

**WSR 11-19-080**  
**PROPOSED RULES**  
**NORTHWEST CLEAN**  
**AIR AGENCY**

[Filed September 19, 2011, 1:52 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: Regulation of the Northwest Clean Air Agency (NWCAA).

Hearing Location(s): Northwest Clean Air Agency, 1600 South Second Street, Mount Vernon, WA 98273, on November 15, 2011, at 9:00 a.m.

Date of Intended Adoption: November 17, 2011.

Submit Written Comments to: Mark Buford, Northwest Clean Air Agency, 1600 South Second Street, Mount Vernon, WA 98273, e-mail mark@nwcleanair.org, fax (360) 428-1620, by November 15, 2011, at 11:00 a.m.

Assistance for Persons with Disabilities: Contact Margarita Smith by November 8, 2011, (360) 428-1617 ext. 215.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To readopt specific rule sections to ensure that they refer to most recent versions of chapters 173-400 and 173-401 WAC. Also to adopt the General Order provisions under WAC 173-400-560 by reference to allow the NWCAA to issue General Orders.

**Amendatory Sections**

**SECTION 104 - ADOPTION OF STATE AND FEDERAL LAWS AND RULES.**

- Delete WAC 173-400-560 from the list of sections excluded from adoption (i.e., adopt WAC 173-400-560 by reference).
- Update effective dates in NWCAA 104.1 and 104.2.
- Readopt to ensure that the references to chapters 173-400 and 173-401 WAC and WAC 173-400-116 are to the most recent versions.

**SECTION 200 - DEFINITIONS and SECTION 301 - TEMPORARY SOURCES.**

- No changes except to readopt to ensure that the reference to WAC 173-400-720 is to the most recent version.

**SECTION 300 - NEW SOURCE REVIEW.**

- No changes except to readopt to ensure that the references to chapter 173-401 WAC and WAC 173-400-720 are to the most recent versions.

**SECTION 305 - PUBLIC INVOLVEMENT, SECTION 321 - EXEMPTIONS FROM REGISTRATION, and SECTION 322 - AIR OPERATING PERMIT PROGRAM (AOP).**

- No changes except to readopt to ensure that the reference to chapter 173-401 WAC is to the most recent version.

Reasons Supporting Proposal: The NWCAA regulation references many rules written by other agencies (e.g., EPA, Washington department of ecology). When external rules are referenced, the version that is incorporated is that as of the date of adoption of the NWCAA regulation. If an external rule is modified, by ecology, for instance, the version of the

state rule referenced in the NWCAA regulation remains that as of the date of NWCAA adoption. This causes confusion because both the previous version as referenced in the NWCAA regulation and the new version both apply. As such, the NWCAA is updating the references in various sections of the regulation to the most recent versions of the external rules. Specifically, sections of chapters 173-400 and 173-401 WAC were updated by ecology as part of the rule adoption on August 10, 2011, to bring the rule into compliance with EPA regulations which defer for a period of three years the consideration of CO<sub>2</sub> emissions from bioenergy and other biogenic sources when determining whether a stationary source meets the PSD and Title V applicability thresholds.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: Chapter 70.94 RCW.

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

Name of Proponent: NWCAA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Mark Asmundson, 1600 South Second Street, Mount Vernon, WA, (360) 428-1617.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable under RCW 70.94.141.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable under RCW 70.94.141.

September 19, 2011

Mark Buford

Assistant Director

**AMENDATORY SECTION**

**Section 104 - ADOPTION OF STATE AND FEDERAL LAWS AND RULES**

104.1 All provisions of State Law that are in effect as of October 19 (~~May 18~~), 2011, which are pertinent to the operation of the NWCAA, are hereby adopted by reference and made part of the Regulation of the NWCAA. Specifically, there is adopted by reference the portions pertinent to the operation of the NWCAA of the Washington State Clean Air Act (chapter 70.94 RCW), the Administrative Procedures Act (chapter 34.05 RCW) and chapters 43.21A and 43.21B RCW and the following state rules: chapter 173-400 WAC, (except --035, -036, -070(8), -075, -099, -100, -101, -102, -103, -104, -105(8), -110, -114, -115, -116, -171(~~-560~~), -930), chapter 173-401 WAC, chapter 173-407 WAC, chapter 173-420 WAC, chapter 173-425 WAC, chapter 173-430 WAC, chapter 173-433 WAC, chapter 173-434 WAC, chapter 173-435 WAC, chapter 173-441 WAC, chapter 173-450 WAC, chapter 173-460 WAC, chapter 173-470 WAC, chapter 173-474 WAC, chapter 173-475 WAC, chapter 173-481 WAC, chapter 173-490 WAC, chapter 173-491 WAC, chapter 173-492 WAC, and chapter 173-495 WAC.

104.2 All provisions of the following federal rules that are in effect as of October 19 (~~May 18~~), 2011 are hereby adopted by reference and made part of the Regulation of the NWCAA: 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans) Appendix M; 40 CFR Part 60 (Standards of Performance For New Sta-

tionary Sources) subparts A, D, Da, Db, Dc, E, Ea, Eb, Ec, F, G, H, I, J, Ja, K, Ka, Kb, L, M, N, Na, O, P, Q, R, T, U, V, W, X, Y, Z, AA, AAa, CC, DD, EE, GG, HH, KK, LL, MM, NN, PP, QQ, RR, SS, TT, UU, VV, VVa, WW, XX, AAA, BBB, DDD, FFF, GGG, GGGa, HHH, III, JJJ, KKK, LLL, NNN, OOO, PPP, QQQ, RRR, SSS, TTT, UUU, VVV, WWW, AAAA, CCCC, EEEE, IIII, JJJJ, KKKK and Appendix A - I; and 40 CFR Part 61 (National Emission Standards For Hazardous Air Pollutants) Subparts A, C, D, E, F, J, L, M, N, O, P, V, Y, BB, FF and 40 CFR Part 63 (National Emission Standards for Hazardous Air Pollutants for Source Categories) Subparts A, B, C, D, F, G, H, I, L, M, N, O, Q, R, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, TTT, UUU, VVV, XXX, AAAA, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, JJJJ, KKKK, MMMM, NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY, ZZZZ, AAAAA, BBBB, CCCC, DDDD, EEEE, FFFF, GGGG, HHHH, IIII, LLLL, MMMM, NNNN, PPPP, QQQQ, RRRR, SSSS, TTTT, YYYY, CCCCC, EEEEE, FFFFF, GGGGG, MMMMM, NNNNN, SSSSS, VVVVV; and 40 CFR 72, 73, 74, 75, 76, 77 and 78 (Acid Rain Program).

AMENDED: April 14, 1993, September 8, 1993, December 8, 1993, October 13, 1994, May 11, 1995, February 8, 1996, May 9, 1996, March 13, 1997, May 14, 1998, November 12, 1998, November 12, 1999, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, June 10, 2010, June 9, 2011, November 17, 2011

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the Northwest Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

## AMENDATORY SECTION

### SECTION 200 - DEFINITIONS

ACTUAL EMISSIONS - The actual rate of emissions of a pollutant from an emission unit, as determined in accordance with a) through c) of this definition.

a) In general, the actual emissions as of a particular date shall equal the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal stationary source operation. The NWCAA shall allow the use of a different time period upon a determination by the NWCAA that it is more representative of normal stationary source operation. Actual emissions shall be calculated using the emissions unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

b) The NWCAA may presume that stationary source-specific allowable emissions for the unit are equivalent to the actual emissions of the emissions unit.

c) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the emissions unit on that date.

ADVERSE IMPACT ON VISIBILITY - Adverse impact on visibility is defined in WAC 173-400-117.

AIR CONTAMINANT - Dust, fumes, mist, smoke, other particulate matter, vapor gas, odorous substance, or any combination thereof. "Air pollutant" means the same as "air contaminant."

AIR POLLUTION - The presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant, or animal life, or property, or which unreasonably interfere with enjoyment of life and property. For the purposes of this regulation, air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW, the Washington Pesticide Application Act, which regulates the application and control of the use of various pesticides.

AIR QUALITY OBJECTIVE - The concentration and exposure time of one or more air contaminants in the ambient air below which, according to available knowledge, undesirable effects will not occur.

AIR QUALITY STANDARD - An established concentration, exposure time and frequency of occurrence of one or more air contaminants in the ambient air which shall not be exceeded.

ALLOWABLE EMISSIONS - The emission rate of a stationary source calculated using the maximum rated capacity of the stationary source (unless the stationary source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

- a) The applicable standards as in 40 CFR Part 60, 61 or 63;
- b) Any applicable SIP emissions limitation including those with a future compliance date; or
- c) The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.

AMBIENT AIR - The surrounding outside air.

AMBIENT AIR QUALITY STANDARD - An established concentration, exposure time and frequency of occurrence of one or more air contaminant(s) in the ambient air which shall not be exceeded.

AMBIENT AIR MONITORING STATION - A station so designated by the Control Officer for the purpose of measuring air contaminant concentrations in the ambient air. The station location and sampling probe locations shall be designated by the Control Officer utilizing as a guide 40 CFR Part 58, Appendix "D" Network Design and Appendix "E" Probe Siting Criteria.

ATTAINMENT AREA - A geographic area designated by EPA at 40 CFR Part 81 as having attained the National Ambient Air Quality Standard (NAAQS) for a given criteria pollutant.

BEGIN ACTUAL CONSTRUCTION - In general, initiation of physical on-site construction activities on an emission unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipe work and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

BEST AVAILABLE CONTROL TECHNOLOGY (BACT) - An emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation under chapter 70.94 RCW emitted from or which results from any new or modified stationary source, which the NWCAA, on a case-by-case basis, taking into account energy, environmental, and economic impacts, and other costs, determines is achievable for such stationary source or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of the "Best Available Control Technology" result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, and 63. Emissions from any stationary source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under the definition of BACT in the Federal Clean Air Act as it existed prior to enactment of the Clean Air Act Amendments of 1990.

BEST AVAILABLE RETROFIT TECHNOLOGY (BART) - An emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use or in existence at the stationary source, the remaining useful life of the stationary source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

BOARD - Board of Directors of the NWCAA.

BUBBLE - A set of emission limits which allows an increase in emissions from a given emissions unit in exchange for a decrease in emissions from another emissions unit, pursuant to RCW 70.94.155 and WAC 173-400-120.

BUSINESS ESTABLISHMENT - A facility and/or place where commercial and/or professional dealings are conducted.

CATALYTIC CRACKING UNIT - A petroleum refinery cracking unit of the fluid or compact moving bed type consisting of a reactor, regenerator and fractionating tower and, where employed, a carbon monoxide boiler.

CLASS I AREA - Any area designated under section 162 or 164 of the Federal Clean Air Act as a Class I area. The following areas are the Class I areas in Washington state:

- a) Alpine Lakes Wilderness;
- b) Glacier Peak Wilderness;
- c) Goat Rocks Wilderness;
- d) Mount Adams Wilderness;
- e) Mount Rainier National Park;
- f) North Cascades National Park;
- g) Olympic National Park;
- h) Pasayten Wilderness; and
- i) Spokane Indian Reservation

COMBUSTION and INCINERATION UNITS - Units using combustion for waste disposal, steam production, chemical

recovery or other process requirements; but excludes open burning.

COMMENCED - a) Commenced as applied to construction, means that the owner or operator has all the necessary pre-construction approvals or permits and either has:

1) Begun, or caused to begin, a continuous program of actual on-site construction of the stationary source, to be completed within a reasonable time; or

2) Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the stationary source to be completed within a reasonable time.

b) For the purpose of this definition, "necessary pre-construction approvals" means those permits or orders of approval required under federal air quality control laws and regulations, including state, local and federal regulations and orders contained in the SIP.

COMMERCIAL COMPOSTING FACILITY - A facility that is operated for the purpose of selling or off-site distribution of compost produced via the controlled biological degradation of organic material.

COMPLAINANT - Any person who files a complaint.

CONCEALMENT - Any action taken to reduce the observed or measured concentrations of a pollutant in a gaseous effluent while, in fact, not reducing the total amount of pollutant discharged.

CONTROL FACILITY - Includes any treatment works, control devices and disposal systems, machinery equipment, structures, property or any part of accessories thereof, installed or acquired for the primary purpose of reducing, controlling, or disposing of industrial waste which, if released to the outdoor atmosphere, could cause air pollution.

CONTROL OFFICER - Air Pollution Control Officer of the NWCAA, also known as Director.

CRITERIA POLLUTANT - A pollutant for which there is established a National Ambient Air Quality Standard at 40 CFR Part 50. The criteria pollutants are carbon monoxide (CO), particulate matter, ozone (O<sub>3</sub>), sulfur dioxide (SO<sub>2</sub>), lead (Pb), and nitrogen dioxide (NO<sub>2</sub>).

DAYLIGHT HOURS - The hours between official sunrise and official sunset.

ECOLOGY - Washington State Department of Ecology (WDOE).

EMISSION - A release of air contaminants into the ambient air.

EMISSION REDUCTION CREDIT (ERC) - A credit granted pursuant to WAC 173-400-131. This is a voluntary reduction in emissions.

EMISSION POINT - The location (place in horizontal plane and vertical elevation) from which an emission enters the atmosphere.

EMISSION STANDARD and EMISSION LIMITATION - A requirement established under the Federal Clean Air Act or chapter 70.94 RCW which limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a stationary source to assure continuous emission reduction and any design, equipment work practice,

or operational standard adopted under the Federal Clean Air Act or chapter 70.94 RCW.

**EMISSIONS UNIT** - Any part of a stationary source or source which emits or would have the potential to emit any pollutant subject to regulation under the Federal Clean Air Act, Chapter 70.94 RCW, Chapter 70.98 RCW or Regulation of the NWCAA.

**EQUIPMENT** - Any stationary or portable device or any part thereof capable of causing the emission of any contaminant into the atmosphere or ambient air.

**EXCESS EMISSIONS** - Emissions of an air pollutant in excess of any applicable emission standard.

**EXISTING STATIONARY FACILITY** - Is defined in WAC 173-400-151.

**FEDERAL CLEAN AIR ACT (FCAA)** - The Federal Clean Air Act, also known as Public Law 88-206, 77 Stat. 392, December 17, 1963, 42 U.S.C. 7401 et seq., as last amended by the Clean Air Act Amendments of 1990, P.L. 101-549, November 15, 1990.

**FEDERAL CLASS I AREA** - Any federal land that is classified or reclassified Class I area. The following areas are the Class I areas in Washington state:

- a) Alpine Lakes Wilderness;
- b) Glacier Peak Wilderness;
- c) Goat Rocks Wilderness;
- d) Mount Adams Wilderness;
- e) Mount Rainier National Park;
- f) North Cascades National Park;
- g) Olympic National Park; and
- h) Pasayten Wilderness

**FEDERAL LAND MANAGER** - The secretary of the department with authority over federal lands in the United States. This includes, but is not limited to, the U.S. Department of the Interior - National Park Service, the U.S. Department of Agriculture - Forest Service, and/or the U.S. Department of the Interior - Bureau of Land Management.

**FEDERALLY ENFORCEABLE** - All limitations and conditions which are enforceable by EPA, including those requirements developed under 40 CFR Parts 60, 61 and 63, requirements within the Washington SIP, requirements within any permit established under 40 CFR 52.21 or order of approval under a SIP approved new source review regulation, or any voluntary limits on emissions pursuant to WAC 173-400-091.

**FIRE CHIEF** - A state, county, or city fire marshal, city fire chief, chief of each County Fire Protection District or authorized forestry officials from the Washington State Department of Natural Resources.

**FUEL BURNING EQUIPMENT** - Equipment that produces hot air, hot water, steam, or other heated fluids by external combustion of fuel.

**FUGITIVE DUST** - A particulate emission made airborne by forces of wind, man's activity, or both. Unpaved roads, construction sites, and tilled land are examples of areas that originate fugitive dust. Fugitive dust is a type of fugitive emission.

**FUGITIVE EMISSIONS** - Emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

**HAZARDOUS AIR POLLUTANT (HAP)** - Any air pollutant listed in or pursuant to Section 112(b) of the Federal Clean Air Act, 42 U.S.C. §7412.

**HEARINGS BOARD** - The state Pollution Control Hearings Board or equivalent local hearings board as set forth in RCW 43.21B.

**HEAT INPUT CAPACITY** - Is the maximum actual or design heat capacity, whichever is greater, stated in British thermal units per hour (BTU/hr) generated by the stationary source and shall be expressed using the higher heating value of the fuel unless otherwise specified.

**HOG FUEL BOILER** - A boiler that utilizes wood, commonly called "hog fuel", as one source of fuel.

**INCINERATOR** - A furnace used primarily for the thermal destruction of waste.

**INSTALLATION** - The placement, assemblage, or construction of equipment or control equipment at the premises where the equipment or control equipment will be used, and includes all preparatory work at such premises.

**LOWEST ACHIEVABLE EMISSION RATE (LAER)** - For any stationary source that rate of emissions which reflects the more stringent of:

a) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed new or modified stationary source demonstrates that such limitations are not achievable; or

b) The most stringent emission limitation which is achieved in practice by such class or category of source.

In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under applicable New Source Performance Standards.

**MAJOR MODIFICATION** - a) "Major modification" as it applies to stationary sources subject to requirements for new stationary sources in nonattainment areas, is defined in WAC 173-400-112.

b) "Major modification" as it applies to stationary sources subject to requirements for new stationary sources in attainment or unclassified areas is defined in WAC 173-400-113.

**MAJOR STATIONARY SOURCE** - a) "Major stationary source" as it applies stationary sources subject to requirements for new stationary sources in nonattainment areas is defined in WAC 173-400-112.

b) "Major stationary source" as it applies stationary sources subject to requirements for new stationary sources in attainment or unclassified areas is defined in WAC 173-400-113.

**MANDATORY CLASS I FEDERAL AREA** - any area defined in Section 162(a) of the Federal Clean Air Act. The following areas are the mandatory Class I federal areas in Washington state:

- a) Alpine Lakes Wilderness;
- b) Glacier Peak Wilderness;
- c) Goat Rocks Wilderness;
- d) Mount Adams Wilderness;
- e) Mount Rainier National Park;
- f) North Cascades National Park;
- g) Olympic National Park; and

## h) Pasayten Wilderness

MASKING - The mixing of a chemically nonreactive control agent with a malodorous gaseous effluent to change the perceived odor.

MATERIALS HANDLING - The handling, transporting, loading, unloading, storage, and transfer of materials with no significant chemical or physical alteration.

MERCURY - The element mercury, excluding any associated elements and includes mercury in particulates, vapors, aerosols, and compounds.

MERCURY ORE - A mineral mined specifically for its mercury content.

MODIFICATION - Any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air contaminant emitted by such stationary source or that results in the emissions of any air contaminant not previously emitted. The term modification shall be construed consistent with the definitions of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

MULTIPLE CHAMBER INCINERATOR - Any incinerator consisting of two or more combustion chambers in series, employing adequate design parameters necessary for maximum combustion of the material to be burned.

NATIONAL AMBIENT AIR QUALITY STANDARDS (NAAQS) - An ambient air quality standard set by EPA at 40 CFR Part 50 and includes standards for carbon monoxide (CO), particulate matter, ozone (O<sub>3</sub>), sulfur dioxide (SO<sub>2</sub>), lead (Pb), and nitrogen dioxide (NO<sub>2</sub>).

NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAPS) - The federal rules in 40 CFR Part 61.

NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES - The federal rules in 40 CFR Part 63.

NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM (NPDES) - Shall be referred to as NPDES.

NATURAL CONDITIONS - Naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.

NET EMISSIONS INCREASE - a) Net emissions increase as it applies to stationary sources subject to requirements for new sources in nonattainment areas, is defined in WAC 173-400-112.

b) Net emissions increase as it applies to stationary sources subject to requirements for new sources in attainment or unclassified areas, is defined in WAC 173-400-113.

NEW SOURCE - means one or more of the following:

a) The construction or modification of a stationary source that increases the amount of any air contaminant emitted by such stationary source or that results in the emission of any air contaminant not previously emitted,

b) The restart of a stationary source after permanent shutdown

c) Any other project that constitutes a new stationary source under the Federal Clean Air Act.

NEW SOURCE PERFORMANCE STANDARDS (NSPS) - The federal rules in 40 CFR Part 60.

NONATTAINMENT AREA - A geographic area designated by EPA at 40 CFR Part 81 as exceeding a National Ambient Air Quality Standard (NAAQS) for a given criteria pollutant.

