depositions, trials, federal and state appellate procedure, administrative proceedings, bankruptcy proceedings, workers' compensation proceedings);

(iv) Any changes to (a), (b), and (c) of this subsection as they affect the certified court reporter.

(d) Technology and business practices:

(i) Computer skills;

(ii) Voice recognition technology;

(iii) Videotaping, video conferencing;

(iv) Reporting skills and practices (e.g., readbacks, marking exhibits, administering oaths);

(v) Transcript production, formats, indexing, document management;

(vi) Technological developments related to court reporting, real-time reporting, CART, or captioning;

(vii) Office practices, office management, marketing, accounting, personnel practices, public relations;

(viii) Financial management, retirement planning, estate planning;

(ix) Partnerships, corporations, taxation, insurance.

(e) Professionalism and ethics:

(i) Standards of court reporting practice applicable to individual states or governmental entities;

(ii) Professional comportment and demeanor as it relates to judges, attorneys, fellow reporters, witnesses, litigants and court and law office personnel.

(f) CPR/first-aid classes.

(g) In-house courses offered by court reporting firms.

(h) Vendor sponsored training, with the exception of sales presentations.

(i) Community based programs.

(j) Meetings that include educational or professional development presentations that otherwise meet Washington state criteria for award of continuing education units((:)).

(k) Documented pro bono services on an hour-for-hour basis including, but not limited to:

- (i) Presence at a court hearing or deposition;
- (ii) Transcription;
- (iii) Editing;
- (iv) Proofreading.

(l) Documented teaching, research or writing for a planned, directly supervised continuing education experience that fulfills continuing education criteria where no payment is received. Continuing education units will be awarded only once for each separate item.

(3) Any course or activity previously approved by any nationally or state recognized association for court reporting professions shall be approved for continuing education units.

(4) Courses offered with a documented grade of C or better at an accredited college or university will be awarded continuing education units at the following rates:

- (a) Semester course: 6 continuing education units.
- (b) Trimester course: 5 continuing education units.
- (c) Quarter course: 4 continuing education units.

(5) Activities that are not acceptable for continuing education units include, but are not limited to, the following:

(a) Attendance at professional or association business meetings or similar meetings convened for the purpose of election of officers, policymaking, or orientation;

(b) Leadership activities in national, state, or community associations and board or committee service;

(c) Attendance at entertainment, recreational, or cultural presentations;

(d) Recreation, aerobics, massage, or physical therapy courses or practice or teaching of same;

(e) Classes in the performing arts, studio arts, or crafts or teaching of same;

(f) Tours of museums or historical sites;

(g) Social events at meetings, conventions, and exhibits;

(h) Visiting vendor exhibits or attending vendor sales demonstrations;

(i) Jury duty;

(j) Any event for which the attendee receives payment for attendance;

(k) Any event which is part of the attendee's regular employment or is attended for the purpose of gaining employment;

(l) On-the-job training or other work experience, life experience, previous work experience.

(6) Individuals shall maintain documentation of continuing education units for at least three years and provide them to the department on request.

(7) An individual who fails to renew their certification by the expiration date forfeits all rights to represent themselves as a (~~"shorthand reporter," "court reporter," "certified shorthand reporter," or "~~)certified court reporter(~~(")~~) until the certificate has been reinstated.

(8) An individual who has allowed the certification to expire for three years or more is required to file a new complete application and fee and must pass the state-approved

examination. Upon passage of the exam a certificate will be issued.

AMENDATORY SECTION (Amending WSR 04-17-072, filed 8/13/04, effective 9/13/04)

**WAC 308-14-130 Standards of professional practice.**

All certified court reporters (CCR) shall comply with the following professional standards except where differing standards are established by court or governmental agency. Failure to comply with the following standards is deemed unprofessional conduct. Certified court reporters shall:

(1) Offer arrangements on a case concerning court reporting services or fees to all parties on equal terms. This section applies to any arrangement or agreement between the CCR and any party or any person paying for court reporting services in the case.

(2) Include on all transcripts, business cards, and advertisements their CCR reference number.

(3) Prepare transcripts in accordance with the transcript preparation guidelines established by WAC 308-14-135 or court.

(4) Preserve and file shorthand notes in a manner retrievable. Transcribed notes shall be retained for no less than three years and untranscribed notes shall be retained for not less than ten years, or as required by statute, whichever is longer.

(5) Provide transcripts on agreed delivery date, and give notification of any delays.

(6) Prepare accurate transcripts. A certified court reporter shall not go "off the record" during a deposition or court proceeding unless agreed to by all parties or their attorneys or as ordered by the court.

(7) Disclose conflicts, potential conflicts, or appearance of conflicts to all involved parties. No deposition shall be taken before a CCR:

• Who is a relative, employee, attorney, or counsel of any of the parties;

• Who is a relative or employee of such attorney or counsel; or

• Who is financially interested in the outcome of the case without the agreement of all parties.

(8) Be truthful and accurate in advertising qualifications and/or services provided.

(9) Preserve the confidentiality of all information obtained during a proceeding and take all steps necessary to ensure its security. The CCR's personal backup tapes or electronic audio files, if retained, may be released to parties of the case at the discretion of the CCR, after "off the record" discussions, if any, have been removed.

(10) Notify all involved parties when transcripts or personal backup tapes or electronic audio files are ordered or provided.

(11) All parties shall be notified when a transcript is ordered by a person not involved in the case. If any party objects, the transcript cannot be provided without a court order.

(12) Supply certified copies of transcripts to any involved party, upon appropriate request.

AMENDATORY SECTION (Amending WSR 09-22-051, filed 10/29/09, effective 12/1/09)

**WAC 308-14-200 Court reporter fees.** The following fees shall be charged by the business and professions division, department of licensing:

Title of Fee	Fee
Certification	
Application	\$150.00
Renewal	125.00
Late renewal penalty	125.00
Verification	25.00
Duplicate	15.00

**WSR 14-09-070  
PROPOSED RULES  
DEPARTMENT OF REVENUE**

[Filed April 17, 2014, 2:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-22-069.

Title of Rule and Other Identifying Information: WAC 458-57-105 Nature of estate tax, definitions, 458-57-115 Valuation of property, property subject to estate tax, and how to calculate the tax and 458-57-125 Apportionment of tax when there are out-of-state assets; and new section WAC 458-57-175 Qualified family-owned business interests.

Hearing Location(s): Capital Plaza Building, Fourth Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA 98501, on May 29, 2014, at 10:00 a.m. Copies of draft rules are available for viewing and printing on our web site at Rules Agenda. *Call-in option can be provided upon request no later than three days before the hearing date.*

Date of Intended Adoption: June 5, 2014.

Submit Written Comments to: Mark E. Bohe, P.O. Box 47453, Olympia, WA 98504-7453, e-mail markbohe@dor.wa.gov, fax (360) 534-1606, by 5:00 p.m. on May 29, 2014.

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These changes include: Explaining the qualified family-owned business interest deduction; the applicable exclusion amount; the increases for the top four marginal tax rates; handling of certain "transfers" regarding qualified terminal interest property (QTIP); adding examples for the apportionment of estate taxes; adding a definition of "spouse"; and changing the definition of the "Washington taxable estate" to specifically include an interest in QTIP included in the gross estate under IRC § 2044 prospectively and retroactively to decedents dying on or after May 17, 2005.

Reasons Supporting Proposal: To amend three existing rules and adopt a new rule to address chapter 2, Laws of 2013 2nd sp. sess, captioned *Education Legacy Trust Account – Estate and Transfer Tax*.

Statutory Authority for Adoption: RCW 83.100.200, 82.32.300, and 82.01.060(2).

Statute Being Implemented: RCW 83.100.020, 83.100.-040, 83.100.047, 83.100.048, 83.100.120, and 83.100.210.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Mark E. Bohe, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1574; Implementation and Enforcement: Stuart Thronson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1300.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The amended and new rules, as proposed, do not impose performance requirements or administrative burdens on any small business not required by statute or the state and/or federal constitution.

A cost-benefit analysis is not required under RCW 34.05.328. The amended and new regulation sections are not significant legislative rules as defined by RCW 34.05.328.

April 17, 2014  
Dylan Waits  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-04-008, filed 1/22/09, effective 2/22/09)

**WAC 458-57-105 Nature of estate tax, definitions. (1)**

**Introduction.** This rule applies to deaths occurring on or after May 17, 2005, and describes the nature of Washington state's estate tax as it is imposed by chapter 83.100 RCW (Estate and Transfer Tax Act). It also defines terms that will be used throughout chapter 458-57 WAC (Washington Estate and Transfer Tax Reform Act rules). The estate tax rule on the nature of estate tax and definitions for deaths occurring on or before May 16, 2005, can be found in WAC 458-57-005.

(2) **Nature of Washington's estate tax.** The estate tax is neither a property tax nor an inheritance tax. It is a tax imposed on the transfer of the entire taxable estate and not upon any particular legacy, devise, or distributive share.

(a) **Relationship of Washington's estate tax to the federal estate tax.** The department administers the estate tax under the legislative enactment of chapter 83.100 RCW, which references the Internal Revenue Code (IRC) as it existed January 1, 2005. Federal estate tax law changes enacted after January 1, 2005, do not apply to the reporting requirements of Washington's estate tax. The department will follow federal Treasury Regulations section 20 (Estate tax regulations), in existence on January 1, 2005, to the extent they do not conflict with the provisions of chapter 83.100 RCW or 458-57 WAC. For deaths occurring January 1, 2009, and after, Washington has different estate tax reporting and filing requirements than the federal government. There will be estates that must file an estate tax return with the state of Washington, even though they are not required to file with

the federal government. The Washington state estate and transfer tax return and the instructions for completing the return can be found on the department's web site at <http://www.dor.wa.gov/> under the heading titled forms. ~~((The return and instructions can also be requested by calling the department's estate tax section at 360-570-3265, option 2.))~~

(b) **Lifetime transfers.** Washington estate tax taxes lifetime transfers only to the extent included in the federal gross estate. The state of Washington does not have a gift tax.

(3) **Definitions.** The following terms and definitions are applicable throughout chapter 458-57 WAC:

(a) "Absentee distributee" means any person who is the beneficiary of a will or trust who has not been located;

(b) "Applicable exclusion amount" means:

(i) One million five hundred thousand dollars for decedents dying before January 1, 2006;

(ii) Two million dollars for estates of decedents dying on or after January 1, 2006, and before January 1, 2014; and

(iii) For estates of decedents dying in calendar year 2014 and each calendar year thereafter, the amount in (b)(ii) of this subsection must be adjusted annually, except as otherwise provided in (b)(iii) of this subsection. The annual adjustment is determined by multiplying two million dollars by one plus the percentage by which the most recent October consumer price index exceeds the consumer price index for October 2012, and rounding the result to the nearest one thousand dollars. No adjustment is made for a calendar year if the adjustment would result in the same or a lesser applicable exclusion amount than the applicable exclusion amount for the immediately preceding calendar year. The applicable exclusion amount under (b)(iii) of this subsection for the decedent's estate is the applicable exclusion amount in effect as of the date of the decedent's death.

(c) "Consumer price index," for purposes of this subsection, means the consumer price index for all urban customers, all items, for the Seattle-Tacoma-Bremerton metropolitan area as calculated by the United States Bureau of Labor Statistics;

(d) "Decedent" means a deceased individual;

~~((e))~~ (e) "Department" means the department of revenue, the director of that department, or any employee of the department exercising authority lawfully delegated to him by the director;

~~((f))~~ (f) "Escheat" of an estate means that whenever any person dies, whether a resident of this state or not, leaving property in an estate subject to the jurisdiction of this state and without being survived by any person entitled to that same property under the laws of this state, such estate property shall be designated escheat property and shall be subject to the provisions of RCW 11.08.140 through 11.08.300;

~~((g))~~ (g) "Federal return" means any tax return required by chapter 11 (Estate tax) of the Internal Revenue Code;

~~((h))~~ (h) "Federal tax" means tax under chapter 11 (Estate tax) of the Internal Revenue Code;

~~((i))~~ (i) "Federal taxable estate" means the taxable estate as determined under chapter 11 of the Internal Revenue Code without regard to:

(i) The termination of the federal estate tax under section 2210 of the IRC or any other provision of law; and

(ii) The deduction for state estate, inheritance, legacy, or succession taxes allowable under section 2058 of the IRC.

~~((j))~~ (j) "Gross estate" means "gross estate" as defined and used in section 2031 of the Internal Revenue Code;

~~((k))~~ (k) "Internal Revenue Code" or "IRC" means, for purposes of this chapter, the United States Internal Revenue Code of 1986, as amended or renumbered on January 1, 2005;

~~((l))~~ (l) "Person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity and, to the extent permitted by law, any federal, state, or other governmental unit or subdivision or agency, department, or instrumentality thereof;

~~((m))~~ (m) "Person required to file the federal return" means any person required to file a return required by chapter 11 of the Internal Revenue Code, such as the personal representative (executor) of an estate;

~~((n))~~ (n) "Property," when used in reference to an estate tax transfer, means property included in the gross estate;

~~((o))~~ (o) "Resident" means a decedent who was domiciled in Washington at time of death;

~~((p))~~ (p) "Spouse" means two individuals with a valid marriage recognized under this or another jurisdiction's laws and includes state registered domestic partners and same-sex spouses. It does not include a marriage prohibited under Washington state law because of close kinship, incest, or bigamy;

(q) "State return" means the Washington estate tax return required by RCW 83.100.050;

~~((r))~~ (r) "Taxpayer" means a person upon whom tax is imposed under this chapter, including an estate or a person liable for tax under RCW 83.100.120;

~~((s))~~ (s) "Transfer" means "transfer" as used in section 2001 of the Internal Revenue Code and includes any shifting upon death of the economic benefit in property or any power or legal privilege incidental to the ownership or enjoyment of property. However, "transfer" does not include a qualified heir disposing of an interest in property qualifying for a deduction under RCW 83.100.046;

~~((t))~~ (t) "Washington taxable estate" means the "federal taxable estate"(~~(~~

~~(i) Less one million five hundred thousand dollars for decedents dying before January 1, 2006, or two million dollars for decedents dying on or after January 1, 2006;~~

~~(ii) Less the amount of any deduction allowed under RCW 83.100.046 as a farm deduction;~~

~~(iii) Less the amount of the Washington qualified terminable interest property (QTIP) election made under RCW 83.100.047;~~

~~(iv) Plus any amount deducted from the federal estate pursuant to IRC § 2056(b)(7) (the federal QTIP election);~~

~~(v) Plus the value of any trust (or portion of a trust) of which the decedent was income beneficiary and for which a Washington QTIP election was previously made pursuant to RCW 83.100.047; and~~

~~(vi) Less any amount included in the federal taxable estate pursuant to IRC § 2044 (inclusion of amounts for which a federal QTIP election was previously made) from a predeceased spouse that died on or after May 17, 2005)) and~~

includes, but is not limited to, the value of any property included in the gross estate under section 2044 of the Internal Revenue Code, regardless of whether the decedent's interest in such property was acquired before May 17, 2005:

(i) Plus amounts required to be added to the Washington taxable estate under RCW 83.100.047 for the marital deduction and surviving spouse benefits that includes state registered domestic partners and same-sex spouses;

(ii) Less:

(A) The applicable exclusion amount;

(B) The amount of any deduction allowed under RCW 83.100.046 for a qualified family-owned farm;

(C) Amounts allowed to be deducted from the Washington taxable estate under RCW 83.100.047 for the marital deduction and surviving spouse benefits that includes state registered domestic partners and same-sex spouses; and

(D) The amount of any deduction allowed for the qualified family-owned business interest.

**AMENDATORY SECTION** (Amending WSR 09-04-008, filed 1/22/09, effective 2/22/09)

**WAC 458-57-115 Valuation of property, property subject to estate tax, and how to calculate the tax. (1)**

**Introduction.** This rule applies to deaths occurring on or after May 17, 2005, and is intended to help taxpayers prepare their return and pay the correct amount of Washington state estate tax. It explains the necessary steps for determining the tax and (~~provides examples of~~) how the tax is calculated. The estate tax rule on valuation of property etc., for deaths occurring on or before May 16, 2005, can be found in WAC 458-57-015.

**(2) Determining the property subject to Washington's estate tax.**

(a) **General valuation information.** The value of every item of property in a decedent's gross estate is its date of death fair market value. However, the personal representative may elect to use the alternate valuation method under section 2032 of the Internal Revenue Code ((IRC)), and in that case the value is the fair market value at that date, including the

adjustments prescribed in that section of the ((IRC)) Internal Revenue Code. The valuation of certain farm property and closely held business property, properly made for federal estate tax purposes pursuant to an election authorized by section 2032A of the Internal Revenue Code of 2005 ((IRC)), is binding on the estate for state estate tax purposes.

(b) **How is the gross estate determined?** The first step in determining the value of a decedent's Washington taxable estate is to determine the total value of the gross estate. The value of the gross estate includes the value of all the decedent's tangible and intangible property at the time of death. In addition, the gross estate may include property in which the decedent did not have an interest at the time of death. A decedent's gross estate for estate tax purposes may therefore be different from the same decedent's estate for local probate purposes. Sections 2031 through 2046 of the ((IRC)) Internal Revenue Code provide a detailed explanation of how to determine the value of the gross estate.

(c) **Deductions from the gross estate.** The value of the taxable estate is determined by subtracting the authorized exemption and deductions from the value of the gross estate. Under various conditions and limitations, deductions are allowable for expenses, indebtedness, taxes, losses, charitable transfers, and transfers to a surviving spouse. While sections 2051 through 2056A of the ((IRC)) Internal Revenue Code provide a detailed explanation of how to determine the value of the taxable estate the following areas are of special note:

(i) **Funeral expenses.**

(A) Washington is a community property state and under *Estate of Julius C. Lang v. Commissioner*, 97 Fed. 2d 867 (9th Cir. 1938) affirming the reasoning of *Wittwer v. Pember-ton*, 188 Wash. 72, 76, 61 P.2d 993 (1936) funeral expenses reported for a married decedent must be halved. Administration expenses are not a community debt and are reported at 100%.

(B) **Example.** John, a married man, died in 2005 with an estate valued at \$2.5 million. On Schedule J of the federal estate tax return listed following as expenses:

SCHEDULE J - Funeral Expenses and Expenses Incurred in Administering Property Subject to Claims			
Item Number	Description	Expense Amount	Total Amount
1	<b>A. Funeral expenses:</b> Burial and services	\$4,000	
	(1/2 community debt)	(\$2,000)	
	Total funeral expenses . . . . .		
	<b>B. Administration expenses:</b>		
	1. Executors' commissions - amount estimated/agreed upon paid. (Strike out the words that do not apply.) . . . . .		\$10,000
	2. Attorney fees - amount estimated/agreed upon/paid. (Strike out the words that do not apply.) . . . . .		\$5,000

The funeral expenses, as a community debt, were properly reported at 50% and the other administration expenses were properly reported at 100%.

(ii) **Mortgages and liens on real property.** Real property listed on Schedule A should be reported at its fair market value without deduction of mortgages or liens on the prop-

erty. Mortgages and liens are reported and deducted using Schedule K.

(iii) **Washington qualified terminable interest property (QTIP) election.**

(A) A personal representative may choose to make a larger or smaller percentage or fractional QTIP election on the Washington return than taken on the federal return in order to reduce Washington estate liability while making full use of the federal unified credit.

(B) Section 2056 (b)(7) of the ((IRC)) Internal Revenue Code states that a QTIP election is irrevocable once made. ~~((Section 2044 states that the value of any property for which a deduction was allowed under section 2056 (b)(7) must be included in the gross estate of the recipient. Similarly.)) For the taxpayer that makes this election, any amount deducted by reason of section 2056 (b)(7) of the Internal Revenue Code is added to, and the value of the property for which a Washington election is made is deducted from, the Washington taxable estate. For the estate of the surviving spouse, the amount included in the estate's gross estate pursuant to section 2044 (a) and (b)(1)(A) of the Internal Revenue Code is deducted from, and the value of any property for which an election under this section was previously made is added to, the Washington taxable estate. A QTIP election made on the Washington return is irrevocable, and a surviving spouse who is the lifetime beneficiary of property for which a Washington QTIP election was made must include the value of the remaining property in his or her gross estate for Washington estate tax purposes. If the value of property for which a federal QTIP election was made is different, this value is not includible in the surviving spouse's gross estate for Washington estate tax purposes; instead, the value of property for which a Washington QTIP election was made is includible.~~

(C) The Washington QTIP election must adequately identify the assets, by schedule and item number, included as part of the election, either on the return or, if those assets have not been determined when the estate tax return is filed, on a statement to that effect, prepared when the assets are definitively identified. Identification of the assets is necessary when reviewing the surviving spouse's return, if a return is required to be filed. This statement may be filed with the department at that time or when the surviving spouse's estate tax return is filed.

~~((D) **Example.** A decedent dies in 2009 with a gross estate of \$5 million. The decedent established a QTIP trust for the benefit of her surviving spouse in an amount to result in no federal estate tax. The federal unified credit is \$3.5 million for the year 2009. In 2009 the Washington statutory deduction is \$2 million. To pay no Washington estate tax the personal representative of the estate has the option of electing a larger percentage or fractional QTIP election resulting in the maximization of the individual federal unified credit and paying no tax for Washington purposes.~~

~~The federal estate tax return reflected the QTIP election with a percentage value to pay no federal estate tax. On the Washington return the personal representative elected QTIP treatment on a percentage basis in an amount so no Washington estate tax is due. Upon the surviving spouse's death the assets remaining in the Washington QTIP trust must be included in the surviving spouse's gross estate.)~~

(iv) **Washington qualified domestic trust (QDOT) election.**

(A) A deduction is allowed for property passing to a surviving spouse who is not a U.S. citizen in a qualified domestic trust (a "QDOT"). An executor may elect to treat a trust as a QDOT on the Washington estate tax return even though no QDOT election is made with respect to the trust on the federal return; and also may forgo making an election on the Washington estate tax return to treat a trust as a QDOT even though a QDOT election is made with respect to the trust on the federal return. An election to treat a trust as a QDOT may not be made with respect to a specific portion of an entire trust that otherwise would qualify for the marital deduction, but if the trust is actually severed pursuant to authority granted in the governing instrument or under local law prior to the due date for the election, a QDOT election may be made for any one or more of the severed trusts.

(B) A QDOT election may be made on the Washington estate tax return with respect to property passing to the surviving spouse in a QDOT, and also with respect to property passing to the surviving spouse if the requirements of ((IRC)) section 2056 (d)(2)(B) of the Internal Revenue Code are satisfied. Unless specifically stated otherwise herein, all provisions of sections 2056(d) and 2056A of the ((IRC)) Internal Revenue Code, and the federal regulations promulgated thereunder, are applicable to a Washington QDOT election. Section 2056A(d) of the ((IRC)) Internal Revenue Code states that a QDOT election is irrevocable once made. Similarly, a QDOT election made on the Washington estate tax return is irrevocable. For purposes of this subsection, a QDOT means, with respect to any decedent, a trust described in ((IRC)) section 2056A(a) of the Internal Revenue Code, provided, however, that if an election is made to treat a trust as a QDOT on the Washington estate tax return but no QDOT election is made with respect to the trust on the federal return:

(I) The trust must have at least one trustee that is an individual citizen of the United States resident in Washington state, or a corporation formed under the laws of the state of Washington, or a bank as defined in ((IRC)) section 581 of the Internal Revenue Code that is authorized to transact business in, and is transacting business in, the state of Washington (the trustee required under this subsection is referred to herein as the "Washington Trustee");

(II) The Washington Trustee must have the right to withhold from any distribution from the trust (other than a distribution of income) the Washington QDOT tax imposed on such distribution;

(III) The trust must be maintained and administered under the laws of the state of Washington; and

(IV) The trust must meet the additional requirements intended to ensure the collection of the Washington QDOT tax set forth in (c)(iv)(D) of this subsection.

(C) The QDOT election must adequately identify the assets, by schedule and item number, included as part of the election, either on the return, or, if those assets have not been determined when the estate tax return is filed, or a statement to that effect, prepared when the assets are definitively identified. This statement may be filed with the department at that time or when the first taxable event with respect to the trust is reported to the department.

(D) In order to qualify as a QDOT, the following requirements regarding collection of the Washington QDOT tax must be satisfied.

(I) If a QDOT election is made to treat a trust as a QDOT on both the federal and Washington estate tax returns, the Washington QDOT election will be valid so long as the trust satisfies the statutory requirements of Treas. Reg. Section 20.2056A-2(d).

(II) If an election is made to treat a trust as a QDOT only on the Washington estate tax return, the following rules apply:

If the fair market value of the trust assets exceeds (~~(\$2 million)~~) the applicable exclusion amount as of the date of the decedent's death, or, if applicable, the alternate valuation date, the trust must comply with Treas. Reg. Section 20.2056A-2 (d)(1)(i), except that: If the bank trustee alternative is used, the bank must be a bank that is authorized to transact business in, and is transacting business in, the state of Washington, or a bond or an irrevocable letter of credit meeting the requirements of Treas. Reg. Section 20.2056A-2 (d)(1)(i)(B) or (C) must be furnished to the department.

If the fair market value of the trust assets is (~~(\$2 million)~~) equal to the applicable exclusion amount or less as of the date of the decedent's death, or, if applicable, the alternate valuation date, the trust must comply with Treas. Reg. Section 20.2056A-2 (d)(1)(ii), except that not more than 35 percent of the fair market value of the trust may be comprised of real estate located outside of the state of Washington.

A taxpayer may request approval of an alternate plan or arrangement to assure the collection of the Washington QDOT tax. If such plan or arrangement is approved by the department, such plan or arrangement will be deemed to meet the requirements of this (c)(iv)(D).

(E) The Washington estate tax will be imposed on:

(I) Any distribution before the date of the death of the surviving spouse from a QDOT (except those distributions excepted by (~~IRC~~) section 2056A (b)(3) of the Internal Revenue Code); and

(II) The value of the property remaining in the QDOT on the date of the death of the surviving spouse (or the spouse's deemed date of death under IRC section 2056A (b)(4)). The tax is computed using Table W. The tax is due on the date specified in IRC section 2056A (b)(5). The tax shall be reported to the department in a form containing the information that would be required to be included on federal Form 706-QDT with respect to the taxable event, and any other information requested by the department, and the computation of the Washington tax shall be made on a supplemental statement. If Form 706-QDT is required to be filed with the Internal Revenue Service with respect to a taxable event, a copy of such form shall be provided to the department. Neither the residence of the surviving spouse or other QDOT beneficiary nor the situs of the QDOT assets are relevant to the application of the Washington tax. In other words, if Washington state estate tax would have been imposed on property passing to a QDOT at the decedent's date of death but for the deduction allowed by this subsection (c)(iv)(E) (II), the Washington tax will apply to the QDOT at the time of a taxable event as set forth in this subsection (c)(iv)(E)(II) regardless of, for example, whether the distribution is made

to a beneficiary who is not a resident of Washington, or whether the surviving spouse was a nonresident of Washington at the date of the surviving spouse's death.

(F) If the surviving spouse of the decedent becomes a citizen of the United States and complies with the requirements of section 2056A (b)(12) of the (~~IRC~~) Internal Revenue Code, then the Washington tax will not apply to: Any distribution before the date of the death of the surviving spouse from a QDOT; or the value of the property remaining in the QDOT on the date of the death of the surviving spouse (or the spouse's deemed date of death under (~~IRC~~) section 2056A (b)(4) of the Internal Revenue Code).

(d) **Washington taxable estate.** The estate tax is imposed on the "Washington taxable estate." The "Washington taxable estate" (~~means the "federal taxable estate"~~:

(i) ~~Less one million five hundred thousand dollars for decedents dying before January 1, 2006, or two million dollars for decedents dying on or after January 1, 2006;~~

(ii) ~~Less the amount of any deduction allowed under RCW 83.100.046 as a farm deduction;~~

(iii) ~~Less the amount of the Washington qualified terminable interest property (QTIP) election made under RCW 83.100.047;~~

(iv) ~~Plus any amount deducted from the federal estate pursuant to IRC § 2056 (b)(7) (the federal QTIP election);~~

(v) ~~Plus the value of any trust (or portion of a trust) of which the decedent was income beneficiary and for which a Washington QTIP election was previously made pursuant to RCW 83.100.047; and~~

(vi) ~~Less any amount included in the federal taxable estate pursuant to IRC § 2044 (inclusion of amounts for which a federal QTIP election was previously made) from a predeceased spouse that died on or after May 17, 2005)) is defined in WAC 458-57-105 (3)(t).~~

(e) **Federal taxable estate.** The "federal taxable estate" (~~means the taxable estate as determined under chapter 11 of the IRC without regard to:~~

(i) ~~The termination of the federal estate tax under section 2210 of the IRC or any other provision of law; and~~

(ii) ~~The deduction for state estate, inheritance, legacy, or succession taxes allowable under section 2058 of the IRC)) is defined in WAC 458-57-105 (3)(i).~~

(3) **Calculation of Washington's estate tax.**

(a) The tax is calculated by applying Table W to the Washington taxable estate. (~~(See (d) of this subsection for the definition of "Washington taxable estate.")~~)

Table W

(For deaths occurring on or after January 1, 2014)

Washington Taxable Estate is at Least	But Less Than	The Amount of Tax Equals Initial Tax Amount	Plus Tax Rate %	Of Washington Taxable Estate Value Greater Than
\$0	\$1,000,000	\$0	10.00%	\$0
\$1,000,000	\$2,000,000	\$100,000	14.00%	\$1,000,000
\$2,000,000	\$3,000,000	\$240,000	15.00%	\$2,000,000
\$3,000,000	\$4,000,000	\$390,000	16.00%	\$3,000,000
\$4,000,000	\$6,000,000	\$550,000	<del>((17.00%))</del> 18.00%	\$4,000,000
\$6,000,000	\$7,000,000	<del>\$((890,000))</del> 910,000	<del>((18.00%))</del> 19.00%	\$6,000,000
\$7,000,000	\$9,000,000	<del>\$((1,070,000))</del> 1,100,000	<del>((18.50%))</del> 19.50%	\$7,000,000
\$9,000,000		<del>\$((1,440,000))</del> 1,490,000	<del>((19.00%))</del> 20.00%	\$9,000,000

Table W

(For deaths occurring before January 1, 2014)

Washington Taxable Estate is at Least	But Less Than	The Amount of Tax Equals Initial Tax Amount	Plus Tax Rate %	Of Washington Taxable Estate Value Greater Than
\$0	\$1,000,000	\$0	10.00%	\$0
\$1,000,000	\$2,000,000	\$100,000	14.00%	\$1,000,000
\$2,000,000	\$3,000,000	\$240,000	15.00%	\$2,000,000
\$3,000,000	\$4,000,000	\$390,000	16.00%	\$3,000,000
\$4,000,000	\$6,000,000	\$550,000	17.00%	\$4,000,000
\$6,000,000	\$7,000,000	\$890,000	18.00%	\$6,000,000
\$7,000,000	\$9,000,000	\$1,070,000	18.50%	\$7,000,000
\$9,000,000		\$1,440,000	19.00%	\$9,000,000

(b) ~~(Examples:~~

~~(i) A widow dies on September 25, 2005, leaving a gross estate of \$2.1 million. The estate had \$100,000 in expenses deductible for federal estate tax purposes. Examples of allowable expenses include funeral expenses, indebtedness, property taxes, and charitable transfers. The Washington taxable estate equals \$500,000.~~

Gross estate	\$2,100,000
Less allowable expenses deduction	-\$100,000
Less \$1,500,000 statutory deduction	-\$1,500,000
Washington taxable estate	\$500,000

~~Based on Table W, the estate tax equals \$50,000 (\$500,000 x 10% Washington estate tax rate).~~

~~(ii) John dies on October 13, 2005, with an estate valued at \$3 million. John left \$1.5 million to his spouse, Jane, using the unlimited marital deduction. There is no Washington estate tax due on John's estate.~~

Gross estate	\$3,000,000
Less unlimited marital deduction	-\$1,500,000
Less \$1,500,000 statutory deduction	-\$1,500,000
Washington taxable estate	\$0

Although Washington estate tax is not due, the estate is still required to file a Washington estate tax return along with a photocopy of the filed and signed federal return and all supporting documentation.) Each year the department will publish each calendar year's "applicable exclusion amount." The "applicable exclusion amount" is adjusted annually and is defined in WAC 458-57-105 (3)(b).

AMENDATORY SECTION (Amending WSR 06-07-051, filed 3/9/06, effective 4/9/06)

**WAC 458-57-125 Apportionment of tax when ((there are)) out-of-state ((assets)) property is included in the gross estate of a decedent.** (1) Introduction. This rule applies to deaths occurring on or after May 17, 2005, and discusses how to apportion the estate tax when there is out-of-

state property included in the gross estate. The estate tax rule on apportionment of estate tax for deaths occurring on or before May 16, 2005, can be found in WAC 458-57-025.

(2) **Calculation of apportioned tax.** Apportionment of the tax is allowed for estate property located outside of Washington, even if the other state where the out-of-state property is located does not impose an estate tax. The amount of tax is determined by multiplying the preapportioned tax using Table W ((see WAC 458-57-115) multiplied) by a fraction. The numerator of the fraction is the value of the property included in the decedent's gross estate that is located in Washington. The denominator of the fraction is the value of the decedent's gross estate. Intangible property is located in Washington if the decedent was a resident of this state at death. Property qualifying for the farm deduction or the family-owned business interest deduction is excluded from the numerator and denominator of the fraction. See WAC 458-57-155 ((f)), Farm deduction((g)), for additional information ((on the farm deduction).

(3) **Example.** A widow dies in 2006 leaving a gross estate of \$3.1 million. The estate had \$100,000 in expenses deductible for federal estate tax purposes. The decedent also owned a home in Arizona valued at \$300,000.

Gross estate	\$3,100,000
Less allowable expenses deduction	-\$100,000
Less \$2,000,000 statutory deduction	-\$2,000,000
Washington taxable estate	\$1,000,000

Based on the tax table, the estate tax equals \$100,000 ( $\$1,000,000 \times 10\%$  Washington estate tax rate). Because the decedent owned an out-of-state asset, the tax due to Washington is prorated by multiplying the amount of tax owed by a fraction. The numerator of the fraction is the value of the property located in Washington divided by the denominator that equals the value of the decedent's gross estate. The fraction is then multiplied by the amount of tax.

$$(\$2,800,000 (\$3,100,000 - \$300,000) / \$3,100,000) \times \$100,000 = \$90,323$$

The estate does not have to pay estate tax to the state of Arizona in order to reduce the tax owed to Washington. The estate tax due to Washington is \$90,323).

((4)) (a) **Example – Washington resident decedent.** A widow dies during 2014 leaving a gross estate of \$4.1 million. The decedent was a Washington resident at death. Decedent's primary residence is located in Seattle, Washington. The decedent also owned a second home in Arizona valued at \$300,000 and unimproved real property in South Dakota valued at \$750,000. The estate had \$100,000 in expenses deductible for federal estate tax purposes. The applicable exclusion amount for 2014 after adjustment for inflation is \$2,012,000.

Under the facts of this example the estate owes Washington estate tax on a Washington taxable estate of \$1,988,000, computed as shown below:

Gross estate:	\$4,100,000
Less allowable deductions:	(\$100,000)

Less applicable exclusion amount:	(\$2,012,000)
Washington taxable estate:	\$1,988,000

The preapportionment Washington estate tax for this estate, using the table provided in WAC 458-57-115 (3)(a), equals \$238,320, computed as follows:  $\$100,000 + (\$988,000 \times 14\%) = \$238,320$ .

Because the decedent owned out-of-state property, a house in Arizona and unimproved real property in South Dakota that are not subject to Washington estate tax, the tax due to Washington is calculated by multiplying the amount of preapportionment tax computed above by the fraction described in this subsection (2). Also, because the decedent was a Washington resident at death, the numerator of the fraction is the value of all property included in the decedent's gross estate that is located in this state, including the decedent's intangible personal property. The denominator of the fraction is the value of the decedent's gross estate. Using the facts in our example, the tax owed to Washington equals \$177,287, computed as follows:  $(\$4,100,000 - \$1,050,000) / \$4,100,000 \times \$238,320 = \$177,287$ .

(b) **Example – Nonresident decedent.** A widow dies during 2013 leaving a gross estate of \$6 million. The decedent was a Colorado resident at death and all of the decedent's property is located in that state, except for a vacation home located in Washington valued at \$650,000. The estate had \$100,000 in expenses deductible for federal estate tax purposes. The applicable exclusion amount for 2013 is \$2,000,000.

Under the facts of this example, the estate owes Washington estate tax on a Washington taxable estate of \$3,900,000, computed as shown below:

Gross estate:	\$6,000,000
Less allowable deductions:	(\$100,000)
Less applicable exclusion amount:	(\$2,000,000)
Washington taxable estate:	\$3,900,000

The preapportionment Washington estate tax for this estate, using the table provided in WAC 458-57-115 (3)(a), equals \$534,000, computed as follows:  $\$390,000 + (\$900,000 \times 16\%) = \$534,000$ .

Because the decedent owned property located outside Washington, the tax due to Washington is calculated by multiplying the amount of preapportionment tax computed above by the fraction described in this subsection (2). Also, because the decedent was not a Washington resident at death, the numerator of the fraction does not include the value of decedent's intangible personal property. The denominator of the fraction is the value of the decedent's gross estate. Using the facts in this example, the tax owed to Washington equals \$57,850, computed as follows:  $(\$650,000 / \$6,000,000) \times \$534,000 = \$57,850$ .

(3) **When is property located in Washington?** ((A decedent's estate may have either real property or tangible personal property located in Washington)) The location of property owned by the decedent is determined at the time of death.

(a) All real property physically situated in this state, with the exception of federal trust lands, and all interests in such property, ~~((are deemed "is located in((") Washington. ((Such))~~ Interests in real property include, but are not limited to:

- ~~(i) ((Leasehold interests;~~
- ~~((ii))~~ Mineral interests;
- ~~((iii) The vendee's (but not the vendor's) interest in an executory contract for the purchase of real property;~~
- ~~(iv) Trusts ((s of realty));~~ and
- ~~((v))~~ (ii) Decedent's beneficial interest in real property held in trust; and
- ~~((v))~~ (iii) Decedent's interest in jointly owned property (e.g., tenants in common, joint with right of survivorship).

(b) Tangible personal property of a ~~((nonresident))~~ decedent ~~((shall be deemed))~~ is located in Washington ((only)) if:

- (i) At the time of death the property is situated in Washington; and
- (ii) It is present for a purpose other than transiting the state.

(c) Intangible personal property of a decedent is located in Washington if the decedent was a resident of this state at death.

**(d) Example.** A nonresident decedent was a construction contractor doing business as a sole proprietor. The decedent was constructing a large building in Washington. At the time of death, any of the decedent's equipment that was located at the job site ~~((in Washington)),~~ such as tools, earthmovers, bulldozers, trucks, etc., ~~((would be deemed))~~ is located in Washington for estate tax purposes~~((Also, the decedent had negotiated and signed a purchase contract for speculative property in another part of Washington. For estate tax purposes, that real property should also be considered a part of the decedent's estate located in Washington))~~ because that property was present in the state for a purpose other than transiting the state.

## NEW SECTION

**WAC 458-57-175 Qualified family-owned business interests.** (1) **Introduction.** This rule applies to deaths occurring on or after January 1, 2014, and is intended to determine if the estate is eligible for the qualified family-owned business interest deduction and to correctly calculate the deduction.

(2) **Definitions.** For purposes of this section, the following definitions apply:

(a) "Material participation" has the same meaning as provided in section 2032A (e)(6) of the Internal Revenue Code as amended or renumbered as of January 1, 2005. Under the federal tax provision, "material participation" generally means the individual is materially involved in making significant management decisions for the trade or business, but not necessarily the day-to-day operating decisions.

A decedent or a qualified heir will not be treated as materially participating in the family-owned business if:

(i) The income derived from carrying out the trade or business is from the management decisions of another individual or entity under an arrangement between the other individual or entity and the decedent or qualified heir.

(ii) The activities that constitute material participation of any agent of the decedent or qualified heir are not considered the activities of the decedent or qualified heir when determining their material participation in the family-owned business.

(iii) A trustee's activities managing a trust for the benefit of other individuals shall not be considered when determining whether any of the present interest beneficiaries of the trust materially participate in the family-owned business.

(b) "Member of the decedent's family" and "member of the family" have the same meaning as "member of the family" in RCW 83.100.046(10).

(c) "Qualified family-owned business interest" has the same meaning as provided in section 2057(e) of the Internal Revenue Code of 1986 as amended and renumbered as of December 31, 2003.

(d) "Qualified heir" has the same meaning as provided in section 2057(i) of the Internal Revenue Code of 1986 as amended and renumbered as of December 31, 2003.

(e) When a business is held in a trust, only the individuals with a present-beneficiary interest in the trust may qualify as a "qualified heir" or "member of decedent's family" under this rule.

### **(3) Criteria for claiming the deduction.**

(a) For the purposes of determining the tax due under this chapter, a deduction is allowed for the value of the decedent's qualified family-owned business interests. The total deduction may not exceed two million five hundred thousand dollars.

(b) The deduction is available only if all the following criteria are met:

(i) The value of the decedent's qualified family-owned business interests must exceed fifty percent of the decedent's Washington taxable estate determined without regard to the deduction for the applicable exclusion amount provided in RCW 83.100.020 (1)(a);

(ii) During the eight-year period ending on the date of the decedent's death, there must have been periods aggregating five years or more during which:

(A) Such interests were owned by the decedent or a member of the decedent's family;

(B) There was material participation, within the meaning of section 2032A (e)(6) of the Internal Revenue Code, by the decedent or a member of the decedent's family in the operation of the trade or business to which such interests relate;

(iii) The qualified family-owned business interests are acquired by any qualified heir from, or passed to any qualified heir from, the decedent, within the meaning of RCW 83.100.046(2), and the decedent was at the time of his or her death a citizen or resident of the United States; and

(iv) The value of the decedent's qualified family-owned business interests is not more than six million dollars.

### **(4) Amounts deductible under this section.**

(a) Only amounts included in the decedent's federal taxable estate may be deducted under this subsection.

(b) Amounts deductible under RCW 83.100.046 regarding property used for farming may not be deducted under this section.

**(5) Additional estate tax imposed - Circumstances - Amount.**

(a) If the qualified heir, within three years of decedent's death and prior to the qualified heir's death, meets one of the four criteria listed below, that qualified heir will be assessed additional estate tax.

(i) The material participation requirements described in section 2032A (c)(6)(b)(ii) of the Internal Revenue Code are not met with respect to the qualified family-owned business interest which was acquired or passed from the decedent;

(ii) The qualified heir disposes of any portion of a qualified family-owned business interest, other than by a disposition to a member of the qualified heir's family or a person with an ownership interest in the qualified family-owned business or through a qualified conservation contribution under section 170(h) of the Internal Revenue Code;

(iii) The qualified heir loses United States citizenship within the meaning of section 877 of the Internal Revenue Code or with respect to whom section 877 (e)(1) applies, and such heir does not comply with the requirements of section 877(g) of the Internal Revenue Code; or

(iv) The principal place of business of a trade or business of the qualified family-owned business interest ceases to be located in the United States.

(b) The amount of the additional estate tax imposed under this subsection if one of the four criteria in (a) of this subsection is met is equal to the amount of tax savings with respect to the qualified family-owned business interest acquired or passed from the decedent.

(c) Interest applies to the tax due under this subsection for the period beginning on the date that the estate tax liability was due under this chapter and ending on the date the additional estate tax due under this subsection is paid. Interest under this subsection must be computed as provided in RCW 83.100.070(2).

(d) The additional estate tax imposed by this subsection is due the day that is six months after any taxable event described in (a) of this subsection occurred and must be reported on a return as provided by the department.

(e) The qualified heir is personally liable for the additional tax imposed by this subsection unless he or she has furnished a bond in favor of the department for such amount and for such time as the department determines necessary to secure the payment of amounts due under this subsection. The qualified heir, on furnishing a bond satisfactory to the department, is discharged from personal liability for any additional estate tax and interest under this subsection and is entitled to a receipt or writing showing such discharge.

(f) Amounts due under this subsection attributable to any qualified family-owned business interest are secured by a lien in favor of the state on the property in respect to which such interest relates. The lien arises at the time the Washington return is filed on which a deduction under this section is taken and continues in effect until:

(i) The additional estate tax liability under this subsection has been satisfied or has become unenforceable by reason of lapse of time; or

(ii) The department is satisfied that no further tax liability will arise under this subsection.

(g) Security acceptable to the department may be substituted for the lien imposed by (f) of this subsection.

(h) For purposes of the assessment or correction of an assessment for additional estate taxes and interest imposed under this subsection, the limitations period in RCW 83.100.095 begins to run on the due date of the return required under (d) of this subsection.

(i) For purposes of this subsection, a qualified heir may not be treated as disposing of an interest described in section 2057 (e)(1)(A) of the Internal Revenue Code by reason of ceasing to be engaged in a trade or business so long as the property to which such interest relates is used in a trade or business by any member of the qualified heir's family.

**(6) Information to be furnished to the department:**

(a) The personal representative of the estate claiming the deduction is required to provide the names and contact information of all qualified heirs on forms prescribed by the department.

(b) Any qualified heir upon the department's request, must submit to the department on an ongoing basis such information as the department determines necessary or useful in determining whether the qualified heir is subject to the additional tax imposed in subsection (5) of this section. The department may not require such information more frequently than twice per year. The department may impose a penalty on a qualified heir who fails to provide the information requested within thirty days of the date the department's written request for the information was sent to the qualified heir. The amount of the penalty under this subsection is five hundred dollars and may be collected in the same manner as the tax imposed under subsection (5) of this section.

**WSR 14-09-072****PROPOSED RULES****BEEF COMMISSION**

[Filed April 18, 2014, 7:35 a.m.]

## Original Notice.

Preproposal statement of inquiry was filed as WSR 14-05-045.

Title of Rule and Other Identifying Information: WAC 60-12-030 Rules for implementation of promotional hosting by the Washington beef commission.

Hearing Location(s): Natural Resource[s] Building, 1111 Washington Street S.E., 2nd Floor, Conference Room 271, Olympia, WA 98504, on June 12, 2014, at 10:00 a.m.

Date of Intended Adoption: June 23, 2014.

Submit Written Comments to: Kelly Frost, P.O. Box 42560, Olympia, WA 98504-2560, e-mail kfrost@agr.wa.gov, fax (360) 902-2092, by 5:00 p.m., June 13, 2014.

Assistance for Persons with Disabilities: Contact WSDA receptionist by May 28, 2014, TTY 1-800-833-6388 or (360) 902-1976.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules identify those authorized to make expenditures for the Washington beef commission with respect to promotional hosting and the objectives for those expenditures.

Reasons Supporting Proposal: The Washington beef commission is proposing rules on promotional hosting in accordance with RCW 15.04.200.

Statutory Authority for Adoption: RCW 15.04.200, chapters 16.67, 34.05 RCW.

Statute Being Implemented: RCW 15.04.200.

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

Name of Proponent: Washington apple commission, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Patti Brumbach, 14240 Interurban Avenue South, #224, Seattle, WA 98168, (206) 444-2902.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules relate to the internal operations of the commission and are in accordance with RCW 15.04.200.

A cost-benefit analysis is not required under RCW 34.05.328. The Washington beef commission is not a listed agency under RCW 34.05.328 (5)(a)(i).

April 18, 2014  
Patti Brumbach  
Executive Director

#### NEW SECTION

**WAC 60-12-030 Rules for implementation of promotional hosting by the Washington beef commission.** RCW 15.04.200 provides that agricultural commodity commissions shall adopt rules governing promotional hosting expenditures by agricultural commodity commission employees, agents, or commissioners. The rules governing promotional hosting expenditures for the Washington beef commission shall be as follows:

(1) "Promotional hosting" means the hosting of individuals or groups of individuals at meetings, meals, events, or other gatherings for the purpose of agricultural development, trade promotion, cultivating trade relations, and in the aid of the marketing, advertising, promotion, or sales of beef and beef products. Such hosting may include providing meals, refreshments, lodging, transportation, gifts of a nominal value, reasonable and customary entertainment, and normal incidental expenses.

(2) Expenditures for promotional hosting shall be pursuant to specific budget items in the commission's annual budget as approved by the commission and the director.

(3) The commission staff members are authorized to make expenditures for promotional hosting in accordance with the provisions of these rules.

(4) Commissioners shall obtain prior authorization of the commission before making any expenditure for promotional hosting.

(5) All payments and reimbursements for promotional hosting expenses shall be identified and supported by a hosting expense report with receipts attached when available. Hosting expense report forms will be supplied by the commission and shall require the following information:

(a) Name of each person hosted, and company or affiliation name if appropriate;

(b) General purpose of the hosting;

(c) Date and location of hosting;

(d) Name and signature of person seeking payment or reimbursement; and

(e) Amount of payment or reimbursement.

(6) The executive director of the commission or chairman of the board are authorized to approve direct payment or reimbursements submitted in accordance with these rules, provided that they are not authorized to approve their own reimbursements.

(7) The following persons may be hosted by Washington beef commission staff or board members when it is reasonably believed such hosting will promote agricultural development, promote trade, cultivate trade relations, or aid in the marketing, advertising, or sale of beef or beef products, provided that such hosting shall not violate federal or state conflict of interest laws:

(a) Individuals from private businesses, associations, commissions;

(b) Foreign government officials;

(c) Federal, state, and local officials: Lodging, meals, and transportation will be provided when such officials may not obtain reimbursement for these expenses from their government employer;

(d) Individuals who directly influence consumer perception and demand for beef and beef products, including media and health care professionals;

(e) Spouses of the persons listed in (d) of this subsection when it is customary and expected; and

(f) The general public, at meetings and gatherings open to the general public.

#### **WSR 14-09-077**

#### **PROPOSED RULES**

#### **PROFESSIONAL EDUCATOR**

#### **STANDARDS BOARD**

[Filed April 18, 2014, 11:39 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-18-015.

Title of Rule and Other Identifying Information: New section WAC 181-79A-132, requires teachers holding an endorsement in special education, early childhood special education, English language learners or bilingual also hold a second endorsement in a different area.

Hearing Location(s): Radisson Hotel, SeaTac Airport, 18118 International Boulevard, Seattle, WA 98188, on July 22, 2014, at 8:30.

Date of Intended Adoption: July 22, 2014.

Submit Written Comments to: David Brenna, 600 Washington Street, Room 400, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by July 15, 2014.

Assistance for Persons with Disabilities: Contact David Brenna by July 15, 2014, (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Endorsements in special education and English learners are demonstrations of

a teacher's competencies in working with the characteristics of a student. Content expertise is required for teachers to be properly assigned to courses, regardless of the characteristics of the student. The rule change requires future certificates issued include a content endorsement in addition to the student characteristic endorsement.

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

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

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

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

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

April 18, 2014  
David Brenna  
Senior Policy Analyst

#### NEW SECTION

##### **WAC 181-79A-132 Dual endorsement requirement.**

Per WAC 181-82A-215, all teachers are required to hold at least one endorsement, provided, a teacher who obtains a special education, early childhood special education, bilingual education, or English language learner endorsement after September 1, 2016, must earn and/or hold a second endorsement in another endorsement area. Special education, early childhood special education, bilingual education, English language learner, and traffic safety do not qualify as the other endorsement area.

#### **WSR 14-09-082**

##### **PROPOSED RULES**

#### **BOARD OF ACCOUNTANCY**

[Filed April 21, 2014, 1:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-03-037.

Title of Rule and Other Identifying Information: WAC 4-30-130 What are the quality assurance review (QAR) requirement for licensed CPA firms?

Hearing Location(s): Holiday Inn Seattle Airport, Queen Anne Room, 17338 International Boulevard, Seattle, WA 98188, on July 24, 2014, at 9:00 a.m.

Date of Intended Adoption: July 24, 2014.

Submit Written Comments to: Richard C. Sweeney, Executive Director, P.O. Box 9131, Olympia, WA 98507-

9131, e-mail info@cpaboard.wa.gov, fax (360) 664-9190, by July 3, 2014.

Assistance for Persons with Disabilities: Contact Kirsten Donovan by July 3, 2014, TTY (800) 833-6388 or (800) 833-6385 (telebraille).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: 1. To enhance public protection by specifying the timing and conditions under which a reviewed firm must notify the board of disagreements on a proposed grade and/or fees charged for a firm's peer review;

2. To clarify that withholding compensation for a peer review as a result of a disagreement about a proposed grade may result in board action; and

3. To clarify when the board will take its own action to evaluate the subject firm's conformity with professional standards.

Reasons Supporting Proposal: To specify corrective actions for those firms who do not comply with the peer review requirements.

Statutory Authority for Adoption: RCW 18.04.055(9).

Statute Being Implemented: RCW 18.04.055(9).

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

Name of Proponent: The Washington state board of accountancy, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Richard C. Sweeney, CPA, 711 Capitol Way South, Suite 400, Olympia, WA, (360) 586-0163.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules will not have more than minor economic impact on business.

A cost-benefit analysis is not required under RCW 34.05.328. The board of accountancy is not one of the agencies required to submit to the requirements of RCW 34.05.-328 (5)(a).

April 21, 2014  
Richard C. Sweeney  
Executive Director

AMENDATORY SECTION (Amending WSR 12-17-054, filed 8/10/12, effective 9/10/12)

##### **WAC 4-30-130 What are the quality assurance review (QAR) requirements for licensed CPA firms? (1)**

**Purpose.** The Washington state board of accountancy is charged with protection of the public interest and ensuring the dependability of information used for guidance in financial transactions or for accounting for or assessing the status or performance of commercial and noncommercial enterprises, whether public, private or governmental. The purpose of the QAR program is to monitor licensees' compliance with audit, compilation, review, and other attestation standards. If the board becomes aware that a firm's performance and/or reporting practices for audit, review, compilation, and other engagements covered by statements on standards for attestation engagements may not be in accordance with applicable professional standards, the board will take appropriate action to protect the public interest.

(2) **Peer review.** Generally, all (~~licensed~~) firms licensed in Washington state offering and/or performing attest services as defined by WAC 4-30-010(5), compilation services, as defined by WAC 4-30-010(12), or other professional services for which a report expressing assurance is prescribed by professional standards (~~in Washington state~~), are required to participate in a board-approved peer review program as a condition of renewing each CPA firm license under RCW 18.04.215 and WAC 4-30-114. However, certain exemptions are listed in subsection (~~(10)~~) (11) of this section. Board-approved peer review programs include:

- (a) The inspection processes of the Public Company Accounting Oversight Board (PCAOB);
- (b) Peer review programs administered by the American Institute of CPAs (AICPA);
- (c) Peer review programs administered by the Washington Society of CPAs (WSCPAs); and
- (d) Other programs recognized and approved by the board.

(3) **Enrollment in peer review:** A licensed firm must enroll in a board-approved peer review program **before** issuing a report for each of the following types of service or any other service the board determines:

- (a) Compilation on historical financial statements;
- (b) Review on historical financial statements;
- (c) Audit report on financial statements, performance audit reports, or examination reports on internal controls for nonpublic enterprises;
- (d) (~~Agreed-upon procedures;~~
- (e) ~~Forecasts; and~~
- (f) ~~Projections~~) Other professional services subject to Statements on Standards for Attestation Engagements.

The schedule for the firm's peer review shall be established according to the peer review program's standards. The board does not require any licensee to become a member of any organization administering a peer review program.

(4) **Participation in peer review.** Every firm that is required to participate in a peer review program shall have a peer review in accordance with the peer review program standards.

(a) It is the responsibility of the firm to anticipate its needs for review services in sufficient time to enable the reviewer to complete the review by the assigned review date.

(b) Any firm that is dropped or terminated by a peer review program for any reason shall have twenty-one days to provide written notice to the board of such termination or drop and to request authorization from the board to enroll in another board-approved peer review program.

(c) In the event a firm is merged, otherwise combined, dissolved or separated, the peer review program shall determine which firm is considered the succeeding firm. The succeeding firm shall retain its peer review status and the review due date.

(d) A firm choosing to change to another peer review program may do so only if there is not an open active peer review and if the peer review is performed in accordance with the minimum standards for performing and reporting on peer reviews.

(5) **Reporting requirements.** Every firm must provide the following information, along with the appropriate fees,

with every application for renewal of a firm license by April 30th of the renewal year (~~of expiration that may consist of but is not limited to~~):

(a) Certify whether the firm does or does not perform attest services or compilation services as defined by WAC 4-30-010 (5), (12), or other professional services for which a report expressing assurance is prescribed by professional standards in Washington state;

(b) If the firm is subject to the peer review requirements, provide the name of the approved peer review program in which the firm is enrolled, and the period covered by the firm's most recent peer review;

(c) Certify the result of the firm's most recent peer review.

Failure to timely submit complete information and the related fee by the April 30th due date can result in the assessment of late fees. The board may waive late fees based on individual hardship including, but not limited to, financial hardship, critical illness, or active military deployment.

(6) A firm must notify the board within thirty days of the date the peer reviewer or a team captain advises the firm that a grade of pass with deficiencies or fail will be recommended. The notification must include the details of any required corrective action plan being recommended by the peer reviewer or team captain, and the planned date (or time period within which) the firm would intend to complete such remedial action or actions if proposed corrective action plan is approved by the appropriate peer review acceptance committee.

Notwithstanding any extensions of time by the peer review program administrator, failure by the firm to meet its planned schedule for completing its specific corrective action plan required by the peer review program and/or timely pay for the peer review services can result in board action.

(7) **Documents required.** A firm that has opted out of participating in the AICPA Facilitated State Board Access (FSBA) program shall provide to the board copies of the following documents related to the peer review report:

- (a) Peer review report issued;
- (b) Firm's letter of response, if any;
- (c) Letter of acceptance from peer review program;
- (d) Recommended action letter from the peer review program, if any;
- (e) A letter from the firm to the board describing corrective actions taken by the firm that relate to recommendations of the peer review program;
- (f) Other information the firm deems important for the board's understanding of the information submitted; and
- (g) Other information the board deems important for the understanding of the information submitted.

~~((7))~~ (8) Document retention. Firms shall retain all documents relating to peer review reports, including working papers of the underlying engagement subject to peer review that was reviewed, until the acceptance of a subsequent peer review by the peer review program or for five years from the date of acceptance of the most recent peer review (~~by the peer review program~~), whichever is sooner.

~~((8))~~ (9) Extensions. The board may grant an extension of time for submission of the peer review report to the board.

Extensions will be determined by the board on a case-by-case basis.

~~((9))~~ **(10) Verification.** The board may verify the certifications of peer review reports that firms provide.

~~((10))~~ **(11) Exemption from peer review.**

(a) Out-of-state firms that do not have a physical location in this state, but perform attest or compilation services in this state, and are otherwise qualified for practice privileges under RCW 18.04.195 (1)(b) are not required to participate in the board's program if the out-of-state firm participates in a board-approved peer review program or similar program approved or sponsored by another state's board of accountancy.

(b) Firms that do not perform attest services as defined by WAC 4-30-010(5), compilation services, as defined by WAC 4-30-010(12), or other professional services for which a report expressing assurance is prescribed by professional standards ~~((in Washington state))~~ are not required to participate in a peer review program, and shall request exemption on each firm license renewal application.