An area is nonattainment only for the pollutants for which the area has been designated nonattainment.

NON HIGHWAY MOBILE SOURCE - A source which is neither used on nor does ordinarily travel on the public roadways and is powered by an internal combustion or other type engine. These sources include, but are not limited to, farm tractors, bulldozers, earthmovers, ships, boats, railroad locomotives and non-commercial aircraft.

NONROAD ENGINE - a) Except as discussed in b) of this definition, a nonroad engine is any internal combustion engine:

1) In or on a piece of equipment that is self-propelled or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or

2) In or on a piece of equipment that is intended to be propelled while performing its function (such as lawnmowers and string trimmers); or

3) That, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform.

b) An internal combustion engine is not a nonroad engine if:

1) The engine is used to propel a motor vehicle or a vehicle used solely for competition, or is subject to standards promulgated under section 202 of the Federal Clean Air Act; or

2) The engine is regulated by a New Source Performance Standard (NSPS) promulgated under section 111 of the Federal Clean Air Act; or

3) The engine otherwise included in (a)(3) of this definition remains or will remain at a location for more than twelve consecutive months or a shorter period of time for an engine located at a seasonal source. A location is any single site at a building, structure, facility, or installation. Any engine (or engines) that replaces an engine at a location and that is intended to perform the same or similar function as the engine replaced will be included in calculating the consecutive time period. An engine located at a seasonal source is an engine that remains at a seasonal source during the full annual operating period of the seasonal source. As seasonal source is a stationary source that remains in a single location on a permanent basis (i.e., at least two years) and that operates at that single location approximately three months (or more) each year. This paragraph does not apply to an engine after the engine is removed from the location.

NOTICE OF CONSTRUCTION APPLICATION - A written application to permit construction of a new source, modification of an existing stationary source or replacement or substantial alteration of control technology at an existing stationary source.

ODOR - That property or a substance which allows its detections by the sense of smell and/or taste.

ODOR SOURCE - Any source that incurs two verified odor nuisance complaints within a twelve month time period. Odor nuisance complaints are verified by a NWCAA representative according to the criteria of the NWCAA Regulation Sections 530.1 and 535.3.

OPACITY - The degree to which an object seen through a plume is obscured, stated as a percentage.

ORDER - Any order issued by the NWCAA pursuant to chapter 70.94 RCW, including, but not limited to RCW 70.94.332, 70.94.152, 70.94.153, and 70.94.141(3), and includes, where used in the generic sense, the terms order, corrective action order, order of approval, and regulatory order.

ORDER OF APPROVAL, APPROVAL ORDER or ORDER OF APPROVAL TO CONSTRUCT (OAC) - A regulatory order issued by the NWCAA to approve the notice of construction application for a proposed new source or modification or the replacement or substantial alteration of control technology at an existing stationary source.

OWNER, OPERATOR, OR AGENT - Includes the person who leases, supervises or operates the equipment or control facility.

OZONE DEPLETING SUBSTANCE - Substance listed in Appendices A and B to Subpart A of 40 CFR Part 82.

PARTICLE - A small discrete mass of solid or liquid matter.

PARTICULATE MATTER or PARTICULATES - Any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

PARTS PER MILLION (PPM) - parts of a contaminant per million parts of gas, by volume, exclusive of water or particulates.

PATHOLOGICAL WASTE - Human and animal remains consisting of carcasses, organs and solid organic wastes, consisting of up to 85% moisture, 5% incombustible solids.

PERMANENT SHUTDOWN - Permanently stopping or terminating all processes at a "stationary source" or "emissions unit." Except as provided in subsections a) and b), whether a shutdown is permanent depends on the intention of the owner or operator at the time of the shutdown as determined from all facts and circumstances, including the cause of the shutdown.

a) A shutdown is permanent if the owner or operator files a report of shutdown, as provided in NWCAA Regulation Sections 325. Failure to file such a report does not mean that a shutdown was not permanent.

b) Any shutdown lasting two (2) or more years is considered to be permanent.

PERMITTING AGENCY - Ecology or the local air pollution control authority with jurisdiction over the source.

PERSON - An individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

PETROLEUM LIQUIDS - Petroleum condensate, and any finished intermediate product manufactured in a petroleum refinery but does not mean Number 2 through Number 6 fuel oils as specified in A.S.T.M. D396-69, gas turbine fuel oils Numbers 2-GT through 4-GT as specified in A.S.T.M. D2880-71, or diesel fuel oils Number 2-D and 4-D as specified in A.S.T.M. D975-68.

PM<sub>10</sub> - Particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on 40 CFR Part 50 Appendix J and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53.

PM<sub>10</sub> EMISSIONS - Finely divided solid or liquid material, including condensible particulate matter, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternate method, specified in Appendix M of 40 CFR Part 51 or by a test method specified in the SIP.

PORTLAND CEMENT PLANT - Any facility manufacturing Portland cement by either the wet or dry process.

POTENTIAL TO EMIT - The maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

PREVENTION OF SIGNIFICANT DETERIORATION (PSD) - The program in WAC 173-400-720 through 750.

PROCESS - A physical and/or chemical modification or treatment of a material from its previous state or condition.

REASONABLY ATTRIBUTABLE - Attributable by visual observation or any other technique the state deems appropriate.

REASONABLY AVAILABLE CONTROL TECHNOLOGY (RACT) - The lowest emission limit that a particular stationary source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual stationary source or source category taking into account the impact of the stationary source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for any stationary source or source category shall be adopted only after notice and opportunity for comment are afforded.

REFUSE - Putrescible and non-putrescible solid waste including garbage, rubbish, ashes, dead animals, abandoned automobiles, solid market wastes, street cleanings and industrial wastes including waste disposal in industrial salvage.

REFUSE BURNING EQUIPMENT - Equipment designed to burn waste (refuse) material, scrap or combustion remains.

REGISTRATION - Registration shall mean the process of identifying, delineating and itemizing all air contaminant sources within the jurisdiction of the NWCAA including the making of periodic reports, as required, by the persons operating or responsible for such sources and may contain information concerning location, size, height of contaminant outlets, processes employed, nature of the contaminant emissions and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

REGULATORY ORDER - An order issued by an Authority to an air contaminant source which applies to that source, any applicable provision of chapter 70.94 RCW, or the rules adopted thereunder, or the NWCAA Regulation.

**SMOKE** - Gas borne particulate matter in a sufficient amount to be observable.

**SOLID WASTE** - All putrescible and nonputrescible solid and semisolid wastes, including but not limited to garbage, rubbish, ashes, industrial wastes, swill, demolition and construction wastes, abandoned vehicles or parts thereof, and discarded commodities. This includes all liquid, solid and semisolid materials, which are not primary products of public, private, industrial, commercial, mining, and agricultural operations. Solid waste includes but is not limited to septage from septic tanks, dangerous waste, and problem wastes. Solid waste does not include wood waste or sludge from waste water treatment plants.

**SOURCE** - All of the emissions unit(s) including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control, whose activities are ancillary to the production of a single product or functionally related groups of products. Activities shall be considered ancillary to the production of a single product or functionally related group of products if they belong to the same major group (i.e., which have the same two digit code) as described in the *Standard Industrial Classification Manual*, 1972, as amended by the 1977 Supplement.

**SOURCE CATEGORY** - All sources of the same type or classification.

**STACK** - Any point in a stationary source designed to emit solids, liquids, or gases into the air, including a pipe or duct.

**STACK HEIGHT** - The height of an emission point measured from the ground-level elevation at the base of the stack.

**STANDARD CONDITIONS** - A temperature of 20 degrees C (68 degrees F) and a pressure of 760 mm (29.92 inches) of mercury.

**STANDARD CUBIC FOOT OF GAS** - That amount of gas which would occupy a cube having dimensions of one foot on each side, if the gas were free of water vapor at a pressure of 14.7 psia and a temperature of 68 degrees F.

**STATE ACT** - Washington Clean Air Act (RCW 70.94) and 43.21B.

**STATE IMPLEMENTATION PLAN (SIP) or WASHINGTON SIP** - Washington SIP in 40 CFR Part 52, subpart WW. The SIP contains state, local and federal regulations and orders, the state plan and compliance schedules approved and promulgated by EPA, for the purpose of implementing, maintaining, and enforcing National Ambient Air Quality Standards.

**STATIONARY SOURCE** - Any building, structure, facility, or installation which emits or may emit any air contaminant. This term does not include emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in Section 216(11) of the Federal Clean Air Act.

**STRAW** - All vegetative material of agricultural origin other than seed removed by swathing, combining or cutting.

**SULFURIC ACID PLANT** - Any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, or acid sludge.

**SYNTHETIC MINOR** - Any stationary source whose potential to emit has been limited below applicable thresholds by

means of a federally enforceable order, rule, or permit condition.

**TON** - Short ton or 2,000 pounds (a long ton is considered 2,240 pounds).

**TOTAL SUSPENDED PARTICULATE** - Particulate matter as measured by the method described in 40 CFR Part 50 Appendix B.

**TOXIC AIR POLLUTANT (TAP) or TOXIC AIR CONTAMINANT** - Any Class A or B toxic air pollutant listed in WAC 173-460-150 and 173-460-160. The term toxic air pollutant may include particulate matter and volatile organic compounds if an individual substance or a group of substances within either of these classes is listed in WAC 173-460-150 and/or 173-460-160. The term toxic air pollutant does not include particulate matter and volatile organic compounds as generic classes of compounds.

**TRUE VAPOR PRESSURE** - The equilibrium pressure exerted by a hydrocarbon at storage conditions.

**UNCLASSIFIABLE AREA** - An area that cannot be designated attainment or nonattainment on the basis of available information as meeting or not meeting the National Ambient Air Quality Standard for the criteria pollutant and that is listed by EPA at 40 CFR Part 81.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY** - Shall be referred to as EPA.

**VOLATILE ORGANIC COMPOUND (VOC)** - Any carbon compound that participates in atmospheric photochemical reactions. a) Exceptions. The following compounds are not a VOC: Acetone; carbon monoxide; carbon dioxide; carbonic acid; metallic carbides or carbonates; ammonium carbonate, methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro 1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro 1,1,1,2-tetrafluoroethane (HCFC-124); pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); parachlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; perchloroethylene (tetrachloroethylene); 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca); 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb); 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1-chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C4F9OCH3); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF3)2CFCF2OCH3); 1-ethoxy-1,1,2,2,3,3,3,4,4,4-nonafluorobutane (C4F9OC2H5);

2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CF<sub>2</sub>OC<sub>2</sub>H<sub>5</sub>); methyl acetate and perfluorocarbon compounds that fall into these classes:

1) Cyclic, branched, or linear completely fluorinated alkanes;

2) Cyclic, branched, or linear completely fluorinated ethers with no unsaturations;

3) Cyclic, branched, or linear completely fluorinated tertiary amines with no unsaturations; and

4) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

b) For the purpose of determining compliance with emission limits, VOC will be measured by the appropriate methods in 40 CFR Part 60 Appendix A. Where the method also measures compounds with negligible photochemical reactivity, these negligibly-reactive compounds may be excluded as VOC if the amount of the compounds is accurately quantified, and the exclusion is approved by Ecology, the NWCAA, or EPA.

c) As a precondition to excluding these negligibly-reactive compounds as VOC or at any time thereafter, Ecology or the NWCAA may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the satisfaction of Ecology or the NWCAA, the amount of negligibly-reactive compounds in the source's emissions.

WASHINGTON ADMINISTRATIVE CODE (WAC) - Regulations of executive branch agencies in the state of Washington, such as the Department of Ecology.

WOOD WASTE BURNER - A sheet metal or other type of enclosure to form a truncated cone or a single chamber cylindrically shaped incinerator line or constructed of suitable refractory material which employs controlled fuel feed, tangential overfire and underfire air supply system, and is designed and used for the disposal of wood and bark wastes by incineration.

AMENDED: October 13, 1982, November 14, 1984, April 14, 1993, October 13, 1994, February 8, 1996, May 9, 1996, March 13, 1997, November 12, 1998, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, November 17, 2011

**Reviser's note:** The typographical error in the above material occurred in the copy filed by the Northwest Clean Air Agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

## AMENDATORY SECTION

### Section 300 - NEW SOURCE REVIEW

300.1 A Notice of Construction and/or PSD permit application must be filed by the owner or operator and an Order of Approval and/or PSD permit issued by the NWCAA, or other designated permitting agency, prior to the establishment of any new source, except for:

a) Those stationary sources exempt under NWCAA 300.4 (categorical) or NWCAA 300.5 (emission thresholds); and

b) Relocation of any temporary source operating in accordance with NWCAA Section 301.

For purposes of this section "establishment" shall mean to "begin actual construction", as that term is defined in NWCAA Section 200, and "new source" shall include any

"modification" to an existing "stationary source", as those terms are defined in NWCAA Section 200.

300.2 Regardless of any other subsection of this section, a Notice of Construction or PSD permit application must be filed and an order of approval or PSD permit issued by the NWCAA prior to establishment of any of the following new sources:

a) Any project that qualifies as construction, reconstruction or modification of an affected facility, within the meaning of 40 CFR Part 60 (New Source Performance Standards), except Subpart AAA (Wood stoves) and such provisions of Subpart IIII pertaining to owners and operators of emergency stationary compression ignition internal combustion engines;

b) Any project that qualifies as a new or modified source within the meaning of 40 CFR 61.02 (National Emission Standards for Hazardous Air Pollutants), except for asbestos demolition and renovation projects subject to 40 CFR 61.145;

c) Any project that qualifies as a new source within the meaning of 40 CFR 63.2 (National Emission Standards for Hazardous Air Pollutants for Source Categories), except Subpart M (Dry Cleaning Facilities) pertaining to area source perchloroethylene dry cleaners, and Subpart ZZZZ pertaining to emergency and limited-use stationary reciprocating internal combustion engines;

d) Any project that qualifies as a new major stationary source, or a major modification;

e) Any modification to a stationary source that requires an increase either in a plant-wide cap or in a unit specific emission limit.

300.3 New source review of a modification shall be limited to the emission unit or units proposed to be added to an existing stationary source or modified and the air contaminants whose emissions would increase as a result of the modification; provided, however, that review of a major modification must comply with WAC 173-400-112 and/or 173-400-113, as applicable.

### 300.4 Emission unit and activity exemptions.

Except as provided in NWCAA 300.1 and 300.2 of this section, establishment of a new emission unit that falls within one of the categories listed below is exempt from new source review. Modification of any emission unit listed below is exempt from new source review, provided that the modified unit continues to fall within one of the listed categories. The installation or modification of a unit exempt under this subsection does not require the filing of a Notice of Construction application.

#### a) Maintenance/construction:

1) Cleaning and sweeping of streets and paved surfaces;  
2) Concrete application, and installation;  
3) Dredging wet spoils handling and placement;  
4) Paving application and maintenance, excluding asphalt plants;

5) Plant maintenance and upkeep activities (grounds keeping, general repairs, routine house keeping, routine plant painting, welding, cutting, brazing, soldering, plumbing, retarring roofs, etc.);

6) Plumbing installation, plumbing protective coating application and maintenance activities;

7) Roofing application;



8) Insulation application and maintenance, excluding products for resale;

9) Janitorial services and consumer use of janitorial products.

b) Storage tanks:

Note: It can be difficult to determine requirements for storage tanks therefore it is recommended that the owner or operator contact the NWCAA to determine the exemption status of storage tanks prior to their installation.

1) Lubricating oil storage tanks except those facilities that are wholesale or retail distributors of lubricating oils;

2) Polymer tanks and storage devices and associated pumping and handling equipment, used for solids dewatering and flocculation;

3) Storage tanks, reservoirs, pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions;

4) Process and white water storage tanks;

5) Operation, loading and unloading of storage tanks and storage vessels, with lids or other appropriate closure and less than 260 gallon capacity (35 cft);

6) Operation, loading and unloading of storage tanks, less than or equal to 1100 gallon capacity, with lids or other appropriate closure, not for use with materials containing toxic air pollutants, as defined in chapter 173-460 WAC, max. VP 550 mm Hg @21° C;

7) Operation, loading and unloading storage of butane, propane, or liquefied petroleum gas with a vessel capacity less than 40,000 gallons;

8) Tanks, vessels and pumping equipment, with lids or other appropriate closure for storage or dispensing of aqueous solutions of inorganic salts, bases and acids.

c) A project with combined aggregate heat input capacity from combustion units, less than or equal to any of the following:

1) Less than or equal to 500,000 Btu/hr coal with less than or equal to 0.5% sulfur or other fuels with less than or equal to 0.5% sulfur;

2) Less than or equal to 500,000 Btu/hr used oil, per the requirements of RCW 70.94.610;

3) Less than or equal to 400,000 Btu/hr wood waste or paper;

4) Less than 1,000,000 Btu/hr kerosene, #1, or #2 fuel oil and with less than or equal to 0.05% sulfur;

5) Less than or equal to 10,000,000 Btu/hr natural gas, propane, or LPG.

Note: the heat input capacity of each combustion unit shall be based on the higher heating value of fuel to be used.

d) Material handling:

1) Continuous digester chip feeders;

2) Grain elevators not licensed as warehouses or dealers by either the Washington State Department of Agriculture or the U.S. Department of Agriculture;

3) Storage and handling of water based lubricants for metal working where organic content of the lubricant is less than or equal to 10%;

4) Equipment used exclusively to pump, load, unload, or store high boiling point organic material in tanks less than one million gallon, material with initial atmospheric boiling

point not less than 150°C or vapor pressure not more than 5 mm Hg @21°C, with lids or other appropriate closure.

e) Water treatment:

1) Septic sewer systems, not including active wastewater treatment facilities;

2) NPDES permitted ponds and lagoons used solely for the purpose of settling suspended solids and skimming of oil and grease;

3) De-aeration (oxygen scavenging) of water where toxic air pollutants as defined in chapter 173-460 WAC are not emitted;

4) Process water filtration system and demineralizer vents;

5) Sewer manholes, junction boxes, sumps and lift stations associated with wastewater treatment systems;

6) Demineralizer tanks;

7) Alum tanks;

8) Clean water condensate tanks.

f) Environmental chambers and laboratory equipment:

1) Environmental chambers and humidity chambers not using toxic air pollutant gases, as regulated under chapter 173-460 WAC;

2) Gas cabinets using only gases that are not toxic air pollutants regulated under chapter 173-460 WAC;

3) Installation or modification of a single laboratory fume hood;

4) Laboratory calibration and maintenance equipment.

g) Monitoring/quality assurance/testing:

1) Equipment and instrumentation used for quality control/assurance or inspection purpose;

2) Hydraulic and hydrostatic testing equipment;

3) Sample gathering, preparation and management;

4) Vents from continuous emission monitors and other analyzers.

h) Dry Cleaning: Unvented, dry-to-dry, dry-cleaning equipment that is equipped with refrigerated condensers and carbon absorption to recover the cleaning solvent.

i) Emergency Stationary Compression Ignition (CI) Internal Combustion Engines (ICE): Any stationary internal combustion engine whose operation is limited to emergency situations and required testing and maintenance and operating less than 500 hours a year. Examples include stationary ICE used to produce power for critical networks or equipment (including power supplied to portions of a facility) when electric power from the local utility (or the normal power source, if the facility runs on its own power production) is interrupted, or stationary ICE used to pump water in the case of fire or flood, etc. Stationary CI ICE used to supply power to an electric grid or that supply power as part of a financial arrangement with another entity are not considered to be emergency engines.

j) Miscellaneous:

1) Single-family residences and duplexes;

2) Plastic pipe welding;

3) Primary agricultural production activities including soil preparation, planting, fertilizing, weed and pest control, and harvesting;

4) Comfort air conditioning;

5) Flares used to indicate danger to the public;

- 6) Natural and forced air vents and stacks for bathroom/toilet activities;
- 7) Personal care activities;
- 8) Recreational fireplaces including the use of barbecues, campfires, and ceremonial fires;
- 9) Tobacco smoking rooms and areas;
- 10) Noncommercial smokehouses;
- 11) Blacksmith forges for single forges;
- 12) Vehicle maintenance activities, not including vehicle surface coating;
- 13) Vehicle or equipment washing (see c) of this subsection for threshold for boilers);
- 14) Wax application;
- 15) Oxygen, nitrogen, or rare gas extraction and liquefaction equipment not including internal and external combustion equipment;
- 16) Ozone generators and ozonation equipment;
- 17) Solar simulators;
- 18) Ultraviolet curing processes, to the extent that toxic air pollutant gases as defined in chapter 173-460 WAC are not emitted;
- 19) Electrical circuit breakers, transformers, or switching equipment installation or operation;
- 20) Pulse capacitors;
- 21) Pneumatically operated equipment, including tools and hand held applicator equipment for hot melt adhesives;
- 22) Fire suppression equipment;
- 23) Recovery boiler blow-down tank;
- 24) Screw press vents;
- 25) Drop hammers or hydraulic presses for forging or metal working;
- 26) Production of foundry sand molds, unheated and using binders less than 0.25% free phenol by sand weight;
- 27) Kraft lime mud storage tanks and process vessels;
- 28) Lime grits washers, filters and handling;
- 29) Lime mud filtrate tanks;
- 30) Lime mud water;
- 31) Stock cleaning and pressurized pulp washing down process of the brown stock washer;
- 32) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities and transportation marketing facilities;
- 33) Nontoxic air pollutant, as defined in chapter 173-460 WAC, solvent cleaners less than 10 square feet air-vapor interface with solvent vapor pressure not more than 30 mm Hg @21°C;
- 34) Surface coating, aqueous solution or suspension containing less than or equal to 1% (by weight) VOCs, and/or toxic air pollutants as defined in chapter 173-460 WAC;
- 35) Cleaning and stripping activities and equipment using solutions having less than or equal to 1% VOCs (by weight); on metallic substances, acid solutions are not exempt;
- 36) Dip coating operations, using materials less than 1% VOCs (by weight) and/or toxic air pollutants as defined in chapter 173-460 WAC.