(c) Firms that prepare financial statements **which do not require reports** under Statements on Standards for Accounting and Review Services ~~((SSARS) 8 as codified in SSARS 19))~~ (management use only compilation reports) and that perform no other attest or compilation services, are not required to participate in a peer review program; however, any such engagements ~~((conducted))~~ performed by a firm that is otherwise required to participate in a peer review program shall be included in the selection of engagements subject to peer review.

~~((11))~~ **(12) Quality assurance oversight.**

(a) The board will:

(i) Annually appoint a compliance assurance oversight committee, and such other committees as the board, in its discretion deems necessary, to provide oversight of the administration of approved peer review programs in order to provide reasonable assurance that peer reviews are being conducted and reported on in accordance with the minimum standards for performing and reporting on peer reviews;

(ii) Consider reports from the compliance assurance oversight committee;

(iii) Direct the evaluation of peer review reports and related documents submitted by firms;

(iv) Determine the appropriate action for firms that have unresolved matters relating to the peer review process or that have not complied with, or acted in disregard of the peer review requirements;

(v) Determine appropriate action for firms when issues with a peer review report may warrant further action; and

(vi) Take appropriate actions the board, in its discretion, deems appropriate to carry out the functions of the quality assurance review program and achieve the purpose of the peer review requirement.

(b) The **compliance assurance oversight committee** shall conduct oversight of approved peer review programs at least semiannually to provide reasonable assurance that such programs are in compliance with the minimum standards for performing and reporting on peer reviews.

(i) The compliance assurance oversight committee's oversight procedures may consist of, but are not limited to:

(A) Attending the peer review program's report acceptance body (RAB) meetings during consideration of peer review documents;

(B) Observing the peer review program administrator's internal review of program and quality control compliance~~((:))~~;

(C) Observing the peer review program's review of the administrator's process.

(ii) The compliance oversight assurance committee shall report to the board any modifications to approved peer review programs and shall make recommendations regarding the continued approval of peer review programs.

~~((12))~~ **(13) Remedies.** ~~((The board's quality assurance review program is intended to monitor the quality of a firm's attest and compilation practices and compliance with professional standards (RCW 18.04.065(9)). If the board determines that a firm's attest or compilation engagement performance and/or reporting practices are not in accordance with applicable professional standards and, therefore, the board determines that one or more of the engagements are, or could be, substandard or seriously questionable, the board will take appropriate action to protect the public interest including, but not limited to:))~~ The board will take appropriate action to protect the public's interest if the board determines through the peer review process or otherwise that a firm's performance and/or reporting practices are not or may not be in accordance with applicable professional standards, the firm does not comply with peer review program requirements, or the firm does not comply with all or some of the reporting, remedial action, and/or fee payment requirements of subsection (5) of this section. The board's actions may include, but are not limited to:

(a) Require the firm to develop quality control procedures to provide reasonable assurance that similar occurrences will not occur in the future;

(b) Require any individual licensee who had responsibility for, or who substantially participated in the ~~((substandard or seriously questionable compilation or attest))~~ engagement(s), to successfully complete specific courses or types of continuing education as specified by the board;

(c) Require that the reviewed firm responsible for ~~((one or more substandard or seriously questionable compilation or attest))~~ engagement(s) submit all or specified categories of its compilation or attest working papers and reports to a preissuance evaluation performed by a board-approved licensee in a manner and for a duration prescribed by the board. Prior to the firm issuing the reports on the engagements reviewed, the board-approved licensee shall submit to the board for board acceptance a report of the findings, including the nature and frequency of recommended actions to the firm. The cost of the board-approved preissuance evaluation will be at the firm's expense;

(d) Require the reviewed firm to engage a board-approved licensee to conduct a board-prescribed on-site field review of the firm's work product and practices or perform other investigative procedures to assess the degree or pervasiveness of ~~((substandard or seriously questionable))~~ non-compliant work product. The board-approved licensee engaged by the firm shall submit a report of the findings to the board within thirty days of the completion of the services.

The cost of the board-prescribed on-site review or other board-prescribed procedures will be at the firm's expense; or

(e) Initiate an investigation pursuant to RCW 18.04.295, 18.04.305, and/or 18.04.320(~~(-and)~~).

(f) Absent an investigation the specific rating of a single peer review report(~~(, individually,)~~) is not a sufficient basis to warrant disciplinary action.

~~((13))~~ (14) The board may solicit and review licensee reports and/or other information covered by the reports from clients, public agencies, banks, and other users of such information.

**WSR 14-09-093**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed April 22, 2014, 9:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-05-076.

Title of Rule and Other Identifying Information: Chapter 296-104 WAC, Board of boiler rules—Substantive.

Hearing Location(s): Department of Labor and Industries (L&I), 950 Broadway, Suite 200, Tacoma, WA 98402-4453, on May 28, 2014, at 10:00 a.m. For directions to the L&I office: <http://www.lni.wa.gov/Main/ContactInfo/OfficeLocations/tacoma.asp>.

Date of Intended Adoption: June 17, 2014.

Submit Written Comments to: Alicia Curry, Rules Coordinator, P.O. Box 44400, Olympia, WA 98504-4400, e-mail [Alicia.Curry@Lni.wa.gov](mailto:Alicia.Curry@Lni.wa.gov), fax (360) 902-5292, by 5 p.m. on May 28, 2014.

Assistance for Persons with Disabilities: Contact Alicia Curry by May 14, 2014, at [Alicia.Curry@Lni.wa.gov](mailto:Alicia.Curry@Lni.wa.gov) or (360) 902-6244.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The board of boiler rules is proposing amendments to chapter 296-104 WAC, Board of boiler rules—Substantive, to adopt new safety code requirements and a housekeeping change. The boiler rules are reviewed on a regular basis to ensure the rules are consistent with national boiler and unfired pressure vessel safety standards and industry practice. Due to the rule-making moratorium, the board of boiler rules didn't adopt rules to align with the 2013 (current edition) National Board Inspection Code (NBIC), used to regulate the industry.

Proposed amendments to this chapter will:

- Adopt the 2013 (current edition) NBIC requirements for boilers and unfired pressure vessels in the state of Washington;
- Adopt the current revision of the National Board NB-263 standards, rules for national board in-service and new construction inspectors; and
- Remove an obsolete reference to provide rule clarity and consistency in the rules.

Reasons Supporting Proposal: This rule making is needed to update existing requirements to ensure the most current standards are in place for proper construction, installation, inspection, operation, maintenance, alterations, and repairs of boilers and unfired pressure vessels that improve public safety.

Statutory Authority for Adoption: Chapter 70.79 RCW, Boilers and unfired pressure vessels.

Statute Being Implemented: Chapter 70.79 RCW, Boilers and unfired pressure vessels.

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

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: José Rodriguez, Tumwater, Washington, (360) 902-6348.

No small business economic impact statement has been prepared under chapter 19.85 RCW. L&I is exempt from preparing a small business economic impact statement under RCW 19.85.030 (1)(a), since the proposed rules would not impose more than minor costs on businesses.

A cost-benefit analysis is not required under RCW 34.05.328. L&I is exempt from preparing a cost-benefit analysis under RCW 34.05.328 (5)(a), since the proposed rules would not impose more than minor costs on businesses.

April 22, 2014  
Robert E. Olson  
Chair

AMENDATORY SECTION (Amending WSR 08-12-015, filed 5/27/08, effective 6/30/08)

**WAC 296-104-050 Administration—What are the requirements for a boiler inspector?** Application for examination for a Washington state certificate of competency shall be in writing upon a form to be furnished by the chief inspector stating the school and education of the applicant, a list of employers, period of employment and position held with each employer. Applications containing willful falsification or untruthful statements shall be rejected.

In order to qualify as a prospective inspector, an applicant shall meet the minimum requirements as set forth in the national board's "Rules for Commissioned Inspectors," NB263, Revision (~~(47)~~) 8 (02/07) or API-510 (ninth edition), as appropriate.

If the applicant's history and experience meet with the approval of the chief inspector based on the board of boiler rules approved criteria, the candidate shall be given the Washington state examination. If the applicant is accepted on the merits of these examinations or as provided for in WAC 296-104-065, and the applicant is in possession of a national board commission or API-510 certification, as appropriate, a Washington state certificate of competency will be issued by the chief inspector.

For those applicants sitting for the national board examination in conjunction with the Washington state examination, a certificate of competency will be issued by the chief inspector upon receipt of a valid national board commission.

Examinations shall be held at locations and times when considered necessary by the chief inspector. The examina-

tions may be offered four times each year, namely, the first Wednesday and following Thursday of the months of March, June, September and December. Special examinations may be held when considered necessary by the chief inspector.

**AMENDATORY SECTION** (Amending WSR 08-24-072, filed 12/1/08, effective 1/1/09)

**WAC 296-104-102 Inspection—What are the standards for in-service inspection?** Where a conflict exists between the requirements of the standards listed below and this chapter, this chapter shall prevail. The duties of the in-service inspector do not include the installation's compliance with other standards and requirements (environmental, construction, electrical, undefined industrial standards, etc.), for which other regulatory agencies have authority and responsibility to oversee.

(1) The standard for inspection of nonnuclear boilers, unfired pressure vessels, and safety devices ~~((is))~~ in the National Board Inspection Code (NBIC), ~~((2007))~~ 2013 edition Part 2, ~~((with addenda,))~~ excluding Section 6, Supplements 1, 2, 5, 6, and 7 which may be used as nonmandatory guidelines. ~~((This code may be used on or after the date of issue and becomes mandatory twelve months after adoption by the board as specified in RCW 70.79.050(2).))~~

(2) The standard for inspection of historical steam boilers of riveted construction preserved, restored, or maintained for hobby or demonstration use, shall be Appendix "C" of the National Board Inspection Code (NBIC) 2004 edition with 2006 addenda.

(3) The standard for inspection of nuclear items is ASME section XI. The applicable ASME Code edition and addenda shall be as specified in the owner in-service inspection program plan.

(4) Where a petroleum or chemical process industry owner/user inspection agency so chooses, the standard for inspection of unfired pressure vessels used by the owner shall be the API-510 Pressure Vessel Inspection Code, ninth edition, with addenda. This code may be used on or after the date of issue.

(5) TAPPI TIP 0402-16, dated 2006 may be used for both pulp dryers and paper machine dryers when requested by the owner. When requested by the owner, this document becomes a requirement and not a guideline.

**AMENDATORY SECTION** (Amending WSR 02-23-036, filed 11/13/02, effective 12/14/02)

**WAC 296-104-271 Installation—How does an owner, user, or installer obtain a variance from clearances?** Variances from WAC 296-104-255, ~~((296-104-256,))~~ 296-104-260, and 296-104-265 may be requested. The variance request shall be in writing on an appropriate form approved by the chief inspector, and shall specify how equivalent safety is to be maintained. The chief inspector may grant the variance provided that safety and accessibility for inspections are acceptable.

**AMENDATORY SECTION** (Amending WSR 08-24-072, filed 12/1/08, effective 1/1/09)

**WAC 296-104-502 Repairs—What is the standard for nonnuclear repairs and alterations?** The standard for repairs/alterations is:

(1) National Board Inspection Code (NBIC), ~~((2007))~~ 2013 edition Part 3, ~~((with addenda,))~~ excluding Section 6, Supplements 1, 2, 5, 6, and ((7)) 10 which may be used as nonmandatory guidelines.

(2) The standard for repair of historical boilers or riveted construction preserved, restored, or maintained for hobby or demonstration use, shall be Appendix C of the National Board Inspection Code (NBIC) 2004 edition with 2006 addenda.

### WSR 14-09-100

#### PROPOSED RULES

#### HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed April 22, 2014, 1:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-07-025.

Title of Rule and Other Identifying Information: Amending WAC 182-550-3400 Case-mix index, 182-550-3600 Diagnosis-related group (DRG) payment—Hospital transfers, 182-550-3700 DRG high outliers and 182-550-4500 Payment method—Ratio of costs-to-charges (RCC); and repealing WAC 182-550-3300, 182-550-3350, 182-550-3500, and 182-550-4600.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 626 8th Avenue, Olympia, WA 98504, on May 27, 2014, at 10:00 a.m. 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.

Date of Intended Adoption: Not sooner than May 28, 2014.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail [arc@hca.wa.gov](mailto:arc@hca.wa.gov), fax (360) 586-9727, by 5:00 p.m. on May 27, 2014.

Assistance for Persons with Disabilities: Contact Kelly Richters by May 22, 2014, 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: Revising the outlier rules is an integral part of updating inpatient hospital payment rates to reflect changes in hospital industry practices and state medicaid payment policies as requested by the legislature. The update called "rebasin" is completed by a consultant hired by the state of Washington in coordination with stakeholders including hospitals, the Washington State Hospital Association, office of financial management, legislative staff and others.

Statutory Authority for Adoption: RCW 41.05.021.

Statute Being Implemented: Chapter 74.60 RCW.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Jason R. P. Crabbe, Olympia, Washington 98504-2716, (360) 725-1346; Implementation and Enforcement: Dylan Oxford, Olympia, Washington 98504-5500, (360) 725-2130.

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.

April 22, 2014  
Kevin M. Sullivan  
Rules Coordinator

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

**WAC 182-550-3400 Case-mix index.** (1) The ~~((department~~ ~~:~~

~~(a) Adjusts hospital costs used to calculate the conversion factor and per diem rates during the rebasing process by the hospital's case mix index; and~~

~~(b)) medicaid agency calculates the case-mix index (CMI) for each individual hospital to measure the relative cost for treating medicaid and ~~((SCHHP))~~ CHIP cases in a given hospital. The CMI represents the relative acuity of the claims.~~

~~(2) ~~((The department calculates the CMI for each hospital using medicaid and SCHHP admissions data from the individual hospital and the hospital's base period cost report. See WAC 388-550-3150. The CMI is calculated for each hospital by summing all relative weights for all claims in the dataset, and dividing the sum of the relative weights by the number of claims. That amount represents the relative acuity of the claims. The hospital-specific CMI is calculated as follows:))~~ Using medicaid and children's health insurance program (CHIP) admissions data from the individual hospital and the hospital's base period cost report, the agency calculates the CMI by:~~

~~(a) ~~((The department multiplies))~~ Multiplying the number of medicaid and ~~((SCHHP))~~ CHIP admissions to the hospital for a specific diagnosis-related group (DRG) classification by the relative weight for that DRG classification. The ~~((department))~~ agency repeats this process for each DRG billed by the hospital~~((:));~~~~

~~(b) ~~((The department adds))~~ Adding together the products in (a) of this subsection for all of the medicaid and ~~((SCHHP))~~ CHIP admissions to the hospital in the base year~~((:));~~ and~~

~~(c) ~~((The department divides))~~ Dividing the sum obtained in (b) of this subsection by the corresponding number of medicaid and ~~((SCHHP))~~ CHIP hospital admissions.~~

~~((d) Example: If the average case mix index for a group of hospitals is 1.0, a CMI of 1.0 or greater for a hospital in that group means that the hospital has treated a mix of patients in the more costly DRG classifications. A CMI of less than 1.0 indicates a mix of patients in the less costly DRG classifications.))~~

~~(3) The ~~((department))~~ agency recalculates each hospital's ~~((case mix index periodically, but no less frequently than each time rebasing is done))~~ CMI during inpatient hospital rebasing, or as needed.~~

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

**WAC 182-550-3600 Diagnosis-related group (DRG) payment—Hospital transfers.** (1) The rules in this section apply when an eligible client transfers from an acute care hospital or distinct unit to any of the following:

~~(a) ~~((Before July 1, 2009, to another acute care hospital or distinct unit; and~~~~

~~(b) On or after July 1, 2009, to one of the following:~~

~~(i)) Another acute care hospital or distinct unit;~~

~~((ii)) (b) A skilled nursing facility (SNF);~~

~~((iii)) (c) An intermediate care facility (ICF);~~

~~((iv)) (d) Home care under the ~~((department's))~~ medicaid agency's home health program;~~

~~((v)) (e) A long-term acute care facility (LTAC);~~

~~((vi)) (f) Hospice (facility-based or in the client's home);~~

~~((vii)) (g) A hospital-based, medicare-approved swing bed, or another distinct unit such as a rehabilitation or psychiatric unit (see WAC ~~((388-550-3000))~~ 182-550-3000); or~~

~~((viii)) (h) A nursing facility certified under medicaid but not medicare.~~

~~(2) The ~~((department))~~ agency pays a transferring hospital ~~((that transfers an emergency case to another acute care hospital, including an acute physical medicine and rehabilitation (acute PM&R) facility or distinct unit, an acute psychiatric facility or distinct unit, and a long-term acute care facility;))~~ the lesser of:~~

~~(a) The appropriate diagnosis-related group (DRG) payment ~~((based on a stable DRG));~~ or~~

~~(b) ~~((A))~~ The prorated DRG payment ~~((when the client's stay at the transferring hospital is less than the average length of stay (LOS) for the AP-DRG classification as determined by the department.~~~~

~~(3) The department pays a transferring hospital as follows:~~

~~(a) For dates of admission before August 1, 2007, a per diem rate multiplied by the number of medically necessary days the client stays at the transferring hospital. The department determines the per diem rate by dividing the hospital's DRG payment amount for the appropriate DRG by that DRG's average LOS.~~

~~(b) For dates of admission on and after August 1, 2007, a per diem rate multiplied by the number of medically necessary days the client stays at the transferring hospital plus one day, not to exceed the total calculated DRG-based payment amount including any outlier payment amount. The department determines the per diem by dividing the hospital's~~

allowed payment amount for the appropriate DRG by that DRG's statewide average LOS (see WAC 388-550-4300) for the AP-DRG classification as determined by the department.

(4) The department uses:

(a) The hospital's midnight census to determine the number of days a client stayed in the transferring hospital prior to the transfer; and

(b) The department's LOS data to determine the number of medically necessary days for a client's hospital stay.

(5) When a post-acute care hospital transfer occurs to one of the locations listed in subsection (1)(b)(ii) through (viii) of this section, the department pays the transferring hospital the lesser of:

(a) The appropriate DRG payment; or

(b) For dates of admission on and after July 1, 2009, a per diem rate multiplied by the number of medically necessary days the client stays at the transferring hospital plus one day, not to exceed the total calculated DRG-based payment amount including any outlier payment amount. The department determines the per diem by dividing the hospital's allowed payment amount for the appropriate DRG by that DRG's statewide average length of stay (see WAC 388-550-4300) for the AP-DRG classification as determined by the department.

(6) The department applies the outlier payment methodology if a transfer case qualifies:

(a) For dates of admission before August 1, 2007, as a high-cost or low-cost outlier; and

(b) For dates of admission on or after August 1, 2007, as a high-cost outlier.

(7)) which the agency calculates by:

(i) Using the average length of stay (ALOS) for the assigned DRG;

(A) The agency uses the 3M national average length of stay for paying inpatient claims.

(B) The agency publishes ALOS values on its web site;

(ii) Dividing the hospital's allowed payment amount for the assigned DRG by the ALOS in (b)(i) of this subsection;

(iii) Determining the client length of stay as all medically necessary days at the transferring hospital, plus one day; and

(iv) Multiplying the number in (b)(ii) of this subsection by the length of stay determined in (b)(iii) of this subsection.

(3) The agency applies the outlier payment method if a transfer case qualifies as a high outlier. To qualify for a high outlier, the costs (ratio of cost-to-charges multiplied by covered allowed charges) for the transfer must exceed the outlier threshold. The threshold is the DRG allowed amount (hospital-specific rate multiplied by DRG relative weight) plus forty thousand dollars.

(4) The ((department)) agency does not pay a transferring hospital for a nonemergency case when the transfer is to another acute care hospital.

((8)) (5) The ((department)) agency pays the full DRG payment to the discharging hospital for a discharge to home or self-care. This is the ((department's)) agency's maximum payment to a discharging hospital.

((9)) (6) The ((department does not pay a discharging hospital any additional amounts as a transferring hospital if it transfers a client to another hospital (intervening hospital) which subsequently sends the client back.

(10) The department)) agency pays ((the)) an intervening hospital((s)) a per diem payment based on the method described in subsection ((3)) (2) of this section.

((11)) (7) The transfer payment policy described in this section does not apply to claims grouped into ((AP-DRG)) DRG classifications ((that are paid)) the agency pays based on the per diem, case rate, or ratio of costs-to-charges (RCC) payment methods.

((12)) (8) The ((department)) agency applies the following to the payment for each claim((s));

(a) All applicable adjustments for client responsibility((s));

(b) Any third-party liability((s));

(c) Medicare((s)) payments; and

(d) Any other adjustments as determined by the ((department)) agency.

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

**WAC 182-550-3700 DRG ((high-cost and low-cost)) high outliers((, and new system DRG and per diem high outliers)).** ((This section applies to inpatient hospital claims paid under the diagnosis-related group (DRG) payment methodology, and for dates of admission on and after August 1, 2007. It also applies to inpatient hospital claims paid under the per diem payment methodology.

(1) For dates of admission before August 1, 2007, a medicaid or state-administered claim qualifies as a DRG high-cost outlier when:

(a) The client's admission date on the claim is before January 1, 2001, the stay did not meet the definition of "administrative day," and the allowed charges exceed:

(i) A threshold of twenty-eight thousand dollars; and

(ii) A threshold of three times the applicable DRG payment amount.

(b) The client's admission date on the claim is January 1, 2001, or after, the stay did not meet the definition of "administrative day," and the allowed charges exceed:

(i) A threshold of thirty-three thousand dollars; and

(ii) A threshold of three times the applicable DRG payment amount.

(2) For dates of admission before August 1, 2007, if the claim qualifies as a DRG high-cost outlier, the high-cost outlier threshold, for payment purposes, is the amount in subsection (1)(a)(i) or (ii), whichever is greater, for an admission date before January 1, 2001; or subsection (1)(b)(i) or (ii), whichever is greater, for an admission date on or after January 1.

(3) For dates of admission before August 1, 2007, the department determines payment for medicaid claims that qualify as DRG high-cost outliers as follows:

(a) All qualifying claims, except for claims in psychiatric DRGs 424-432 and claims from in-state children's hospitals, are paid seventy-five percent of the allowed charges above the outlier threshold determined in subsection (2) of this section, multiplied by the hospital's RCC rate, plus the applicable DRG payment.

(b) In-state children's hospitals are paid eighty-five percent of the allowed charges above the outlier threshold deter-

mined in subsection (2) of this section, multiplied by the hospital's RCC rate, plus the applicable DRG payment.

(c) Psychiatric DRG high-cost outliers for DRGs 424-432 are paid one hundred percent of the allowed charges

above the outlier threshold determined in subsection (2) of this section, multiplied by the hospital's RCC rate, plus the applicable DRG payment.

Examples for DRG high-cost outlier claim qualification and payment calculation (Admission dates are January 1, 2001, or after, and before August 1, 2007.)						
Allowed-Charges	Applicable-DRG Payment	Three times-App. DRG Payment	Allowed-Charges > \$33,000?	Allowed-Charges > Three times-App. DRG Payment?	DRG High-Cost Outlier Payment	Hospital's Individual RCC Rate
\$17,000	\$5,000	\$15,000	No	Yes	N/A	64%
*\$33,500	5,000	15,000	Yes	Yes	**\$5,240	64%
10,740	35,377	106,131	No	No	N/A	64%

Medicaid Payment calculation example for allowed charges of:	Nonpsych DRGs/Noninstate children's hospital (RCC is 64%)
*\$33,500	Allowed charges
-\$33,000 -\$500	The greater amount of 3 x applicable DRG pymt (\$15,000) or \$33,000
x 48%	75% of allowed charges x hospital-RCC rate (nonpsych DRGs/noninstate children's) (75% x 64% = 48%)
-\$240	Outlier portion
+\$5,000	Applicable DRG payment
**\$5,240	Outlier payment

(4) For dates of admission before August 1, 2007, DRG high-cost outliers for state-administered programs are paid according to WAC 388-550-4800.

(5) For dates of admission before August 1, 2007, a medicaid or state-administered claim qualifies as a DRG low-cost outlier if:

(a) The client's admission date on the claim is before January 1, 2001, and the allowed charges are:

- (i) Less than ten percent of the applicable DRG payment;
- or
- (ii) Less than four hundred dollars.

(b) The client's admission date on the claim is January 1, 2001, or after, and the allowed charges are:

- (i) Less than ten percent of the applicable DRG payment;
- or
- (ii) Less than four hundred fifty dollars.

(6) If the claim qualifies as a DRG low-cost outlier:

(a) For an admission date before January 1, 2001, the low-cost outlier amount is the amount in subsection (5)(a)(i) or (ii), whichever is greater; or

(b) For an admission date on January 1, 2001, or after, the low-cost outlier amount is the amount in subsection (5)(b)(i) or (ii), whichever is greater.

(7) For dates of admission before August 1, 2007, the department determines payment for a medicaid claim that

qualifies as a DRG low-cost outlier by multiplying the allowed charges for each claim by the hospital's RCC rate.

(8) For dates of admission before August 1, 2007, DRG low-cost outliers for state-administered programs are paid according to WAC 388-550-4800.

(9) For dates of admission before August 1, 2007, the department makes day outlier payments to hospitals in accordance with section 1923 (a)(2)(C) of the Social Security Act, for clients who have exceptionally long stays that do not reach DRG high-cost outlier status. A hospital is eligible for the day outlier payment if it meets all of the following criteria:

(a) The hospital is a disproportionate share hospital (DSH) and the client served is under age six, or the hospital may not be a DSH hospital but the client served is a child under age one;

(b) The payment methodology for the admission is DRG;

(c) The allowed charges for the hospitalization are less than the DRG high-cost outlier threshold as defined in subsection (2) of this section; and

(d) The client's length of stay exceeds the day outlier threshold for the applicable DRG payment amount. The day outlier threshold is defined as the number of days in an average length of stay for a discharge (for an applicable DRG payment), plus twenty days.

(10) For dates of admission before August 1, 2007 the department bases the day outlier payment on the number of days that exceed the day outlier threshold, multiplied by the administrative day rate.

(11) For dates of admission before August 1, 2007, the department's total payment for a day outlier claim is the applicable DRG payment plus the day outlier or administrative days payment.

(12) For dates of admission before August 1, 2007, a client's outlier claim is either a day outlier or a high-cost outlier, but not both.

(13) For dates of admission on and after August 1, 2007, the department does not identify a claim as a low-cost outlier or day outlier. Instead, these claims are processed using the applicable payment method described in this chapter. The department may review claims with very low costs.

(14) For dates of admission on and after August 1, 2007, the department)) (1) The agency identifies a diagnosis-related

group (DRG) high outlier claim based on the claim's estimated costs. The agency allows a high outlier payment for claims paid using the DRG payment method when high outlier ((qualifying)) criteria are met.

(a) To qualify as a DRG high outlier claim, the estimated costs for the claim must be greater than the outlier threshold effective for the date of admission. The outlier threshold amount is depicted in the following table:

<u>Dates of Admission</u>	<u>Pediatric</u>	<u>Nonpediatric</u>
<u>February 1, 2011 – July 31, 2012</u>	<u>Base DRG * 1.50</u>	<u>Base DRG * 1.75</u>
<u>August 1, 2012 – June 30, 2013</u>	<u>Base DRG * 1.429</u>	<u>Base DRG * 1.667</u>
<u>July 1, 2013 – June 30, 2014</u>	<u>Base DRG * 1.563</u>	<u>Base DRG * 1.823</u>
<u>July 1, 2014, and after</u>	<u>Base DRG + \$40,000</u>	<u>Base DRG + \$40,000</u>

(b) The agency calculates the estimated costs of the claim ((are calculated)) by multiplying the total submitted charges, minus the ((noneovered)) nonallowed charges on the claim, by the hospital's ratio of costs-to-charges (RCC) ((rate. The department identifies a DRG high outlier claim based on the claim's estimated costs. To qualify as a DRG high outlier claim, the department's estimated costs for the claim must be greater than both the fixed outlier cost threshold of fifty thousand dollars, and one hundred seventy five percent of the applicable base DRG allowed amount for payment)).

((These)) (c) When a transferring hospital submits a transfer claim to the agency, the high outlier criteria ((are also)) used to determine ((if a transfer)) whether the claim qualifies for high outlier payment ((when a transfer claim is submitted to the department by a transferring hospital.

For Children's Hospital Regional Medical Center, Mary Bridge Children's Hospital and Health Center, and claims grouped to neonatal and pediatric DRGs under the DRG payment method, the department identifies a high outlier claim based on the claim's estimated costs. To qualify as a high outlier claim, the claim's estimated cost amount must be greater than both the fixed outlier threshold of fifty thousand dollars and one hundred fifty percent of the applicable base DRG allowed amount for payment.

(15) For dates of admission on and after August 1, 2007, the department may allow an adjustment for a high outlier for per diem claims grouped to a DRG classification in one of the acute unstable DRG service categories, i.e., medical, surgical, burn, and neonatal. These service categories are described in subsection (16) of this section.

(a) The department identifies high outlier per diem claims for medical, surgical, burn, and neonatal DRG service categories based on the claim estimated costs. The claim estimated costs are the total submitted charges, minus the non-covered charges for the claim, multiplied by the hospital's ratio of costs to charges (RCC) related to the admission. Except as specified in (b) of this subsection, a claim that is grouped to a medical, surgical, or burn DRG service category qualifies as a high outlier when the claim's estimated cost is greater than both the fixed outlier threshold of fifty thousand dollars and one hundred seventy five percent of the applicable per diem base allowed amount for payment.

(b) For Children's Hospital Regional Medical Center, Mary Bridge Children's Hospital and Health Center, and claims grouped to neonatal and pediatric DRGs under medical, surgical, burn, and neonatal services categories, the department identifies high outlier claims based on the claim's estimated costs. To qualify as a high outlier claim, the claim's

estimated cost must be greater than both the fixed outlier threshold of fifty thousand dollars and one hundred fifty percent of the applicable per diem base allowed amount for payment.