#### 300.5 Exemptions Based on Emissions Thresholds

- a) Except as provided in NWCAA 300.1 and 300.2 of this section and in this subsection:

- 1) A new emissions unit that has an uncontrolled potential to emit below each of the threshold levels listed in the table contained in (d) of this subsection is exempt from new source review provided that the conditions of (b) of this subsection are met.

- 2) A modification to an existing emissions unit that increases the unit's actual emissions by less than each of the threshold levels listed in the table contained in (d) of this subsection is exempt from new source review provided that the conditions of (b) of this subsection are met.

- b) The owner or operator seeking to exempt a project from new source review under this section shall notify, and upon request, file a brief project summary with the NWCAA thirty (30) days prior to beginning actual construction on the project. If the NWCAA determines that the project will have more than a de Minimus impact on air quality as defined in 300.5 d), the NWCAA shall require the filing of a Notice of Construction or PSD permit application. The NWCAA may require the owner or operator to demonstrate that the emissions increase from the new emissions unit is smaller than all of the thresholds listed below. In accordance with NWCAA 324.2, a filing and NOC applicability determination fee shall apply when the NWCAA issues a written determination that a project is exempt for new source review.

- c) The owner or operator may begin actual construction on the project thirty-one (31) days after the NWCAA receives the project summary, unless the NWCAA notifies the owner or operator within thirty (30) days that the proposed new source requires a Notice of Construction or PSD permit application.

#### d) Exemption threshold table:

##### POLLUTANT THRESHOLD LEVEL (ton per year)

- 1) Total Suspended Particulates: 1.25
- 2) PM-10: 0.75
- 3) Sulfur Oxides: 2.0
- 4) Nitrogen Oxides: 2.0
- 5) Volatile Organic Compounds: total 2.0
- 6) Carbon Monoxide: 5.0
- 7) Lead: 0.005
- 8) Ozone Depleting Substances: total 1.0 (in effect on July 1, 2000)
- 9) Toxic Air Pollutants: as specified in chapter 173-460 WAC.

300.6 The Control Officer may require that a new source, that would otherwise be exempt under this section, submit a Notice of Construction application and be granted approval as specified in this section. This discretionary determination shall be based on the nature of air pollution emissions from the stationary source and its potential effect on health, economic and social factors, or physical effects on property. Upon request, the proponent shall submit to the Control Officer, appropriate information as necessary to make this determination.

#### 300.7 Notice of Construction - Submittal Requirements

Each Notice of Construction application shall:

- a) be submitted on forms provided by the NWCAA;
- b) be accompanied by the appropriate fee specified in NWCAA 324.2;

c) be accompanied by a completed State Environmental Policy Act (SEPA) checklist consistent with NWCAA 155; and

d) include a "top down" BACT analysis, as defined at the time of submittal, except where the Federal Clean Air Act requires LAER; and

e) An applicant filing a Notice of Construction application for a project described in WAC 173-400-117(2), Special protection requirements for Class I areas, shall send a copy of the application to the responsible federal land manager.

300.8 Notice of Construction - Completeness Determination.

a) Within thirty (30) days after receiving a Notice of Construction or PSD permit application, the NWCAA shall either notify the applicant in writing that the application is complete or notify the applicant in writing of additional information necessary to complete the application.

b) For a project subject to the Special protection requirements for federal Class I areas in WAC 173-400-117(2), a completeness determination includes a determination that the application includes all information required for review of that project under WAC 173-400-117(3).

c) For a project subject to PSD review under WAC 173-400-720 through -750, a completeness determination includes a determination that the application provides all information required to conduct the PSD review.

300.9 Notice of Construction - Final Determination

a) Within sixty (60) days of receipt of a complete Notice of Construction or PSD permit application, the NWCAA shall either issue a final decision on the application or initiate public notice under NWCAA Section 305 on a proposed decision, followed as promptly as possible by a final decision.

b) A person seeking approval to construct or modify a stationary source that requires an operating permit may elect to integrate review of the operating permit application or amendment required under RCW 70.94.161 and the Notice of Construction or PSD permit application required by this section. A Notice of Construction or PSD permit application designated for integrated review shall be processed in accordance with operating permit program procedures and deadlines in chapter 173-401 WAC. A PSD permit application under WAC 173-400-720 through -750, a notice of nonattainment area construction application for a major modification in a nonattainment area, or a Notice of Construction application for a major stationary source in a nonattainment area must also comply with WAC 173-400-171.

c) Every final determination on a Notice of Construction or PSD permit application shall be reviewed and signed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the NWCAA.

d) If the new source is a major stationary source or the change is a major modification, the application shall be processed in accordance with the applicable sections of WAC 173-400-112, 113, 117 and 171. The permitting agency shall:

1) Submit any control technology determination included in a final Order of Approval or PSD permit to the RACT/BACT/LAER clearinghouse maintained by EPA; and

2) Send a copy of the final Order of Approval or PSD permit to EPA.

300.10 Order of Approval - Appeals

An Order of Approval or PSD permit, any conditions contained in an Order of Approval or PSD permit, or the denial of a Notice of Construction or PSD permit application may be appealed to the Pollution Control Hearings Board as provided in chapter 43.21B RCW. The NWCAA shall promptly mail copies of each order approving or denying a Notice of Construction or PSD permit application to the applicant and to any other party who submitted timely comments on the application, along with a notice advising parties of their rights of appeal to the Pollution Control Hearings Board.

300.11 Order of Approval - Time Limitations.

An Order of Approval or PSD permit becomes invalid if construction is not commenced within eighteen months after receipt of the approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The NWCAA may extend the eighteen-month period upon a satisfactory showing that an extension is justified. An extension for a project operating under a PSD permit must also comply with public notice requirements in WAC 173-400-171. This provision does not apply to the time period between construction of the approved phases of a phased construction project. Each phase must commence construction within eighteen months of the projected and approved commencement date.

300.12 Order of Approval - Change of Conditions.

a) The owner or operator may request, at any time, a change in conditions of an Order of Approval or PSD permit and the NWCAA may approve the request provided the NWCAA finds that:

1) The change in conditions will not cause the stationary source to exceed an emissions standard;

2) No ambient air quality standard or PSD increment will be exceeded as a result of the change;

3) The change will not adversely impact the ability of Ecology or the NWCAA to determine compliance with an emissions standard;

4) The revised order will continue to require BACT, as defined at the time of the original approval, for each new source approved by the order except where the Federal Clean Air Act requires LAER; and

5) The revised order meets the requirements of this section and WAC 173-400-110, 173-400-112, 173-400-113 and 173-400-720 through -750, as applicable.

b) Actions taken under this subsection are subject to the public involvement provisions of NWCAA Section 305 or WAC 173-400-171 as applicable.

c) This rule does not prescribe the exact form such requests must take. However, if the request is filed as a Notice of Construction application, that application must be acted upon using the timelines found in NWCAA 300.8 and NWCAA 300.9 and the fee schedule found in NWCAA 324.

300.13 Replacement or Substantial Alteration of Emission Control Technology at an Existing Stationary Source.

a) Any person proposing to replace or substantially alter the emission control technology installed on an existing stationary source or emission unit shall file a Notice of Con-

struction application with the NWCAA. Replacement or substantial alteration of control technology does not include routine maintenance, repair or similar parts replacement.

b) For projects not otherwise reviewable under NWCAA Section 300, the NWCAA may:

1) Require that the owner or operator employ RACT for the affected emission unit;

2) Prescribe reasonable operation and maintenance conditions for the control equipment; and

3) Prescribe other requirements as authorized by chapter 70.94 RCW.

c) Within thirty (30) days of receipt of a Notice of Construction application under this section the NWCAA shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Within thirty (30) days of receipt of a complete Notice of Construction application under this section the NWCAA shall either issue an Order of Approval or a proposed RACT determination for the proposed project.

d) Construction shall not "commence," as defined in NWCAA Section 200, on a project subject to review under this section until the NWCAA issues a final Order of Approval. However, any Notice of Construction application filed under this section shall be deemed to be approved without conditions if the NWCAA takes no action within thirty (30) days of receipt of a complete Notice of Construction application.

e) Approval to replace or substantially alter emission control technology shall become invalid if construction is not commenced within eighteen months after receipt of such approval, if construction is discontinued for a period of eighteen months or more, or if construction is not completed within a reasonable time. The NWCAA may extend the eighteen-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within eighteen months of the projected and approved commencement date.

#### 300.14 Adoption of State NSR Regulations

In order to facilitate complete implementation of this section, WAC 173-400-112, -113, -117, -700, -710, -720, -730, -740, and -750 are hereby incorporated by reference.

#### 300.15 Order of Approval - Requirements to Comply

It shall be unlawful for an owner or operator of a source or emission unit to not abide by the operating and reporting conditions in the Order of Approval.

Passed: November 12, 1998 Amended: November 12, 1999, March 9, 2000, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, June 10, 2010, June 9, 2011, November 17, 2011

### AMENDATORY SECTION

#### SECTION 301 - TEMPORARY SOURCES

301.1 This section applies to temporary sources not exempt under NWCAA 300.4 or 300.5, which locate temporarily at sites within the jurisdiction of the NWCAA. Nonroad engines regulated by this section are limited to those

listed in a) 3) of the definition of "nonroad engine" found in Section 200 of this Regulation (i.e., those that are portable or transportable, but operate in a stationary manner). The regulation of nonroad engines under this section is subject to the limitations as set forth in 40 CFR Appendix A to Subpart A of 89 - State Regulation of Nonroad Internal Combustion Engines.

301.2 The owner or operator of a temporary source shall be allowed to operate at a temporary location without filing a Notice of Construction application or, for nonroad engines, obtaining a regulatory order from the NWCAA providing that:

a) The owner or operator notifies the NWCAA each calendar year of the intent to operate within the jurisdiction of the NWCAA at least fifteen (15) days prior to starting operation and pays the appropriate fees identified in NWCAA Section 324.1;

b) The owner or operator notifies the NWCAA of the intent to relocate within the jurisdiction of the NWCAA at least fifteen (15) days prior to relocation;

c) The owner or operator supplies sufficient information to enable the NWCAA to determine that the operation will comply with all applicable air pollution rules and regulations;

d) The operation does not cause a violation of ambient air quality standards;

e) If the operation is in a nonattainment area, it shall not interfere with the scheduled attainment of ambient standards;

f) The temporary source operates in compliance with all applicable air pollution rules and regulations;

g) A temporary source that is considered a major stationary source within the meaning of WAC 173-400-113 shall also comply with the requirements in WAC 173-400-720 through -750;

h) Except for nonroad engines, all temporary sources shall have a valid Order of Approval to Construct from an air quality permitting organization in the State of Washington. The temporary source shall operate in compliance with the conditions set forth in the Order of Approval to Construct. Any reports required by the Order of Approval to Construct shall be submitted to the NWCAA;

i) Permission to operate shall not exceed ninety (90) operating days in any calendar year anywhere within the jurisdiction of the NWCAA. The NWCAA may set specific conditions for operating during that time period. No source shall continue to operate beyond the allowable 90-day period unless an Order of Approval to Construct, or for nonroad engines, a regulatory order, has been issued by the NWCAA. For the purpose of this section, an operating day shall be considered any time equipment operates within a calendar day; and

j) Except for nonroad engines, based on the source type and emission quantity, temporary sources may be subject to new source review at the discretion of the Control Officer.

PASSED: November 12, 1998 AMENDED: March 9, 2000, June 14, 2001, July 10, 2003, July 14, 2005, November 8, 2007, November 17, 2011

AMENDATORY SECTION

SECTION 305 - PUBLIC INVOLVEMENT

305.1 Internet Notice

(A) A notice shall be published on the NWCAA website for each Notice of Construction (NOC) application received by the NWCAA, and for each proposed revision to an Order of Approval to Construct (OAC) for which there is no associated NOC application. The internet notice shall remain on the NWCAA website for a minimum of 15 consecutive days and shall include the following information:

- (1) name and location of the affected facility,
- (2) brief description of the proposed action, and
- (3) a statement that a public comment period may be requested within 15 days of the initial date of the internet posting.

(B) Requests for a public comment period shall be received by the NWCAA via letter, facsimile, or electronic mail within 15 days of the initial date of the internet posting. A public notice and comment period shall be provided in accordance with this Section, for any NOC application or proposed OAC revision that receives such a request. Any NOC application or proposed OAC revision for which a public comment period is not requested may be processed without further public involvement at the end of the 15-day request period.

305.2 Actions Requiring Public Notice and Comment Period

(A) The NWCAA shall provide public notice and a public comment period in accordance with 305.3 through 305.8 of this Section, before approving or denying any of the following types of applications or other actions:

- (1) Any use of a modified or substituted air quality model, other than a guideline model in Appendix W of 40 CFR Part 51 (in effect on July 1, 2005) as part of review under Section 300 of this Regulation;
- (2) Any order to determine Reasonably Available Control Technology (RACT);
- (3) Any order to establish a compliance schedule or a variance;
- (4) Any order to demonstrate the creditable height of a stack which exceeds the good engineering practice (GEP) formula height and sixty-five meters, by means of a fluid model or a field study, for the purposes of establishing an emission limitation;
- (5) Any order to authorize an emissions bubble pursuant to WAC 173-400-120;
- (6) Any regulatory order to establish or debit of emission reduction credits (ERC);
- (7) Any order issued under WAC 173-400-091 that establishes limitations on a source's potential to emit;
- (8) Any extension of the deadline to begin actual construction of a "major stationary source" or "major modification" in a nonattainment area;
- (9) The original issuance and any revisions to a general Order of Approval issued under WAC 173-400-560;
- (10) Any Notice of Construction application or other proposed action for which the NWCAA determines there is substantial public interest;

(11) Any Notice of Construction application or proposed Order of Approval to Construct revision that receives a request for a public comment period in accordance with 305.1 of this Section.

(12) Any Notice of Construction application or proposed Order of Approval to Construct revision that would result in a significant emissions increase defined as follows.

Air Pollutant	Potential to Emit in Tons per Year
Carbon Monoxide (CO)	100.0
Volatile Organic Compounds (VOC)	40.0
Sulfur Dioxide (SO <sub>2</sub> )	40.0
Nitrogen Oxides (NO <sub>x</sub> )	40.0
Particulate Matter (PM)	25.0
Fine Particulate Matter (PM-10)	15.0
Lead	0.6
Fluorides	3.0
Sulfuric Acid Mist (H <sub>2</sub> SO <sub>4</sub> )	7.0
Hydrogen Sulfide (H <sub>2</sub> S)	10.0
Total Reduced Sulfur (including H <sub>2</sub> S)	10.0

(B) Any Notice of Construction application designated for integrated review with an application to issue or modify an Air Operating Permit shall be processed in accordance with the Air Operating Permit program procedures and deadlines set forth in WAC 173-401.

305.3 Public Comment Period

If required, a public comment period shall be initiated through publication of a legal notice in a local newspaper. The public comment period shall be initiated only after the NWCAA has made a preliminary determination. The cost of providing legal notice shall be borne by the applicant. Public notice of any NOC application requiring a public comment period shall include the following:

(A) The NOC application and any written preliminary determination by the NWCAA shall be available on the NWCAA's internet website, excluding any confidential information as provided in Section 114 of this Regulation. In addition, the NOC application and any written determination shall be made available for public inspection in at least one location near the proposed project. The NWCAA's written preliminary determination shall include the conclusions, determinations and pertinent supporting information from the NWCAA's analysis of the effect of the proposed project on air quality.

(B) Publication of a legal notice in a newspaper of general circulation in the area of the proposed project which provides each of the following:

- (1) Name, location and a brief description of the project;
- (2) Location of documents made available for public inspection;
- (3) The deadline for submitting written comments;

(4) A statement that any person, interested governmental agency, group, or the applicant may request a public hearing;

(5) A statement that a public hearing may be held if the NWCAA determines within a 30-day period that significant public interest exists;

(6) The date of the close of the public comment period in the event of a public hearing;

(C) Notice to the US Environmental Protection Agency Region 10 Regional Administrator.

#### 305.4 Extent of Public Comment Period

The public comment period shall be the 30-day period following the date the public notice is first published, unless a public hearing is held. If a public hearing is held, the public comment period shall extend through the hearing date and thereafter for such period, as specified in the notice of public hearing.

#### 305.5 Public Hearings

Any person, interested governmental entity, group or the applicant, may request a public hearing within the comment period specified in the public notice. Any such request shall indicate, in writing, the interest of the entity filing it and why a hearing is warranted. The NWCAA may, in its discretion, hold a public hearing if it determines that significant public interest exists. Any such hearing shall be held upon such notice and at a time and place as the NWCAA deems reasonable. The NWCAA shall provide at least 30 days prior notice of any hearing.

#### 305.6 Consideration of Public Comments

No final decision on any NOC application or OAC revision shall be made until all public comment periods have ended and any comments received have been considered.

#### 305.7 Other Requirements of Law

Whenever procedures permitted or mandated by law will accomplish the objectives of public notice and opportunity for comment, those procedures may be used in lieu of the provisions of this section (e.g., SEPA). This subsection does not apply to an application for a "major modification" or an application from a "major stationary source".

#### 305.8 Public Information.

All information provided to the public in accordance with this Section, except information protected from disclosure under any applicable law, including, but not limited to, NWCAA Section 114 and RCW 70.94.205, shall be available for public inspection at the NWCAA. This includes copies of Notices of Construction applications, orders, and modifications.

Passed: July 14, 2005 Amended: November 8, 2007, June 9, 2011, November 17, 2011

### AMENDATORY SECTION

#### SECTION 321 - EXEMPTIONS FROM REGISTRATION

Exclusion from registration does not absolve the owner, lessee, or his registered agent from all other requirements of the Regulation of the NWCAA. Exemption from registration does not apply to any control facility or device required to be installed in order to meet the emission and/or ambient standards of this Regulation.

The following sources of air pollution are exempt from registration:

321.1 Motor vehicles.

321.2 Non-road engines (as defined in Section 216 of the FCAA).

321.3 Non-road vehicles (as defined in Section 216 of the FCAA).

321.4 Sources that require an air operating permit per Chapter 173-401 WAC.

321.5 The Control Officer may exempt sources having the potential to emit (uncontrolled) criteria air pollutants under the following thresholds:

a) 5 tons per year of carbon monoxide (CO);

b) 2 tons per year of nitrogen oxides (NO<sub>x</sub>);

c) 2 tons per year of sulfur dioxide (SO<sub>2</sub>);

d) 1.25 tons per year of particulate matter (PM);

e) 0.75 tons per year of fine particulate matter (PM<sub>10</sub>);

f) 2 tons per year of volatile organic compounds (VOC's);

g) 0.005 tons per year of lead.

321.6 The Control Officer may exempt sources that do not emit measurable amounts of Class A or Class B toxic air pollutants specified in Chapter 173-460-150 WAC and Chapter 173-460-160 WAC.