(e) The department may perform retrospective utilization reviews on all per diem outlier claims that exceed the department determined DRG average length of stay (LOS). If the department determines the entire LOS or part of the LOS is not medically necessary, the claim will be denied or the payment will be adjusted.

(16) For dates of admission on and after August 1, 2007, the term "unstable" is used generically to describe an AP-DRG classification that has fewer than ten occurrences (low volume), or that is unstable based on the statistical stability test indicated in this subsection, and to describe such claims in the major service categories of per diem paid claims identified in this section. The formula for the statistical stability test calculates the required size of a sample population of values necessary to estimate a mean cost value with ninety percent confidence and within an acceptable error of plus or minus twenty percent given the population's estimated standard deviation.

Specifically, this formula is:

$$N = (Z^2 * S^2) / R^2, \text{ where}$$

- The Z-statistic for 90 percent confidence is 1.64

- S = the standard deviation for the AP-DRG classification, and

- R = acceptable error range, per sampling unit

If the actual number of claims within an AP-DRG classification is less than the calculated N size for that classification during relative weight recalibration, the department designates that DRG classification as unstable for purposes of calculating relative weights. And as previously stated, for relative weight recalibration, the department also designates any DRG classification having less than ten claims in total in the claims sample used to recalibrate the relative weights, as low volume and unstable.

The DRG classifications assigned to the per diem payment method, that are in one of the major service categories in subsection (16)(a) through (d) of this section, qualify for examination if a high outlier payment is appropriate. The department specifies those DRG classifications to be paid the per diem payment method because the DRG classification has low volume and/or unstable claims data for determination of an AP-DRG relative weight. A claim in a DRG classification that falls into one of the following major services categories that the department designates for per diem payment, may receive a per diem high outlier payment when the claim

meets the high outlier criteria as described in subsection (15) of this section:

(a) Neonatal claims, based on assignment to medical diagnostic category (MDC) 15;

(b) Burn claims based on assignment to MDC 22;

(c) AP-DRG groups that include primarily medical procedures, excluding any neonatal or burn per diem classifications identified in (a) and (b) of this subsection; and

(d) AP-DRG groups that include primarily surgical procedures, excluding any neonatal or burn per diem classifications identified in (a) and (b) of this subsection.

(17) For dates of admission on and after August 1, 2007, the high outlier claim payment processes for the general assistance unemployable (GA-U) program are the same as those for the medicaid or SCHIP DRG paid and per diem paid claims, except that the DRG rates and per diem rates are reduced, and the percent of outlier adjustment factor applied to the payment may be reduced. The high outlier claim payment process for medicaid or SCHIP DRG paid and per diem paid claims is as follows:

(a) The department determines the claim estimated cost amount that is used in the determination of the high outlier claim qualification and the high outlier threshold for the calculation of outlier adjustment amount. The claim estimated cost is equal to the total submitted charges, minus the non-covered charges reported on the claim, multiplied by the hospital's inpatient ratio of costs to charges (RCC) related to the admission.

(b) The high outlier threshold when calculating the high outlier adjustment portion of the total payment allowed amount on the claim is:

(i) For DRG paid claims grouped to nonneonatal or non-pediatric DRG classifications, and for DRG paid claims that are not from Children's Hospital Regional Medical Center or Mary Bridge Children's Hospital and Health Center, the high outlier threshold is one hundred seventy-five percent of the base DRG payment allowed amount;

(ii) For DRG paid claims grouped to neonatal or pediatric DRG classifications, and for DRG paid claims that are from Children's Hospital Regional Medical Center or Mary Bridge Children's Hospital and Health Center, the high outlier threshold is one hundred fifty percent of the base DRG payment allowed amount;

(iii) For nonspecialty service category per diem paid claims grouped to nonneonatal and nonpediatric DRG classifications, and for nonspecialty service category per diem paid claims that are not from Children's Hospital Regional Medical Center or Mary Bridge Children's Hospital and Health Center, the high outlier threshold is one hundred seventy-five percent of the base per diem payment allowed amount; and

(iv) For nonspecialty service category per diem paid claims grouped to neonatal and pediatric DRG classifications, and for all nonspecialty service category per diem paid claims from Children's Hospital Regional Medical Center and Mary Bridge Children's Hospital and Health Center, the high outlier threshold is one hundred fifty percent of the base per diem payment allowed amount;

(e) The high outlier payment allowed amount is equal to the difference between the department's estimated cost of services associated with the claim, and the high outlier threshold for payment indicated in (b)(i) through (iv) of this subsection, respectively, the resulting amount being multiplied by a percent of outlier adjustment factor. The percent of outlier adjustment factor is:

(i) Ninety-five percent for outlier claims that fall into one of the neonatal or pediatric AP-DRG classifications. Hospitals paid with the payment method used for out-of-state hospitals are paid using the percent of outlier adjustment factor identified in (e)(iii) of this subsection. All high outlier claims at Children's Hospital Regional Medical Center and Mary Bridge Children's Hospital and Health Center receive a ninety-five percent of outlier adjustment factor, regardless of AP-DRG classification assignment;

(ii) Ninety percent for outlier claims that fall into burn-related AP-DRG classifications;

(iii) Eighty-five percent for all other AP-DRG classifications; and

(iv) Used as indicated in WAC 388-550-4800 to calculate payment for state-administered programs' claims that are eligible for a high outlier payment.

(d) The high outlier payment allowed amount is added to the calculated allowed amount for the base DRG or base per diem payment, respectively, to determine the total payment allowed amount for the claim.

DRG high outlier						
Three examples for medicaid or SCHIP DRG high outlier claim qualification and payment calculation (admission dates are on or after August 1, 2007). Example dollar amounts are approximated and not based on real claims data.						
Total Submitted Charges Minus Noncovered Charges	Base DRG Payment Allowed Amount <sup>1</sup>	175% of Base DRG Payment Allowed Amount	Department Determined Estimated Costs Are Greater Than \$50,000 <sup>2,3</sup>	Department Determined Estimated Costs Are Greater Than 175% of Base DRG Payment Allowed Amount <sup>2</sup>	Total DRG High Outlier Claim Payment Allowed Amount <sup>3,4</sup>	Hospital's Individual RCC Rate
\$95,600	\$28,837	\$50,465	Yes	Yes	\$38,761	65%
\$64,500	\$28,837	\$50,465	No	Yes	\$28,837	65%
\$77,000	\$28,837	\$50,465	Yes	No	\$28,837	65%

All examples represent a claim that is a nonpsychiatric claim and a claim that isn't from Children's Hospital Regional Medical Center or Mary Bridge Children's Hospital and Health Center.

**Example one:** The claim meets high cost outlier criteria. Example dollar amounts are approximated and not based on real claims data:

$${}^1\text{DRG conversion factor times DRG relative weight} = \text{Base DRG allowed amount}$$

$$\$6,300 \times 4.5773 = \$28,837 = \text{Base DRG allowed amount}$$

$${}^2\text{Total submitted charges minus total nonecovered charges times RCC rate} = \text{Department determined estimated costs}$$

$$\$95,600 \times 65\% = \$62,140 = \text{Department determined estimated costs}$$

<sup>3</sup>If department determined estimated costs are greater than the outlier qualifying criteria (in this example \$50,000), then (department determined estimated costs minus 175% of base DRG payment allowed amount (high outlier payment threshold)) times claim's percent of outlier adjustment factor (see subsection (17)(e)(i), (ii) and (iii)) = High outlier portion allowed amount, if greater than \$0, otherwise \$0.

$$\$62,140 - \$50,465 = \$11,675 \times 85\% = \$9,924 = \text{High outlier portion allowed amount}$$

$${}^4\text{Base DRG payment allowed amount plus high outlier portion allowed amount} = \text{Total DRG high outlier claim payment amount}$$

$$\$28,837 + \$9,924 = \$38,761$$

**Example two:** The claim does not meet high cost outlier criteria due to department determined estimated cost being less than \$50,000. Example dollar amounts are approximated and not based on real claims data:

$${}^1\text{DRG conversion factor times DRG relative weight} = \text{Base DRG allowed amount}$$

$$\$6,300 \times 4.5773 = \$28,837 = \text{Base DRG allowed amount}$$

$${}^2\text{Total submitted charges minus total nonecovered charges times RCC rate} = \text{Department determined estimated costs}$$

$$\$64,500 \times 65\% = \$41,925 = \text{Department determined estimated costs}$$

<sup>3</sup>If department determined estimated costs are greater than the outlier qualifying criteria, then (department deter-

mined estimated costs minus 175% of base DRG payment allowed amount (high outlier payment threshold)) times claim's percent of outlier adjustment factor (see subsection (17)(e)(i), (ii) and (iii)) = High outlier portion allowed amount, if greater than \$0, otherwise \$0.

$$(\$41,925 - \$50,465 = (-\$8,540)) \times 85\% = (-\$7,259), \text{ which is converted to } \$0. \text{ Also, } \$41,925 \text{ is not greater than } \$50,000, \text{ so the claim does not meet the high outlier qualifying criteria. Therefore, the high outlier portion allowed amount is } \$0.$$

$${}^4\text{Base DRG payment allowed amount plus high outlier portion allowed amount} = \text{Total DRG high outlier claim payment allowed amount}$$

$$\$28,837 + \$0 = \$28,837$$

**Example three:** The claim does not meet high outlier criteria due to high DRG allowed amount. Example dollar amounts are approximated and not based on real claims data:

$${}^1\text{DRG conversion factor times DRG relative weight} = \text{Base DRG allowed amount}$$

$$\$6,300 \times 4.5773 = \$28,837 = \text{Base DRG allowed amount}$$

$${}^2\text{Total submitted charges minus total nonecovered charges times RCC rate} = \text{Department determined estimated costs}$$

$$\$77,000 \times 65\% = \$50,050 = \text{Department determined estimated costs}$$

<sup>3</sup>If department determined estimated costs are greater than the outlier qualifying criteria, then (department determined estimated costs minus 175% of base DRG payment allowed amount (high outlier payment threshold)) times claim's percent of outlier adjustment factor (see subsection (17)(e)(i), (ii) and (iii)) = high outlier portion allowed amount, if greater than \$0, otherwise \$0.

$$(\$50,050 - \$50,465 = (-\$415)) \times 85\% = (-\$353), \text{ which is converted to } \$0. \text{ Also, } \$50,050 \text{ is greater than } \$50,000, \text{ but not greater than } \$50,465, \text{ so the claim does not meet the high outlier qualifying criteria. Therefore, the high outlier portion allowed amount is } \$0.$$

$${}^4\text{Base DRG payment allowed amount plus high outlier portion allowed amount} = \text{Total DRG high outlier claim payment allowed amount}$$

$$\$28,837 + \$0 = \$28,837$$

Per Diem High Outlier

Three examples for medicaid and SCHIP per diem high outlier claim qualification and payment calculation (admission dates are on or after August 1, 2007). Example dollar amounts are approximated and not based on real claims data.

Total Submitted Charges Less Total Nonecovered Charges	Base Per Diem Payment Allowed Amount <sup>1</sup>	175% of Base Per Diem Payment Allowed Amount	Department Determined Estimated Costs Are Greater Than \$50,000 <sup>2,3</sup>	Department Determined Estimated Costs Are Greater Than 175% of Base Per Diem Payment Allowed Amount <sup>2</sup>	Total Per Diem High Outlier Claim's Payment Allowed Amount <sup>2,4</sup>	Hospital's Individual RCC Rate
\$100,000	\$25,000	\$43,750	Yes	Yes	\$47,313	70%
\$64,000	\$25,000	\$43,750	No	Yes	\$25,000	70%
\$75,000	\$35,000	\$61,250	Yes	No	\$35,000	70%

All examples represent a claim that is a nonpsychiatric claim and a claim that isn't from Children's Hospital Regional Medical Center or Mary Bridge Children's Hospital and Health Center.

**Example one:** The claim meets high cost outlier criteria. Example dollar amounts are approximated and not based on real claims data:

<sup>1</sup>Per diem rate times client's department recognized length of stay for eligible days = Base per diem allowed amount

$\$1,000 \text{ (rate)} \times 25 \text{ (days)} = \$25,000 = \text{Base per diem allowed amount}$

<sup>2</sup>Total submitted charges minus total noncovered charges times RCC rate = Department determined estimated costs

$\$100,000 \times 70\% = \$70,000 = \text{Department determined estimated costs}$

<sup>3</sup>If department determined estimated costs are greater than the outlier qualifying criteria, then (department determined estimated costs minus 175% of base per diem payment allowed amount (high outlier payment threshold)) times claim's percent of outlier adjustment factor (see subsection (17)(c)(i), (ii) and (iii)) = High outlier portion allowed amount, if greater than \$0, otherwise \$0.

$(\$70,000 - \$43,750 = \$26,250) \times 85\% = \$22,313 = \text{High outlier portion allowed amount}$

<sup>4</sup>Base per diem payment allowed amount plus high outlier portion allowed amount = Total per diem high outlier claim payment allowed amount

$\$25,000 + \$22,313 = \$47,313$

**Example two:** The claim does not meet high cost outlier criteria due to department determined estimated cost being less than \$50,000. Example dollar amounts are approximated and not based on real claims data:

<sup>1</sup>Per diem rate times client's department recognized length of stay for eligible days = Base per diem allowed amount

$\$1,000 \times 25 = \$25,000 = \text{Base per diem allowed amount}$

<sup>2</sup>Total submitted charges minus total noncovered charges times RCC rate = Department determined estimated costs

$\$64,500 \times 70\% = \$45,150 = \text{Department determined estimated costs}$

<sup>3</sup>If department determined estimated costs are greater than the outlier qualifying criteria, then (department determined estimated costs minus 175% of base per diem payment allowed amount (high outlier payment threshold)) times claim's percent of outlier adjustment factor (see subsection (17)(c)(i), (ii) and (iii)) = High outlier portion allowed amount, if greater than \$0, otherwise \$0.

$(\$45,150 - \$43,750 = \$1,400)$ , but \$45,150 is not greater than \$50,000, so the claim does not meet the high outlier qualifying criteria. Therefore, the high outlier portion allowed amount is \$0.

<sup>4</sup>Base per diem payment allowed amount plus high outlier portion allowed amount = Total per diem high outlier claim payment allowed amount

$\$25,000 + \$0 = \$25,000$

**Example three:** (The claim does not meet high outlier criteria due to high DRG allowed amount. Example dollar amounts are approximated and not based on real claims data):

<sup>1</sup>Per diem rate times client's department recognized length of stay for eligible days = Base per diem allowed amount

$\$1,000 \times 35 = \$35,000 = \text{Base per diem allowed amount}$

<sup>2</sup>Total submitted charges minus total noncovered charges times RCC rate = Department determined estimated costs

$\$75,000 \times 70\% = \$52,500 = \text{Department determined estimated costs}$

<sup>3</sup>If department determined estimated costs are greater than the outlier qualifying criteria, then (department determined estimated costs minus 175% of base DRG payment allowed amount (high outlier payment threshold)) times claim's percent of outlier adjustment factor (see subsection (17)(c)(i), (ii) and (iii)) = High outlier portion allowed amount, if greater than \$0, otherwise \$0.

$(\$52,500 - \$61,250 = (8,750)) \times 85\% = (\$7,438)$ , which is converted to \$0. Also, \$52,500 is greater than \$50,000, but not greater than \$61,250, so the claim does not meet the high outlier qualifying criteria. Therefore, the high outlier portion allowed amount is \$0.

<sup>4</sup>Base per diem payment allowed amount plus high outlier portion allowed amount = Total per diem high outlier claim payment allowed amount

$\$35,000 + \$0 = \$35,000$

(18)) is the DRG allowed amount for the claim before the transfer payment reduction.

(2) The agency calculates the high outlier payment by multiplying the hospital's estimated cost above threshold (CAT) by the outlier adjustment factor. The outlier adjustment factors, which vary by dates of admission and inpatient payment policy, are depicted in the table at the end of this subsection.

(a) For inpatient claims paid under the all-patient-diagnosis-related group (AP-DRG), the agency uses a separate outlier adjustment factor for:

- (i) Pediatric services, including all claims submitted by children-specialty hospitals;
- (ii) Burn services; and
- (iii) Nonpediatric services.

(b) For inpatient claims paid under the all-patient refined-DRG (APR-DRG), the agency uses a separate outlier adjustment factor for a:

- (i) Severity of illness (SOI) of one or two; or
- (ii) SOI of three or four.

<u>AP-DRG Dates of Admission</u>	<u>Pediatric</u>	<u>Burn</u>	<u>Nonpediatric</u>
<u>Before August 1, 2012</u>	<u>CAT * 0.95</u>	<u>CAT * 0.90</u>	<u>CAT * 0.85</u>
<u>August 1, 2012 – June 30, 2013</u>	<u>CAT * 0.998</u>	<u>CAT * 0.945</u>	<u>CAT * 0.893</u>
<u>July 1, 2013 – June 30, 2014</u>	<u>CAT * 0.912</u>	<u>CAT * 0.864</u>	<u>CAT * 0.816</u>
<u>APR-DRG Dates of Admission</u>	<u>SOI 1 or 2</u>	<u>SOI 3 or 4</u>	
<u>July 1, 2014, and after</u>	<u>CAT * 0.80</u>	<u>CAT * 0.95</u>	

(3) For state-administered programs (SAP), the agency applies the hospital-specific ratable to the outlier adjustment factor.

(4) This subsection contains examples of outlier claim payment calculations.

<u>DRG SOI</u>	<u>DRG Allowed Amount</u>	<u>Threshold<sup>1</sup></u>	<u>Cost<sup>2</sup></u>	<u>Outlier Percent</u>	<u>Ratable</u>	<u>Base DRG</u>	<u>Outlier<sup>3</sup></u>	<u>Claim Payment<sup>4</sup></u>
<u>1</u>	<u>\$10,000</u>	<u>\$50,000</u>	<u>\$100,000</u>	<u>0.80</u>	<u>n/a</u>	<u>\$10,000</u>	<u>\$40,000</u>	<u>\$50,000</u>
<u>3</u>	<u>\$10,000</u>	<u>\$50,000</u>	<u>\$100,000</u>	<u>0.95</u>	<u>n/a</u>	<u>\$10,000</u>	<u>\$47,500</u>	<u>\$57,500</u>

<sup>1</sup> Threshold = \$40,000 + base DRG

<sup>2</sup> Cost = Billed charges - noncovered charges - denied charges

<sup>3</sup> Outlier = (cost - threshold) \* outlier percent

<sup>4</sup> Claim payment = base DRG + outlier

(5) When directed by the legislature to achieve targeted expenditure levels, as described in WAC ((388-550-2800(2))) 182-550-3000(8), the ((department)) agency may apply an inpatient adjustment factor to any of the high outlier thresholds and to any of the ((percentages of)) outlier adjustment factors described in this section.

((19)) (6) The ((department)) agency applies the following to the payment for each claim((-all)):

(a) All applicable adjustments for client responsibility((-any)):

(b) Any third-party liability((-, medicare));

(c) Medicare payments; and ((any))

(d) Any other adjustments as determined by the ((department)) agency.

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

**WAC 182-550-4500 Payment method—Ratio of costs-to-charges (RCC).** (1) The medicaid agency pays hospitals using the ratio of costs-to-charges (RCC) ((is defined in WAC 388-550-1050. The department uses:

(a) The RCC payment method to pay hospitals for hospital services that are exempt from the diagnosis related group (DRG), per diem, ambulatory)) payment method for services exempt from the following payment methods:

(a) Ambulatory payment classification (APC)((, maximum allowable fee schedule, and per case payment methods.

(b) The term "ratio of costs-to-charges" to refer to the factor (rate) applied to a hospital's allowed covered charges to determine estimated costs for medically necessary services);

(b) Diagnosis-related group (DRG);

(c) Enhanced ambulatory patient group (EAPG);

(d) Per case;

(e) Per diem; and

(f) Maximum allowable fee schedule.

(2) The ((department)) agency:

(a) Determines the payment ((due a hospital under the RCC payment method)) for:

(i) Inpatient claims by multiplying the hospital's inpatient RCC ((rate)) by the allowed covered charges for medically necessary services((-)); and

(ii) Outpatient claims by multiplying the hospital's outpatient RCC ((rate)) by the allowed covered charges for medically necessary services.

(b) Deducts from the amount derived in (a) of this subsection ((any)):

(i) All applicable adjustments for client responsibility ((amount));

(ii) Any third-party liability (((FPL) amount));

(iii) Medicare payments; and

((iii) Other applicable payment program adjustment)

(iv) Any other adjustments as determined by the agency.

(c) Limits the RCC payment to the hospital's ((allowable)) usual and customary charges for services allowed by the agency.

(3) ((For inpatient hospital dates of admission before August 1, 2007, the department uses the RCC payment method to pay for inpatient hospital services that are:

(a) Provided in a hospital located in the state of Washington (see WAC 388-550-4000 for out-of-state hospital payment methods and WAC 388-550-3900 for payment methods to designated bordering city and critical border hospitals);

(b) Provided in a diagnosis related group (DRG)-exempt hospital identified in WAC 388-550-4300; and

(c) Identified in WAC 388-550-4400 as DRG-exempt services (see WAC 388-550-4400 (2)(g), (h), and (k) for exceptions).

(4) For inpatient hospital dates of admission on and after August 1, 2007, the department) The agency uses the RCC payment method to ((pay for)) calculate the following:

(a) Payment for the following services:

(i) Organ transplant services ((identified in)) (See WAC ((388-550-4400)) 182-550-4400 (4)(h));

((b) High outlier qualifying claims (see WAC 388-550-3700 (14) and (15));

(e)) (ii) Hospital services provided at a long-term acute care (LTAC) facility not covered under the LTAC per diem rate (see WAC ((388-550-2596)) 182-550-2596); and

((d)) (iii) Any other hospital service identified by the agency as being paid by the RCC payment method; and

(b) Costs for the following:

(i) High outlier qualifying claims (see WAC 182-550-3700); and

(ii) Hospital services provided in hospitals eligible for certified public expenditure (CPE) payments (((see WAC 388-550-4650(5)); and

(c) Any other hospital service identified and published by the department as being paid by the RCC payment method.

(5)) under WAC 182-550-4650(5).

(4) When directed by the legislature to achieve targeted expenditure levels, as described in WAC ~~((388-550-2800 (2)))~~ 182-550-3000(8), the ~~((department))~~ agency may apply an inpatient adjustment factor to the inpatient RCC payments made for the services in subsection ~~((4))~~ (3) of this section ~~((, except as provided in subsection (6) of this section)).~~

~~((6) For hospitals paid under the certified public expenditure (CPE) payment method, the inpatient adjustment factor referred to in subsection (5) of this section does not apply, except to payments for re-priced claims adjusted according to WAC 388-550-4670 (2)(a)(ii).~~

~~The department))~~ (5) This section explains how the agency calculates each in-state and critical border hospital's RCC ((rate as follows)). For noncritical border city hospitals, see WAC 182-550-3900. The ((department)) agency:

(a) Divides ~~((each hospital's allowable costs by patient-related revenues associated with these allowable costs))~~ adjusted costs by adjusted patient charges. The ~~((department))~~ agency determines the allowable costs and associated ~~((revenues))~~ charges.

(b) Excludes ~~((, prior to calculating the RCC rate, department))~~ agency nonallowed costs and nonallowed ~~((revenue))~~ charges, such as costs and ~~((revenues))~~ charges attributable to a change in ownership.

(c) Bases the RCC ~~((rate))~~ calculation on data from the hospital's ~~(("as filed"))~~ annual medicare cost report (Form ~~((2552-96))~~ 2552) and applicable patient revenue reconciliation data provided by the hospital. The ~~(("as filed"))~~ medicare cost report must cover a period of twelve consecutive months in its medicare cost report year.

(d) Updates a hospital's inpatient RCC ~~((rate))~~ annually after the hospital sends its ~~(("as filed"))~~ hospital fiscal year medicare cost report to the centers for medicare and medicaid services (CMS) and the ~~((department))~~ agency. ~~((In the case where))~~ If medicare grants a delay in submission of the CMS medicare cost report to the medicare fiscal intermediary ~~((is granted by medicare)),~~ the ~~((department))~~ agency may determine an alternate method to adjust the RCC ~~((rate based on a department-determined method)).~~

(e) Limits a noncritical access hospital's RCC ~~((payment))~~ to one ~~((hundred percent of its allowed covered charges))~~ point zero (1.0).

~~((f) Determines an RCC rate, when))~~ (6) For a hospital ((is)) formed as a result of a merger ((refer to)) see WAC ((388-550-4200)) 182-550-4200, ((by combining)) the agency combines the previous hospital's medicare cost reports and ((following)) follows the process in ((a)) subsection (5) of this ((subsection)) section. The ((department)) agency does not use partial year cost reports for this purpose.

~~((g) Determines a new in-state hospital's RCC rate by calculating and using the average RCC rate for all current noncritical access hospitals located in Washington state. The department))~~ (7) For newly constructed hospitals and hospitals not otherwise addressed in this chapter, the agency annually calculates a weighted average in-state RCC ((rate)) by ((identifying all in-state hospitals with specific RCC rates and)) dividing the ((department-determined total patient-related revenues associated with those)) sum of agency-determined costs for all in-state hospitals with RCCs by the sum of agency-determined charges for all hospitals with RCCs.

(8) The ~~((department))~~ agency calculates each hospital's outpatient RCC ~~((rate))~~ annually. The agency calculates:

(a) ~~((The department calculates))~~ A hospital's outpatient RCC ((rate)) by multiplying the hospital's inpatient RCC ((rate)) by the outpatient adjustment factor (OAF)((-)); and

(b) The ~~((department determines the))~~ weighted average in-state hospital outpatient RCC ~~((rate))~~ by multiplying the in-state weighted average inpatient RCC ~~((rate))~~ by the ~~((outpatient adjustment factor))~~ OAF.

(9) The ~~((outpatient adjustment factor))~~ OAF:

(a) Is the ratio between the outpatient and inpatient RCC payments ~~((, established in 1998 through negotiation with hospital providers));~~

(b) Is updated annually to adjust for cost and charge inflation; and

(c) Must not exceed ~~((1.0; and~~

~~((d) Is differentiated from the OPSS outpatient adjustment factor (defined in WAC 388-550-1050), and applies to hospitals exempt from OPSS))~~ one point zero (1.0).

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 182-550-3300 Hospital peer groups and cost caps.

WAC 182-550-3350 Outlier costs.

WAC 182-550-3500 Hospital annual inflation adjustment determinations.

WAC 182-550-4600 Hospital selective contracting program.

#### **WSR 14-09-101**

#### **PROPOSED RULES**

#### **DEPARTMENT OF HEALTH**

[Filed April 22, 2014, 3:15 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-02-027.

Title of Rule and Other Identifying Information: Chapter 246-440 WAC, creating a new chapter for healthcare associated infections reporting.

Hearing Location(s): Department of Health, Town Center 2, Room 158, 101 Israel Road S.E., Tumwater, WA 98501, on May 27, 2014, at 9:00 a.m.

Date of Intended Adoption: June 27, 2014.

Submit Written Comments to: Jason Lempp, Healthcare Associated Infections Program, Department of Health, P.O. Box 47811, Olympia, WA 98504-7811, e-mail <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-4245, by May 27, 2014.

Assistance for Persons with Disabilities: Contact Jason Lempp by May 19, 2014, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule establishes a new healthcare associated infections reporting requirement for acute-care hospitals. Acute-care hospitals

licensed by the state would be required to report healthcare-associated *Clostridium difficile* (*C. difficile*) infections via the Centers for Disease Control and Prevention (CDC) National Healthcare Safety Network (NHSN) LabID event method. This will align state and federal requirements.

Reasons Supporting Proposal: HB 1471 (chapter 319, Laws of 2013 PV) requires the department of health to determine if necessary to delete, add, or modify in rules reporting of healthcare associated infections to align state reporting with the reporting categories of the Centers for Medicare and Medicaid Services. *C. difficile* infections are widespread and a growing problem in hospitals across the nation. They are steadily increasing in Washington state.

Statutory Authority for Adoption: RCW 43.70.056.

Statute Being Implemented: RCW 43.70.056.

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: David Birnbaum, 101 Israel Road S.E., Tumwater, WA 98501, (360) 236-4153; Implementation and Enforcement: Marisa D'Angeli, 1610 N.E. 150th Street, Shoreline, WA 98155-7224, (206) 418-5595.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose more than minor costs on businesses in an industry. A copy of the statement may be obtained by contacting Ala Mofidi, 101 Israel Road S.E., Tumwater, WA, phone (360) 236-4055, fax (360) 586-7424, e-mail alaeddin.mofidi@doh.wa.gov.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Jason Lempp, 101 Israel Road S.E., Tumwater, WA 98501, phone (360) 236-4249, fax (360) 236-4245, e-mail Jason.Lempp@doh.wa.gov.

April 22, 2014  
Jessica Todorovich  
Deputy Secretary  
for John Wiesman, DrPH, MPH  
Secretary

## Chapter 246-440 WAC

### HEALTH CARE-ASSOCIATED INFECTIONS REPORTING

#### NEW SECTION

**WAC 246-440-010 Definitions.** The definitions in this section apply throughout the chapter unless the context clearly requires otherwise.

(1) "Health care-associated infection" means a localized or systemic condition that results from adverse reaction to the presence of an infectious agent or its toxins and that was not present or incubating at the time of admission to the hospital.

(2) "Hospital" means a health care facility licensed under chapter 70.41 RCW.

#### NEW SECTION

**WAC 246-440-100 Hospital reporting requirements for health care-associated infections.** The purpose of this section is to provide access to data on hospital-specific rates of certain types of health care-associated infection. This type of data provides evidence-based information measures to reduce hospital-acquired infections.

(1) A hospital shall collect data related to health care-associated infections in compliance with RCW 43.70.056. Data must be collected and reported in accordance with the Centers for Disease Control and Prevention National Healthcare Safety Network on:

(a) Central line-associated bloodstream infection in all hospital inpatient areas where patients normally reside at least twenty-four hours;

(b) Surgical site infection for:

(i) Deep sternal wound for cardiac surgery, including coronary artery bypass graft;

(ii) Total hip and knee replacement surgery; and

(iii) Colon and abdominal hysterectomy procedures.

(2) A hospital shall also collect and report data for *Clostridium difficile* (*C. difficile*) infections by the Centers for Disease Control and Prevention National Healthcare Safety Network LabID Event method.

### WSR 14-09-107 PROPOSED RULES DEPARTMENT OF NATURAL RESOURCES

[Filed April 22, 2014, 5:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-05-098.

Title of Rule and Other Identifying Information: Geoduck diver safety program, effective January 1, 2015, all commercial wildstock geoduck divers participating in the state managed fishery are required to demonstrate proof of compliance with the geoduck diver safety program in order to be maintained on a department of natural resources (DNR) harvest plan of operations and/or obtain a commercial geoduck diver license under RCW 77.65.410. The annual requirement includes a combination of training qualifications and medical requirements. Training qualifications include CPR/first aid certification, emergency oxygen certification, Washington state boater education card, and annual refresher of the principles of dive safety. Medical requirements include an annual hyperbaric dive physical. The geoduck diver safety program does not apply to tribal harvest or the aquaculture industry.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on Tuesday, May 27, 2014, at 6:00 p.m.; and at the Point Hudson Marina, Marina Room, 310 Hudson Street, Port Townsend, WA 98368, on Tuesday, June 3, 2014, at 6:00 p.m.

Date of Intended Adoption: July 1, 2014.

Submit Written Comments to: Matthew Goehring, DNR, 1111 Washington Street S.E., Mailstop 47027, Olympia, WA

98504-7027, e-mail matt.goehring@dnr.wa.gov, fax (360) 902-1786, by June 7, 2014.

Assistance for Persons with Disabilities: Contact Ms. Megan McKay by May 20, 2014, TTY (360) 902-1125.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: 2SHB 1764 requires DNR to adopt rules establishing a geoduck diver safety program by December 1, 2014. The proposed program establishes mandatory safety training and medical requirements for all divers participating in the state managed wildstock geoduck fishery. Mandated safety requirements are intended to mitigate the inherent hazards associated with working in hyperbaric conditions and reduce the probability of diver related accidents. Increased safety requirements will reduce risk exposure for geoduck divers, as well for other individuals that provide emergency response in the event of a dive-related accident.

Reasons Supporting Proposal: Commercial geoduck harvesting techniques expose divers to a wide-range of occupational health and safety hazards. Despite recognized hazards, there are currently no mandated safety requirements for geoduck divers engaged in the wildstock fishery. The rule aligns geoduck harvest diving with industry standards for commercial diving operations.

Statutory Authority for Adoption: RCW 43.30.560.

Statute Being Implemented: RCW 43.30.560.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: DNR will implement compliance verification for the geoduck diver safety program. Information will be shared with department of fish and wildlife (DFW) for the purposes of issuing commercial geoduck diver licenses under RCW 77.65.410.

Name of Proponent: DNR, governmental.

Name of Agency Personnel Responsible for Drafting: Matthew Goehring, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-1090; Implementation: Blain Reeves, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-1731; and Enforcement: Todd Palzer, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-1864.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

**I. Executive Summary:** The proposed rule to establish a geoduck diver safety program includes a combination of annual training qualifications and medical requirements for divers to participate in the state managed wildstock geoduck fishery. The mandated requirements are comparable with industry standards for commercial diving. All divers must annually demonstrate compliance prior to being listed on a DNR plan of operations or issued a DFW geoduck diver license under RCW 77.65.410.

The annualized cost of compliance with the proposed geoduck diver safety program is estimated to be \$813 per diver and is unrelated to harvest revenue. Since compliance is connected to a privately held license, all costs are assumed to be borne by the individual diver. For the purposes of this

analysis all divers fall within the scope of a small business – either they are employed by a company with fewer than fifty employees or are considered self-employed. The rule will not have a disproportionate impact on small businesses. However, the relative burden of compliance costs as measured as a percent of diver income will be related to the number of days an individual spends on water harvesting geoduck.

Given the high value of the geoduck commodity, the proposed rule will not impact overall industry demand for harvest divers. However, an unknown percentage of divers may not be deemed medically qualified to conduct harvest diving under hyperbaric conditions. Some percentage of divers who fall within the bottom quartile in terms of frequency of dive-days may also decide to not pursue licensing due to the cost of compliance as compared to their relatively small income from geoduck harvest. This could result in a small decrease in total number of licensed divers, but is not anticipated to impact total annual geoduck harvest.

**II. Background:** DNR, DFW, and Puget Sound treaty Indian tribes jointly manage the commercial wildstock geoduck fishery. Annual harvest of wildstock geoduck has increased from 82,000 pounds in 1970 to 4,327,000 pounds in 2010 valued at over \$36 million (DFW, 2011). As manager of state-owned aquatic lands DNR maintains proprietary rights to fifty percent of the annual harvestable commercial quota. Since 2003, the state-managed portion of annual harvest has averaged 1,965,295 pounds, generating between \$3.6 and \$29.6 million of revenue (DNR, unpublished data).

Commercial harvest occurs within tracts known to support commercial quantities of geoducks. DNR auctions the right to harvest quotas within defined tracts. A harvest agreement between DNR and a purchaser outlines legally binding terms of harvest. Successful bidders must submit a harvest plan of operations outlining (1) individuals, vessels, and vehicles involved in harvest and transport operations; (2) legal relationship between purchasers and individuals engaging in harvest operations; and (3) assurances that all employees and subcontractors will comply with the terms of the harvest agreement.

Geoduck harvest is completed using surface-supplied air diving techniques. Divers are deployed from harvest vessels and use handheld water jets to extract geoduck from depths between eighteen and seventy feet below mean lower low water. All divers participating in the state-managed wildstock fishery must be identified within a DNR harvest contract plan of operations and possess a DFW commercial geoduck diver license under RCW 77.65.410.

**Rationale for Rule Making:** The commercial geoduck diving occupation exposes divers to a wide range of health and safety hazards. Despite recognized hazards associated with commercial diving, there are currently no mandated safety requirements for geoduck divers engaged in the wildstock fishery. The proposed rule establishes training and medical requirements that are similar to industry-wide commercial diving standards.

2SHB 1764 directs DNR to establish: (a) An advisory geoduck harvester safety committee; and (b) a geoduck diver safety program outlining mandatory safety requirements for all divers. The safety committee, composed of agency and industry representatives, was required to provide DNR rec-

ommendations for safety program requirements by December 1, 2013. Beginning January 1, 2015, all divers will be required to demonstrate compliance with [the] diver safety program annually in order to be maintained on a DNR plan of operations and to obtain a commercial geoduck diver license under RCW 77.65.410.

The Federal Occupational Safety and Health Administration (OSHA) and Washington state department of labor and industries (L&I) have developed commercial diving standards to address the unique safety concerns associated with operating in a hyperbaric environment. However, OSHA and L&I jurisdiction is limited by an ambiguous employee-employer relationship and the fact that geoduck divers are deployed from a vessel as opposed to a fixed platform.

**Summary of Proposed Rule:** The proposed geoduck diver safety program consists of a combination of training qualifications and medical requirements. Divers will be required to demonstrate compliance annually.

1. Training Qualifications:

- Cardiopulmonary resuscitation (CPR) and first aid certification;
- Administering emergency oxygen certification;
- Washington state boater education card; and
- Signed acknowledgment confirming review and understanding of principles of dive safety.

2. Medical Requirements:

- Annual hyperbaric physical examination.

All requirements are effective January 1, 2015, except for the signed acknowledgment which goes into effect January 1, 2016.

**III. Analysis of Compliance Cost for Washington Businesses:**

**Affected Industry:** All divers licensed under RCW 77.65.410 and engaged in the state-managed wildstock geoduck fishery would be required to comply with the proposed geoduck diver safety program. Compliance is tied to the individual license holder - not the employer. 2SHB 1764 established an annual maximum of seventy-seven licenses beginning in 2015. From 2008 to 2012, DFW issued an average of sixty-nine commercial geoduck diver licenses. Annual licenses ranged from sixty-three licenses in 2012 to eighty-one licenses in 2009 (DFW, unpublished data). Considerable ambiguity surrounds the employee-employer relationship between geoduck divers and harvest vessel operators. For the purposes of this analysis all divers fall within the scope of a small business - either they are employed by a company with fewer than fifty employees or are considered self-employed. There are several geoduck purchasers that exceed the fifty-employee threshold for small businesses; however, these firms do not directly employ divers at this time.

Tribal and aquaculture harvest divers are not subject to the proposed requirements.

**Cost of Compliance:** The cost of the rule requirements can be broken down into the cost of:

- The training certifications and medical examinations;
- The divers' time spent on the training; and
- Recordkeeping and reporting.

Costs for the training certificates and medical examinations were estimated based on consultation with providers. The cost of the divers' time was estimated based on an average hourly wage of \$15 and the time required for training. The cost of maintaining and presenting the training records to DNR was deemed negligible compared to the other costs and was not included. Per-diver cost estimates are summarized in Table 1.

**Table 1: Proposed Alternatives and their Average Costs, per Diver**

	Frequency	Time Required (hrs)	Course Cost	Time Cost	Total Cost	Annualized Total Cost
<b>Training requirements</b>						
CPR and first aid certification	Biennial	6	\$90	\$90	\$180	\$90
Administering emergency oxygen certification	Biennial	2	\$95	\$30	\$125	\$63
Diver safety refresher	Annual	4	\$0	\$60	\$60	\$60
Washington state boater education course	Once	3	\$10	\$45	\$55	\$5.5
<b>Medical requirements</b>						
Physical examination of diver's fitness	Annual	3	\$550	\$45	\$595	\$595
<b>Annualized Total</b>		<b>16.3</b>	<b>\$644</b>	<b>\$170</b>	<b>\$813</b>	<b>\$813</b>

**Impact on Small Businesses:** Geoduck divers within the commercial wildstock fishery are self-employed or employed by harvest businesses that fall below the fifty employee small business threshold as defined in RCW 19.85.020. Since compliance is connected to a privately-held

commercial diver license, the costs are expected to be borne by individual divers in the short term. Given that this rule only affects small businesses, there is no disproportionate impact on small versus large businesses.

The burden of compliance for individual divers will be proportionate to diver compensation. Divers are compensated based on the total pounds of geoducks harvested. While diver-specific data is unavailable, compensation is assumed to be highly variable and dependent on the number of days an individual participates in harvest diving. Table 2 estimates the average cost of compliance as a percentage of average diver incomes. Estimates were derived from 2013 DNR records of "days on water" for each diver.

As shown in the table, compliance costs as a percentage of income from diving for the average diver in the bottom quartile of dive-days are estimated to be much larger than for the average diver in the upper quartile. This is because the bottom quartile appears to be composed of spot – or infrequent – divers, whose dive days range from only one day per year to twenty-seven days per year.

**Table 2: Estimated Cost of Compliance as a Percentage of Diver Income (2013 Dive Data)**

Percentage of Divers	Diver-Days on Water	Estimated Dive hrs*	Percentage of Total hrs	Average Income based on harvest rate assumption**		Compliance Costs as a % of average income	
				200 lbs/hr	300 lbs/hr	200 lbs/hr	300 lbs/hr
Top Quartile	1584	3960	41 %	\$60,923	\$91,385	1.3 %	0.9 %
Second Quartile	1198	2995	31 %	\$46,077	\$69,115	1.7 %	1.1 %
Third Quartile	837	2092	22 %	\$32,192	\$48,288	2.4 %	1.6 %
Bottom Quartile	242	605	6 %	\$9,077	\$13,615	8.6 %	5.8 %

\* Based on an average of 2.5 hours of dive time per day.

\*\* Assumes diver compensation of \$1/lb.

**Estimated Loss of Jobs:** RCW 19.85.040 (2)(d) requires that the economic analysis include "(a)n estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule."

Geoduck is a high value commodity. Although diver compliance costs may eventually affect profits for harvesters and purchasers, the relative cost of compliance with respect to the overall value of the geoduck commodity is not expected to impact industry demand for divers to harvest geoduck quotas. Although no net loss in diver demand is anticipated, some percentage of divers may not be considered fit to dive following a hyperbaric physical examination. It is difficult to estimate at this time what percentage of divers may not pass a physical examination.

The higher relative costs of compliance as a percentage of total harvest income may also result in a percentage of infrequent divers deciding to no longer pursue a diver license. This could result in an overall decrease in the number of licensed divers with more work being concentrated among fewer divers. Alternatively, some divers may find more work available and increase their dive days to compensate for the costs of compliance with the safety program.

**IV. Actions Taken to Reduce Impact on Small Businesses:** RCW 19.85.030 requires an agency to reduce the cost of compliance for small businesses where legal and feasible within the stated objectives of the underlying statutes. DNR considered a series of alternatives to minimize the costs for small businesses.

DNR proposes an annual signed acknowledgment that a diver has reviewed and understands the principles of dive safety as outlined by the geoduck harvest safety committee. A self-directed review of materials as opposed to an in-person course will reduce the cost and time associated with compliance. Larger employers (still fewer than the fifty employee threshold) may have been able to negotiate reduced per-person course rates that would have been unavailable to smaller businesses. DNR also proposes delaying the effective date of

the signed acknowledgment requirement until the 2016 calendar year. This will reduce the burden for divers in the first year of required compliance and allow the harvest safety committee to develop review materials.

DNR considered an alternative without a medical requirement. However, DNR determined a diver safety program without an annual hyperbaric dive physical would not meet the intended objective of 2SHB 1764 to ensure diver safety within the state managed wildstock geoduck fishery. Although a dive physical represents a cost for divers, it is considered an industry standard to ensure divers are physically able to withstand the challenges of working under hyperbaric conditions. Annual dive physicals are required under L&I rules for commercial diving operations (WAC 296-37-525) and recommended by the International Consensus Standards for Commercial Diving and Underwater Operations (2011).

CPR/first aid and emergency oxygen training are two-year certifications. Any reduction in frequency of training might cause a lapse in certification and compromise diver safety.

**V. Small Business Involvement in Development of Proposed Rules:** 2SHB 1764 directs DNR to establish a geoduck harvest safety committee and hold ongoing quarterly meetings. Committee membership includes representatives from the Washington harvesters association (vessel owners) and the harvest divers association (divers). Both associations represent the interests of small businesses within the industry. The proposed rules are substantively based on the committee report submitted in November 2013 outlining recommendations for a geoduck diver safety program.

DNR has posted information pertaining to the rule making on its agency web site and reached out to individual divers as part of its geoduck harvest compliance program. Notice of the proposed rule making will be distributed to all licensed divers and prospective purchasers. Two public hearings will

be conducted to summarize the proposed rule and accept public comments.

**VI. References:** Association of Diving Contractors International (2011), International Consensus Standards for Commercial Diving and Underwater Operations, 6th Edition.

Washington Department of Fish and Wildlife (2011). Commercial wildstock geoduck fishery landings and ex-vessel value in Washington. Accessed April 14, 2014. [http://wdfw.wa.gov/fishing/commercial/geoduck/geoduck\\_historic\\_landings\\_value\\_table.pdf](http://wdfw.wa.gov/fishing/commercial/geoduck/geoduck_historic_landings_value_table.pdf).

A copy of the statement may be obtained by contacting Matthew Goehring, DNR, 1111 Washington Street S.E., Mailstop 47027, Olympia, WA 98504, phone (360) 902-1090, fax (360) 902-1786, e-mail [matt.goehring@dnr.wa.gov](mailto:matt.goehring@dnr.wa.gov) [matt.goehring@dnr.wa.gov].

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Matthew Goehring, DNR, 1111 Washington Street S.E., Mailstop 47027, Olympia, WA 98504, phone (360) 902-1090, fax (360) 902-1786, e-mail [matt.goehring@dnr.wa.gov](mailto:matt.goehring@dnr.wa.gov).

April 22, 2014  
Megan Duffy  
Deputy Supervisor  
Aquatics and  
Environmental Protection

#### NEW SECTION

**WAC 332-30-172 Geoduck diver safety program.** (1) General.

(a) Beginning January 1, 2015, and annually thereafter, divers shall demonstrate compliance with the geoduck diver safety program established in this section prior to being identified on a department geoduck harvest agreement plan of operations.

(b) The department shall accept applicable documents and certifications beginning October 1st of each year to verify compliance for the subsequent calendar year. Materials will be reviewed in the order they are received and divers will be notified of their compliance status within thirty-days of receipt of all required documentation.

(c) The department will maintain an electronic database documenting annual compliance with the program. Compliance verification shall expire at the end of a calendar year.

(d) If a plan of operations spans portions of two calendar years, the department will only verify diver compliance for the calendar year the diver is initially identified on the plan of operations.

(2) Training qualifications.

(a) Divers shall provide proof of completion of the following training qualifications:

(i) Cardiopulmonary resuscitation (CPR) and first-aid certification;

(ii) Administering emergency oxygen certification;

(iii) Washington state boater education card; and

(iv) Signed acknowledgment confirming review and understanding of the fundamental principles of diver safety, including:

(A) Diving physiology and physics;

(B) Diving operations and emergency procedures;

(C) Tools, equipment, and techniques relevant to geoduck harvesting;

(D) U.S. Coast Guard vessel safety requirements; and

(E) Other subject areas as determined by the geoduck harvest safety committee.

(b) The geoduck harvest safety committee established in RCW 43.30.555 shall develop, distribute, and update as necessary, review materials on the principles of dive safety.

(c) A signed acknowledgment, as outlined in (a)(iv) of this subsection, shall be required annually beginning January 1, 2016.

(3) Medical requirements.

(a) Annual examination of a diver's medical fitness to be exposed to hyperbaric conditions performed by an Undersea and Hyperbaric Medical Society (UHMS) or Association of Diving Contractors International (ADCI) certified physician;

(b) Scope of medical examination:

(i) Medical history;

(ii) Basic physical examination;

(iii) Diving related work history;

(iv) Tests as required by International Consensus Standards for Commercial Diving and Underwater Operations; and

(v) Any additional tests at the discretion of the examining physician.

(c) A physician report shall state that the patient has been examined in accordance with ADCI Physical Examination Standards and determined fit for occupational diving under hyperbaric conditions. Example physical examination and medical history forms are included in the International Consensus Standards for Commercial Diving and Underwater Operations.

(d) Disqualifying conditions are outlined in International Consensus Standards for Commercial Diving and Underwater Operations. They may include, but are not limited to, history of seizure disorder, cystic or cavity disease of the lungs, significant obstructive or restrictive lung disease or recurrent pneumothorax, chronic inability to equalize sinus and middle ear pressure, significant central or peripheral nervous system disease or impairment, chronic drug or alcohol abuse, history of psychosis, significant hemoglobinopathies, significant malignancies, grossly impaired hearing, significant osteonecrosis, chronic conditions requiring continuous control by medication and pregnancy.

(e) Physician reports shall be dated within the six months preceding department review.

**WSR 14-09-108**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**  
[Filed April 23, 2014, 7:02 a.m.]

Supplemental Notice to WSR 14-05-102.

Preproposal statement of inquiry was filed as WSR 14-02-113 on December 31, 2013.

Title of Rule and Other Identifying Information: WAC 220-47-307 Closed areas—Puget Sound salmon, 220-47-311 Purse seine—Open periods, and 220-47-411 Gillnet—Open periods.

Hearing Location(s): Natural Resources Building, Room 635, 1111 Washington Street S.E., Olympia, WA 98504, on Thursday, May 29, 2014, at 1:00 p.m. to 2:00 p.m.

Date of Intended Adoption: On or after June 2, 2014.

Submit Written Comments to: Joanna Eide, Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Rules.Coordinator@dfw.wa.gov, fax (360) 902-2155, by May 23, 2014.

Assistance for Persons with Disabilities: Contact Tami Lininger by May 23, 2014, (360) 902-2207 or TTY 1-800-833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal reflects changes to WAC 220-47-307, 220-47-311, and 220-47-411 made after WSR 14-05-102 was filed.

This attachment summarizes changes made to proposed rule changes since the filing of WSR 14-05-102. These changes were made based on public input received and negotiations with the Washington tribal comanagers.

**For Puget Sound salmon closed areas, WAC 220-47-307, changes include:**

Closure of the Hales Pass portion of Area 7B September 1-21 for gillnets and purse seine release of coho required within closure area.

Closure during chum directed fisheries of that portion of Area 10 east of a line from Alki Point to Fourmile Rock.

Removal of closure area in Area 12 between Hazel Pt. and Misery Pt. for gillnets all season and for purse seines October 27 and November 3. (Note: Conservation area around Big Beef Creek remains closed.)

Addition of purse seine closure in area 12 of waters within 2 miles of the Hood Canal Bridge on October 27 and November 3.

#### **Season Structural Changes:**

**For purse seine open periods, WAC 220-47-311, changes include:**

- Areas 7 and 7A chum: Adjustment to open dates during the chum fishery as per tribal agreement.
- Areas 10 and 11 chum: Adjustment to days scheduled in weeks 42-45, including removal of 2nd day of fishing in week 43 and adding 1 day of fishing in week 42.
- Areas 12 and 12B chum: Added purse seine release requirement for coho during chum fishery.
- Area 12C chum: Adjustment to days scheduled in weeks 42-45, including removal of 2nd day of fishing in week 43 and adding 1 day of fishing in week 42. Addition of fishing day in week 45.

**For gillnet open periods, WAC 220-47-411, changes include:**

- Area 6D: Added a day to the fishery on 9/21 and removed a day on 9/23 per industry request and tribal agreement.
- Areas 7 and 7A: Adjustment to open dates during chum fishery as per tribal agreement.
- Area 10 and 11 chum: Adjustment to fishing days scheduled in weeks 42-45, including adding 2 days of fishing in week 42. Changes hours from 4 PM-midnight on 'market days' to full night fisheries. Changes hours to require gillnet closure at 7 AM on the days purse seines fish.
- Areas 12 and 12B chum: Adjustment to days scheduled in weeks 42-45, including adding 2 days of fishing in week 42.
- Area 12C chum: Addition of 2 days of fishing in week 45.

**There are no changes to WAC 220-47-401 Reef net open periods and 220-47-428 Beach seine open periods from the initial filing, so these WACs are not included in the supplemental filing.**

Reasons Supporting Proposal: These changes incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable fish in commercial salmon fisheries in Puget Sound while protecting species of fish listed as endangered.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047.

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

Name of Proponent: Washington department of fish and wildlife (WDFW), governmental.

Name of Agency Personnel Responsible for Drafting: Kendall Henry, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2717; Implementation: Jim Scott, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2651; and Enforcement: Steve Crown, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

A small business economic impact statement has been prepared under chapter 19.85 RCW.

#### Small Business Economic Impact Statement

#### **1. Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule:**

These rules will incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon in Puget Sound while protecting species of fish, marine mammals, and sea

birds listed as endangered. The rules include legal gear requirements, area restrictions, and open periods for commercial salmon fisheries occurring in Puget Sound.

**2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply with Such Requirements:** These rule changes clarify dates for anticipated open periods and areas for full-fleet and limited-participation salmon fisheries, and legal gear requirements for those fisheries. There are no anticipated professional services required to comply.

**3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs:** The proposed rules adjust opening and closing dates. The proposed rules do not require any additional equipment, supplies, labor, or administrative costs. Therefore, there is no additional cost to comply with the proposed rules.

**4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue?** The proposed rules do not affect the harvestable numbers of salmon available to nontreaty fleets. Therefore, the proposed rules should not cause any businesses to lose sales or revenue.

**5. Cost Of Compliance for Small Businesses Compared with the Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:**

1. Cost per employee;
2. Cost per hour of labor; or
3. Cost per one hundred dollars of sales.

None - The proposed rules do not require any additional equipment, supplies, labor, or administrative costs.

**6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So:** Most businesses affected by these rules are small businesses. As indicated above, all of the gear restrictions proposed by the rules are identical to gear restrictions WDFW has required in past salmon fishery seasons. Therefore, the gear restrictions will not impose new costs on small businesses.

**7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule:** As in previous years, WDFW interacts with and receives input from affected businesses through the North of Falcon process, which is a series of public meetings occurring from February through April each year. These meetings allow small businesses to participate in formulating these rules.

**8. A List of Industries That Will Be Required to Comply with the Rule:** All licensed fishers attempting to harvest salmon in the all-citizen commercial salmon fisheries occurring in Puget Sound will be required to comply with these rules.

**9. An Estimate of the Number of Jobs That Will Be Created or Lost as a Result of Compliance with the Proposed Rule:** As explained above, these rules impose similar requirements to those used in the previous years' commercial salmon fisheries. Compliance with the rules will not result in the creation or loss of jobs.

A copy of the statement may be obtained by contacting Joanna Eide, 600 Capitol Way North, Olympia, WA 98501-

1091, phone (360) 902-2930, fax (360) 902-2155, e-mail Rules.Coordinator@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

April 23, 2014  
Joanna M. Eide  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-15-148, filed 7/23/13, effective 8/23/13)

**WAC 220-47-307 Closed areas—Puget Sound salmon.** It is unlawful at any time, unless otherwise provided, to take, fish for, or possess salmon taken for commercial purposes with any type of gear from the following portions of Puget Sound Salmon Management and Catch Reporting Areas, except that closures listed in this section do not apply to reef net fishing areas listed in RCW 77.50.050:

**Areas 4B, 5, 6, 6B, and 6C** - The Strait of Juan de Fuca Preserve as defined in WAC 220-47-266.

**Area 6D** - That portion within 1/4-mile of each mouth of the Dungeness River.

**Area 7** -

(1) The San Juan Island Preserve as defined in WAC 220-47-262.

(2) Those waters within 1,500 feet of shore on Orcas Island from Deer Point northeasterly to Lawrence Point, thence west to a point intercepting a line projected from the northernmost point of Jones Island, thence 90° true to Orcas Island.

(3) Those waters within 1,500 feet of the shore of Cypress Island from Cypress Head to the northernmost point of Cypress Island.

(4) Those waters easterly of a line projected from Iceberg Point to Iceberg Island, to the easternmost point of Charles Island, then true north from the northernmost point of Charles Island to the shore of Lopez Island.

(5) Those waters northerly of a line projected from the southernmost point of land at Aleck Bay to the westernmost point of Colville Island, thence from the easternmost point of Colville Island to Point Colville.

(6) Those waters easterly of a line projected from Biz Point on Fidalgo Island to the Williamson Rocks Light, thence to the Dennis Shoal Light, thence to the light on the westernmost point of Burrows Island, thence to the southwestern-most point of Fidalgo Head, and including those waters within 1,500 feet of the western shore of Allan Island, those waters within 1,500 feet of the western shore of Burrows Island, and those waters within 1,500 feet of the shore of Fidalgo Island from the southwestern-most point of Fidalgo Head northerly to Shannon Point.

(7) Additional Fraser sockeye and pink seasonal closure: Those waters within 1,500 feet of the shore of Fidalgo Island from the Initiative 77 marker northerly to Biz Point.

(8) Those waters within 1,500 feet of the eastern shore of Lopez Island from Point Colville northerly to Lopez Pass, and those waters within 1,500 feet of the eastern shore of Decatur Island from the southernmost point of land northerly to Fauntleroy Point, and including those waters within 1,500 feet of the shore of James Island.

**Area 7A** - The Drayton Harbor Preserve as defined in WAC 220-47-252.

**Area 7B** -

(1) That portion south and east of a line from William Point on Samish Island to Saddlebag Island to the southeastern tip of Guemes Island, and that portion northerly of the railroad trestle in Chuckanut Bay.

(2) That portion of Bellingham Bay and Portage Bay adjacent to Lummi Indian Reservation is closed north and west of a line from the intersection of Marine Drive and Hoff Road (48°46'59"N, 122°34'25"W) projected 180° true for 2.75 nautical miles (nm) to a point at 48°45'11"N, 122°34'25"W, then 250° true for 1.4 nm to a point at 48°44'50"N, 122°35'42"W, then 270° true for 1.4 nm to 48°44'50"N, 122°37'08"W, then 230° true for 1.3 nm to 48°44'24"N, 122°37'52"W, then 200° true for 1 nm to 48°43'45"N, 122°38'12"W, then 90° true for 1 nm to a point just northeast of Portage Island (48°43'45"N, 122°37'14"W), then 160° true for 1.4 nm to a point just east of Portage Island (48°42'52"N, 122°36'37"W).

(3) Additional coho seasonal closure: September 1 through September 21, closed to gillnets in the waters of Area 7B west of a line from Point Francis (48°41'46"N, 122°36'32"W) to the red and green buoy southeast of Point Francis (48°40'27"N, 122°35'24"W), then to the northernmost tip of Eliza Island (48°39'38"N, 122°35'14"W), then along the eastern shore of the island to its southernmost tip (48°38'40"N, 122°34'57"W) and then north of a line from the southernmost tip of Eliza Island to Carter Point (48°38'24"N, 122°36'31"W). Nontreaty purse seiners fishing September ((1-21)) 1 through September 21 in this area must release coho.

**Area 7C** - That portion southeasterly of a line projected from the mouth of Oyster Creek 237° true to a fishing boundary marker on Samish Island.

**Area 8** -

(1) That portion of Skagit Bay easterly of a line projected from Brown Point on Camano Island to a white monument on the easterly point of Ika Island, thence across the Skagit River to the terminus of the jetty with McGlenn Island.

(2) Those waters within 1,500 feet of the western shore of Camano Island south of a line projected true west from Rocky Point.