PASSED: November 12, 1998 Amended: June 9, 2011, November 17, 2011

### AMENDATORY SECTION

#### SECTION 322 - AIR OPERATING PERMIT PROGRAM (AOP)

322.1 Purpose. The purpose of this section is to provide for a comprehensive operating permit program consistent with the requirements of Title V of the Federal Clean Air Act (FCAA) Amendments of 1990 and its implementing regulation 40 CFR Part 70, and RCW 70.94.161 and its implementing regulation Chapter 173-401 of the Washington Administrative Code (WAC).

322.2 Applicability. The provisions of this section shall apply to all sources within the NWCAA jurisdiction excluding those regulated by the Washington State Department of Ecology Industrial Section subject to the requirements of Section 7661(a) of the FCAA or Chapter 173-401-300 WAC.

322.3 Compliance. It shall be unlawful for any person to cause or allow the operation of any source subject to the requirements of Chapter 173-401 WAC without complying with the provisions of Chapter 173-401 WAC and any permit issued under its authority.

322.4 Air Operating Permit Fees.

a) The NWCAA shall levy annual operating permit program fees as set forth in this section to cover the cost of administering its operating permit program.

b) Commencing with the effective date of the operating permit program, the NWCAA shall assess and collect annual air operating permit fees in its jurisdiction for any source specified in Section 7661(a) of Title V of the FCAA or Chapter 173-401-300 WAC (excluding sources regulated by the Washington State Department of Ecology Industrial Section). The total fees required by the NWCAA to administer the program shall be determined by a workload analysis conducted by the staff and approved annually by a resolution by the Board of Directors. Allocation of the fees to individual affected sources shall be based on the following:

1) Ten percent (10%) of the total fees shall be allocated equally among all affected sources.

2) Ninety percent (90%) of the total fees shall be allocated based on actual emissions of regulated pollutants identified in the most recent annual emission inventory or potential emissions if actual data are unavailable. A regulated pollutant for fee calculation shall include:

Nitrogen oxides (NO<sub>x</sub>);

Volatile organic compounds (VOC's);

Particulate matter with an aerodynamic particle diameter less than or equal to 10μ (PM<sub>10</sub>);

Sulfur dioxide (SO<sub>2</sub>);

Lead; and

Any pollutant subject to the requirements under Section 112(b) of the FCAA not included in any of the above categories.

c) Upon assessment by the NWCAA, fees are due and payable and shall be deemed delinquent if not fully paid within 90 days. Any source that fails to pay a fee imposed under this section within 90 days of the due date shall be assessed a late penalty in the amount of 50 percent of the fee. This late penalty shall be in addition to the fee assessed under this section.

d) The NWCAA shall collect and transfer to the Washington State Department of Ecology a surcharge established by the Department of Ecology to cover the Department of Ecology's program development and oversight costs attributable to subject sources within the NWCAA jurisdiction. Fees for the Department of Ecology shall be allocated to affected sources in the same manner specified in this section.

e) An affected source subject to the operating permit program that is required to pay an annual operating permit program fee shall not be required to pay a registration fee as specified in Section 324.

PASSED: November 12, 1998 Amended: November 12, 1999, June 9, 2011, November 17, 2011

### WSR 11-20-038

#### WITHDRAWAL OF PROPOSED RULES

#### BOARD OF

#### PILOTAGE COMMISSIONERS

[Filed September 27, 2011, 2:06 p.m.]

I hereby withdraw the CR-102 Proposed rule making regarding WAC 363-116-200 Duties of pilots. It was filed as WSR 11-13-114 on June 21, 2011.

Peggy Larson  
Administrator

### WSR 11-20-043

#### PROPOSED RULES

#### DEPARTMENT OF LICENSING

[Filed September 28, 2011, 12:52 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-11-107.

Title of Rule and Other Identifying Information: Adoption of WAC 308-409-020 Application process to license as an appraisal management company, 308-409-030 Licensure and renewal, 308-409-035 Surety bond requirements, 308-409-040 Business location and/or physical address and mailing address, 308-409-050 Fees and charges, 308-409-055 Required records—Accessibility of records to the department of licensing, 308-409-060 Additional required records, 308-409-070 Required disclosure to appraisers, 308-409-080 Prohibitions, and 308-409-100 Appraisal reports—Alterations—Use.

Hearing Location(s): Department of Licensing, Business and Professions Division, 2000 4th Avenue West, Conference Room 3204, Olympia, WA 98502, on November 8, 2011, at 10:00 a.m.

Date of Intended Adoption: December 6, 2011.

Submit Written Comments to: Ralph C. Birkedahl, Real Estate Appraiser Program, P.O. Box 9021, Olympia, WA 98507-9021, e-mail rbirkedahl@dol.wa.gov, fax (360) 570-4981, by October 28, 2011.

Assistance for Persons with Disabilities: Contact Dee Sharp by October 28, 2011, TTY (360) 664-8885 or (360) 664-6504.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The adoption of these rules is proposed for the implementation of chapter 18.310 RCW, Appraisal management companies, as passed by the 2010 Washington state legislature.

Reasons Supporting Proposal: Implementation of Washington law, chapter 18.310 RCW, and to comply with the Dodd-Frank Wall Street Reform and Consumer Protection Act which was signed into federal law on July 21, 2010.

Statutory Authority for Adoption: RCW 18.310.020(1).

Statute Being Implemented: Chapter 18.310 RCW.

Rule is necessary because of federal law, Dodd-Frank Wall Street Reform and Consumer Protection Act.

Name of Proponent: Department of licensing, real estate appraiser program, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Ralph C. Birkedahl, Olympia, Washington, (360) 664-6504.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These rules are to implement chapter 18.310 RCW. This law requires that the appraisal management company program be self-supporting. Fees were set to implement and maintain this program.

A cost-benefit analysis is not required under RCW 34.05.328. The department of licensing is not one of the named agencies under this RCW.

September 28, 2011

Ben T. Shomshor  
Rules Coordinator

**Chapter 308-409 WAC**

**APPRAISAL MANAGEMENT COMPANIES**

NEW SECTION

**WAC 308-409-020 Application process to license as an appraisal management company.** (1) An entity applying for licensure as an appraisal management company shall present to the department:

(a) A completed licensure application form that complies with RCW 18.310.060;

(b) Completed registration forms for the owner(s) of ten percent or more of the company and controlling persons, including a designated controlling person.

(c) Fingerprint cards, that are identified to the appraisal management company program, for owner(s) of ten percent or more of the company and controlling person(s);

(i) An application submitted without the required fingerprint card(s) is considered incomplete.

(ii) When a fingerprint card is rejected, the owner or controlling person must submit to the department a new fingerprint card within twenty-one calendar days of written notice to the address of record on file with the appraisal management company program.

(iii) Failure to submit a new fingerprint card may result in a suspension of the appraisal management company license until the fingerprint card is received by the department.

(iv) If the fingerprint card is rejected, the applicant must pay a new fee for fingerprinting and background processing. After three failed submissions, the program may use other sources/methods to satisfy the background check requirement.

(d) Proof of surety bond; and

(e) Appropriate fees.

(2) A change in ownership or controlling person(s) of the appraisal management company will require the new owner(s) or controlling person(s) to submit owner or controlling person registration form(s) to the department together with fingerprint cards, that are identified to the appraisal management company program, and appropriate processing fees within ten days of change.

NEW SECTION

**WAC 308-409-030 Licensure and renewal.** (1) Appraisal management companies must be licensed by January 1, 2012.

(2) Each original and renewal license issued under chapter 18-310 RCW shall expire two years from date of issue.

(3) To be renewed as an appraisal management company, the holder of a valid license shall submit an application and pay the prescribed fee to the director no earlier than ninety days prior to the expiration date.

(4) If a company fails to renew a license prior to its expiration and no more than one year has passed since the company last held a valid license, the company may obtain a renewed license by paying the renewal fee and late renewal penalty fee.

(5) The director shall cancel the license of any company whose renewal fee is not received within one year from the date of expiration. A company may obtain a new license by applying for original licensure as an appraisal management company.

NEW SECTION

**WAC 308-409-035 Surety bond requirements.** (1) All appraisal management companies must maintain surety bonds that conform to RCW 18.310.040 in an active status at all times during the period of licensure.

(2) The bond must provide that the surety will give the department of licensing and the licensee thirty days advance notice of cancellation or termination of the bond with the reason for the cancellation or termination; provided, that no such notice shall be required when the termination of the bond is due to the expiration or revocation of the subject license.

NEW SECTION

**WAC 308-409-040 Business location and/or physical address and mailing address.** It is the responsibility of each licensed appraisal management company to notify the department of a change of business location and/or physical address and mailing address for receiving certified mail and service of documents. Change of address notification shall be made within fourteen business days of the change of address.

NEW SECTION

**WAC 308-409-050 Fees and charges.** The following fees shall be paid under the provisions of chapter 18-310 RCW:

Title of Fee	Fee
Original licensure	\$2,400.00
Renewal	1,200.00
Late renewal penalty	38.00
Duplicate license	30.00
Fingerprint processing	35.25

**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.

NEW SECTION

**WAC 308-409-055 Required records—Accessibility of records to the department of licensing.** Appraisal management companies must retain records in accordance with RCW 18.310.130. Such records will be subject to random audit by the department without notice and must be readily available for inspection by a representative of the department.

NEW SECTION

**WAC 308-409-060 Additional required records.** (1) An appraisal management company having been issued a license shall comply with the following:



(a) Shall maintain with the department the name and address of the designated controlling person for service of process and shall furnish in writing to the department any changes to the information on file within fourteen business days.

(b) An appraisal management company shall maintain a complete record of all requests for appraisal services referred to state licensed and certified appraisers, the amount of fees collected from each client for each appraisal service, as well as payments and dates of payments made to the appraisers and shall make such information available to the department upon written request. An appraisal management company's statement of recordkeeping certification upon registration with the division and biennially thereafter shall be signed by its designated controlling person and shall describe its system for maintaining a record of:

(i) The name of the appraiser who accepts each assignment and signs the corresponding appraisal report; or

(ii) If an assignment is accepted by an appraisal company, the name of the appraisal company that accepts the assignment.

(2) The appraisal management company shall make available to the department any and all records that are required to be maintained under RCW 18.310.130 and this section or records relevant to compliance with this chapter and other relevant statutes.

(3) At any time a document filed with the department becomes inaccurate, the appraisal management company shall promptly file with the department an amendment correcting that information within twenty-one business days.

(4) An appraisal management company shall, at all times, maintain a current list of its appraisal panel and shall provide a copy of that list to the department upon written request.

#### NEW SECTION

**WAC 308-409-070 Required disclosure to appraisers.** When engaging the appraiser, the appraisal management company shall disclose to an appraiser, within their engagement documents, the state license number of the appraisal management company.

#### NEW SECTION

**WAC 308-409-080 Prohibitions.** (1) In addition to the unprofessional conduct described in RCW 18.235.130, the director may take disciplinary action for the following conduct, actions or conditions:

(a) Prohibiting or refusing to allow, or attempting to prohibit or refuse to allow the professional appraisal assistance of registered real estate appraiser trainees in appraisal services unless such action is required by the appraisal management company's client;

(b) The appraisal management company shall not permit any employee, agent, third party, or controlling principal to engage in any of the following activities:

(i) Require the appraiser to collect the appraisal fee from a borrower, homeowner, or third party or to accept a credit card payment;

(ii) Require the appraiser to provide the appraisal management company with the appraiser's digital signature or seal; or

(iii) Compensate an unlicensed appraisal management company for referrals of appraisal services.

(2) This section does not prohibit an appraisal management company or an individual with an interest in a real estate transaction from requesting an appraiser to:

(a) Consider additional appropriate property information including relevant sales comparables not considered in the initial appraisal report;

(b) Provide further detail, substantiation or explanation of the appraiser's value conclusion; or

(c) Correct errors in the appraisal report.

#### NEW SECTION

**WAC 308-409-100 Appraisal reports—Alterations—Use.** The licensed appraisal management company shall not, under any circumstances remove data or portions thereof from the completed appraisal report for use in any form or for any reason.

#### **WSR 11-20-045**

#### **PROPOSED RULES**

#### **TACOMA COMMUNITY COLLEGE**

[Filed September 28, 2011, 2:42 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-05-066.

Title of Rule and Other Identifying Information: Repealing chapter 132V-120 WAC, Code of student rights and responsibilities; and adopting chapter 132V-121 WAC, Code of student conduct.

Hearing Location(s): Tacoma Community College, Gig Harbor Campus, 3993 Hunt Street N.W., Gig Harbor, WA 98335, on November 9, 2011, at 4:00 p.m.

Date of Intended Adoption: November 9, 2011.

Submit Written Comments to: Dolores Haugen, Tacoma Community College, 6501 South 19th Street, Tacoma, WA 98466, e-mail dhaugen@tacomacc.edu, fax (253) 566-6090, by October 21, 2011.

Assistance for Persons with Disabilities: Contact Cathie Bitz by November 1, 2011, cbitz@tacomacc.edu or (253) 566-5101.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes to language in the new code of student conduct reflect best practices in the field of student conduct administration. In particular, wording has changed from that of a "judicial" or "criminal" proceeding to an administrative one, while recognizing procedural due process rights for students. This is congruent with the educational mission of the institution and results in clearer wording and better understanding for students, staff, and faculty.

Statutory Authority for Adoption: RCW 28B.50.140 (13).

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

Name of Proponent: Tacoma Community College, public.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Dolores Haugen, Tacoma Community College, (253) 566-6090.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Policies are relevant to Tacoma Community College students only.

A cost-benefit analysis is not required under RCW 34.05.328. Policies are relevant to Tacoma Community College students only.

September 26, 2011  
 Mary A. Chikwinya  
 Vice-President  
 for Student Services

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

- WAC 132V-120-010 Title.
- WAC 132V-120-020 Definitions.
- WAC 132V-120-030 Jurisdiction.
- WAC 132V-120-040 Student rights.
- WAC 132V-120-050 Student responsibilities.
- WAC 132V-120-060 Authority of the president to prohibit trespass.
- WAC 132V-120-070 Summary suspension proceedings.
- WAC 132V-120-080 Notice of summary proceedings.
- WAC 132V-120-090 Procedures of summary suspension hearing.
- WAC 132V-120-100 Decision by chief student services officer.
- WAC 132V-120-110 Notice of suspension.
- WAC 132V-120-120 Suspension for failure to appear.
- WAC 132V-120-130 Appeal of summary suspension.
- WAC 132V-120-140 Summary suspension proceedings not duplicative.
- WAC 132V-120-150 Purpose of disciplinary actions.
- WAC 132V-120-160 Disciplinary action.
- WAC 132V-120-170 Initiation of disciplinary proceedings.
- WAC 132V-120-180 Disciplinary proceedings.

- WAC 132V-120-200 Composition of student rights and responsibilities committee.
- WAC 132V-120-210 Hearing procedures before the student rights and responsibilities committee.
- WAC 132V-120-220 Conduct of hearings.
- WAC 132V-120-230 Evidence admissible in hearings.
- WAC 132V-120-240 Decision by the committee.
- WAC 132V-120-241 Notification of decision and sanctions imposed.
- WAC 132V-120-245 Appeal process.
- WAC 132V-120-260 Suspension—Reestablishment of academic standing.
- WAC 132V-120-270 Student grievances.
- WAC 132V-120-280 Grievances excluded from this section.
- WAC 132V-120-290 Grievance procedures.
- WAC 132V-120-295 Grievance procedures appeal process.
- WAC 132V-120-300 Final decision regarding student grievances.
- WAC 132V-120-310 Nature of grievance proceedings.
- WAC 132V-120-320 Withdrawal of grievance.
- WAC 132V-120-335 Student grievance procedure for final course grades.
- WAC 132V-120-340 Final course grade grievance process.
- WAC 132V-120-345 Final course grade grievance appeal process.

**Chapter 132V-121 WAC**

**CODE OF STUDENT CONDUCT**

NEW SECTION

**WAC 132V-121-010 Preamble.** Tacoma Community College has a responsibility to create and maintain an environment that balances freedom of expression with freedom from threats to safety, both physical and emotional. Each member of the college community is obligated to act in a manner that promotes the college's mission of meaningful and relevant learning, equity and student success.

Admission to Tacoma Community College carries with it the expectation that the student will conduct himself/herself as a responsible member of the academic community and observe the principles of mutual respect, personal and academic integrity and civility. The code of student conduct

establishes rules governing academic and social conduct of students, including due process rights.

#### NEW SECTION

**WAC 132V-121-020 Title.** This chapter will be known as the code of student conduct of Tacoma Community College.

#### NEW SECTION

**WAC 132V-121-030 Definitions.** The definitions and phrases in this section apply throughout this chapter.

**Academic misconduct** is the violation of college policies (e.g., tampering with grades, taking part in obtaining or distributing any part of an exam prior to the scheduled testing time).

**Calendar day** means all days of the month, not just instructional days. In cases where a specified due date falls on a weekend or holiday, the working day closest to the date due will be used (i.e., if the seventh day deadline falls on Saturday the document will be due on Friday).

**Cheating** includes, but is not limited to, when a student misrepresents that he or she mastered information on an academic exercise.

**College** means Tacoma Community College main campus and any other campus or college facility which may be created by the board of trustees.

**College employee** includes any person employed by the college performing assigned administrative or professional responsibilities.

**College premises** includes all land, buildings, facilities and other property in the possession of or owned, used, controlled, or leased/rented by the college, and agencies or institutions that have educational agreements with the college, extending to associated electronic communication including web sites and distance learning classroom environments.

**Complainant** means any person who alleges that a student violated the code of student conduct.

**Conduct hold** means a block prohibiting the student from registering for classes until he or she receives clearance from the student conduct administrator.

**Fabrication** is the use of invented information or the falsification of research or other findings with the intent to deceive or mislead.

**Faculty** means any person hired by the college to conduct classroom or teaching activities or who is otherwise considered by the college to be a member of its faculty.

**Instructional day** means any regularly scheduled instructional day designated in the instructional calendar, including summer quarter, as a day when classes are held or during final examination week. Saturdays and Sundays are not regularly scheduled instructional days.

**May** is used in the permissive sense.

**Member of the college community** includes any person who is a student, faculty member, college employee, or volunteer. A person's status in a particular situation will be determined by the student conduct administrator.

**Plagiarism** includes, but is not limited to, the inclusion of someone else's words, ideas or data as one's own work.

**Policy** means the written regulations of the college as found in, but not limited to, the code of student conduct, college web site, college catalog, and college administrative manual.

**Respondent** means any student accused of violating the code of student conduct.

**Student conduct administrator** means a college employee authorized by the vice-president for student services to impose consequences upon any student(s) found to have violated the code of student conduct.

**Student conduct appeal board** means members of the college community authorized by the vice-president for student services to hear an appeal by a student of a student conduct administrator's determination and imposed consequences for an alleged violation of the code of student conduct.

**Student** means any person who is admitted to or enrolled for classes through the college, including any person in affiliated distance learning courses. Admitted or enrolled students who withdraw after allegedly violating the code are considered students.

**Will** is used in the imperative sense.

#### NEW SECTION

**WAC 132V-121-040 Code of student conduct authority.** (1) The vice-president for student services will develop policies for the administration of the student conduct system and procedural rules for the conduct of student conduct appeal board hearings that are consistent with provisions of the code of student conduct.

(2) Decisions made by the student conduct appeal board and/or student conduct administrator will be final.

#### NEW SECTION

**WAC 132V-121-050 Jurisdiction of the college code of student conduct.** (1) The college code of student conduct will apply to conduct that occurs on college premises, at college sponsored activities, and to off-campus conduct that adversely affects the college community and/or the pursuit of its objectives.

(2) Each student will be responsible for his/her conduct beginning at the time of application for admission and for the duration of their enrollment through the college, even though conduct may occur before classes begin or after classes end. The code of student conduct will apply to a student's conduct even if the student withdraws from school after the alleged misconduct has occurred.

(3) The vice-president for student services will decide whether the code of student conduct will be applied to conduct occurring off-campus, on a case-by-case basis.

(4) Violation of law and college discipline.

(a) College disciplinary proceedings are separate and independent of any civil or criminal proceedings.

(b) The college will cooperate with law enforcement and other agencies in the enforcement of criminal law on campus. Members of the college community, acting in their personal capacities, are free to interact with governmental representatives as they deem appropriate.

NEW SECTION**WAC 132V-121-060 Standards for student conduct.**

Any student found to have committed or to have attempted to commit the following misconduct is subject to the disciplinary consequences outlined in WAC 132V-121-070, Code of student conduct procedures.

(1) Acts of dishonesty including, but not limited to, the following (see *Tacoma Community College Administrative Procedure for Academic Dishonesty*):

(a) Cheating, plagiarism, fabrication, academic misconduct or other forms of academic dishonesty.

(b) Withholding information or furnishing false information to any college official, faculty member or office.

(c) Forgery, alteration or misuse of any college document, record, or instrument of identification.

(2) Disruption or obstruction of teaching, research, administration, disciplinary proceedings, other college activities, including its public service functions on or off campus, or of other authorized noncollege activities when the conduct occurs on college premises.

(3) Physical abuse, verbal abuse, threats, intimidation, harassment, coercion, or other conduct which threatens or endangers the health or safety of any person, including reckless driving.

(4) Stalking which is a pattern of unwanted behavior that is directed at a specific person that would cause a reasonable person alarm and/or fear.

(5) Sexual harassment which is defined as engaging in unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when such behavior offends the recipient, causes discomfort or humiliation, or interferes with school-related performance (as stated in chapter 132V-300 WAC, Grievance Procedure—Sexual Harassment, Sex Discrimination and Disability Discrimination).

(6) Attempted or actual theft of and/or damage to property of the college or property of a member of the college community on campus.

(7) Hazing which means any method of initiation into a student group or any pastime or amusement engaged in with respect to such a group that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm, to any student or other person attending any institution of higher education (as stated in chapter 132V-130 WAC, Hazing policy).

(8) Failure to comply with directions of college employees acting in performance of their duties and/or failure to identify oneself to these persons when requested to do so.

(9) Unauthorized possession, duplication or use of keys to any college premises or unauthorized entry to or use of college premises.

(10) Violation of any college policy.

(11) Violation of any federal, state or local law.

(12) Being under the influence, use, possession, manufacturing or distribution of marijuana (including medical marijuana), heroin, narcotics or other controlled substances, or associated paraphernalia (pursuant to RCW 69.50.102).

(13) Being under the influence, use, possession, manufacturing or distribution of alcoholic beverages (except as expressly permitted by college regulations) at college-spon-

sored events. Alcoholic beverages may not, in any circumstances, be used by, possessed by or distributed to any person under twenty-one years of age.

(14) Possession of firearms, explosives, other weapons, or dangerous chemicals on college premises or use of any such item in a manner that harms, threatens or causes fear to others.

(15) Leading or inciting others to disrupt scheduled and/or normal activities on any college premises.

(16) Obstruction of the free flow of pedestrian or vehicular traffic on college premises or at college sponsored or supervised functions.

(17) Falsely setting off or otherwise tampering with any emergency safety equipment, alarm, or other device established for the safety of individuals and/or college facilities.

(18) Conduct that is disorderly, breach of peace, or aiding, abetting or procuring another person to breach the peace on college premises or at functions sponsored by the college or members of the academic community. Disorderly conduct includes, but is not limited to, any unauthorized use of electronic or other devices to make an audio or video record of any person while on college premises without his/her prior knowledge, or with his/her effective consent when such a recording is likely to cause injury or distress. This includes, but is not limited to, taking pictures of another person in a locker room or restroom without their permission.

(19) Theft or other abuse of computer facilities and resources including, but not limited to:

(a) Unauthorized entry into a file for any purpose;

(b) Use of another individual's identification and/or password without his or her permission;

(c) Use of computing facilities and resources to interfere with the work of another student, faculty member or college official;

(d) Interfering with normal operation of the college computing system;

(e) Violation of copyright laws;

(f) Any violation of the college's acceptable use of information systems and services policy.

(20) Abuse of the student conduct system including, but not limited to:

(a) Failure to obey the notice from a student conduct appeal board or college employee to appear for a meeting or hearing as part of the student conduct system;

(b) Falsification, distortion or misrepresentation of information before a student conduct appeal board;

(c) Disruption or interference with the orderly conduct of a student conduct appeal board hearing;

(d) Institution of a code of student conduct proceeding in bad faith;

(e) Attempting to discourage an individual's participation in, or use of, the student conduct system;

(f) Attempting to influence the impartiality of a member of a student conduct appeal board prior to and/or during the course of the student conduct appeal board proceeding;

(g) Harassment (verbal or physical) and/or intimidation of a member of a student conduct appeal board prior to, during and/or after a code of student conduct proceeding;

(h) Failure to comply with the consequence(s) imposed under the code of student conduct;

(i) Influencing or attempting to influence another person to violate the code of student conduct system.

#### NEW SECTION

**WAC 132V-121-070 Code of student conduct procedures.** (1) Purpose. The code of student conduct procedures are designed to afford complainants and respondents a fair and accessible process that educates students about their rights and responsibilities, holds students accountable for their actions, and provides due process.

(2) Complaints and student conduct appeal board hearings.

(a) Any member of the college community may submit a complaint against a student for violation of the code of student conduct. Any complaint must be submitted in writing to the student conduct administrator within ten instructional days of the date the person became aware or reasonably can be expected to have become aware of the alleged violation of the code of student conduct.

(b) All complaints will be presented to the respondent by the college in written form (i.e., by U.S. mail to the student's address of record, to the student's TCC e-mail address, or delivered in person).

(c) The student conduct administrator will schedule an initial meeting with the respondent to discuss the complaint.

(i) During the initial meeting, the student conduct administrator will explain the process, the respondent's rights and responsibilities, and review the complaint and alleged violation(s) of the code of student conduct. The student conduct administrator will seek information from the respondent regarding the allegations and may seek additional information from other involved parties or observers.

(ii) If there is more than one respondent involved in the complaint, the student conduct administrator at sole discretion may permit the conferences concerning each respondent to be conducted either separately or jointly.

(3) The student conduct administrator will investigate to determine if the complaint has merit and will take one of the following actions:

(a) If the student conduct administrator determines that the case has no merit, the case will be dismissed;

(b) If the respondent and the student conduct administrator mutually agree to the resolution of the complaint, it will be put in writing and there will be no subsequent proceedings;

(c) If the respondent disagrees with the student conduct administrator's resolution of the complaint, the respondent may appeal the decision of the student conduct administrator to the student conduct appeal board, provided:

(i) The respondent must submit his or her appeal in writing to the student conduct administrator within seven calendar days of the date the decision is communicated to the student, either verbally or in writing, by the student conduct administrator;

(ii) A time will be set for a student conduct board appeal hearing no later than the fifteenth instructional day after the respondent's written appeal has been received by the student conduct administrator;

(d) Such other action as the student conduct administrator deems appropriate.

(4) At any time during this process, failure to meet with the student conduct administrator at the appointed time may subject the respondent to a conduct hold. If the respondent fails to meet with the student conduct administrator in a timely fashion the complaint will be determined in the respondent's absence.

(5) Student conduct appeal board hearings will be conducted according to the following guidelines:

(a) Formal rules of process, procedure, and/or rules of evidence, such as are applied in criminal or civil court, are not used in student conduct proceedings;

(b) The respondent will be notified in written form (i.e., by U.S. mail to the student's address of record, to the student's TCC e-mail address, or delivered in person) at least seven calendar days in advance of the hearing. Such notification will include the time, date and location of the hearing; and the specific complaints against the respondent. Upon request, any documents or other physical evidence that will be presented by any party at the hearing will be provided no less than three instructional days before the hearing to all other parties. Upon request, a list of persons who may appear at the hearing or provide written testimony for any party will be provided no less than three instructional days before the hearing to all other parties;

(c) Student conduct appeal board hearings normally will be conducted in private;

(d) The student conduct appeal board will be composed of five members. The membership will consist of one member of the exempt staff, chosen by the vice-president for student services; two faculty members chosen by the faculty union president; and two students chosen by the president of the associated student body;

(i) Chairperson. The student conduct appeal board will elect its own chairperson for each complaint brought before it.

(ii) Quorum. A quorum will consist of no less than three members, provided, that one exempt staff, one faculty and one student are present.

(iii) Substitutes:

(A) Any member of the student conduct appeal board who has direct knowledge or involvement in a complaint under consideration may be excused from participation in the hearing or appeal.

(B) Substitutes may be appointed to form a quorum.

(e) The complainant and respondent and their advisors, if any, will be allowed to attend the entire portion of the student conduct appeal board hearing at which information is received (excluding deliberations). Admission of any other person to the student conduct appeal board hearing and level of involvement will be at the sole discretion of the student conduct appeal board and/or the student conduct administrator;

(f) In student conduct appeal board hearings involving more than one respondent, the student conduct administrator, in his or her sole discretion, may permit the student conduct appeal board hearings concerning each student to be conducted either separately or jointly;

(g) The complainant and the respondent may be assisted by an advisor of their choice. The advisor must be a member of the college community and may not be an attorney. The complainant and/or the respondent is responsible for presenting his or her own information. Therefore, advisors are not permitted to speak or to participate directly in any hearing before a student conduct appeal board. A student should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the student conduct appeal board hearing because delays will not normally be allowed due to the scheduling conflicts of an advisor;

(h) The complainant, the respondent and the student conduct appeal board may arrange for witnesses to present pertinent information to the student conduct appeal board. The college will try to arrange the attendance of possible witnesses who are members of the college community, if reasonably possible, and who are identified by the complainant and/or respondent at least two weekdays prior to the student conduct appeal board hearing. Witnesses will provide information to and answer questions from the student conduct appeal board. Questions may be suggested by the respondent and/or complainant to be answered by each other or by other witnesses. This will be conducted by the student conduct appeal board with such questions directed to the chairperson, rather than to the witness directly. This method is used to preserve the educational tone of the hearing and to avoid creation of an adversarial environment. The chairperson of the student conduct appeal board will determine relevancy of the questions;

(i) Pertinent records, exhibits and written statements may be accepted as information for consideration by the student conduct appeal board at the sole discretion of the chairperson;

(j) All procedural questions are subject to the final decision of the chairperson of the student conduct appeal board;

(k) After the portion of the student conduct appeal board hearing concludes in which all pertinent information has been received, the student conduct appeal board will determine which section(s) of the code of student conduct, if any, that the respondent has violated.

(6) The student conduct appeal board's determination will be made on the basis of whether it is more likely than not that the respondent violated the code. Formal rules of process, procedure, and/or rules of evidence, such as are applied in criminal or civil court, are not used in student conduct proceedings. There will be a single verbatim record, such as a tape recording, of all student conduct appeal board hearings before a student conduct appeal board (not including deliberations). Deliberations will not be recorded. The record will be the property of the college.

(7) If a respondent does not appear before a student conduct appeal board hearing, the information in support of the charges will be presented and considered even if the respondent is not present.

(8) The student conduct appeal board may accommodate concerns for the personal safety, well-being, and/or fears of confrontation of the complainant, respondent, or other witness during the hearing by providing separate facilities, by using a visual screen, or by permitting participation by telephone, videophone, closed circuit television, video confer-

encing, videotape, audio tape, written statement, or other means, where and as determined by the vice-president for student services to be appropriate.

(9) In consultation and agreement with the vice-president for student services, the student conduct appeal board will issue a final determination as follows:

(a) The board determines that the case has no merit, and the case is dismissed;

(b) The board upholds the determination of responsibility and consequences imposed by the student conduct administrator;

(c) The board upholds part or all of the determination of responsibility and modifies the consequences.

(10) Consequences.

(a) Any student found to have violated the code of student conduct will be subject to one or more of the following consequences:

(i) Warning. Written notice to a student that the student has been in violation of college policy or has otherwise failed to meet the college's standards of conduct. Such warnings will include the statement that continuation or repetition of the specific conduct involved or other misconduct may result in one of the more serious consequences;

(ii) Reprimand. Written action censuring a student for violation of college policy or otherwise failing to meet the college's standards of conduct. The written reprimand will be filed in the office of the vice-president for student services for the duration of the student's attendance at the college. A reprimand will include the statement that continuation or repetition of the specific conduct involved or other misconduct may result in one of the more serious consequences;

(iii) Probation. Conditions placed upon the student's continued attendance for violation of this chapter. Notice will be made in writing and specify the period of probation and the conditions to be met by the student. Disciplinary probation may be for a specific term or for an indefinite period which may extend to graduation. Violation of the terms of the probation or violation of any college policy during the probation period may be grounds for additional consequences;

(iv) Loss of privileges. Denial of specified privileges for a designated period of time;

(v) Restitution. Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement;

(vi) Withholding admission or degree. Admission to or a degree awarded from the college may be withheld for a specified amount of time;

(vii) Revocation of admission or degree. Admission to or a degree awarded from the college is revoked and noted on the transcript. In general this action is reserved for conduct that includes, but is not limited to, acts of dishonesty;

(viii) Discretionary consequences. Work assignments, essays, service to the college, or other related discretionary assignments;

(ix) No contact. The student may have no contact with other stated members of the college community;

(x) Suspension. Temporary dismissal from the college and termination of the person's student status;

(xi) Expulsion. Permanent dismissal from the college and termination of the person's student status.

(b) More than one of the consequences listed in (a)(i) through (xi) of this subsection may be imposed for any single violation.

(c) Consequences for conduct in class.

(i) Each faculty member is responsible for conduct in class and is authorized to take such steps as are necessary when behavior of a student interrupts the normal class procedure. When behavior is disruptive, the faculty member may dismiss the student from class for that one class period and make reasonable effort to resolve the situation. This includes electronically removing a disruptive student from on-line class situations. However, if the matter becomes so serious as to result in removing the student from the class for two consecutive class periods or when a pattern of periodic misconduct occurs, the faculty member will report the incident to the student conduct administrator in order to seek resolution to the situation and allow for due process.

(ii) Consequences for academic dishonesty or abetting in academic dishonesty may be imposed at the discretion of a faculty member up to and including a failing grade for the course. Students should refer to each of their faculty's course syllabus.

(d) Disciplinary consequences will be made part of both the complainant's and the respondent's education record. The records may be expunged of disciplinary consequences, other than expulsion, seven years after the quarter in which the incident occurred.

(11) Emergency suspension.

(a) In certain circumstances, the vice-president for student services, or designee, may impose an emergency suspension. Emergency suspension may be imposed only:

(i) To ensure the student's own physical or emotional safety and well-being; or

(ii) To ensure the safety and well-being of members of the college community or preservation of college property; or

(iii) If the student poses an ongoing threat of disruption or interference with the normal operations of the college.

(b) During the emergency suspension, a student will be denied access to the campus (including classes) and/or all other college activities or privileges for which the student might otherwise be eligible, as the vice-president for student services or the student conduct administrator may determine to be appropriate.

(c) The student will be notified in writing of this action and the reasons for the emergency suspension. The student will also be informed in writing of the time, date and place of an initial meeting.

(d) An initial meeting will take place within five instructional days of the emergency suspension. At the initial meeting the student may show cause why his or her continued presence on the campus does not constitute a threat and may contest whether a campus policy was violated.

(e) At the initial meeting the student conduct administrator, in consultation and agreement with the vice-president for student services, will decide to uphold the emergency suspension, dismiss it, or impose other consequences. The student will be informed in writing of this decision.

(f) The emergency suspension does not replace the code of student conduct procedures, which will proceed on the normal schedule, up to and through a student conduct appeal board hearing, if required.

(g) Appeals.

(i) A decision reached or a consequence imposed by the student conduct administrator may be appealed by the respondent within five instructional days of the decision. Such appeals must be in writing and delivered to the student conduct administrator who will convene a student conduct appeal board hearing as outlined in subsection (5) of this section.

(ii) The decision of the student conduct appeal board will be final.

#### NEW SECTION

#### **WAC 132V-121-080 Interpretation and revision. (1)**

Any question of interpretation or application of the code of student conduct will be referred to the vice-president for student services or his or her designee for final determination.

(2) The code of student conduct will be reviewed every five years under the direction of the student conduct administrator.

#### **WSR 11-20-052**

#### **PROPOSED RULES**

#### **HEALTH CARE AUTHORITY**

[Filed September 29, 2011, 3:41 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-09-057.

Title of Rule and Other Identifying Information: WAC 388-505-0210 Apple health for kids and other children's medical assistance programs, 388-505-0211 Premium requirements for premium-based healthcare coverage under programs included in apple health for kids, and 182-505-0235 Order of payments under the premium-based apple health for kids program as funded by Title XXI of the Social Security Act.

Hearing Location(s): Health Care Authority, Cherry Street Plaza Building, Conference Room 106A (Apple Room), 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at <http://maa.dshs.wa.gov/pdf/CherryStreetDirectionsNMap.pdf>

or directions can be obtained by calling (360) 725-1000, on November 8, 2011, at 10:00 a.m.

Date of Intended Adoption: Not sooner than November 9, 2011.

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 November 8, 2011.

Assistance for Persons with Disabilities: Contact Kelly Richters by October 31, 2011, TTY/TDD (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: Eliminating the Social Security number requirement for premium-based apple health [for] kids medical coverage is necessary to comply with federal "maintenance of effort" requirements under Patient Protection and Affordable Care Act (PPACA); adding description of lawfully present aliens to comply with Children's Health Insurance Program Reauthorization Act (CHIPRA); and creating [a] new WAC section identifying the order of Title XXI payments under the premium-based apple health for kids program.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.057, 74.08.090, and 74.09.500.

Statute Being Implemented: PPACA; §2102 (b)(1)(A) of the Social Security Act (SSA); and Public Law 111-3 (CHIPRA of 2009).

Rule is necessary because of federal law, PPACA; §2102 (b)(1)(A) of the SSA; and P.L. 111-3 (CHIPRA of 2009).

Name of Proponent: Health care authority, governmental.

Name of Agency Personnel Responsible for Drafting: Kevin Cornell, P.O. Box 45504, Olympia, WA 98504-5504, (360) 725-1344; Implementation and Enforcement: Kevin Cornell, P.O. Box 45534, Olympia, WA 98504-5534, (360) 725-1423.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative rules review committee (JARRC) has not requested the filing of a small business economic impact statement, and there will be no costs to small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to health care authority rules unless requested by JARRC or applied voluntarily.

September 29, 2011  
Kevin M. Sullivan  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-03-001, filed 1/5/11, effective 2/5/11)

**WAC 388-505-0210 Apple health for kids and other children's medical assistance programs.** Funding for coverage under the apple health for kids programs may come through Title XIX (medicaid), Title XXI (CHIP), or through state-funded programs. There are no resource limits for the apple health for kids programs. Apple health for kids coverage is free to children in households with incomes of no more than two-hundred percent of the federal poverty level (FPL), and available on a premium basis to children in households with incomes of no more than three-hundred percent FPL.

(1) Newborns are eligible for federally matched categorically needy (CN) coverage through their first birthday when:

(a) The newborn is a resident of the state of Washington.

(b) The newborn's mother is eligible for medical assistance:

(i) On the date of the newborn's birth, including a retroactive eligibility determination; or

(ii) Based on meeting a medically needy (MN) spend-down liability with expenses incurred on, or prior to, the date of the newborn's birth.

(2) Children under the age of nineteen who are U.S. citizens, U.S. nationals, or lawfully present qualified or nonqualified aliens as described in WAC 388-424-0001, 388-424-0010(4), and 388-424-0006 (1), (4), and (5) are eligible for free federally matched CN coverage when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC;

(b) A Social Security number or application as described in chapter 388-476 WAC;

(c) Proof of citizenship or immigrant status and identity as required by WAC 388-490-0005(11);

(d) Family income is at or below two hundred percent of federal poverty level (FPL), as described in WAC 388-478-0075 at each application or review; or

(e) They received Supplemental Security Income (SSI) cash payments in August 1996 and would continue to be eligible for those payments except for the August 1996 passage of amendments to federal disability definitions; or

(f) They are currently eligible for SSI.

(3) Noncitizen children under the age of nineteen, who are not lawfully present qualified or nonqualified aliens as described in WAC 388-424-0001, 388-424-0010(4), and 388-424-0006 (1), (4), and (5), are eligible for free state-funded coverage when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC; and

(b) Family income is at or below two hundred percent FPL at each application or review.

(4) Children under the age of nineteen who are U.S. citizens, U.S. nationals, or lawfully present qualified or nonqualified aliens as described in WAC 388-424-0001, 388-424-0010(4), and 388-424-0006 (1), (4), and (5) are eligible for premium-based federally matched CN coverage as described in chapter 388-542 WAC when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC;

(b) ~~((A) Social Security number or application as described in chapter 388-476 WAC;~~

~~((c))~~ Proof of citizenship or immigrant status and identity as required by WAC 388-490-0005(11);

~~((d))~~ (c) Family income is over two hundred percent FPL, as described in WAC 388-478-0075, but not over three hundred percent FPL at each application or review;

~~((e))~~ (d) They do not have other creditable health insurance as described in WAC 388-542-0050; and

~~((f))~~ (e) They pay the required monthly premiums as described in WAC 388-505-0211.