**Area 8A** -

(1) Those waters easterly of a line projected from Mission Point to Buoy C1, excluding the waters of Area 8D, thence through the green light at the entrance jetty of the Snohomish River and across the mouth of the Snohomish River to landfall on the eastern shore, and those waters northerly of a line from Camano Head to the northern boundary of Area 8D, except when open for pink fisheries.

(2) Additional coho seasonal closure prior to October 3: Those waters southerly of a line projected from the Clinton ferry dock to the Mukilteo ferry dock.

~~((3) Adjusted pink seasonal closure: Those waters easterly of a line projected from the southernmost point of Area 8D, the point of which begins from a line projected 225° from the pilings at Old Bower's Resort to a point 2,000 feet offshore, thence through the green light at the entrance jetty of the Snohomish River and across the mouth of the Snohomish~~

~~River to landfall on the eastern shore, and those waters northerly of a line from Camano Head to the northern boundary of Area 8D, and waters southerly of a line projected from the Clinton ferry dock to the Mukilteo ferry dock.))~~

**Area 8D** - Those waters easterly of a line projected from Mission Point to Hermosa Point.

**Area 9** - Those waters lying inside and westerly of a line projected from the Point No Point light to Sierra Echo buoy, thence to Forbes Landing wharf east of Hansville.

**Area 10** -

(1) Those waters easterly of a line projected from Meadow Point to West Point.

(2) Those waters of Port Madison westerly of a line projected from Point Jefferson to the northernmost portion of Point Monroe.

(3) Additional pink seasonal closure: The area east inside of the line originating from West Point and extending west to the closest midchannel buoy, thence true through Point Wells until reaching latitude 47°44'500"N, thence extending directly east to the shoreline.

(4) Additional purse seine pink seasonal closure: The area within 500 feet of the eastern shore in Area 10 is closed to purse seines north of latitude 47°44'500"N.

(5) Additional coho and chum seasonal closure: Those waters of Elliott Bay east of a line from Alki Point to the light at Fourmile Rock, and those waters northerly of a line projected from Point Wells to "SF" Buoy, then west to President's Point.

**Area 10E** - Those waters of Liberty Bay north of a line projected due east from the southernmost Keyport dock, those waters of Dyes Inlet north of the Manette Bridge, and those waters of Sinclair Inlet southwest of a line projected true east from the Bremerton ferry terminal.

**Area 11** -

(1) Those waters northerly of a line projected true west from the light at the mouth of Gig Harbor, and those waters south of a line from Browns Point to the northernmost point of land on Point Defiance.

(2) Additional coho seasonal closure: Those waters south of a line projected from the light at the mouth of Gig Harbor to the Tahlequah ferry dock, then south to the Point Defiance ferry dock, and those waters south of a line projected from the Point Defiance ferry dock to Dash Point.

**Area 12** -

(1) Those waters inside and easterly of a line projected from Lone Rock to the navigation light off Big Beef Creek, thence southerly to the tip of the outermost northern headland of Little Beef Creek.

(2) Additional purse seine chum seasonal closure:

(a) Those waters of Area 12 south and west of a line projected 94 degrees true from Hazel Point to the light on the opposite shore, bounded on the west by the Area 12/12B boundary line are closed to purse seines except this area is open for purse seines on October 27 and November 3.

(b) Those waters of Area 12 within 2 miles of the Hood Canal Bridge are closed to purse seines on October 27 and November 3.

**Area 12A** -

(1) Those waters north of a line projected due east from Broad Spit.

(2) Those waters within 1,000 feet of the mouth of the Quilcene River.

**Area 12B -**

(1) Those waters within 1/4-mile of the mouths of the Dosewallips, Duckabush, and Hamma Hamma rivers and Anderson Creek.

~~((Areas 12, 12A, and 12B - (1) Those waters within 1,000 feet of the mouth of the Quilcene River.~~

~~(2) Additional Chinook seasonal closure: Those waters north and east of a line projected from Tekiu Point to Triton Head.)~~ (2) Additional Chinook seasonal closure: Those waters north and east of a line projected from Tekiu Point to Triton Head.

**Areas 12, 12B and 12C -** Those waters within 1,000 feet of the eastern shore.

**Area 12C -**

(1) Those waters within 2,000 feet of the western shore between the dock at Glen Ayr R.V. Park and the Hoodsport marina dock.

(2) Those waters south of a line projected from the Cushman Powerhouse to the public boat ramp at Union.

(3) Those waters within 1/4-mile of the mouth of the Dewatto River.

**Area(s) 12 ((and 12D - Additional coho and)) - Chum seasonal closures:**

(1) Those waters of Area 12 south and west of a line projected 94 degrees true from Hazel Point to the light on the opposite shore, bounded on the west by the Area 12/12B boundary line (and those waters of Area 12D) are closed to purse seines except this area is open for purse seines on October 27 and November 3.

(2) Those waters of Area 12 within 2 miles of the Hood Canal Bridge are closed to purse seines on October 27 and November 3.

**Area 13A -** Those waters of Burley Lagoon north of State Route 302; those waters within 1,000 feet of the outer oyster stakes off Minter Creek Bay, including all waters of Minter Creek Bay; those waters westerly of a line drawn due north from Thompson Spit at the mouth of Glen Cove; and those waters within 1/4-mile of Green Point.

AMENDATORY SECTION (Amending WSR 13-15-148, filed 7/23/13, effective 8/23/13)

**WAC 220-47-311 Purse seine—Open periods.** (1) It is unlawful to take, fish for, or possess salmon taken with purse seine gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas and during the periods provided for in each respective Management and Catch Reporting Area:

AREA	TIME	DATE
7, 7A:	7AM - 6PM	10/11, 10/12, ((10/13, 10/15, 10/17;)) 10/14, 10/18, 10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1((-11/2))

AREA	TIME	DATE
	7AM - 5PM	11/2, 11/3, 11/4, 11/5, 11/6, 11/7, 11/8((-11/9))

Note: In Areas 7 and 7A, it is unlawful to fail to brail when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

7B, 7C:	6AM - 9PM	((8/14)) 8/13
7B, 7C:	6AM - 8PM	((8/21, 8/28, 9/4)) 8/20, 8/27, 9/3
7B:	7AM - 8PM	((9/9, 9/11, 9/13)) 9/8, 9/10, 9/12
	7AM - 7PM	((9/16, 9/18, 9/20)) 9/15, 9/17, 9/19
	7AM ((9/22)) 9/21	6PM ((10/26)) 10/25
	7AM ((10/28)) 10/27	4PM ((11/1)) 10/31
	7AM ((11/4)) 11/3	4PM ((11/8)) 11/7
	7AM ((11/11)) 11/10	4PM ((11/15)) 11/14
	7AM ((11/18)) 11/17	4PM ((11/22)) 11/21
	7AM ((11/25)) 11/24	4PM ((11/29)) 11/28

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squilicum Harbor is open to purse seines beginning at 12:01 a.m. on the last Monday in October and until 4:00 p.m. on the first Friday in December.

((8:	6AM - 7PM	8/21, 8/22, 8/26, 8/27, 9/4)
8A:	((7AM - 7PM	8/19, 8/20, 8/28, 8/29, 9/3)
	7AM - 7PM	Limited participation - Two boats ((9/23, 9/30)) 9/15, 9/22
8D:	7AM - 7PM	((9/23, 9/30)) 9/22, 9/29, 10/6
	7AM - 6PM	((10/14, 10/21)) 10/13, 10/20, 10/28, 10/30
	7AM - 5PM	((11/4, 11/11, 11/13, 11/18)) 11/3, 11/11, 11/13, 11/17, 11/25
10:	((7AM - 7PM	Limited participation - 5 boats 8/15, 8/21, 8/22, 8/27)
10, 11:	7AM - 6PM	((10/22, 10/28, 10/30)) 10/16, 10/20, 10/27
	7AM - 5PM	((11/5)) 11/3, 11/11, 11/13, ((11/19, 11/26)) 11/17, 11/25
12, 12B:	7AM - 6PM	((10/22, 10/28, 10/30)) 10/16, 10/20, 10/27
	7AM - 5PM	((11/5)) 11/3, 11/11, 11/13, ((11/19)) 11/17
12C:	7AM - 5PM	11/3, 11/11, 11/13, ((11/19, 11/26)) 11/17, 11/25

Note: In Area 10 during any open period occurring in August or September, it is unlawful to fail to brail or use a brailing bunt when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).  
 ((During limited participation fisheries it is unlawful for vessels to take or fish for salmon without department observers on board.))

(2) It is unlawful to retain the following salmon species taken with purse seine gear within the following areas during the following periods:

(a) Chinook salmon - At all times in Areas 7, 7A, 8, 8A, 8D, 10, 11, 12, 12B, and 12C, and after October 20 in Area 7B.

(b) Coho salmon - At all times in Areas 7, 7A, 10, and 11, and prior to September 1 in Area 7B.

(c) Chum salmon - Prior to October 1 in Areas 7 and 7A, and at all times in 8A.

(d) All other saltwater and freshwater areas - Closed for all species at all times.

**AMENDATORY SECTION** (Amending WSR 13-15-148, filed 7/23/13, effective 8/23/13)

**WAC 220-47-411 Gillnet—Open periods.** It is unlawful to take, fish for, or possess salmon taken with gillnet gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided for in each respective fishing area:

AREA	TIME	DATE(S)	MINIMUM MESH
6D: Skiff gillnet only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM - 7PM	9/21, <u>9/22</u> , 9/24, 9/25, 9/26, ((9/27)) <u>9/29</u> , 9/30, 10/1, 10/2, 10/3, ((10/4)) <u>10/6</u> , 10/7, 10/8, 10/9, 10/10, ((10/11)) <u>10/13</u> , 10/14, 10/15, 10/16, 10/17, ((10/18)) <u>10/20</u> , 10/21, 10/22, 10/23, 10/24((10/25))	5"

Note: In Area 6D, it is unlawful to use other than 5-inch minimum mesh in the skiff gillnet fishery. It is unlawful to retain Chinook taken in Area 6D at any time, or any chum salmon taken in Area 6D prior to October 16. In Area 6D, any Chinook or chum salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

7, 7A:	7AM - Midnight	10/11, 10/12, ((10/13, 10/15, 10/17,)) <u>10/14</u> , 10/18((10/19))	6 1/4"
	7AM - Midnight	<u>10/19</u> , 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3, 11/4, 11/5, 11/6, 11/7, 11/8((11/9))	6 1/4"

Note: In Areas 7 and 7A after October 9 but prior to October ((20)) 19, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the gillnet web enters the water, until the gillnet is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f) when coho and Chinook release is required.

7B, 7C:	7PM - 8AM	NIGHTLY ((8/11)) <u>8/10</u> , <u>8/12</u> , 8/13, ((8/14)) <u>8/17</u> , 8/18, 8/19, 8/20, ((8/21)) <u>8/24</u> , 8/25, <u>8/26</u> , 8/27((8/28))	7"
7B, 7C:	7AM ((9/4)) <u>8/31</u>	7AM ((9/6)) <u>9/5</u>	5"
7B:	7AM ((9/8)) <u>9/7</u>	7AM 9/12	
	7AM ((9/15)) <u>9/14</u>	7AM 9/19	5"
	7AM ((9/22)) <u>9/21</u>	Midnight ((10/26)) <u>10/25</u>	5"
	7AM ((10/28)) <u>10/27</u>	4PM ((11/1)) <u>10/31</u>	6 1/4"
	6AM ((11/4)) <u>11/3</u>	4PM ((11/8)) <u>11/7</u>	6 1/4"
	6AM ((11/11)) <u>11/10</u>	4PM ((11/15)) <u>11/14</u>	6 1/4"
	6 AM ((11/18)) <u>11/17</u>	4PM ((11/22)) <u>11/21</u>	6 1/4"
	7 AM ((11/25)) <u>11/24</u>	4PM ((11/29)) <u>11/28</u>	6 1/4"

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to gillnets using 6 1/4-inch minimum mesh beginning 12:01 AM on the last day in October and until 4:00 PM on the first Friday in December.

AREA	TIME		DATE(S)	MINIMUM MESH
8:	( <del>5</del> AM	-	<del>10</del> PM 8/19, 8/20, 8/28, 8/29	5" minimum and 5 1/2" maximum
	6AM	-	10PM 9/3	5" minimum and 5 1/2" maximum))

Note: In Area 8 it is unlawful to take or fish for pink salmon with drift gillnets greater than 60-mesh maximum depth. Fishers must also use minimum 5" and maximum 5 1/2" mesh during pink salmon management periods.

8A:	( <del>5</del> AM	-	<del>10</del> PM 8/21, 8/22, 8/26, 8/27	5" minimum and 5 1/2" maximum
	6AM	-	10PM 9/4	5" minimum and 5 1/2" maximum))
	6PM	-	8AM Limited participation; 2 boats only (( <del>9</del> / <del>24</del> ) <u>9/17</u> )	5"
	6PM	-	8AM NIGHTLY (( <del>10</del> / <del>1</del> , <del>10</del> / <del>2</del> ) <u>9/23, 9/24</u> )	5"

Note: In Area 8A fishers must use minimum 5" and maximum 5 1/2" mesh during pink salmon management periods.

8D:	6PM	-	8AM NIGHTLY (( <del>9</del> / <del>22</del> , <del>9</del> / <del>26</del> , <del>9</del> / <del>29</del> , <del>10</del> / <del>3</del> , <del>10</del> / <del>6</del> , <del>10</del> / <del>10</del> ) <u>9/21, 9/25, 9/28, 10/2, 10/5, 10/9</u> )	5"
	6PM (( <del>9</del> / <del>23</del> ) <u>9/22</u> )	-	8AM (( <del>9</del> / <del>26</del> ) <u>9/25</u> )	5"
	6PM (( <del>9</del> / <del>30</del> ) <u>9/29</u> )	-	8AM (( <del>10</del> / <del>3</del> ) <u>10/2</u> )	5"
	6PM (( <del>10</del> / <del>7</del> ) <u>10/6</u> )	-	8AM (( <del>10</del> / <del>10</del> ) <u>10/9</u> )	5"
	5PM	-	8AM (( <del>10</del> / <del>13</del> , <del>10</del> / <del>17</del> ) <u>10/12, 10/16</u> )	5"
	5PM (( <del>10</del> / <del>14</del> ) <u>10/13</u> )	-	8AM (( <del>10</del> / <del>17</del> ) <u>10/16</u> )	5"
	5PM	-	9AM (( <del>10</del> / <del>20</del> , <del>10</del> / <del>24</del> , <del>10</del> / <del>27</del> , <del>10</del> / <del>31</del> , <del>11</del> / <del>3</del> , <del>11</del> / <del>7</del> ) <u>10/19, 10/23, 10/26, 10/30</u> )	5"
	5PM (( <del>10</del> / <del>21</del> ) <u>10/20</u> )	-	9AM (( <del>10</del> / <del>24</del> ) <u>10/23</u> )	5"
	5PM (( <del>10</del> / <del>28</del> ) <u>10/27</u> )	-	9AM (( <del>10</del> / <del>31</del> ) <u>10/30</u> )	5"
	(( <del>5</del> PM <del>11</del> / <del>4</del> ) <u>4PM</u> )	-	(( <del>9</del> AM <del>11</del> / <del>7</del> ) <u>8AM</u> )	5"
	<u>4PM 11/3</u>	-	<u>8AM 11/6</u>	<u>5"</u>
	6AM	-	6PM <u>11/12, 11/13, ((<del>11</del>/<del>14</del>) <u>11/19, 11/20</u> (<del>11</del>/<del>21</del>, <del>11</del>/<del>27</del>, <del>11</del>/<del>28</del>))</u>	6 1/4"
	6AM	-	4PM (( <del>11</del> / <del>15</del> , <del>11</del> / <del>22</del> , <del>11</del> / <del>29</del> ) <u>11/14, 11/21</u> )	6 1/4"
	<u>7AM</u>	-	<u>6PM 11/26, 11/27</u>	<u>6 1/4"</u>
	<u>7AM</u>	-	<u>4PM 11/28</u>	<u>6 1/4"</u>
9A: Skiff gillnet only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM (( <del>8</del> / <del>25</del> ) <u>8/24</u> )	-	7PM (( <del>11</del> / <del>2</del> ) <u>11/1</u> )	5"

Note: It is unlawful to retain chum salmon taken in Area 9A prior to October 1, and it is unlawful to retain Chinook salmon at any time. Any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

10:	(( <del>7</del> PM	-	<del>7</del> AM Limited participation -- 5 boats 8/14, 8/19, 8/20, 8/27	4 1/2" minimum and 5 1/2" maximum))
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Note: In Area 10 fishers must use minimum 4 1/2" and maximum 5 1/2" mesh during pink salmon management periods. Also, during August or September openings, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 90 minutes. Net soak time is defined as the time elapsed from when the first of the gillnet web enters the water, until the gillnet is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f). During all limited participation fisheries, it is unlawful for vessels to take or fish for salmon without department observers on board.

10, 11:	5PM	-	9AM NIGHTLY (( <del>10</del> / <del>20</del> , <del>10</del> / <del>23</del> , <del>11</del> / <del>3</del> , <del>11</del> / <del>6</del> ) <u>10/14, 10/21, 10/23, 10/28, 10/30</u> )	6 1/4"
	<u>5PM</u>	-	<u>7AM NIGHTLY 10/15</u>	<u>6 1/4"</u>
	(( <del>5</del> PM))	-	8AM (( <del>10</del> / <del>29</del> ) <u>11/4, 11/6, 11/9, 11/12, 11/18, 11/20, 11/23, 11/26</u> )	6 1/4"
	<u>4PM</u>	-		

AREA	TIME	DATE(S)	MINIMUM MESH
	((4PM - 9AM	NIGHTLY 11/12, 11/17, 11/24	6 1/4")
	4PM - ((Midnight) 7AM	NIGHTLY ((10/31, 11/14, 11/20, 11/27)) 11/12	6 1/4"
12A: Skiff gillnet only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM - 7PM	Dates determined per agreement with tribal co-managers in-season if Summer Chum Salmon Conservation Initiative goals are met allowing for openings of gillnet gear.	5"
Note: In Area 12A, it is unlawful to use other than 5-inch minimum mesh in the skiff gillnet fishery. It is unlawful to retain Chinook or chum salmon taken in Area 12A at any time, and any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.			
12, 12B:	7AM - 8PM	10/14, 10/15, 10/21, 10/23( <del>10/29, 10/31, 11/4, 11/6</del> )	6 1/4"
	<u>7AM</u> - <u>7PM</u>	10/28, 10/30	
	6AM - 6PM	11/4, 11/6, 11/10, 11/12, ((11/14,)) 11/18, 11/20	6 1/4"
12C:	6AM - 6PM	11/4, 11/6, 11/10, 11/12, ((11/14,)) 11/18, 11/20, 11/24, ((11/25)) 11/26	6 1/4"

All other saltwater and freshwater areas - Closed.

Nightly openings refer to the start date.

Within an area or areas, a mesh size restriction remains in effect from the first date indicated until a mesh size change is shown, and the new mesh size restriction remains in effect until changed.

**WSR 14-09-109**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
 (Economic Services Administration)

[Filed April 23, 2014, 8:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-06-080.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-310-1600 WorkFirst—Sanctions.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on May 27, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 28, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on May 27, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by May 13, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The community services division, economic services administration is proposing to amend WAC 388-310-1600 to reduce the time period before closure of TANF/SFA due to failure to meet WorkFirst requirements without good cause.

Reasons Supporting Proposal: The proposed amendments are necessary to implement the WorkFirst program changes outlined in the Agency Detail, Rec Sums for the supplemental budget (ESSB 6002) that passed the legislature on March 13, 2014.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW and ESSB 6002 Agency Detail, Rec Sums.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Bev Kelly, CSD Policy, DSHS, 712 Pear Street S.E., Olympia, WA 98501, (360) 725-4556.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not have an economic impact on small businesses.

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

April 21, 2014  
 Katherine I. Vasquez  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-22-042, filed 10/27/11, effective 12/1/11)

**WAC 388-310-1600 WorkFirst—Sanctions.** Effective ~~((July 1, 2010))~~ November 1, 2014.

**(1) What WorkFirst requirements do I have to meet?**

You must do the following when you are a mandatory WorkFirst participant:

(a) Give the department the information we need to develop your individual responsibility plan (IRP) (see WAC 388-310-0500);

(b) Show that you are participating fully to meet all of the requirements listed on your individual responsibility plan;

(c) Go to scheduled appointments listed in your individual responsibility plan;

(d) Follow the participation and attendance rules of the people who provide your assigned WorkFirst services or activities; and

(e) Accept available paid employment when it meets the criteria in WAC 388-310-1500.

**(2) What happens if I don't meet WorkFirst requirements?**

(a) If you do not meet WorkFirst requirements, we will send you a letter telling you what you did not do, and inviting you to a noncompliance ~~((sanction))~~ case staffing. The letter will also schedule a home visit (or alternative meeting) that will happen if you don't attend your noncompliance case staffing.

(i) A noncompliance case staffing is a meeting with you, your case manager, and other people who are working with your family, such as representatives from tribes, community or technical colleges, employment security, the children's administration, family violence advocacy providers or limited-English proficient (LEP) pathway providers to review your situation and compliance with your participation requirements.

(ii) You will be notified when your noncompliance ~~((sanction))~~ case staffing is scheduled so you can attend.

(iii) You may invite anyone you want to come with you to your noncompliance case staffing.

(b) You will have ten days to contact us so we can talk with you about your situation. You can contact us in writing, by phone, by going to the noncompliance ~~((sanction))~~ case staffing appointment described in the letter, or by asking for an individual appointment.

(c) If you do not contact us within ten days, we will make sure you have been screened for family violence and other barriers to participation. We will use existing information to decide whether:

(i) You were unable to do what was required; or

(ii) You were able, but refused, to do what was required.

(d) If you had a good reason not to do a required activity we will work with you and may change the requirements in your individual responsibility plan if a different WorkFirst activity would help you move towards independence and employment sooner. If you have been unable to meet your WorkFirst requirements because of family violence, you and your case manager will develop an ~~((IRP))~~ individual responsibility plan to help you with your situation, including referrals to appropriate services.

(e) If you do not attend your noncompliance case staffing, and we determine you did not have a good reason, we will conduct the home visit (or alternative meeting) to review your circumstances and discuss next steps and options.

**(3) What is considered a good reason for not doing what WorkFirst requires?**

You have a good reason if you were not able to do what WorkFirst requires (or get an excused absence, described in WAC 388-310-0500(5)) due to a significant problem or event outside your control. Some examples of good reasons include, but are not limited to:

(a) You had an emergent or severe physical, mental or emotional condition, confirmed by a licensed health care professional that interfered with your ability to participate;

(b) You were threatened with or subjected to family violence;

(c) You could not locate child care for your children under thirteen years that was:

(i) Affordable (did not cost you more than your copayment would under the working connections child care program in chapter 170-290 WAC);

(ii) Appropriate (licensed, certified or approved under federal, state or tribal law and regulations for the type of care you use and you were able to choose, within locally available options, who would provide it); and

(iii) Within a reasonable distance (within reach without traveling farther than is normally expected in your community).

(iv) You could not locate other care services for an incapacitated person who lives with you and your children.

(d) You had an immediate legal problem, such as an eviction notice; or

(e) You are a person who gets necessary supplemental accommodation (NSA) services under chapter 388-472 WAC and your limitation kept you from participating. If you have a good reason because you need NSA services, we will review your accommodation plan.

**(4) What happens in my noncompliance ~~((sanction))~~ case staffing?**

(a) At your noncompliance case staffing we will ensure you were offered the opportunity to participate and discuss with you:

(i) Whether you had a good reason for not meeting WorkFirst requirements.

~~((ii))~~ (ii) What happens if you are sanctioned ~~((and stay in sanction))~~;

~~((iii))~~ (iii) How you can participate and get out of sanction status;

~~((iv))~~ (iv) How you and your family benefit when you participate in WorkFirst activities;

~~((v))~~ (v) That ~~((if you continue to refuse to participate, without good cause,))~~ your case may be closed after you have been in sanction status for ~~((four))~~ two months in a row;

~~((vi))~~ (vi) How you plan to care for and support your children if your case is closed. We will also discuss the safety of your family, as needed, using the guidelines under RCW 26.44.030;

~~((vii))~~ (vii) How to reapply if your case is closed; and

~~((viii))~~ (viii) That upon your third ~~((noncompliance))~~ sanction case closure after March 1, 2007, you may be per-

manently disqualified from receiving TANF/SFA. If you are permanently disqualified, your entire household is ineligible for TANF/SFA.

(b) If you do not come to your noncompliance (~~(sanction)~~) case staffing, we will make a decision based on the information we have and send you a letter letting you know whether we found that you had a good reason for not meeting WorkFirst requirements.

**(5) What if we decide that you did not have a good reason for not meeting WorkFirst requirements?**

(a) Before you are placed in sanction, a supervisor or designee will review your case to make sure:

- (i) You knew what was required;
- (ii) You were told how to end your sanction;
- (iii) We tried to talk to you and encourage you to participate; and
- (iv) You were given a chance to tell us if you were unable to do what we required.

(b) If we decide that you did not have a good reason for not meeting WorkFirst requirements, and a supervisor or designee approves the sanction and sanction penalties, we will send you a letter that tells you:

- (i) What you failed to do;
- (ii) That you are in sanction status;
- (iii) Penalties that will be applied to your grant;
- (iv) When the penalties will be applied;
- (v) How to request (~~(a fair)~~) an administrative hearing if you disagree with this decision; and
- (vi) How to end the penalties and get out of sanction status.

(c) If your case is closed because you failed to attend your noncompliance case staffing and home visit (or alternative meeting), this information will be included in your termination letter.

(d) We will also provide you with information about resources you may need if your case is closed. If you are sanctioned, then we will actively attempt to contact you another way so we can talk to you about the benefits of participation and how to end your sanction.

**(6) What is sanction status?**

When you are a mandatory WorkFirst participant, you must follow WorkFirst requirements to qualify for your full grant. If you or someone else on your grant doesn't do what is required and you can't prove that you had a good reason, you do not qualify for your full grant. This is called being in WorkFirst sanction status.

**(7) Are there penalties when you or someone in your household goes into sanction status?**

~~((a))~~ When you or someone in your household is in sanction status, we impose penalties. The penalties last until you or the household member meet WorkFirst requirements. There are different penalties depending on if you attended your noncompliance case staffing or home visit (or alternative meeting).

~~((b))~~ (a) If you attended your noncompliance case staffing or home visit (or alternative meeting) and we determined that you did not have a good reason for not meeting WorkFirst requirements, you will receive a grant reduction sanction penalty.

(i) Your grant is reduced by one person's share or forty percent, whichever is more.

(ii) The reduction is effective the first of the month following ten-day notice from the department; and

(iii) Your case may be closed effective the first of the month after your grant has been reduced for two months in a row.

(b) If you did not attend your noncompliance case staffing or home visit (or alternative meeting) and we determined that you did not have a good reason for not meeting WorkFirst requirements you will receive a case closure sanction penalty. Your case may be closed the first of the month following the ten-day notice from the department.

**(8) What happens before your case is closed due to sanction?**

Before we close your case due to sanction status, we will send you a letter to tell you:

- (a) What you failed to do;
- (b) When your case will be closed;
- (c) How you can request an administrative hearing if you disagree with this decision;
- (d) How you can end your penalties and keep your case open (if you are able to participate for four weeks in a row before we close your case); and

(e) How your participation before your case is closed can be used to meet the participation requirement in subsection (13).

**(9) What happens if my sanction grant reduction penalty started before November 1, 2014?**

If you are in sanction and entered sanction before November 1, 2014, your case may be closed after you have been in sanction for fourth months in a row.

~~((8))~~ **(10) How do I end the penalties and get out of sanction status?**

To ~~((stop))~~ end the penalties and get out of sanction status:

- (a) You must provide the information we requested to develop your individual responsibility plan; and/or
- (b) Start and continue to do your required WorkFirst activities for four weeks in a row (that is, twenty-eight calendar days).

~~((e))~~ **(11) What happens when I get out of sanction status before my case is closed?**

When you ~~((leave))~~ get out of sanction status before your case is closed, your grant will be restored to the level you are eligible for beginning the first of the month following your four weeks of participation. For example, if you finished your four weeks of participation on June 15, your grant would be restored on July 1.

~~((9))~~ **(12) What if my case closes for a reason other than sanction while I'm getting a reduced sanction grant and I reapply for TANF or SFA ((and I was in sanction status when my case closed))?**

If your case closes for a reason other than sanction while you are ~~((in))~~ getting a reduced sanction ((status)) grant and is reopened, you will ~~((start out where you left off in))~~ reopen in month two of sanction status.

~~((That is, if you were in month two of sanction when your case closed, you will be in month three of sanction when you are approved for TANF or SFA.~~

~~(10) What happens if I stay in sanction status?~~~~(a) We will send information to a supervisor or designee with a recommendation to close your case.~~~~(b) A supervisor or designee will make the final decision.~~~~(c) If the supervisor or designee approves case closure, your case will be closed after you have been in sanction for four months in a row.~~~~(11) What happens when a supervisor or designee approves closure of my case?~~~~When a supervisor or designee approves closure of your case, we will send you a letter to tell you:~~~~(a) What you failed to do;~~~~(b) When your case will be closed;~~~~(c) How to request a fair hearing if you disagree with this decision;~~~~(d) How to end your penalties and keep your case open (if you are able to participate for four weeks in a row before we close your case); and~~~~(e) How your participation before your case is closed can be used to meet the participation requirement in subsection (12).~~~~((12)) (13) What if I reapply for TANF or SFA after ((a supervisor or designee approved case closure and my case was closed)) my case is closed due to sanction?~~~~If ((a supervisor or designee approves case closure and)) we close your case due to sanction, you must participate for four weeks in a row before you can receive cash. Once you have met your four week participation requirement, your cash benefits will start, going back to the date we had all the other information we needed to make an eligibility decision.~~~~((13)) (14) What happens if a supervisor or designee approves case closure for the third time?~~~~If we close your case for sanction at least three times after March 1, 2007, you will be permanently disqualified from receiving TANF/SFA. If you are permanently disqualified, any household you are in will also be ineligible for TANF/SFA.~~

## WSR 14-09-114

## PROPOSED RULES

## OLYMPIC COLLEGE

[Filed April 23, 2014, 8:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-24-048.