(5) Noncitizen children under the age of nineteen, who are not lawfully present qualified or nonqualified aliens as described in WAC 388-424-0001, 388-424-0010(4), and 388-424-0006 (1), (4), and (5), are eligible for premium-based state-funded CN coverage when they meet the following criteria:

(a) State residence as described in chapter 388-468 WAC;



(b) Family income is over two hundred percent FPL, as described in WAC 388-478-0075, but not over three hundred percent FPL at each application or review;

(c) They do not have other creditable health insurance as described in WAC 388-542-0050; and

(d) They pay the required monthly premium as described in WAC 388-505-0211.

(6) Children under age nineteen are eligible for the medically needy (MN) medicaid program when they meet the following criteria:

(a) Citizenship or immigrant status, state residence, and Social Security number requirements as described in subsection (2)(a), (b), and (c) of this section;

(b) Are ineligible for other federally matched CN programs;

(c) Have income that exceeds three hundred percent FPL; or

(d) Have income less than three hundred percent FPL, but do not qualify for premium-based coverage as described in subsection (4) of this section because of creditable coverage; and

(e) Meet their spenddown liability as described in WAC 388-519-0100 and 388-519-0110.

(7) Children under the age of nineteen who reside or are expected to reside in a medical institution, intermediate care facility for the mentally retarded (ICF/MR), hospice care center, nursing home, institution for mental diseases (IMD) or inpatient psychiatric facility may be eligible for apple health for kids healthcare coverage based upon institutional rules described in WAC 388-505-0260. Individuals between the age of nineteen and twenty-one may still be eligible for healthcare coverage but not under the apple health for kids programs. See WAC 388-505-0230 "Family related institutional medical" and WAC 388-513-1320 "Determining institutional status for long-term care" for more information.

(8) Children who are in foster care under the legal responsibility of the state, or a federally recognized tribe located within the state, and who meet eligibility requirements for residency, Social Security number, and citizenship as described in subsection (2)(a), (b) and (c) of this section are eligible for federally matched CN medicaid coverage through the month of their:

(a) Eighteenth birthday;

(b) Twenty-first birthday if the children's administration determines they remain eligible for continued foster care services; or

(c) Twenty-first birthday if they were in foster care on their eighteenth birthday and that birthday was on or after July 22, 2007.

(9) Children are eligible for state-funded CN coverage through the month of their eighteenth birthday if they:

(a) Are in foster care under the legal responsibility of the state or a federally recognized tribe located within the state; and

(b) Do not meet social security number and citizenship requirements in subsection (2)(b) and (c) of this section.

(10) Children who receive subsidized adoption services are eligible for federally matched CN coverage.

(11) Children under the age of nineteen not eligible for apple health for kids programs listed above may be eligible

for one of the following medical assistance programs not included in apple health for kids:

(a) Family medical as described in WAC 388-505-0220;

(b) Medical extensions as described in WAC 388-523-0100;

(c) SSI-related MN if they:

(i) Meet the blind and/or disability criteria of the federal SSI program, or the condition of subsection (2)(e) of this section; and

(ii) Have countable income above the level described in WAC 388-478-0070(1).

(d) Home and community based waiver programs as described in chapter 388-515 WAC; or

(e) Alien medical as described in WAC 388-438-0110, if they:

(i) Have a documented emergency medical condition as defined in WAC 388-500-0005;

(ii) Have income more than three hundred percent FPL; or

(iii) Have income less than three hundred percent FPL, but do not qualify for premium-based coverage as described in subsection (5) of this section because of creditable coverage.

(12) Except for a child described in subsection (7) of this section, an inmate of a public institution, as defined in WAC 388-500-0005, is not eligible for any apple health for kids program.

AMENDATORY SECTION (Amending WSR 11-03-001, filed 1/5/11, effective 2/5/11)

**WAC 388-505-0211 Premium requirements for premium-based healthcare coverage under programs included in apple health for kids.** (1) For the purposes of this chapter, "**premium**" means an amount paid for healthcare coverage under programs included in apple health for kids as described in WAC 388-505-0210 (4) and (5).

(2) Payment of a premium is required as a condition of eligibility for premium-based coverage under programs included in apple health for kids, as described in WAC 388-505-0210 (4) and (5), unless the child is:

(a) Pregnant; or

(b) An American Indian or Alaska native.

(3) The premium requirement begins the first of the month following the determination of eligibility. There is no premium requirement for medical coverage received in a month or months before the determination of eligibility.

(4) The premium amount for the assistance unit (AU) is based on the net countable income as described in WAC 388-450-0210 and the number of children in the (~~assistance unit~~) AU. If the household includes more than one (~~assistance unit~~) AU, the premium amount billed for the (~~assistance units~~) AUs may be different amounts.

(5) The premium amount is limited to a monthly maximum of two premiums for households with two or more children.

(6) The premium amount for each ((eligible)) U.S. citizen or lawfully present alien child ((shall be)) described in WAC 388-505-0210(4) is:

(a) Twenty dollars per month per child for households with income above two hundred percent FPL, but not above two hundred and fifty percent FPL; or

(b) Thirty dollars per month per child for households with income above two hundred and fifty percent FPL, but not above three hundred percent FPL ~~(; and~~

~~(e) Limited to a monthly maximum of two premiums for households with two or more children).~~

~~((6)) (7) The premium amount for each noncitizen child described in WAC 388-505-0210(5) who is not a lawfully present qualified or nonqualified alien is no greater than the average of the state-share of the per capita cost for state-funded children's health coverage. The premium amount is set every two years, based on the forecasted per capita costs for that period.~~

~~(8) All children in an ((assistance unit)) AU are ineligible for healthcare coverage when the head of household fails to pay required premium payments for three consecutive months.~~

~~((7)) (9) When the ((department)) agency or the agency's designee terminates the medical coverage of a child due to nonpayment of premiums, the child's eligibility is restored only when the:~~

(a) Past due premiums are paid in full prior to the end of the certification period; or

(b) The child becomes eligible for coverage under a non-premium-based CN healthcare program.

~~((8)) (10) The ((department)) agency or the agency's designee writes off past-due premiums after twelve months.~~

~~((9)) (11) If all past due premiums are paid after the certification period is over:~~

(a) Eligibility for prior months is not restored; and

(b) Children are not eligible for premium-based coverage under apple health for kids until:

(i) The month the premiums are paid or the ~~((department))~~ agency writes off the debt; ~~((or)) and~~

(ii) The family reapplies and is found eligible.

~~((10)) (12) A family cannot designate partial payment of the billed premium amount as payment for a specific child in the ((assistance unit)) AU. The full premium amount is the obligation of the head of household of the ((assistance unit)) AU. A family can decide to request healthcare coverage only for certain children in the ((assistance unit)) AU, if they want to reduce premium obligation.~~

~~((11)) (13) A change that affects the premium amount is effective the month after the change is reported and processed.~~

~~((12)) (14) A sponsor or other third party may pay the premium on behalf of the child or children in the ((assistance unit)) AU. The premium payment requirement remains the obligation of head of household of the ((assistance unit)) AU. The failure of a sponsor or other third party to pay the premium does not eliminate the obligation of the head of household to pay past due premiums.~~

#### NEW SECTION

**WAC 182-505-0235 Order of payments under the premium-based apple health for kids program as funded by Title XXI of the Social Security Act.** The agency admin-

isters the programs included in apple health for kids that provide premium-based coverage through a combination of state and federal funding sources. For expenditures funded by Title XXI of the Social Security Act, also known as the children's health insurance program (CHIP), federal financial participation will be sought in compliance with section 2105 of the act in the following order:

(1) For medical assistance for targeted low-income children from birth through age eighteen, as described in section 4 of the Title XXI state plan.

(2) For medical assistance for unborn children, as described in section 4.1.2.1 of the Title XXI state plan.

(3) For medical assistance for medicaid-eligible children, as described in CHIPRA, section 214.

(4) For medical assistance for medicaid-eligible children, as described in section 2105 (g)(4)(A) and (B) of the act.

(5) For allowable administrative expenditures under the ten percent cap, as defined in section 2105 (a)(1)(D) of the act in the following order:

(a) First, for reasonable expenditures necessary to administer the plan, including staffing for eligibility determinations, plan administration, quality assurance, and similar costs.

(b) Second, for a toll-free 800 telephone number providing information regarding the Washington apple health for kids program.

(c) Third, for health services initiatives, such as the funding of the Washington poison center, to the extent that state funds are appropriated by the legislature.

(d) Fourth, for translation or interpretation services in connection with the enrollment, retention, or use of services under this title by individuals for whom English is not their primary language, but only to the extent that state-matching funds are made available.

(e) Fifth, for outreach services for the Washington apple health for kids program, to the extent that appropriated state-matching funds are available.

(f) Sixth, for other CMS-approved activities to the extent that federal matching funds are available, and where such activities do not duplicate efforts conducted under this subsection.

#### **WSR 11-20-055**

#### **PROPOSED RULES**

#### **PUBLIC DISCLOSURE COMMISSION**

[Filed September 30, 2011, 11:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-13-072.

Title of Rule and Other Identifying Information: Amending WAC 390-05-400 Changes to dollar amounts as prescribed in RCW 42.17.690 and correct statutory references to reflect the recodification of chapter 42.17 RCW to chapter 42.17A RCW in January 2012.

Hearing Location(s): Commission Hearing Room, 711 Capitol Way, Room 206, Olympia, WA 98504, on December 8, 2011, at 9:30 a.m.

Date of Intended Adoption: December 8, 2011.

Submit Written Comments to: Lori Anderson, Public Disclosure Commission (PDC), P.O. Box 40908, Olympia, WA 98504-0908, e-mail lori.anderson@pdc.wa.gov, fax (360) 753-1112, by December 6, 2011.

Assistance for Persons with Disabilities: Contact Jana Greer by e-mail jana.greer@pdc.wa.gov or phone (360) 586-0544 or (360) 753-1111.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To amend existing dollar limits for inflation in accordance with RCW 42.17.690, adjust contributions to candidates seeking any judicial office in accordance with RCW 42.17.645, and correct statutory references to reflect the recodification of chapter 42.17 RCW to chapter 42.17A RCW.

Reasons Supporting Proposal: To adjust contribution limits based on changes in economic conditions.

Statutory Authority for Adoption: RCW 42.17.370(1) and 42.17.690.

Statute Being Implemented: RCW 42.17.020, 42.17.-125, 42.17.180, 42.17.640, 42.17.645, and chapter 204, Laws of 2010.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The rule amendment conforms to the provisions in RCW 42.17.690 requiring the commission, at the beginning of each even-numbered calendar year, to adjust dollar amounts in RCW 42.17.020, 42.17.125, 42.17.180, 42.17.-640, and 42.17.645 based on changes in economic conditions.

Name of Proponent: PDC, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Lori Anderson, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2737; and Enforcement: Phil Stutzman, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-8853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments has minimal impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The PDC is not an agency listed in subsection (5)(a)(i) of section 201. Further, the PDC does not voluntarily make section 201 applicable to the adoption of these rules pursuant to subsection (5)(a)(i) of section 201, and, to date, the joint administrative rules review committee has not made section 201 applicable to the adoption of these rules.

September 29, 2011

Lori Anderson  
Communications and  
Training Officer

AMENDATORY SECTION (Amending WSR 08-04-022, filed 1/28/08, effective 2/28/08)

**WAC 390-05-400 Changes in dollar amounts.** Pursuant to the requirement in RCW ((42.17.690)) 42.17A.125 that the commission biennially revise the dollar amounts found in Initiative 134 and RCW ((42.17.645)) 42.17A.410 to reflect changes in economic conditions, the following revisions are made:

Code Section	Subject Matter	Amount Enacted or Last Revised	((2008)) <u>2012</u> Revision
((-020)) <u>.005</u>	Definition of "Independent Expenditure"	\$((700)) <u>800</u>	\$((800)) <u>900</u>
((-125)) <u>.445(3)</u>	Reimbursement of candidate for loan to own campaign	\$((4,300)) <u>4,700</u>	\$((4,700)) <u>5,000</u>
((-180(1)) <u>.630(1)</u>	Report— Applicability of provisions to Persons who made contributions Persons who made independent expenditures	\$((14,500)) <u>16,000</u>  \$((700)) <u>800</u>	\$((16,000)) <u>18,000</u>  \$((800)) <u>900</u>
((-640(2)) <u>.405(2)</u>	Contribution Limits— Candidates for state leg. office Candidates for county office Candidates for other state office Candidates for special purpose districts	\$((700)) <u>800</u> \$((700)) <u>800</u> \$((1,400)) <u>1,600</u> \$((1,400)) <u>1,600</u>	\$((800)) <u>900</u> \$((800)) <u>900</u> \$((1,600)) <u>1,800</u> \$((1,600)) <u>1,800</u>
((-640(3)) <u>.405(3)</u>	Contribution Limits— State official up for recall or pol comm. supporting recall— State Legislative Office Other State Office	\$((700)) <u>800</u> \$((1,400)) <u>1,600</u>	\$((800)) <u>900</u> \$((1,600)) <u>1,800</u>

Code Section	Subject Matter	Amount Enacted or Last Revised	((2008)) <u>2012</u> Revision
<del>((-640(4)))</del> <u>.405(4)</u>	Contribution Limits— Contributions made by political parties and caucus committees		
	State parties and caucus committees	<del>((-70))</del> <u>.80</u> per voter	<del>((-80))</del> <u>.90</u> per registered voter
	County and leg. district parties	<del>((-35))</del> <u>.40</u> per voter	<del>((-40))</del> <u>.45</u> per registered voter
	Limit for all county and leg. district parties to a candidate	<del>((-35))</del> <u>.40</u> per voter	<del>((-40))</del> <u>.45</u> per registered voter
<del>((-640(5)))</del> <u>.405(5)</u>	Contribution Limits— Contributions made by pol. parties and caucus committees to state official up for recall or committee supporting recall		
	State parties and caucuses	<del>((-70))</del> <u>.80</u> per voter	<del>((-80))</del> <u>.90</u> per registered voter
	County and leg. district parties	<del>((-35))</del> <u>.40</u> per voter	<del>((-40))</del> <u>.45</u> per registered voter
	Limit for all county and leg. district parties to state official up for recall or pol. comm. supporting recall	<del>((-35))</del> <u>.40</u> per voter	<del>((-40))</del> <u>.45</u> per registered voter
<del>((-640(7)))</del> <u>.405(7)</u>	Limits on contributions to political parties and caucus committees		
	To caucus committee	<del>\$(700)</del> <u>800</u>	<del>\$(800)</del> <u>900</u>
	To political party	<del>\$(3,500)</del> <u>4,000</u>	<del>\$(4,000)</del> <u>4,500</u>
<del>((-645(1)))</del> <u>.410(1)</u>	Candidates for judicial office	<del>\$(1,400)</del> <u>1,600</u>	<del>\$(1,600)</del> <u>1,800</u>
<del>((-740))</del> <u>.475</u>	Contribution must be made by written instrument	<del>\$(70)</del> <u>80</u>	<del>\$(80)</del> <u>90</u>

**WSR 11-20-056**

**PROPOSED RULES**

**PUBLIC DISCLOSURE COMMISSION**

[Filed September 30, 2011, 11:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-05-045.

Title of Rule and Other Identifying Information: Amending WAC 390-20-120 Forms for report of legislative activity by public agencies.

Hearing Location(s): Commission Hearing Room, 711 Capitol Way, Room 206, Olympia, WA 98504, on December 8, 2011, at 9:30 a.m.

Date of Intended Adoption: December 8, 2011.

Submit Written Comments to: Lori Anderson, Public Disclosure Commission (PDC), P.O. Box 40908, Olympia, WA 98504-0908, e-mail lori.anderson@pdc.wa.gov, fax (360) 753-1112, by December 6, 2011.

Assistance for Persons with Disabilities: Contact Jana Greer by e-mail jana.greer@pdc.wa.gov or phone (360) 586-0544 or (360) 753-1111.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending the form for report of legislative activity by public agencies to include new services attachment and travel attachment pages and correct statutory references to reflect the recodification of chapter 42.17 RCW to chapter 42.17A RCW. These pages are for disclosure of payments made by public agencies to contract lobbyists and expenditures for travel related to lobbying, respectively.

Reasons Supporting Proposal: These amendments will provide guidance to public agencies required to report lobbying activity and bring uniformity to public agencies' disclosure of lobbying-related expenditures, both of which should increase public access to public agencies' lobbying expenditures.

Statutory Authority for Adoption: RCW 42.17.370(1).

Statute Being Implemented: RCW 42.17.190 and chapter 204, Laws of 2010.

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

Name of Proponent: PDC, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Lori Anderson, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2737; and Enforcement: Phil Stutzman, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-8853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments has minimal impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The PDC is not an agency listed in subsection (5)(a)(i) of section 201. Further, the PDC does not voluntarily make section 201 applicable to the adoption of these rules pursuant to subsection (5)(a)(i) of section 201, and, to date, the joint administrative rules review committee has not made section 201 applicable to the adoption of these rules.

September 29, 2011

Lori Anderson  
Communications and  
Training Officer

AMENDATORY SECTION (Amending WSR 09-01-068, filed 12/12/08, effective 1/12/09)

**WAC 390-20-120 Forms for report of legislative activity by public agencies.** The official form for the report of legislative activity by public agencies as required by RCW ((42.17.190)) 42.17A.635 is designated "L-5," revised ((1/09)) 1/12. Copies of this form are available at the Commission Office, Room 206, Evergreen Plaza Building, Olympia, Washington 98504-0908. Any attachments shall be on 8-1/2" x 11" white paper.

((STRICKEN GRAPHIC \_\_\_\_\_))

**THESE INSTRUCTIONS APPLY ONLY TO GOVERNMENT AGENCIES REPORTING PURSUANT TO RCW 42.17.190.**

**WHO SHOULD REPORT?**

Each state agency, county, city, town, municipal corporation, quasi-municipal corporation or special purpose district which expends public funds for "lobbying". Please study the definitions of what is and is not included in lobbying to determine if your agency is required to report.

"Lobbying" means attempting to influence the passage or defeat of any legislation by the state legislature or the adoption or rejection of any rule, standard, rate or other legislative enactment by any state agency under chapters 28.19 and 34.04 RCW. "Legislation" means bills, resolutions, motions, amendments, nominations, and other matters pending or proposed in either house of the state legislature, and includes any other matter which may be the subject of action by either house, or any committee of the legislature and all bills and resolutions which having passed both houses, are pending approval by the Governor.

**LOBBYING DOES NOT INCLUDE**

1. Requests for appropriations by a state agency to OFM pursuant to RCW 43.88 or requests by OFM to the legislature for appropriations other than its own agency budget. Note that an agency representative who, in person, contacts a legislator or committee on appropriations matters is lobbying.
2. Recommendations or reports to the legislature in response to a legislative request expressly requesting or directing a specific study, recommendation or report on a particular subject.
3. Official reports including recommendations submitted annually or biennially by a state agency as required by law.
4. Requests, recommendations or other communications between or within state agencies or between or within local agencies.
5. Telephone conversations or preparation of written correspondence.
6. Preparation or adoption of policy positions within an agency or group of agencies. Note that once a position is adopted, further action to advocate it may constitute lobbying.
7. Attempts to influence federal or local legislation.

**LOBBYING NOT REPORTABLE**

1. In person lobbying totaling no more than four days or parts of days during any three month period in aggregate for all officials and employees of the agency. In person lobbying includes testifying at legislative committee hearings and state agency hearings on rules and regulations but does not include attendance merely to monitor or observe testimony and debate.
2. In person lobbying by any elected official on behalf of his agency or in connection with his powers, duties or compensation.

**EXPENDITURES OVER \$15 OF NON-PUBLIC FUNDS**

Any person (including an elected official) who expends more than \$15 of personal or non-public funds for or on behalf of one or more legislators, state elected officials or state public officers or employees in connection with in person lobbying must be listed on the L-5 report. Attach a page showing the spender's name, and date, the source of funds and amount spent, and for whom the money was spent. Examples of these expenditures include entertainment, dinners and campaign contributions.