Title of Rule and Other Identifying Information: Revision of Olympic College student conduct code, chapter 132C-120 WAC.

Hearing Location(s):

- Olympic College, 1000 Olympic College Way N.W., Poulsbo, WA, Room 219
- Olympic College, 1600 Chester Avenue, Bremerton, WA, Science and Technology Building, Room 203
- Olympic College, 937 West Alpine Way, Shelton, WA, Room 118

Date May 30, 2014, at 9:00 a.m., 11:00 a.m. and 2:00 p.m. respectively.

Date of Intended Adoption: June 17, 2014.

Submit Written Comments to: Thomas Oliver, Olympic College, CSC 210, 1600 Chester Avenue, Bremerton, WA 98337, e-mail [toliver@olympic.edu](mailto:toliver@olympic.edu), fax (360) 475-7505, by May 23, 2014.Assistance for Persons with Disabilities: Contact access services by phone (360) 475-7540 or e-mail [accessservices@olympic.edu](mailto:accessservices@olympic.edu), by May 19, 2014.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This is an update of existing policy to bring it into alignment with the federal Violence Against Women Act (VAWA) and to bring language into alignment with current practice. Existing student disciplinary procedures will be repealed and replaced with procedures in compliance with VAWA and state law. Substantive provisions in the student conduct code will be updated, including but not limited to new prohibitions regarding sexual harassment, sexual violence, harassment, retaliation, academic dishonesty, weapons, and use of marijuana, tobacco, electronic cigarettes and related products.

Reasons Supporting Proposal: This policy will meet federal and state laws as follows: Titles VII and IX of the Civil Rights Act of 1964, the Age Discrimination and Employment Act, Section 504 of the Rehabilitation Act of 1974, the Americans with Disabilities Act of 1990, VAWA, and the state law against discrimination, chapter 49.60 RCW.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

Statute Being Implemented: Chapter 28B.50 RCW.

Rule is necessary because of federal law, see Reasons supporting proposal above.

Name of Proponent: Damon Bell, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Damon Bell, CSC 525, 1600 Chester Avenue, Bremerton, WA 98337, (360) 475-7476.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There will be no impact on any entity other than Olympic College.

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

April 22, 2014  
Thomas Oliver  
Rules CoordinatorNEW SECTION**WAC 132C-120-022 Statement of student rights. (1)**

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.

(2) 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:

(a) Academic freedom.

(i) 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.

(ii) 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).

(iii) 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.

(iv) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate conduct, and harassment, including sexual harassment.

(b) Due process.

(i) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(ii) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(iii) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in this chapter.

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

**WAC 132C-120-050 Authority to prohibit trespass.**

The president or designee, acting through the vice-president ~~((of))~~ for the student services area or such other designated person shall have authority and power to:

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

(2) Give notice against trespass 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 a college facility; or

(3) Order any person, persons, or group of persons to leave or vacate all or any portion of a college facility.

Such authority and power may be exercised to halt any event that is deemed to be unreasonably disruptive of order or threatens to disrupt the movement of persons from facilities owned and/or operated by the college. Any student or person who shall disobey a lawful order given by the college president or designee pursuant to the requirements of this rule shall be subject to disciplinary and/or legal action.

AMENDATORY SECTION (Amending WSR 85-13-067, filed 6/18/85)

**WAC 132C-120-055 Emergency procedures.** In the event of activities or situations which interfere with the orderly operation of the college, the ~~((dean of students))~~ vice-

president for the student services area or college president or their designees shall determine the course of action which appears to offer the best possibility for resolution of the problem. The emergency procedures outlined below will be followed if deemed essential:

(1) Inform those involved in such activities that they are in violation of college and/or civil regulations.

(2) Inform them that they should cease and desist.

(3) If they do not respond within a reasonable time, call the civil authorities.

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

**WAC 132C-120-060 Right to demand identification.**

Olympic College identification is required for the purpose of determining the identity of a person as a student, where identification as a student is a prerequisite to admission or the charge for admission to any college activity, or where identification as a student is required in a case of alleged violation of this code, any college employee may demand that any person on college property or at a college activity produce evidence of student enrollment at the college. Failure of the student to produce identification as required shall subject the student to disciplinary action.

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

**WAC 132C-120-065 ~~((Violations))~~ Prohibited student conduct.** ~~((Any student shall be subject to immediate disciplinary action provided for in this student conduct code who, either as a principal actor or aider or abettor:~~

~~(1) Materially and substantially interferes with the personal rights or privileges of others or the educational process of the college;~~

~~(2) Violates any provision of the student conduct code;~~

~~(3) Commits any of the following acts which are hereby prohibited:~~

~~(a) Assault, reckless endangerment, intimidation, harassment, or interference upon another person.~~

~~(b) Disorderly, abusive, or bothersome conduct. Disorderly or abusive behavior that interferes with the rights of others or obstructs or disrupts teaching, research, or administrative functions.~~

~~(c) Failure to follow instructions. Inattentiveness, inability, or failure of student to follow the instructions of a college official, thereby infringing upon the rights and privileges of others.~~

~~(d) Providing false information to the college, forgery, or alteration of records.~~

~~(e) Illegal assembly, disruption, obstruction or other act which materially and substantially interferes with vehicular or pedestrian traffic, classes, hearings, meetings, the educational and administrative functions of the college, or the private rights and privileges of others.~~

~~(f) Inciting others. Intentionally encouraging, preparing, or compelling others to engage in any prohibited conduct.~~

~~(g) Hazing. Hazing means any method of 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, mental or emotional harm to any student or other person.

(h) False complaint. Knowingly or recklessly filing a formal complaint falsely accusing another student or college employee with violating a provision of this chapter.

(i) False alarms. Falsely setting off or otherwise tampering with any emergency safety equipment, alarm, or other device established for the safety of individuals and/or college facilities.

(j) Sexual harassment. Engaging in unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature where such behavior offends the recipient, causes discomfort or humiliation, or interferes with job or school performance.

(k) Malicious harassment. Malicious harassment involves intimidation or bothersome behavior directed toward another person because of, or related to that person's race, color, religion, gender, sexual orientation, ancestry, national origin, or mental, physical, or sensory disability.

(l) Theft and robbery. Theft of the property of the district or of another as defined in RCW 9A.56.010 through 9A.56.050 and RCW 9A.56.100 as now law or hereafter amended. Includes theft of the property of the district or of another; actual or attempted theft of property or services belonging to the college, any member of its community or any campus visitor; or knowingly possessing stolen property.

(m) Damage to any college facility or equipment. Intentional or negligent damage to or destruction of any college facility, equipment, or other public or private real or personal property.

(n) Unauthorized use of college or associated students' equipment or supplies. Converting of college equipment, supplies, or computer systems for personal gain or use without proper authority.

(o) Illegal entry. Entering, or remaining in any administrative office or otherwise closed college facility or entering after the closing time of college facilities without permission of an employee in charge.

(p) Possession or use of firearms, explosives, dangerous chemicals, or other dangerous weapons, instruments, or substances that can be used to inflict bodily harm or to damage real or personal property, except for authorized college purposes or law enforcement officers.

(q) Refusal to provide identification (e.g., valid driver's license, student identification, passport, or state identification card) in appropriate circumstances to any college employee in the lawful discharge of the employee's duties.

(r) Smoking. Smoking in any classroom or laboratory, the library, or in any college facility, office, or any other smoking not in compliance with college policy or chapter 70.160 RCW.

(s) Controlled substances. Using, possessing, being demonstrably under the influence of, or selling any narcotic or controlled substance as defined in chapter 69.50 RCW as now law or hereafter amended, except when the use or possession of a drug is specifically prescribed as medication by an authorized medical doctor or dentist. For the purpose of this regulation, "sale" shall include the statutory meaning defined in RCW 69.50.410 as now law or hereafter amended.

(t) Alcoholic beverages. Being demonstrably under the influence of any form of alcoholic beverage. Possessing or consuming any form of alcoholic beverage on college property, with the exception of sanctioned events, approved by the president or his or her designee and in compliance with state law.

(u) Computer, telephone, or electronic technology violation. Conduct that violates the college published acceptable use rules on computer, telephone, or electronic technology use, including electronic mail and the internet.

(v) Computer trespass. Gaining or denying others access, without authorization, to a computer system or network, or electronic data owned, used by, or affiliated with Olympic College.

(w) Ethics 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 courses or is pursuing as an educational goal or major. These ethics codes must be distributed to students as part of an educational program, course, or sequence of courses and the student must be informed that a violation of such ethics codes may subject the student to disciplinary action by the college.

(x) Criminal law violation, illegal behavior, other violations. Students may be accountable to the civil or criminal authorities and the college for acts which constitute violations of federal, state, or local law as well as college rules where the students' behavior is determined to threaten the health, safety, and/or property of the college and its members. The college may refer any such violations to civilian or criminal authorities for disposition.) 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, the following:

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

(a) Cheating includes any attempt to 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. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(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.

(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.

(4) **Assault, abuse, threats, intimidation, harassment and stalking.** 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 severe, persistent, or pervasive physical or verbal abuse 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.** 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, holding, wearing, transporting, storage or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing

bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties;

(b) A student with a valid concealed weapons permit may store a firearm in his or her vehicle parked on campus in accordance with RCW 9.41.050, provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or his delegee may authorize possession of a weapon on campus upon a showing that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated therein.

(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, or sale of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** The use, possession, delivery, or sale 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, or sale of any legend drug (any drug that requires a prescription including both controlled substances and nonnarcotic drugs), 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.** Use of tobacco, electronic cigarettes and related products is prohibited in all buildings owned or controlled by the college, in all college vehicles, and on all college property, except in designated smoking areas. All smoking materials are to be lit, smoked and extinguished in designated areas only. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

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

(12) **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/family status; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification.

(13) **Sexual misconduct.** The term "sexual misconduct" includes, but is not limited to, sexual harassment, sexual intimidation, and sexual violence. Use of alcohol or other drugs will not function as a defense to a violation of college policies regarding sexual misconduct. Cases involving alle-

gations of sexual misconduct are subject to special discipline procedures; see WAC 132C-120-300 through 132C-120-315.

(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 person to participate in or benefit from the college's educational programs/activities 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, or 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.

(14) **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.

(15) **Retaliation.** Retaliation against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment. Retaliation is considered a separate offense, regardless of the outcome of the original complaint.

(16) **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 college's electronic use policy.

(17) **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.

(18) **Safety violations.** Safety violations include 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.

(19) **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.

(20) **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.

**AMENDATORY SECTION** (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

**WAC 132C-120-076 Classroom conduct.** Faculty have the authority to take appropriate action to maintain order and proper conduct in the classroom and to maintain the effective cooperation of the class in fulfilling the objectives of the course.

An instructor has the authority to exclude a student from ~~((any single))~~ up to three class ~~((session during which))~~ sessions if the student is disruptive to the learning environment pending a meeting with the vice-president for the student services area or a designee. The instructor shall report any such exclusion from the class to the vice-president ~~((of))~~ for the student services area or designee who may ~~((summarily suspend the student or))~~ at his or her discretion initiate ~~((con-~~

~~duet)) disciplinary proceedings as provided in this procedure. The vice-president ((øf)) for the student services area may impose a disciplinary probation that restricts the student from the classroom until the student has met with the vice-president ((øf)) for the student services area and the student agrees to comply with the specific conditions outlined by the vice-president ((øf)) for the student services area for conduct in the classroom. The student may appeal the disciplinary sanction according to the disciplinary appeal procedures.~~

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

**WAC 132C-120-100 Statement of jurisdiction.**

~~((Admission to the college carries with it the expectation that the student will obey the law, comply with rules and regulations of the college, and is accountable for his/her conduct.~~

~~All rules herein adopted shall apply to every student on any college property or engaged in any college-related activity or function. Sanctions for violation of the rules of student conduct herein adopted will be administered by the college in the manner provided by said rules. When violations of the laws of the state of Washington and/or the United States are involved, the college may in addition refer such matters to civil authorities. In the case of minors such conduct may be referred to parents or guardians.~~

~~This code is applicable in all matters of discipline, and any disciplinary action imposed upon a student shall be taken in accordance with this code, unless the disciplinary action was imposed according to separate college policy which the student contractually accepted as a condition to participation in a particular course of study.~~

~~Disciplinary action, including dismissal from the college, may be imposed on a student for failure to abide by rules of conduct contained herein. The form of disciplinary action imposed will determine whether and under what conditions a violator may continue as a student at the college. Practices in disciplinary cases may vary in formality according to the severity of the case.~~

~~College administrative officers may deny admission to a prospective student or reregistration to a current student if, in their judgment, the student would not be competent to profit from the curricular offerings of the college, or would, by the student's presence or conduct, create a disruptive atmosphere within the college inconsistent with the purpose of the institution.~~

~~When reference in this document is made to a college official, that reference shall be read to include the specified college official or designee.)) The student conduct code shall apply to student conduct that occurs on college premises, to conduct that occurs at or in connection with college sponsored activities, or to off-campus conduct that in the judgment of the college adversely affects the college community or the pursuit of its objectives. Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, campus housing, 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. The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off campus.

NEW SECTION

**WAC 132C-120-101 Authority.** The board of trustees, acting pursuant to RCW 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 the student services area or designee. The student conduct officer shall serve as the principal investigator and administrator for alleged violations of this code.

NEW SECTION

**WAC 132C-120-102 Brief adjudicative proceeding authorized.** This rule is adopted in accordance with RCW 34.05.482 through 34.05.494. Brief adjudicative proceedings shall be used, unless provided otherwise by another rule or determined otherwise in a particular case by the president, or a designee, in regard to:

- (1) Parking violations.
- (2) Outstanding debts owed by students.
- (3) Use of college facilities.
- (4) Residency determinations.
- (5) Use of library - Fines.
- (6) Challenges to contents of education records.
- (7) Loss of eligibility for participation in institution sponsored athletic events.
- (8) Student conduct appeals involving the following disciplinary actions:
  - (a) Suspensions of ten instructional days or less;
  - (b) Disciplinary probation;
  - (c) Written reprimands;
  - (d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions; and
  - (e) Appeals by a complainant in student disciplinary proceedings involving allegations of sexual misconduct in which the student conduct officer:
    - (i) Dismisses disciplinary proceedings based upon a finding that the allegations of sexual misconduct have no merit; or
    - (ii) Issues a verbal warning to respondent.
  - (9) Appeals of decisions regarding mandatory tuition and fee waivers.

Brief adjudicative proceedings are informal hearings and shall be conducted in a manner which will bring about a prompt fair resolution of the matter.

NEW SECTION

**WAC 132C-120-103 Brief adjudicative proceedings—Agency record.** The agency 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 132C-120-104 Definitions.** The following definitions shall apply for the purposes of this student conduct code:

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

(2) "Conduct review officer" is the vice-president for the student services area 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.

(3) "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.

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

(5) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

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

(7) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By sending the document by first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is deposited in the mail.

(8) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) By sending the document by e-mail and first class mail to the specified college official's office and college e-mail address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(9) "College premises" includes 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) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students."

(11) "Business day" means a weekday, excluding weekends and college holidays.

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

**WAC 132C-120-110 Initiation of disciplinary ~~(proceedings)~~ action.** ~~((Any person shall have the right to request sanctions for violations of the student conduct code.~~

~~All disciplinary proceedings will be initiated by the vice-president of student services who may also establish advisory panels to advise or act for the office in disciplinary proceedings.~~

~~Any student accused of violating any provision of the rules of student conduct will be called for an initial conference with the vice-president of student services and will be informed of what provision or provisions of the code of student conduct he/she is charged with violating and what appears to be the range of penalties which might result from consideration of the disciplinary proceeding.~~

~~After considering the evidence in the case and interviewing the accused, the vice-president of student services may take any of the following actions:~~

~~(1) Terminate the proceeding, exonerating the accused;~~

~~(2) Dismiss the case after whatever counseling and advice may be appropriate;~~

~~(3) Impose sanctions directly such as warning, reprimand, restitution, disciplinary probation, suspension, and/or expulsion;~~

~~(4) Refer the matter to the student conduct board for a recommendation to the vice-president of student services as to appropriate action.~~

~~A student accused of violating any provision of the code of student conduct shall be given written notification of the vice-president of student services' action.~~

~~Disciplinary action recommended by the vice-president of student services is final unless the accused exercises his/her right of appeal as provided in WAC 132C-120-115.)~~ (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 132-120-145.

(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.

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

**WAC 132C-120-115 Appeal(s) from disciplinary action.** ~~((Any disciplinary action may be appealed as provided. Action by the vice-president of student services may be appealed to the student conduct board. Action taken by the student conduct board may be appealed to the president. Action taken by the president shall be final. All appeals by a student must be made in writing and presented to the college president within five instructional days of the disciplinary action/recommendation or the right to appeal is waived and the disciplinary action/recommendation is automatically imposed. Decisions on appeals will be rendered in writing within three instructional days following conclusion of the appeal process.~~

~~Time periods referenced in the code may be altered or waived on written agreement of the accused and vice-president of student services.~~

~~An appeal of a disciplinary action stays enforcement of the action until the appeal process is exhausted or a final decision reached.))~~ (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 service of the student conduct officer's decision. Failure to timely file a notice

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

(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 student conduct 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 sanction for violation of the student conduct code shall be stayed pending appeal, unless respondent has been summarily suspended. Protective measures which have been imposed to protect the health, safety and welfare of an individual or the campus community, such as no contact orders, will not be stayed.

(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 disciplinary actions listed in (8)(a) through (c) of this subsection.

(9) Except as provided elsewhere in these rules, disciplinary warnings and dismissals of disciplinary actions are final and are not subject to appeal.

#### NEW SECTION

**WAC 132C-120-116 Brief adjudicative proceedings—Initial hearing.** (1) Brief adjudicative proceedings shall be conducted by a conduct review officer designated by the president. The conduct review officer shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the agency's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon both parties within ten days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about

how to seek administrative review of the initial decision. If no request for review is filed within twenty-one days of service of the initial decision, the initial decision shall be deemed the final decision.

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

#### NEW SECTION

**WAC 132C-120-117 Brief adjudicative proceedings—Review of an initial decision.** (1) An initial decision is subject to review by the president, provided the respondent files a written request for review with the conduct review officer within twenty-one days of service of the initial decision.

(2) The president shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president shall give each party an opportunity to file written responses explaining their view of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within twenty-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 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.

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

**WAC 132C-120-120 ((Composition of the) Student conduct ((board) committee.** ((The student conduct board shall be composed of seven members on an ad hoc basis as needed. Members shall be selected as follows:

(1) ~~The college president shall appoint three members and an alternate from the faculty.~~

(2) ~~The president shall appoint one member from the college administration and an alternate.~~

(3) ~~The college president shall appoint two members from the student body. The president may consult the president of the associate students of Olympic College for a recommendation of student members.~~

(4) ~~The president of the college shall designate a chair from the membership who shall preside at all meetings and hearings. The chair shall not vote except to break a tie vote.)~~

(1) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government;

(b) Two faculty members appointed by the president; and

(c) One administrator (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 administrator 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 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 132C-120-122 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 an appropriately screened assistant attorney general.

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

**WAC 132C-120-125 ((Procedures for)) Student conduct ((board)) committee hearings-Presentations of evidence.** ((The student conduct board will hear and make recommendations to the president of the college on all disciplinary cases referred/appealed to it.

The accused has a right to a fair and impartial hearing before the student conduct board on any charge of violating rules of student conduct. The accused's failure to cooperate with hearing procedures shall not prevent the student conduct board from making its findings of fact, conclusions, and recommendations. Failure by the accused to cooperate may be taken into consideration by the student conduct board in recommending appropriate disciplinary action to the president.

The accused shall be given written notice of the time and place of the hearing before the student conduct board and afforded not less than five instructional days notice thereof. Said notice shall contain:

(1) A statement of the time, place, and nature of the disciplinary hearing.

(2) A statement of allegations and reference to relevant sections of the student conduct code involved.

The accused shall be entitled to hear and examine evidence against him/her and be informed of the identity of its source, shall be entitled to present evidence or witnesses in his/her own behalf and cross-examine adverse witnesses as to relevant factual matters.

~~Only those matters presented at the hearing in the presence of the accused will be considered by the student conduct board in determining whether there is sufficient evidence to cause it to believe the accused violated the student conduct code.~~

~~The student may be represented by counsel of choice at the disciplinary hearing. If the student elects to choose a duly licensed attorney admitted to practice in any state as counsel, he/she may do so provided that not less than three instructional days notice of the same is given the vice-president of student services.~~

~~In all disciplinary proceedings, the college may be represented by the vice-president of student services, designee, and/or assistant attorney general who shall present the college's case against the student accused of violating rules of the student conduct code.~~

~~The chair of the student conduct board shall preside at the disciplinary hearing and may establish organizational or operational procedures necessary to the conduct of the hearing. The chair may rule on all questions before the student conduct board and may limit repetitious testimony and exclude immaterial or irrelevant evidence. Strict rules of evidence shall not be applied.~~

~~The proceedings of the hearing shall be recorded and copies of presented materials retained. Such shall be kept in the vice-president of student services office after use by the student conduct board.)) (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.~~

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

~~WAC 132C-120-135 ((Decision by the)) Student conduct ((board)) committee—Initial decision. ((Upon conclusion of the disciplinary hearing, the student conduct board shall in closed session consider the evidence therein presented. By majority the board shall reach its conclusions and recommended disciplinary action. The board shall issue in written form its conclusions and recommended disciplinary action within three instructional days of the conclusion of the hearing to the student, the vice president of student services, and the president. The disciplinary recommendations of the board shall be limited to the following:~~

~~(1) That the student or students be exonerated and the proceedings terminated;~~

~~(2) That any disciplinary action provided in WAC 132C-120-145 be imposed on the student or students.~~

~~Disciplinary action recommended by the student conduct board shall be automatically imposed unless the accused exercises his/her right of appeal to the president as provided in WAC 132C-120-115.)~~ (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 132C-120-139 Appeal from student conduct committee initial decision.** (1) A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within twenty-one days of service of the

committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president shall provide a written decision to all parties within twenty-one days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) The president may, at his or her discretion, suspend any disciplinary action pending review of the merits of the findings, conclusions, and disciplinary actions imposed.

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

AMENDATORY SECTION (Amending WSR 05-10-052, filed 4/29/05, effective 5/30/05)

**WAC 132C-120-145 Disciplinary ((actions)) sanctions and terms and conditions.** ~~((The following disciplinary actions are hereby established and shall be usual sanctions imposed upon violators of the code of student conduct:~~

~~Disciplinary warnings: Notice to a student either verbally or in writing that he/she has been in violation of the rules of student conduct or has otherwise failed to satisfy the college's expectations regarding conduct. Such warnings imply that continuation or repetition of the specific conduct involved or other misconduct will result in one of the more serious disciplinary actions described below.~~

~~Reprimand: Formal action censuring a student for violation of the rules of student conduct. Reprimands are always made in writing. A reprimand indicates to the student that continuation or repetition of the specific conduct involved or other misconduct will result in one of the more serious disciplinary actions described below.~~

~~Disciplinary probation: Formal action placing conditions upon the student's continued attendance for violation of the code of student conduct. The action will specify, in writing, the period of probation and any conditions such as limiting the student's participation in extracurricular activities. Disciplinary probation may be for a specified term or for an indefinite period which may extend to graduation or other termination of the student's enrollment in the college.~~

~~Dismissal: Termination of student status for violation of the code of student conduct. Dismissal may be for a stated or for an indefinite period. The notification dismissing a student will indicate, in writing, the term of the dismissal and any special conditions which must be met before readmission. There is no refund of tuition and fees for the quarter in which action is taken but tuition and fees paid in advance for a subsequent quarter are to be refunded.~~

~~Restitution: The college may demand restitution from individual students for destruction or damage of property.~~

Failure to make arrangements for restitution promptly will result in the cancellation of the student's registration and will prevent the student from reregistration.)) The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code.

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

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.

Disciplinary probation: Formal action placing specific conditions and restrictions upon the student's continued attendance depending upon the seriousness of the violation. Probation may be for a limited time or may be for the duration of the student's attendance at the college.

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.

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.

Disciplinary terms and conditions that may be imposed alone or in conjunction with a disciplinary sanction include, but are not limited to, the following:

Restitution: 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, or other compensation.

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.

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:

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

(2) 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.

Other terms and conditions: The vice-president for the student services area may impose other terms and conditions,

such as a no-contact order, as necessary to protect the health, safety and welfare of the campus community.

AMENDATORY SECTION (Amending WSR 85-13-067, filed 6/18/85)

**WAC 132C-120-200 Summary suspension ((rules)).**  
 ((The board of trustees of Olympic College recognizes the need to provide the administration with a summary system of student discipline which can swiftly and fairly respond to immediate disorder. Summary suspension rules are not to be construed to supplant provisions of the student conduct code or usual disciplinary procedures, but rather to supplement the student conduct code by providing an emergency method of suspension during the pendency of investigation and prosecution of student violations that will subsequently be heard on their merits consistent with student conduct code procedures.)) **(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 business days of the oral notice.

**(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:**

**(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;**

**(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and**

**(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.**

**(5)(a) 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 132C-120-300 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.

The college reserves the right to take whatever protective measures it deems necessary in response to an allegation of sexual misconduct in order to protect the rights and personal safety of our campus community members. Such measures include, but are not limited to, reasonable changes to academic/housing arrangements, no-contact orders, counseling, interim suspension from campus pending a proceeding, and reporting the matter to local police. The college will consider the concerns and rights of both the recipient of and the person accused of the sexual misconduct. Not all forms of sexual misconduct will be deemed to be equally serious offenses, and the college reserves the right to impose different sanctions, from warning to dismissal, depending on the severity of the offense.

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 132C-120-010 through 132C-120-200. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct procedures shall prevail.

#### NEW SECTION

**WAC 132C-120-305 Supplemental definitions.** The following supplemental definitions shall apply for purposes of student conduct code proceedings involving allegations of sexual misconduct by a student:

(1) "Complainant" is an alleged victim of sexual misconduct, as defined in subsection (2) of this section.

(2) "Sexual misconduct" is prohibited sexual or gender-based conduct by a student including, but not limited to:

(a) Sexual activity for which clear and voluntary consent has not been given in advance;

(b) Sexual activity with someone who is incapable of giving valid consent because, for example, she or he is underage, sleeping or otherwise incapacitated due to alcohol or drugs;

(c) Sexual harassment;

(d) Sexual violence, which includes, but is not limited to, sexual assault, domestic violence, intimate violence, and sexual or gender-based stalking;

(e) Nonphysical conduct such as sexual- or gender-based digital media stalking, sexual- or gender-based online harassment, sexual- or gender-based cyberbullying, nonconsensual recording of a sexual activity, and nonconsensual distribution of a recording of a sexual activity.

#### NEW SECTION

**WAC 132C-120-310 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 vice-president for the student services area 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.

(3) In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(4) 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.

(5) 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.

(6) The student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights. If protective sanctions and/or condi-

tions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

#### NEW SECTION

##### **WAC 132C-120-315 Supplemental appeal rights. (1)**

The following actions by the student conduct officer may be appealed by the complainant:

(a) The dismissal of a sexual misconduct complaint; or  
 (b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary warning.

(2) A complainant may appeal a disciplinary decision by filing a notice of appeal with the conduct review officer within twenty-one days of service of the notice of the discipline decision provided for in WAC 132C-120-310(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 instructional days or less; and/or  
 (f) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(6) An appeal by a complainant from disciplinary action imposing a suspension in excess of ten instructional days or 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 business days before the hearing, he or she files a written notice of the attorney's identity and participation with the committee chair, and with copies to the respondent and the student conduct officer.

(8) In proceedings before the student conduct committee, complainant and respondent shall not directly question or cross examine one another. All questions shall be directed to

the committee chair, who will act as an intermediary and pose questions on the parties' behalf.

(9) Student conduct hearings involving sexual misconduct allegations shall be closed to the public, unless 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 subject to the same procedures and deadlines applicable to other parties.

(12) The president, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132C-120-071 Academic dishonesty.

WAC 132C-120-105 Procedural standards in disciplinary proceedings.

WAC 132C-120-130 Conduct of disciplinary hearings.

WAC 132C-120-140 Final decision on disciplinary appeals.

WAC 132C-120-150 Readmission after dismissal.

WAC 132C-120-205 Initiation of summary suspension proceedings.

WAC 132C-120-210 Notice of summary suspension.

WAC 132C-120-215 Permission to enter or remain on campus.

WAC 132C-120-220 Procedures for summary suspension hearing.

WAC 132C-120-225 Decision by vice-president of student services.

WAC 132C-120-230 Failure to appear for summary suspension hearing.

WAC 132C-120-235 Summary suspension proceedings not duplicative.

**WSR 14-09-122**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Aging and Long-Term Support Administration)

[Filed April 23, 2014, 10:34 a.m.]

April 16, 2014

Katherine I. Vasquez

Rules Coordinator

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-133.

Title of Rule and Other Identifying Information: The department is repealing WAC 388-106-1500 through 388-106-1535, chronic care management and amending WAC 388-106-0010 Definitions.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on May 27, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than May 28, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on May 27, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by May 13, 2014, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is repealing the chronic care management (CCM) program as the CCM state plan service ended on October 31, 2013. Washington has received approval from the Centers for Medicare and Medicaid Services to offer health home services under its medicaid program. Health home services are comparable to CCM services. The state's new health home service contracted through the health care authority will replace the CCM program.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.520.

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

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Cathy Sweeney, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2607.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business economic impact statement is not required, as no new costs will be imposed on small businesses or nonprofits as a result of this rule amendment.

A cost-benefit analysis is not required under RCW 34.05.328. Rules are exempt per RCW 34.05.328 (5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

AMENDATORY SECTION (Amending WSR 14-04-097, filed 2/4/14, effective 3/7/14)

**WAC 388-106-0010 What definitions apply to this chapter? "Ability to make self understood"** means how you make yourself understood to those closest to you; express or communicate requests, needs, opinions, urgent problems and social conversations, whether in speech, writing, sign language, symbols, or a combination of these including use of a communication board or keyboard:

(a) Understood: You express ideas clearly;

(b) Usually understood: You have difficulty finding the right words or finishing thoughts, resulting in delayed responses, or you require some prompting to make self understood;

(c) Sometimes understood: You have limited ability, but are able to express concrete requests regarding at least basic needs (e.g. food, drink, sleep, toilet);

(d) Rarely/never understood: At best, understanding is limited to caregiver's interpretation of client specific sounds or body language (e.g. indicated presence of pain or need to toilet);

(e) Child under three: Proficiency is not expected of a child under three and a child under three would require assistance with communication with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.

**"Activities of daily living (ADL)"** means the following:

(a) Bathing: How you take a full-body bath/shower, sponge bath, and transfer in/out of tub/shower.

(b) Bed mobility: How you move to and from a lying position, turn side to side, and position your body while in bed, in a recliner, or other type of furniture.

(c) Body care: How you perform with passive range of motion, applications of dressings and ointments or lotions to the body and pedicure to trim toenails and apply lotion to feet. In adult family homes, contracted assisted living, enhanced adult residential care, and enhanced adult residential care-specialized dementia care facilities, dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC. Body care excludes:

(i) Foot care if you are diabetic or have poor circulation; or

(ii) Changing bandages or dressings when sterile procedures are required.

(d) Dressing: How you put on, fasten, and take off all items of clothing, including donning/removing prosthesis.

(e) Eating: How you eat and drink, regardless of skill. Eating includes any method of receiving nutrition, e.g., by mouth, tube or through a vein.

(f) Locomotion in room and immediate living environment: How you move between locations in your room and immediate living environment. If you are in a wheelchair,

locomotion includes how self-sufficient you are once in your wheelchair.

(g) **Locomotion outside of immediate living environment including outdoors:** How you move to and return from more distant areas. If you are living in a contracted assisted living, adult residential care, enhanced adult residential care, enhanced adult residential care-specialized dementia care facility or nursing facility (NF), this includes areas set aside for dining, activities, etc. If you are living in your own home or in an adult family home, locomotion outside immediate living environment including outdoors, includes how you move to and return from a patio or porch, backyard, to the mailbox, to see the next-door neighbor, etc.

(h) **Walk in room, hallway and rest of immediate living environment:** How you walk between locations in your room and immediate living environment.

(i) **Medication management:** Describes the amount of assistance, if any, required to receive medications, over the counter preparations or herbal supplements.

(j) **Toilet use:** How you use the toilet room, commode, bedpan, or urinal, transfer on/off toilet, cleanse, change pad, manage ostomy or catheter, and adjust clothes.

(k) **Transfer:** How you move between surfaces, i.e., to/from bed, chair, wheelchair, standing position. Transfer does not include how you move to/from the bath, toilet, or get in/out of a vehicle.

(l) **Personal hygiene:** How you maintain personal hygiene, including combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands (including nail care), and perineum (menses care). Personal hygiene does not include hygiene in baths and showers.

**"Age appropriate"** proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130 for the specific ages.

**"Aged person"** means a person sixty-five years of age or older.

**"Agency provider"** means a licensed home care agency or a licensed home health agency having a contract to provide long-term care personal care services to you in your own home.

**"Application"** means a written request for medical assistance or long-term care services submitted to the department by the applicant, the applicant's authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The applicant must submit the request on a form prescribed by the department.

**"Assessment details"** means a summary of information that the department entered into the CARE assessment describing your needs.

**"Assessment or reassessment"** means an inventory and evaluation of abilities and needs based on an in-person interview in your own home or your place of residence, using CARE.

**"Assistance available"** means the amount of assistance available for a task if status is coded:

(a) Partially met due to availability of other support; or

(b) Shared benefit. The department determines the amount of the assistance available using one of four categories:

(i) Less than one-fourth of the time;

(ii) One-fourth to one-half of the time;

(iii) Over one-half of the time to three-fourths of the time; or

(iv) Over three-fourths but not all of the time.

**"Assistance with body care"** means you need assistance with:

(a) Application of ointment or lotions;

(b) Trimming of toenails;

(c) Dry bandage changes; or

(d) Passive range of motion treatment.

**"Assistance with medication management"** means you need assistance managing your medications. You are scored as:

(a) Independent if you remember to take medications as prescribed and manage your medications without assistance.

(b) Assistance required if you need assistance from a nonlicensed provider to facilitate your self-administration of a prescribed, over the counter, or herbal medication, as defined in chapter 246-888 WAC. Assistance required includes reminding or coaching you, handing you the medication container, opening the container, using an enabler to assist you in getting the medication into your mouth, alteration of a medication for self-administration, and placing the medication in your hand. This does not include assistance with intravenous or injectable medications. You must be aware that you are taking medications.

(c) Self-directed medication assistance/administration if you are an adult with a functional disability who is capable of and who chooses to self-direct your medication assistance/administration.

(d) Must be administered if you must have medications placed in your mouth or applied or instilled to your skin or mucus membrane. Administration must either be performed by a licensed professional or delegated by a registered nurse to a qualified caregiver (per chapter 246-840 WAC). Administration may also be performed by a family member or unpaid caregiver in in-home settings or in residential settings if facility licensing regulations allow. Intravenous or injectable medications may never be delegated except for insulin injections.

**"Authorization"** means an official approval of a departmental action, for example, a determination of client eligibility for service or payment for a client's long-term care services.

**"Blind person"** means a person determined blind as described under WAC 182-500-0015 by the division of disability determination services of the medical assistance administration.

**"Categorically needy"** means the status of a person who is eligible for medical care under Title XIX of the Social Security Act. See WAC 182-512-0010 and chapter 182-513 WAC.

**"Child"** means an individual less than eighteen years of age.

~~**"Chronic care management"** means programs that provide care management and coordination activities for~~

medical assistance clients receiving long-term care services and supports determined to be at risk for high medical costs.)

**"Health action plan"** means an individual plan which identifies health-related problems, interventions and goals.

**"Client"** means an applicant for service or a person currently receiving services from the department.

**"Current"** means a behavior occurred within seven days of the CARE assessment date, including the day of the assessment. Behaviors that the department designates as current must include information about:

(a) Whether the behavior is easily altered or not easily altered; and

(b) The frequency of the behavior.

**"Decision making"** means your ability and actual performance in making everyday decisions about tasks or activities of daily living. The department determines whether you are:

(a) Independent: Decisions about your daily routine are consistent and organized; reflecting your lifestyle, choices, culture, and values.

(b) Modified independence/difficulty in new situations: You have an organized daily routine, are able to make decisions in familiar situations, but experience some difficulty in decision making when faced with new tasks or situations.

(c) Moderately impaired/poor decisions; unaware of consequences: Your decisions are poor and you require reminders, cues and supervision in planning, organizing and correcting daily routines. You attempt to make decisions, although poorly.

(d) Severely impaired/no or few decisions: Decision making is severely impaired; you never/rarely make decisions.

(e) Child under twelve: Proficiency in decision making is not expected of a child under twelve and a child under twelve would require assistance with decision making with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.

**"Department"** means the state department of social and health services, aging and disability administration or its designee.

**"Designee"** means area agency on aging.

**"Developmental milestones table"** is a chart showing the age range for which proficiency in the identified task is not expected of a child and assistance with the task would be required whether or not the child has a functional disability.

**"Difficulty"** means how difficult it is or would be for you to perform an instrumental activity of daily living (IADL). This is assessed as:

(a) No difficulty in performing the activity;

(b) Some difficulty in performing the activity (e.g., you need some help, are very slow, or fatigue easily); or

(c) Great difficulty in performing the activity (e.g., little or no involvement in the activity is possible).

**"Disability"** is described under WAC 182-500-0025.

**"Disabling condition"** means you have a medical condition which prevents you from self performance of personal care tasks without assistance.

**"Estate recovery"** means the department's process of recouping the cost of medicaid and long-term care benefit

payments from the estate of the deceased client. See chapter 182-527 WAC.

**"Home health agency"** means a licensed:

(a) Agency or organization certified under medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence and reimbursed through the use of the client's medical identification card; or

(b) Home health agency, certified or not certified under medicare, contracted and authorized to provide:

(i) Private duty nursing; or

(ii) Skilled nursing services under an approved medicaid waiver program.

**"Income"** means income as defined under WAC 182-509-0001.

**"Individual provider"** means a person employed by you to provide personal care services in your own home. See WAC 388-71-0500 through 388-71-05909.

**"Informal support"** means a person or resource that is available to provide assistance without home and community program funding. The person or resource providing the informal support must be age 18 or older. Examples of informal supports include but are not limited to: family members, friends, housemates/roommates, neighbors, school, child-care, after school activities, adult day health, church or community programs.

**"Institution"** means medical facilities, nursing facilities, and institutions for the intellectually disabled. It does not include correctional institutions. See medical institutions in WAC 182-500-0050.

**"Instrumental activities of daily living (IADL)"** means routine activities performed around the home or in the community and includes the following:

(a) Meal preparation: How meals are prepared (e.g., planning meals, cooking, assembling ingredients, setting out food, utensils, and cleaning up after meals). NOTE: The department will not authorize this IADL to plan meals or clean up after meals. You must need assistance with actual meal preparation.

(b) Ordinary housework: How ordinary work around the house is performed (e.g., doing dishes, dusting, making bed, tidying up, laundry).

(c) Essential shopping: How shopping is completed to meet your health and nutritional needs (e.g., selecting items). Shopping is limited to brief, occasional trips in the local area to shop for food, medical necessities and household items required specifically for your health, maintenance or well-being. This includes shopping with or for you.

(d) Wood supply: How wood is supplied (e.g., splitting, stacking, or carrying wood) when you use wood as the sole source of fuel for heating and/or cooking.

(e) Travel to medical services: How you travel by vehicle to a physician's office or clinic in the local area to obtain medical diagnosis or treatment-includes driving vehicle yourself, traveling as a passenger in a car, bus, or taxi.

(f) Managing finances: How bills are paid, checkbook is balanced, household expenses are managed. The department cannot pay for any assistance with managing finances.

(g) Telephone use: How telephone calls are made or received (with assistive devices such as large numbers on telephone, amplification as needed).

**"Long-term care services"** means the services administered directly or through contract by the aging and disability services and identified in WAC 388-106-0015.

**"Medicaid"** is defined under WAC 182-500-0070.

**"Medically necessary"** is defined under WAC 182-500-0070.

**"Medically needy (MN)"** means the status of a person who is eligible for a federally matched medical program under Title XIX of the Social Security Act, who, but for income above the categorically needy level, would be eligible as categorically needy. Effective January 1, 1996, an AFDC-related adult is not eligible for MN.

**"New Freedom consumer directed services (NFCDS)"** means a mix of services and supports to meet needs identified in your assessment and identified in a New Freedom spending plan, within the limits of the individual budget, that provide you with flexibility to plan, select, and direct the purchase of goods and services to meet identified needs. Participants have a meaningful leadership role in:

(a) The design, delivery and evaluation of services and supports;

(b) Exercising control of decisions and resources, making their own decisions about health and well being;

(c) Determining how to meet their own needs;

(d) Determining how and by whom these needs should be met; and

(e) Monitoring the quality of services received.

**"New Freedom consumer directed services (NFCDS) participant"** means a participant who is an applicant for or currently receiving services under the NFCDS waiver.

**"New Freedom spending plan (NFSP)"** means the plan developed by you, as a New Freedom participant, within the limits of an individual budget, that details your choices to purchase specific NFCDS and provides required federal medicaid documentation.

**"Own home"** means your present or intended place of residence:

(a) In a building that you rent and the rental is not contingent upon the purchase of personal care services as defined in this section;

(b) In a building that you own;

(c) In a relative's established residence; or

(d) In the home of another where rent is not charged and residence is not contingent upon the purchase of personal care services as defined in this section.

**"Past"** means the behavior occurred from eight days to five years of the assessment date. For behaviors indicated as past, the department determines whether the behavior is addressed with current interventions or whether no interventions are in place.

**"Personal aide"** is defined in RCW 74.39.007.

**"Personal care services"** means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) due to your functional limitations. Assistance is evaluated with the use of assistive devices.

**"Physician"** is defined under WAC 182-500-0085.

**"Plan of care"** means assessment details and service summary generated by CARE.

**"Provider or provider of service"** means an institution, agency, or person:

(a) Having a signed department contract to provide long-term care client services; and

(b) Qualified and eligible to receive department payment.

**"Reasonable cost"** means a cost for a service or item that is consistent with the market standards for comparable services or items.

**"Representative"** means a person who you have chosen, or has been appointed by a court, whose primary duty is to act on your behalf to direct your service budget to meet your identified health, safety, and welfare needs.

**"Residential facility"** means a licensed adult family home under department contract or licensed assisted living facility under department contract to provide assisted living, adult residential care or enhanced adult residential care.

**"Self performance for ADLs"** means what you actually did in the last seven days before the assessment, not what you might be capable of doing. Coding is based on the level of performance that occurred three or more times in the seven-day period and does not include support provided as defined in WAC 388-106-0010. Your self performance level is scored as:

(a) Independent if you received no help or oversight, or if you needed help or oversight only once or twice;

(b) Supervision if you received oversight (monitoring or standby), encouragement, or cueing three or more times;

(c) Limited assistance if you were highly involved in the activity and given physical help in guided maneuvering of limbs or other nonweight bearing assistance on three or more occasions. For bathing, limited assistance means physical help is limited to transfer only;

(d) Extensive assistance if you performed part of the activity, but on three or more occasions, you needed weight bearing support or you received full performance of the activity during part, but not all, of the activity. For bathing, extensive assistance means you needed physical help with part of the activity (other than transfer);

(e) Total dependence if you received full caregiver performance of the activity and all subtasks during the entire seven-day period from others. Total dependence means complete nonparticipation by you in all aspects of the ADL; or

(f) Activity did not occur if you or others did not perform an ADL over the last seven days before your assessment. The activity may not have occurred because:

(i) You were not able (e.g., walking, if paralyzed);

(ii) No provider was available to assist; or

(iii) You declined assistance with the task.

**"Self performance for IADLs"** means what you actually did in the last thirty days before the assessment, not what you might be capable of doing. Coding is based on the level of performance that occurred three or more times in the thirty-day period. Your self performance is scored as:

(a) Independent if you received no help, set-up help, or supervision;

(b) Set-up help/arrangements only if on some occasions you did your own set-up/arrangement and at other times you received help from another person;

(c) Limited assistance if on some occasions you did not need any assistance but at other times in the last thirty days you required some assistance;

(d) Extensive assistance if you were involved in performing the activity, but required cueing/supervision or partial assistance at all times;

(e) Total dependence if you needed the activity fully performed by others; or

(f) Activity did not occur if you or others did not perform the activity in the last thirty days before the assessment.

**"Service summary"** is CARE information which includes: Contacts (e.g. emergency contact), services the client is eligible for, number of hours or residential rates, personal care needs, the list of formal and informal providers and what tasks they will provide, a provider schedule, referral needs/information, and dates and agreement to the services.

**"Shared benefit"** means:

(a) A client and their paid caregiver both share in the benefit of an IADL task being performed; or

(b) Two or more clients in a multi-client household benefit from the same IADL task(s) being performed.

**"SSI-related"** is defined under WAC 182-512-0050.

**"Status"** means the level of assistance available for a task from informal supports; the shared benefit that a care provider may derive from doing a task for a client or that two or more clients derive from the same IADL being performed and the determination of whether a child's need for assistance is due primarily to his or her age. The department determines the status of each ADL or IADL and codes the status as follows:

(a) Met, which means the ADL or IADL will be fully provided by an informal support;

(b) Unmet, which means an informal support will not be available to provide assistance with the identified ADL or IADL;

(c) Partially met, which means an informal support will be available to provide some assistance, but not all, with the identified ADL or IADL;

(d) Shared benefit, which means:

(i) A client and their paid caregiver both share in the benefit of an IADL task being performed; or

(ii) Two or more clients in a multi-client household benefit from the same IADL task(s) being performed.

(e) Age appropriate or child under (age), means proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. The department presumes children have a responsible adult(s) in their life to provide assistance with personal care tasks. Refer to the developmental milestones table in WAC 388-106-0130; or

(f) Client declines, which means you do not want assistance with the task.

**"Supplemental security income (SSI)"** means the federal program as described under WAC 182-500-0100.

**"Support provided"** means the highest level of support provided (to you) by others in the last seven days before the assessment, even if that level of support occurred only once.

(a) No set-up or physical help provided by others;

(b) Set-up help only provided, which is the type of help characterized by providing you with articles, devices, or preparation necessary for greater self performance of the activity. (For example, set-up help includes but is not limited to giving or holding out an item or cutting food);

(c) One-person physical assist provided;

(d) Two- or more person physical assist provided; or

(e) Activity did not occur during entire seven-day period.

**"You/your"** means the client.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-106-1500 What is the department's chronic care management program?

WAC 388-106-1505 What services may I receive under the chronic care management program?

WAC 388-106-1510 Who provides chronic care management services to medical assistance clients receiving long-term care services and supports?

WAC 388-106-1515 Am I eligible to enroll in the chronic care management program?

WAC 388-106-1520 How do I enroll in the chronic care management program?

WAC 388-106-1525 How long can I participate in the chronic care management program?

WAC 388-106-1530 Is there a cost to me for participating in the chronic care management program?

WAC 388-106-1535 Do I have a right to a fair hearing while receiving chronic care management services?

#### **WSR 14-09-124**

#### **PROPOSED RULES**

#### **LIQUOR CONTROL BOARD**

[Filed April 23, 2014, 11:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-05-036.

Title of Rule and Other Identifying Information: WAC 314-02-109 What are the quarterly reporting and payment requirements for a spirits retailer license?, 314-19-020 What if a licensee doesn't report or pay the taxes due, or reports or pays late? (for wine and beer), 314-23-022 What if a distributor doesn't report or pay the taxes due, or reports or pays late?, 314-23-042 What if a certificate of approval doesn't report or pay the taxes due, or reports or pays late?, and 314-28-080 What if a distillery or craft distillery licensee fails to report or pay, or reports or pays late?

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on May 28, 2014, at 10:00 a.m.

Date of Intended Adoption: June 4, 2014.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9689, by May 28, 2014.

Assistance for Persons with Disabilities: Contact Karen McCall by May 28, 2014, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The United States Post Office doesn't use postmarks on mail that has a bar code. The current rules need to address how the board will assess penalties on late payments when there is no postmark on the envelope.

Reasons Supporting Proposal: Clarification is needed for licensees.

Statutory Authority for Adoption: RCW 66.08.030.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not required.

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

April 23, 2014  
Sharon Foster  
Chairman

AMENDATORY SECTION (Amending WSR 13-07-085, filed 3/20/13, effective 4/20/13)

**WAC 314-02-109 What are the quarterly reporting and payment requirements for a spirits retailer license?**

(1) A **spirits retailer** must submit quarterly reports and payments to the board.

The required reports must be:

- (a) On a form furnished by the board;
- (b) Filed every quarter, including quarters with no activity or payment due;
- (c) Submitted, with payment due, to the board on or before the twenty-fifth day following the tax quarter (e.g., Quarter 1 (Jan., Feb., Mar.) report is due April 25th). When the twenty-fifth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day; and
- (d) Filed separately for each liquor license held.

(2) **What if a spirits retailer licensee fails to report or pay, or reports or pays late?** Failure of a spirits retailer licensee to submit its quarterly reports and payment to the board as required in subsection (1) of this section will be suf-

ficient grounds for the board to suspend or revoke the liquor license.

A penalty of two percent per month will be assessed on any payments postmarked after the twenty-fifth day quarterly report is due. When the twenty-fifth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day.

Absent a postmark, the date received at the Washington state liquor control board, or designee, will be used to determine if penalties are to be assessed.

AMENDATORY SECTION (Amending WSR 12-24-091, filed 12/5/12, effective 1/5/13)

**WAC 314-19-020 What if a licensee doesn't report or pay the taxes due, or reports or pays late?** The board may take the following actions against a licensee or permit holder in order to collect any of the reports or taxes due that are outlined in this title.

<p><b>(1) Suspension or revocation of license</b></p>	<p>(a) Failure to make a report and/or pay the taxes in the manner and dates outlined in this chapter will be sufficient ground for the board to suspend or revoke a liquor license, wine shipper permit, or certificate of approval (per RCW 66.08.150, 66.24.010, 66.24.120, 66.24.206, 66.20.370, 66.20.380, and 66.24.270).</p> <p>(b) The suspension will remain in effect until all missing reports and/or taxes have been filed with the board (see WAC 314-19-010(1) for the definition of "missing").</p>
<p><b>(2) Penalties</b></p>	<p>A penalty of two percent per month will be assessed on any tax payments postmarked after the twentieth day of the month following the reporting period of the transactions (per the reporting requirements outlined in WAC 314-19-015, RCW 66.24.290, and 66.24.210). When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day.</p> <p><u>Absent a postmark, the date received at the Washington state liquor control board, or designee, will be used to determine if penalties are to be assessed.</u></p>

<p><b>(3) Surety bond requirements</b></p>	<p><b>(a) What is a surety bond?</b> A "surety bond" is a type of insurance policy that guarantees beer and/or wine tax payment to the state. The surety bond must be:</p> <ul style="list-style-type: none"> <li>(i) Executed by a surety company authorized to do business in the state of Washington;</li> <li>(ii) On a form and in an amount acceptable to the board;</li> <li>(iii) Payable to the Washington state liquor control board; and</li> <li>(iv) Conditioned that the licensee will pay the taxes and penalties levied by RCW 66.24.210 and/or 66.24.290.</li> <li>(v) As an option to obtaining a surety bond, a licensee may create an assignment of savings account for the board in the same amount as required for a surety bond. Requests for this option must be submitted in writing to the board's financial division.</li> </ul> <p><b>(b) When will the board require a surety bond?</b> The board may require a surety bond from a Washington beer and/or wine distributor, domestic microbrewery, domestic brewery, public house, domestic winery, wine shipper, or a beer or wine certificate of approval holder that has a direct shipment privilege. If any of the following occur, the board may require the licensee or permit holder to obtain a surety bond or assignment of savings account, within twenty-one days after an administrative violation notice is issued:</p> <ul style="list-style-type: none"> <li>(i) A report or tax payment is missing, as defined in WAC 314-19-010, for two or more consecutive months; or</li> <li>(ii) A report or tax payment is missing, as defined in WAC 314-19-010, two or more times within a two year period.</li> </ul>	<p><b>(c) What will happen if the licensee does not acquire the surety bond or savings account?</b> Failure to meet the bonding or savings account requirements outlined in subsections (a) and (b) of this rule may result in immediate suspension of license privileges until all missing reports are filed and late taxes have been paid and the surety bond is acquired or the savings account is established.</p> <p><b>(d) In what amount and for how long will the board require a surety bond?</b> The amount of a surety bond or savings account required by this chapter must be either \$3,000, or the total of the highest four months' worth of tax liability for the previous twelve month period, whichever is greater.</p> <ul style="list-style-type: none"> <li>(i) The licensee or permit holder must maintain the bond for at least two years. After the two year period the licensee or permit holder may request an exemption as outlined in subsection (f) of this rule.</li> <li>(ii) Surety bond and savings account amounts may be reviewed annually and compared to the last twelve months' tax liability of the licensee. If the current bond or savings account amount does not meet the requirements outlined in this section, the licensee or permit holder will be required to increase the bond amount or amount on deposit within twenty-one days.</li> </ul> <p><b>(e) What action will the board take when a licensee or permit holder holds a surety bond and does not pay taxes due or pays late?</b> If a licensee or permit holder holds a surety bond or savings account, the board will immediately start the process to collect overdue taxes from the surety company or assigned account. If the exact amount of taxes due is not known due to missing reports, the board will estimate the taxes due based on previous production, receipts, and/or sales.</p>
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**(f) Can a licensee or permit holder request an exemption to the surety bond or savings account requirement?** A licensee or permit holder may make a written request to the board's financial division for an exemption from the surety bond or assignment of savings account requirements. The board will grant an exemption once the following criteria are met:

(i) The licensee or permit holder has filed reports and paid applicable taxes to the board for at least two years immediately prior to the exemption request; and

(ii) There have been no late or missing reports or tax payments during the previous two years.

(iii) In order to remain exempt from the surety bond or assignment of savings account requirements, the licensee must continue to meet the tax reporting and payment requirements outlined in this title (outlined in WAC 314-19-015, RCW 66.24.206, 66.24.210, 66.24.270, 66.24.290, and 66.24.580).

**AMENDATORY SECTION** (Amending WSR 13-07-085, filed 3/20/13, effective 4/20/13)

**WAC 314-23-022 What if a distributor licensee fails to report or pay, or reports or pays late?** (1) Failure of a spirits distributor licensee to submit its monthly reports and payment to the board as required in WAC 314-23-021(1) will be sufficient grounds for the board to suspend or revoke the liquor license.

(2) A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day.

Absent a postmark, the date received at the Washington state liquor control board, or designee, will be used to determine if penalties are to be assessed.

**AMENDATORY SECTION** (Amending WSR 12-12-065, filed 6/5/12, effective 7/6/12)

**WAC 314-23-042 What if a certificate of approval licensee fails to report or pay, or reports or pays late?** (1) If a spirits certificate of approval licensee does not submit its monthly reports and payment to the board as required by this subsection (1), the licensee is subject to penalties.

(2) A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day.

Absent a postmark, the date received at the Washington state liquor control board, or designee, will be used to determine if penalties are to be assessed.

**AMENDATORY SECTION** (Amending WSR 13-07-085, filed 3/20/13, effective 4/20/13)

**WAC 314-28-080 What if a distillery or craft distillery licensee fails to report or pay, or reports or pays late?** Failure of a distillery or craft distiller to submit its monthly reports and payment to the board as required in WAC 314-28-070(1) will be sufficient grounds for the board to suspend or revoke the liquor license.

Penalties. A penalty of two percent per month will be assessed on any payments postmarked after the twentieth day of the month following the month of sale. When the twentieth day of the month falls on a Saturday, Sunday, or a legal holiday, the filing must be postmarked by the U.S. Postal Service no later than the next postal business day.

Absent a postmark, the date received at the Washington state liquor control board, or designee, will be used to determine if penalties are to be assessed.

## WSR 14-09-125

### PROPOSED RULES

### DEPARTMENT OF LICENSING

[Filed April 23, 2014, 11:52 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-01-083.

Title of Rule and Other Identifying Information: WAC 308-88-020 Application and registration of rental vehicle businesses.

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA (check in at counter on first floor), on May 27, 2014, at 4:00 p.m.

Date of Intended Adoption: May 28, 2014.

Submit Written Comments to: Cathie Jelvik, Administrative Assistant, P.O. Box 9909, Olympia, WA 98507-8500, e-mail [cjelvik@dol.wa.gov](mailto:cjelvik@dol.wa.gov), fax (360) 570-7892, by May 26, 2014.

Assistance for Persons with Disabilities: Contact Cathie Jelvik by May 26, 2014, TTY (360) 902-3812 or (360) 902-3811.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending WAC 308-88-020 to update reference to the agency responsible for handling the business licensing service.

Reasons Supporting Proposal: The master license service program (now known as business licensing service program) was transferred from the department of licensing to the

department of revenue by SHB 2017, enacted by the legislature in 2011. Since the business licensing service program has continued to assist the department of licensing in the application and registration of rental vehicle businesses, the references to the agency responsible for handling the business licensing service must be updated in WAC 308-88-020.

Statutory Authority for Adoption: RCW 46.01.110 and 46.87.023.

Statute Being Implemented: RCW 46.87.023.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Cathie Jelvik, Olympia, (360) 902-3812; Implementation and Enforcement: Toni Wilson, Olympia, (360) 902-3811.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.025(3) and 34.05.310 (4)(d).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

April 23, 2014  
Damon Monroe  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-02-077, filed 1/2/07, effective 2/2/07)

**WAC 308-88-020 Application and registration of rental vehicle businesses.** (1) **What is required to become a rental vehicle business?**

(a) Applicants must apply for a rental vehicle business license by submitting a completed (~~master~~) business license application to the department of (~~licensing's master license~~) revenue's business licensing service. The business licensing service will process the application on behalf of the department of licensing.

(b) A separate (~~master~~) business license application must be filed for each place of business operated as a rental vehicle business. For the purposes of this section, "place of business" means a physical location at which arrangements to rent a rental vehicle may be made.

(c) Businesses operating in the form of a corporation, limited liability company, limited liability partnership, or similar form of legal entity must register their legal entity through the office of the secretary of state before applying for a rental vehicle business license.

(2) **What will I receive as proof that I qualified as a vehicle rental business?** A rental vehicle business registration number will be issued to your business and displayed on the (~~master~~) business license.

(3) **Can I transfer my business registration number to another company?** No. The rental vehicle business registration number issued through the (~~master license~~) business licensing service is not assignable or transferable, and is valid only for the rental vehicle business to which the registration number (R-number) was issued.