**REPORTS REQUIRED**

The L-5 report is submitted to cover each calendar quarter in which lobbying occurs. No report is required if no reportable lobbying has taken place during the quarter.

<b>DUE DATES:</b>	April 30 (1st quarter)	July 31 (2nd quarter)
	October 31 (3rd quarter)	January 31 (4th quarter)

ONE CONSOLIDATED REPORT SHOULD BE SUBMITTED TO INCLUDE LOBBYING ACTIVITIES OF ALL DIVISIONS OR OFFICES OF AN AGENCY.

**Public Disclosure Commission**  
**Send Reports To:** 711 Capitol Way, Rm 206  
 PO Box 40908  
 Olympia, WA 98504-0908

SPECIAL NOTE: In lieu of reporting as provided in RCW 42.17.190 any agency or lobbyist for an agency may elect to register and report as provided in RCW 42.17.150, .160, .170 and .180. An agency so choosing must notify PDC of that fact and obtain necessary reporting forms and instructions.

\_\_\_\_\_  
((STRICKEN GRAPHIC))



PDC FORM <b style="font-size: 2em;">L-5</b> (Rev 1/12)	<b>LOBBYING BY STATE AND LOCAL GOVERNMENT AGENCIES</b>
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Instructions Are Printed On Reverse

Agency or Governmental Entity Name and Address  _____  _____	Date prepared  _____  _____	Report for calendar quarter ending  _____ Month    Year
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**PERSONS WHO LOBBIED THIS QUARTER**

Name	Job title	Annual salary \$	% of time spent lobbying during quarter
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General description of lobbying activities or objectives. (Include bill or WAC numbers, if any)

Check if person spent more than \$15 of non-public funds in lobbying. See instructions on reverse.

Name	Job title	Annual salary \$	% of time spent lobbying during quarter
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General description of lobbying activities or objectives. (Include bill or WAC numbers, if any)

Check if person spent more than \$15 of non-public funds in lobbying. See instructions on reverse.

Name	Job title	Annual salary \$	% of time spent lobbying during quarter
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General description of lobbying activities or objectives. (Include bill or WAC numbers, if any)

Check if person spent more than \$15 of non-public funds in lobbying. See instructions on reverse.

**EXPENDITURES FOR LOBBYING THIS QUARTER**  
Report only the separately identifiable and measurable expenditures incurred for lobbying purposes

Salaries Of Persons Who Lobbied (Include only portion of quarterly salary attributable to lobbying)	\$
Travel (Include food, lodging, per diem payments and cost of transportation used)	\$
Brochures And Other Publications Whose Principal Purpose Is To Influence Legislation	\$
Consultants Or Other Contractual Services	\$
<b>Total This Quarter</b>	\$
<b>Total To Date This Year</b>	\$

<b>CERTIFICATION:</b> I certify that to the best of my knowledge the above is a true, complete and correct statement in accordance with RCW 42.17A.635.	Name of employee completing report  _____
Signature of agency head  _____	Work telephone Number  _____  Work E-mail  _____

Attach additional sheets if more room is required

**THESE INSTRUCTIONS APPLY ONLY TO GOVERNMENT AGENCIES REPORTING PURSUANT TO RCW 42.17A.635.**

**WHO SHOULD REPORT?**

Each state agency, county, city, town, municipal corporation, quasi-municipal corporation or special purpose district which expends public funds for "lobbying". Please study the definitions of what is and is not included in lobbying to determine if your agency is required to report.

"Lobbying" means attempting to influence the passage or defeat of any legislation by the state legislature or the adoption or rejection of any rule, standard, rate or other legislative enactment by any state agency under the state administrative procedure act, chapter 34.05 RCW. "Legislation" means bills, resolutions, motions, amendments, nominations, and other matters pending or proposed in either house of the state legislature, and includes any other matter which may be the subject of action by either house, or any committee of the legislature and all bills and resolutions which having passed both houses, are pending approval by the Governor.

**LOBBYING DOES NOT INCLUDE**

1. Requests for appropriations by a state agency to OFM pursuant to RCW 43.88 or requests by OFM to the legislature for appropriations other than its own agency budget. Note that an agency representative who, in person, contacts a legislator or committee on appropriations matters is lobbying.
2. Recommendations or reports to the legislature in response to a legislative request expressly requesting or directing a specific study, recommendation or report on a particular subject.
3. Official reports including recommendations submitted annually or biennially by a state agency as required by law.
4. Requests, recommendations or other communications between or within state agencies or between or within local agencies.
5. Telephone conversations or preparation of written correspondence.
6. Preparation or adoption of policy positions within an agency or group of agencies. Note that once a position is adopted, further action to advocate it may constitute lobbying.
7. Attempts to influence federal or local legislation.

**LOBBYING NOT REPORTABLE**

1. In person lobbying totaling no more than four days or parts of days during any three month period in aggregate for all officials and employees of the agency. In person lobbying includes testifying at legislative committee hearings and state agency hearings on rules and regulations but does not include attendance merely to monitor or observe testimony and debate.
2. In person lobbying by any elected official on behalf of his agency or in connection with his powers, duties or compensation.

**EXPENDITURES OVER \$15 OF NON-PUBLIC FUNDS**

Any person (including an elected official) who expends more than \$15 of personal or non-public funds for or on behalf of one or more legislators, state elected officials or state public officers or employees in connection with in person lobbying must be listed on the L-5 report. Attach a page showing the spender's name, and date, the source of funds and amount spent, and for whom the money was spent. Examples of these expenditures include entertainment, dinners and campaign contributions.

**REPORTS REQUIRED**

The L-5 report is submitted to cover each calendar quarter in which lobbying occurs. No report is required if no reportable lobbying has taken place during the quarter.

**DUE DATES:**    April 30 (1st quarter)        July 31 (2nd quarter)  
                          October 31 (3rd quarter)      January 31 (4th quarter)

ONE CONSOLIDATED REPORT SHOULD BE SUBMITTED TO INCLUDE LOBBYING ACTIVITIES OF ALL DIVISIONS OR OFFICES OF AN AGENCY.

**Public Disclosure Commission**  
**Send Reports To:**    711 Capitol Way, Rm 206  
                                  PO Box 40908  
                                  Olympia, WA 98504-0908

SPECIAL NOTE: In lieu of reporting as provided in RCW 42.17A.635 any agency or lobbyist for an agency may elect to register and report as provided in RCW 42.17A.600, .610, .615 and .630. An agency so choosing must notify PDC of that fact and obtain necessary reporting forms and instructions.



<b>NON-PUBLIC FUNDS ATTACHMENT</b>			<b>L-5</b>
Agency or Governmental Entity Name		Report for calendar quarter ending	
		Month	Year
<b>Expenditures over \$15 of non-public funds</b>			
<b>Name of Lobbyist:</b>			
<b>Date</b>	<b>Source of funds</b>	<b>Person on Whom Funds Spent</b>	<b>Amount</b>
<b>Purpose:</b>			
<b>Date</b>	<b>Source of funds</b>	<b>Person on Whom Funds Spent</b>	<b>Amount</b>
<b>Purpose:</b>			
<b>Date</b>	<b>Source of funds</b>	<b>Person on Whom Funds Spent</b>	<b>Amount</b>
<b>Purpose:</b>			
<b>Date</b>	<b>Source of funds</b>	<b>Person on Whom Funds Spent</b>	<b>Amount</b>
<b>Purpose:</b>			
<b>Date</b>	<b>Source of funds</b>	<b>Person on Whom Funds Spent</b>	<b>Amount</b>
<b>Purpose:</b>			
<b>Date</b>	<b>Source of funds</b>	<b>Person on Whom Funds Spent</b>	<b>Amount</b>
<b>Purpose:</b>			
<b>Date</b>	<b>Source of funds</b>	<b>Person on Whom Funds Spent</b>	<b>Amount</b>
<b>Purpose:</b>			
<b>Date</b>	<b>Source of funds</b>	<b>Person on Whom Funds Spent</b>	<b>Amount</b>
<b>Purpose:</b>			

<b>SERVICES ATTACHMENT</b>		<b>L-5</b>
Agency or Governmental Entity Name		Report for calendar quarter ending Month Year
<b>Date</b>	<b>Name</b>	<b>Amount</b>
<b>Purpose</b>		
<b>Date</b>	<b>Name</b>	<b>Amount</b>
<b>Purpose</b>		
<b>Date</b>	<b>Name</b>	<b>Amount</b>
<b>Purpose</b>		
<b>Date</b>	<b>Name</b>	<b>Amount</b>
<b>Purpose</b>		
<b>Date</b>	<b>Name</b>	<b>Amount</b>
<b>Purpose</b>		
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<b>Date</b>	<b>Name</b>	<b>Amount</b>
<b>Purpose</b>		

<b>TRAVEL ATTACHMENT</b>			<b>L-5</b>
Agency or Governmental Entity Name		Report for calendar quarter ending Month    Year	
<b>Date</b>	<b>Name</b>	<b>Vendor Name</b>	<b>Amount</b>
<b>Purpose</b>			
<b>Date</b>	<b>Name</b>	<b>Vendor Name</b>	<b>Amount</b>
<b>Purpose</b>			
<b>Date</b>	<b>Name</b>	<b>Vendor Name</b>	<b>Amount</b>
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<b>Purpose</b>			
<b>Date</b>	<b>Name</b>	<b>Vendor Name</b>	<b>Amount</b>
<b>Purpose</b>			
<b>Date</b>	<b>Name</b>	<b>Vendor Name</b>	<b>Amount</b>
<b>Purpose</b>			

**WSR 11-20-057**  
**PROPOSED RULES**  
**PUBLIC DISCLOSURE COMMISSION**

[Filed September 30, 2011, 11:09 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-13-073.

Title of Rule and Other Identifying Information: WAC 390-16-011 Forms—Registration statement for political committees, 390-16-060 Forms for report of independent expenditures and electioneering communications, 390-17-315 Political committees—Qualifications to contribute, 390-18-060 Electioneering communication reporting threshold and sponsors, 390-19-030 Electronic filing—Reporting threshold, 390-37-103 Commission options following receipt of a staff report on alleged violations, and 390-16-050 Forms for contributions and expenditures of out-of-state political committees (see WSR 11-13-072).

Hearing Location(s): Commission Hearing Room, 711 Capitol Way, Room 206, Olympia, WA 98504, on December 8, 2011, at 9:30 a.m.

Date of Intended Adoption: December 8, 2011.

Submit Written Comments to: Lori Anderson, Public Disclosure Commission (PDC), P.O. Box 40908, Olympia, WA 98504-0908, e-mail lori.anderson@pdc.wa.gov, fax (360) 753-1112, by December 6, 2011.

Assistance for Persons with Disabilities: Contact Jana Greer by e-mail jana.greer@pdc.wa.gov or phone (360) 586-0544 or (360) 753-1111.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendments are necessary to implement chapter 145, Laws of 2011, effective January 1, 2012. Proposed amendments to WAC 390-16-011 include new definition of sponsor, related name requirements, instructions regarding updating a sponsor's status, and notice of a new eligibility requirement a committee must meet before contributing to another political committee. Proposed amendment to WAC 390-16-060 lowers threshold for electioneering communications to \$1,000. Proposed amendments to WAC 390-17-315 add a new eligibility requirement to be met before contributing to other political committees (\$10 each from ten Washington registered voters) and instructs political committees to maintain a list of these contributors. Proposed amendments to WAC 390-18-060 lowers threshold for electioneering communications to \$1,000 and strikes examples explaining how to report certain electioneering communications. Proposed amendments to WAC 390-19-030 lowers e-filing threshold to \$5,000 and makes corresponding changes to benchmark amounts set out in the rule. Proposed amendment to WAC 390-37-103 strikes language that requires the commission to forego an enforcement hearing in cases referred to the attorney general or other enforcement agency. Proposed changes to WAC 390-16-050 adjusts the reporting threshold for major contributions disclosed by an out-of-state political committee based on change in economic conditions and notice of a new eligibility requirement to be met before contributing to other political committees. Amendments to the foregoing rules also correct statutory references to reflect the recodification of chapter 42.17 RCW to chapter 42.17A RCW in January 2012.

Reasons Supporting Proposal: To provide guidance and clarification to in-state and out-of-state political committees subject to chapter 42.17 RCW (recodified to chapter 42.17A RCW effective January 1, 2012, as amended by chapter 145, Laws of 2011, effective January 1, 2012). Additionally, the commission is required to annually modify the reporting threshold for major contributions disclosed by an out-of-state political committee based on percentage change in the implicit price deflator for personal consumption expenditures for the United States as published for the most recent twelve-month period by the Bureau of Economic Analysis of the federal Department of Commerce.

Statutory Authority for Adoption: RCW 42.17.130.

Statute Being Implemented: RCW 42.17.093, chapter 145, Laws of 2011, and chapter 204, Laws of 2010.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The proposed amendments clarify new disclosure requirements, reporting thresholds, and changes to the PDC's enforcement authority imposed by chapter 145, Laws of 2011.

Name of Proponent: PDC, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Lori Anderson, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2737; and Enforcement: Phil Stutzman, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-8853.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rule amendments has minimal impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The PDC is not an agency listed in subsection (5)(a)(i) of section 201. Further, the PDC does not voluntarily make section 201 applicable to the adoption of these rules pursuant to subsection (5)(a)(i) of section 201, and, to date, the joint administrative rules review committee has not made section 201 applicable to the adoption of these rules.


September 29, 2011

Lori Anderson  
 Communication[s] and  
 Training Officer

AMENDATORY SECTION (Amending WSR 10-20-011, filed 9/24/10, effective 10/25/10)

**WAC 390-16-011 Forms—Registration statement for political committees.** The official form for providing the statement of organization by political committees for designating a campaign treasurer and depository and for reporting information required to qualify for mini campaign finance reporting is designated "C-1pc," revised ((4/40)) 1/12. Copies of this form are available at the Commission Office, 711 Capitol Way, Room 206, P.O. Box 40908, Olympia, Washington 98504-0908. Any attachments shall be on 8-1/2" x 11" white paper.

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 <b>PUBLIC DISCLOSURE COMMISSION</b> 711 CAPITOL WAY RM 206 PO BOX 40908 OLYMPIA WA 98504-0908 (360) 753-1111 Toll Free 1-877-601-2828		<b>Political Committee Registration</b>		<b>C1PC</b> (11/10)	
Committee Name (Show entire official name.)				Acronym: _____	
Mailing Address				Telephone: ( ) _____	
City _____ County _____ Zip + 4 _____				Fax: ( ) _____	
NEW OR AMENDED REGISTRATION? <input type="checkbox"/> NEW. Complete entire form. <input type="checkbox"/> AMENDS previous report. Complete entire form.				COMMITTEE STATUS <input type="checkbox"/> Continuing (On-going; not established in anticipation of any particular campaign election.) <input type="checkbox"/> _____ election year only. Date of general or special election: _____ (Year)	
1. What is the purpose or description of the committee? <input type="checkbox"/> <b>Bona Fide Political Party Committee</b> - official state or county central committee or legislative district committee. If you are not supporting the entire party ticket, attach a list of the names of the candidates you support.					
<input type="checkbox"/> <b>Ballot Committee</b> - Initiative, Bond, Levy, Recall, etc. Name or description of ballot measure: _____				Ballot Number _____ FOR <input type="checkbox"/> AGAINST <input type="checkbox"/>	
<input type="checkbox"/> <b>Other Political Committee</b> - PAC, caucus committee, political club, etc. If committee is related or affiliated with a business, association, union or similar entity, specify name: _____					
<b>For single election-year only committees (not continuing committees):</b> Is the committee supporting or opposing (a) one or more candidates? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, attach a list of each candidate's name, office sought and political party affiliation. (b) the entire ticket of a political party? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, identify the party: _____					
2. Related or affiliated committees. List name, address and relationship. <input type="checkbox"/> Continued on attached sheet.					
3. How much do you plan to spend during this entire election campaign, including the primary and general elections? Based on that estimate, choose one of the reporting options below. (If your committee status is continuing, estimate spending on a calendar year basis.) <b>If no box is checked you are obligated to use Full Reporting. See instruction manuals for information about reports required and changing reporting options.</b> <input type="checkbox"/> <b>MINI REPORTING</b> Mini Reporting is selected. No more than \$5,000 will be raised or spent <u>and</u> no more than \$500 in the aggregate will be accepted from any one contributor.					
				<input type="checkbox"/> <b>FULL REPORTING</b> Full Reporting is selected. The frequent, detailed campaign reports mandated by law will be filed as required.	
4. Campaign Manager's or Media Contact's Name and Address				Telephone Number: ( ) _____	
5. Treasurer's Name and Address. Does treasurer perform <u>only</u> ministerial functions? Yes ___ No ___ See WAC 390-05-243 and next page for details. List deputy treasurers on attached sheet.				Daytime Telephone Number: ( ) _____ <input type="checkbox"/> Continued on attached	
6. Persons who perform only ministerial functions on behalf of this committee <u>and</u> on behalf of candidates or other political committees. List name, title, and address of these persons. See WAC 390-05-243 and next page for details. <input type="checkbox"/> Continued on attached sheet.					
7. Committee Officers and other persons who authorize expenditures or make decisions for committee. List name, title, and address. See next page for definition of "officer." <input type="checkbox"/> Continued on attached sheet.					
8. Campaign Bank or Depository		Branch		City	
9. Campaign books must be open to the public by appointment between 8 a.m. and 8 p.m. during the eight days before the election, except Saturdays, Sundays, and legal holidays. In the space below, provide contact information for scheduling an appointment and the address where the inspection will take place. It is not acceptable to provide a post office box or an out-of-area address. <b>Street Address, Room Number, City where campaign books will be available for inspection</b>  In order to make an appointment, contact the campaign at (telephone, fax, e-mail): ( ) _____					
10. <b>Eligibility to Give to State Office Candidates:</b> During the 180 days prior to making a contribution to a state office candidate, your committee must have received contributions of \$10 or more from at least ten persons registered to vote in Washington State. <input type="checkbox"/> A check here indicates your awareness of and pledge to comply with this provision. Absence of a check mark means your committee does not qualify to give to state office candidates (legislative and statewide executive candidates).				11. <b>Signature and Certification.</b> I certify that this statement is true, complete and correct to the best of my knowledge.  Committee Treasurer's Signature _____ Date _____	

SEE INSTRUCTIONS ON NEXT PAGE

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Please consult PDC instruction manuals when completing this report. Reporting requirements are contained in and governed by RCW 42.17 and WAC 390.



**Who Must File** – Persons, committees, organizations or groups that receive contributions or make expenditures in support of or opposition to: candidates in jurisdictions of 5,000 or more registered voters as of the last general election; statewide ballot issues; or local ballot issues in jurisdictions with 1,000 or more registered voters as of the last general election.

**When To File** – Within 2 weeks of organizing a committee or first expecting to receive contributions or make expenditures, whichever occurs first. **(Committees that organize within three weeks of an election must file within three business days of forming or of expecting to receive contributions or make expenditures.)**

File an amended C-1pc form within 10 calendar days of any material change to the registration information furnished previously. For single election-year only committees, a material change includes providing or modifying the list of candidates the committee is supporting or opposing.

Continuing political committees using Mini Reporting must also file a C-1pc annually in January. Reports are considered filed as of the postmark date or date hand-delivered to PDC.

**Where To File** – Send the **original to PDC** at the address on the reverse side. Keep a copy as part of the committee’s records.

**“Officer” of a Political Committee** – Officer of a political committee includes the following persons:

- any person designated as an officer on the C-1pc registration statement, and
- any person who alone or in conjunction with other persons makes, directs, or authorizes contribution, expenditure, strategic or policy decisions on behalf of the committee. [WAC 390-05-245]

**Persons who perform “Ministerial Functions” for two or more campaigns**


A person may perform ministerial functions for a candidate and a political committee without jeopardizing that political committee’s eligibility to make independent expenditures or electioneering communications regarding that candidate as long as:

- the person performs solely ministerial functions for both the candidate and the political committee;
- the person is identified on both the candidate’s and political committee’s registration statements as a person performing ministerial functions for the campaign; and
- the person does not share information from or about one of the campaigns with the other campaign, or does not use information from or about one of the campaigns to assist the other campaign. [See RCW 42.17.020 (15)(b)(ix) and WAC 390-05-243 for more detailed information.]

“Ministerial functions” means activities carried out as part of the duties of an administrative office without exercise of personal judgment or discretion. RCW 42.17.020(34). Also see WAC 390-05-243 for a non-exclusive list of ministerial functions and a definition of administrative office. Typically, persons performing ministerial functions may, under the supervision of a candidate or committee officer, file PDC reports, make deposits, pay bills and maintain campaign finance records. However, if a person performs functions for both a candidate and a political committee and those functions for one or both campaigns entail duties beyond those deemed ministerial, any expenditure by the committee benefiting the candidate may be a contribution, rather than an independent expenditure or electioneering communication. [RCW 42.17.020(34) and WACs 390-05-243 and 390-05-210]

**For Instruction Manuals and Reporting Forms click on the “Filer Resources” tab at [www.pdc.wa.gov](http://www.pdc.wa.gov)**

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 <p><b>PUBLIC DISCLOSURE COMMISSION</b>                  711 CAPITOL WAY RM 206                  PO BOX 40908                  OLYMPIA WA 98504-0908                  (360) 753-1111                  Toll Free 1-877-601-2828</p>	<h2>Political Committee Registration</h2>	<h1>C1PC</h1> <p>(1/12)</p>	
Committee Name (Include sponsor in committee name. See next page for definition of "sponsor." Show entire official name. Do not use abbreviations or acronyms in this box.)		Acronym: _____ Telephone: ( ) _____	
Mailing Address		Fax: ( ) _____	
City _____	County _____	Zip + 4 _____	E-mail: _____
<b>NEW OR AMENDED REGISTRATION?</b> <input type="checkbox"/> NEW. Complete entire form. <input type="checkbox"/> AMENDS previous report. Complete entire form.		<b>COMMITTEE STATUS</b> <input type="checkbox"/> Continuing (On-going; not established in anticipation of any particular campaign election.) <input type="checkbox"/> _____ election year only. Date of general or special election: _____ (Year)	
1. What is the purpose or description of the committee? <input type="checkbox"/> <b>Bona Fide Political Party Committee</b> - official state or county central committee or legislative district committee. If you are not supporting the entire party ticket, attach a list of the names of the candidates you support.			
<input type="checkbox"/> <b>Ballot Committee</b> - Initiative, Bond, Levy, Recall, etc. Name or description of ballot measure: _____		Ballot Number _____	FOR <input type="checkbox"/> AGAINST <input type="checkbox"/>
<input type="checkbox"/> <b>Other Political Committee</b> - PAC, caucus committee, political club, etc. If committee is related or affiliated with a business, association, union or similar entity, specify name: _____			
<b>For single election-year only committees (not continuing committees):</b> Is the committee supporting or opposing (a) one or more candidates? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, attach a list of each candidate's name, office sought and political party affiliation. (b) the entire ticket of a political party? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, identify the party: _____			
2. Related or affiliated committees. List name, address and relationship. <span style="float:right;"><input type="checkbox"/> Continued on attached sheet.</span>			
3. How much do you plan to spend during this entire election campaign, including the primary and general elections? Based on that estimate, choose one of the reporting options below. (If your committee status is continuing, estimate spending on a calendar year basis.) <b>If no box is checked you are obligated to use Full Reporting. See instruction manuals for information about reports required and changing reporting options.</b> <input type="checkbox"/> <b>MINI REPORTING</b> Mini Reporting is selected. No more than \$5,000 will be raised or spent <u>and</u> no more than \$500 in the aggregate will be accepted from any one contributor.			
		<input type="checkbox"/> <b>FULL REPORTING</b> Full Reporting is selected. The frequent, detailed campaign reports mandated by law will be filed as required.	
4. Campaign Manager's or Media Contact's Name and Address		Telephone Number: ( ) _____	
5. Treasurer's Name and Address. Does treasurer perform <u>only</u> ministerial functions? Yes ___ No ___ See WAC 390-05-243 and next page for details. List deputy treasurers on attached sheet. <span style="float:right;"><input type="checkbox"/> Continued on attached sheet.</span>		Daytime Telephone Number: ( ) _____	
6. Persons who perform only ministerial functions on behalf of this committee <u>and</u> on behalf of candidates or other political committees. List name, title, and address of these persons. See WAC 390-05-243 and next page for details. <span style="float:right;"><input type="checkbox"/> Continued on attached sheet.</span>			
7. Committee Officers and other persons who authorize expenditures or make decisions for committee. List name, title, and address. See next page for definition of "officer." <span style="float:right;"><input type="checkbox"/> Continued on attached sheet.</span>			
8. Campaign Bank or Depository		Branch _____	City _____
9. Campaign books must be open to the public by appointment between 8 a.m. and 8 p.m. during the eight days before the election, except Saturdays, Sundays, and legal holidays. In the space below, provide contact information for scheduling an appointment and the address where the inspection will take place. It is not acceptable to provide a post office box or an out-of-area address. <b>Street Address, Room Number, City where campaign books will be available for inspection</b>  In order to make an appointment, contact the campaign at (telephone, fax, e-mail): ( ) _____			
10. <b>Eligibility to Give to Political Committees and State Office Candidates:</b> A committee must receive \$10 or more each from ten Washington State registered voters before contributing to a Washington State political committee. Additionally, during the six months prior to making a contribution to a state office candidate your committee must have received contributions of \$10 or more each from at least ten Washington State registered voters.  <input type="checkbox"/> A check here indicates your awareness of and pledge to comply with these provisions. Absence of a check mark means your committee does not qualify to give to Washington State political committees and/or state office candidates.		11. <b>Signature and Certification.</b> I certify that this statement is true, complete and correct to the best of my knowledge.  <div style="display: flex; justify-content: space-between;"> <span><b>Committee Treasurer's Signature</b></span> <span><b>Date</b></span> </div>	

**SEE INSTRUCTIONS ON NEXT PAGE**

Please consult PDC instruction manuals when completing this report. Reporting requirements are contained in and governed by RCW 42.17A and WAC 390.

**C1pc**  
(1/12)

**POLITICAL COMMITTEE  
REGISTRATION**

**Who Must File** – Persons, committees, organizations or groups that receive contributions or make expenditures in support of or opposition to: candidates in jurisdictions of 5,000 or more registered voters as of the last general election; statewide ballot issues; or local ballot issues in jurisdictions with 1,000 or more registered voters as of the last general election.

**When To File** – Within 2 weeks of organizing a committee or first expecting to receive contributions or make expenditures, whichever occurs first. **(Committees that organize within three weeks of an election must file within three business days of forming or of expecting to receive contributions or make expenditures.)**

Amend the C-1pc form within 10 calendar days of any material change to the registration information furnished previously. See “Sponsor” section below for further instructions.\* For single election-year only committees, a material change includes providing or modifying the list of candidates the committee is supporting or opposing.

Continuing political committees using Mini Reporting are required to file a C-1pc annually each January. Reports are considered filed as of the postmark date or date hand-delivered to PDC.

**File** the initial C-1pc and any necessary amendments with the PDC. Keep copies with of the committee’s records.

**Committee Name** – Do not use the exact name of another active political committee – no two active committees may have the same name. Do not abbreviate or use acronyms in the committee name.

**“Sponsor” of a Political Committee** – Sponsor of a political committee includes any person, except a committee authorized by a candidate or by a public official against whom recall charges have been filed to whom any of the following applies:

- the committee receives 80% or more of its contributions either from the person or from the person’s members, officers, employees, or shareholders;
- the person collects contributions for the committee by use of payroll deductions or dues from its members, officers, or employees.

“Person” is defined in RCW 42.17A.005(36).

\* A political committee shall include a known sponsor in its name when filing the initial C-1pc. The political committee must amend its registration 60 days before an election in which it participates if the political committee has a different sponsor at that time. Interim amendments are not required to show changes to a sponsor’s status.

**“Officer” of a Political Committee** – Officer of a political committee includes the following persons:

- any person designated as an officer on the C-1pc registration statement, and
- any person who alone or in conjunction with other persons makes, directs, or authorizes contribution, expenditure, strategic or policy decisions on behalf of the committee. [WAC 390-05-245]

**Persons who perform “Ministerial Functions” for two or more campaigns** – A person may perform ministerial functions for a candidate and a political committee without jeopardizing that political committee’s eligibility to make independent expenditures or electioneering communications regarding that candidate as long as:

- the person performs solely ministerial functions for both the candidate and the political committee;
- the person is identified on both the candidate’s and political committee’s registration statements as a person performing ministerial functions for the campaign; and
- the person does not share information from or about one of the campaigns with the other campaign, or does not use information from or about one of the campaigns to assist the other campaign. [See RCW 42.17A.005 (13)(b)(ix) and WAC 390-05-243 for more detailed information.]

“Ministerial functions” means activities carried out as part of the duties of an administrative office without exercise of personal judgment or discretion. RCW 42.17A.005(33). Also see WAC 390-05-243 for a non-exclusive list of ministerial functions and a definition of administrative office. Typically, persons performing ministerial functions may, under the supervision of a candidate or committee officer, file PDC reports, make deposits, pay bills and maintain campaign finance records. However, if a person performs functions for both a candidate and a political committee and those functions for one or both campaigns entail duties beyond those deemed ministerial, any expenditure by the committee benefiting the candidate may be a contribution, rather than an independent expenditure or electioneering communication. [RCW 42.17A.005(33) and WACs 390-05-243 and 390-05-210]

**Instruction Manuals and Reporting Forms are found under the “Filer Resources” tab at [www.pdc.wa.gov](http://www.pdc.wa.gov).**



AMENDATORY SECTION (Amending WSR 09-19-004 and 09-19-103, filed 9/2/09 and 9/21/09, effective 10/3/09 and 11/4/09)

**WAC 390-16-050 Forms for contributions and expenditures of out-of-state political committees.** The official form for the report required by RCW ((42-17-093)) 42.17A.250 of contributions and expenditures of an out-of-state political committee organized for the purpose of supporting or opposing candidates or ballot propositions in another state that is not otherwise required to report under RCW ((42-17-040)) 42.17A.250 through ((42-17-090)) 42.17A.240 is designated "C-5," revised ((11/09)) 1/12. Copies of this form are available at the Commission Office, Room 206, Evergreen Plaza Building, Olympia, Washington 98504-0908. Any paper attachments shall be on 8 1/2" x 11" white paper.

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Form <b>C5</b> (11/09)	This space for office use P M A R K  R E C E I V E D
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**Out-of-State Political Committee Campaign Finance Report**

<p><b>1. Name and full address of committee making the contribution</b> Name Street address City / State / Zip</p>	<p><b>2. Check appropriate box</b>  <input type="checkbox"/> This is the first report submitted during 20__  <input type="checkbox"/> This shows new expenditures, contributions or information changed from reports submitted previously this calendar year.</p>
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**3. Provide the purpose of the committee and the identity of any business, union, association or person with which the committee is affiliated (e.g., a State Committee of the Oregon Republican Party, Idaho committee of United Workers Union or federal PAC of XYZ Trade Assn.)**

<b>4. Officers or responsible leaders of committee:</b>	
Name and full address	Title

<b>5. States where this political committee is registered and has been actively reporting campaign finance information for the preceding two years:</b>	
Name of state(s) & administrative agency(s)	Agency(s) website address

**6. Candidate contributions: List each Washington candidate for state, local or judicial office to whom you have made a contribution of more than \$50.00.**

Candidate name	Office sought	Political party	Date	Amount

**7. Ballot measure committee contributions: List each Washington committee supporting or opposing a ballot measure to whom you have made a contribution of more than \$50.00.**

Committee name & full address	Ballot number	For or Against?	Date	Amount

**8. Other contributions and expenditures: List each other contribution or expenditure of more than \$50.00 made to or on behalf of any Washington state, local or judicial candidate, ballot measure or political committee.**

Recipient name & full address	Purpose	Date	Amount

Check here  if continued on an attached sheet

**9. Total contributions and expenditures (Add parts 6, 7, 8) .....**

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**10. Aggregate contributions and expenditures made during this calendar year in Washington State.**  
 Include amounts shown on this report and C5 reports previously submitted this calendar year. \_\_\_\_\_

Does this aggregate total represent 20% or more of the committee's nationwide campaign activity to date for this calendar year? Y  N

**11. Contributions received from Washington residents.** List all contributions of more than \$25.00 in the aggregate to this out-of-state committee during the current calendar year from Washington residents or corporations with their headquarters or a primary place of business in Washington.

Name and full address	Date	Amount	Aggregate Total

Check here  if continued on an attached sheet

**12. Contributions received from persons residing outside of Washington.** List the name, address, and employer of each person or corporation residing outside the state of Washington who has made contributions of more than \$2,600 in the aggregate to this out-of-state committee during the current calendar year.

Name and full address	Employer name, city and state	Date	Amount	Aggregate Total

Check here  if continued on an attached sheet

**13. Eligibility to Give to State Office Candidates:** During the six months prior to making a contribution to a legislative or statewide executive candidate your committee must have received contributions of \$10 or more from at least ten persons registered to vote in Washington State.

A check here indicates your awareness of and pledge to comply with this provision. Absence of a check mark means your committee does not qualify to give to legislative and statewide executive office candidates.

**14. Certification:** I certify the information contained in this report is true, complete and correct to the best of my knowledge.

Signature of Committee Official _____	Name – Typed or Printed _____
Title _____	Daytime Telephone No. (    ) _____
	E-Mail Address _____

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~~((STRICKEN GRAPHIC~~**Instructions – (Statutory reference: RCW 42.17.093)**

**Who Must Report on C5 Form:** An out-of-state political committee, including political committees filing with the Federal Election Commission, organized for the purpose of supporting or opposing candidates or ballot propositions in another state that is not otherwise required to report under RCW 42.17.040 through 42.17.090 which has made contributions or expenditures to or on behalf of a state, local or judicial candidate or political committee in Washington state. See WAC 390-16-049 reprinted below. A political committee making contributions or expenditures to or on behalf of a state, local or judicial candidate or political committee in Washington state that fails to satisfy all of the conditions of WAC 390-16-049(3) shall not use the C5 form but instead shall register and report as a political committee pursuant to RCW 42.17.040 through 42.17.090 and as otherwise required by RCW 42.17.

**When to Report:** A C5 report is due no later than the 10<sup>th</sup> day of the month following any month in which a contribution or other expenditure of more than \$50 is made to or on behalf of a Washington state candidate or political committee. After filing an initial C5 report, subsequent reports during the same calendar year shall be filed updating or amending the information previously reported. These follow-up reports are also due no later than the 10<sup>th</sup> day of the month following any month in which an additional contribution or other expenditure of more than \$50 is made. The C5 report is considered filed as of the postmark date.

**Send Report to:** Public Disclosure Commission, 711 Capitol Way, Room 206, PO Box 40908, Olympia, Washington 98504-0908

**Questions?** Contact PDC at [www.pdc.wa.gov](http://www.pdc.wa.gov), toll free at 1-877-601-2828 or 1-360-753-1111

**WAC 390-16-049 Out-of-state political committees – Implementation of RCW 42.17.093**

(1) RCW 42.17.093 governs campaign reporting in Washington State by committees located outside of Washington. The statute directs that an out-of-state political committee organized for the purpose of supporting or opposing candidates or ballot propositions in another state (and that is not otherwise required to report as an in-state committee) reports the information listed in RCW 42.17.093 on a C5 form (WAC 390-16-050). The committee begins reporting on a C5 form when it makes an expenditure supporting or opposing a Washington state candidate or political committee.

(2) To file as an out-of-state political committee, all the criteria in (a) and (b) below must be satisfied:

(a) **Out-of-State.** First, the committee must be located out-of-state. It must be maintaining its office or headquarters in another U.S. state or the District of Columbia, and has no office, street address or corporate registered agent in Washington State. If there is no office or headquarters in another state or the District of Columbia, and no corporate registered agent in Washington State, the political committee is deemed out-of-state if its treasurer resides in another U.S. state or the District of Columbia.

(b) **Organizational Purpose and Campaign Activities.** Second, the committee must also be currently organized primarily for engaging in campaign activities in another state. The political committee may be described in other states as a political committee, political action committee (PAC), group (Alaska) or similar terms to describe a committee. Therefore, to qualify as a current out-of-state committee, the committee must also:

(i) Be currently registered and actively filing campaign disclosure reports in one or more other states and has been so filing for the preceding two years; and,

(ii) Have organizational documents showing it was originally formed and is currently organized for the purpose of making expenditures in another state or soliciting contributions for use in another state's election campaigns; and,

(iii) Have spent less than 20 percent of its aggregate expenditures for all political campaign activity nationwide at any point in any calendar year to support and/or oppose Washington candidates for state, local and judicial office, Washington ballot measures and/or Washington political committees.

(3) A committee that does not satisfy the criteria in subsection (2) shall file as an in-state committee under RCW 42.17, including RCW 42.17.040 – RCW 42.17.090.

(4) Out-of-state political committees reporting under RCW 42.17.093 are also subject to reporting pursuant to RCW 42.17.103 (political advertising independent expenditures) and 42.17.565 through 42.17.575 (electioneering communications).

~~STRICKEN GRAPHIC))~~



Form <h1 style="margin: 0;">C5</h1> (1/12)	This space for office use  P M A R K  R E C E I V E D
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## Out-of-State Political Committee Campaign Finance Report

<b>1. Name and full address of committee making the contribution</b> Name Street address City / State / Zip	<b>2. Check appropriate box</b> <input type="checkbox"/> This is the first report submitted during 20__ <input type="checkbox"/> This shows new expenditures, contributions or information changed from reports submitted previously this calendar year.
--	--

**3. Provide the purpose of the committee and the identity of any business, union, association or person with which the committee is affiliated (e.g., a State Committee of the Oregon Republican Party, Idaho committee of United Workers Union or federal PAC of XYZ Trade Assn.)**

<b>4. Officers or responsible leaders of committee:</b>	
Name and full address	Title

**5. States where this political committee is registered and has been actively reporting campaign finance information for the preceding two years:**

Name of state(s) & administrative agency(s)	Agency(s) website address
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**6. Candidate contributions: List each Washington candidate for state, local or judicial office to whom you have made a contribution of more than \$50.00.**

Candidate name	Office sought	Political party	Date	Amount

**7. Ballot measure committee contributions: List each Washington committee supporting or opposing a ballot measure to whom you have made a contribution of more than \$50.00.**

Committee name & full address	Ballot number	For or Against?	Date	Amount

**8. Other contributions and expenditures: List each other contribution or expenditure of more than \$50.00 made to or on behalf of any Washington state, local or judicial candidate, ballot measure or political committee.**

Recipient name & full address	Purpose	Date	Amount

Check here  if continued on an attached sheet

**9. Total contributions and expenditures (Add parts 6, 7, 8) .....**

**10. Aggregate contributions and expenditures made during this calendar year in Washington State.**  
 Include amounts shown on this report and C5 reports previously submitted this calendar year. . . . . \_\_\_\_\_

Does this aggregate total represent 20% or more of the committee's nationwide campaign activity to date for this calendar year? Y  N

**11. Contributions received from Washington residents.** List all contributions of more than \$25.00 in the aggregate to this out-of-state committee during the current calendar year from Washington residents or corporations with their headquarters or a primary place of business in Washington.

Name and full address	Date	Amount	Aggregate Total

Check here  if continued on an attached sheet

**12. Contributions received from persons residing outside of Washington.** List the name, address, and employer of each person or corporation residing outside the state of Washington who has made contributions of more than \$2,700 in the aggregate to this out-of-state committee during the current calendar year.

Name and full address	Employer name, city and state	Date	Amount	Aggregate Total

Check here  if continued on an attached sheet

**13. Eligibility to Give to Political Committees and State Office Candidates:** A committee must receive \$10 or more each from ten Washington State registered voters before contributing to a Washington State political committee. Additionally, during the six months prior to making a contribution to a state office candidate your committee must have received contributions of \$10 or more each from at least ten Washington State registered voters.

A check here indicates your awareness of and pledge to comply with these provisions. Absence of a check mark means your committee does not qualify to give to Washington State political committees and/or state office candidates.

**14. Certification:** I certify the information contained in this report is true, complete and correct to the best of my knowledge.

Signature of Committee Official \_\_\_\_\_ Name – Typed or Printed \_\_\_\_\_

Title \_\_\_\_\_ Daytime Telephone No. (     ) \_\_\_\_\_

E-Mail Address \_\_\_\_\_

**Instructions – (Statutory reference: RCW 42.17A.250)**

**Who Must Report on C5 Form:** An out-of-state political committee, including political committees filing with the Federal Election Commission, organized for the purpose of supporting or opposing candidates or ballot propositions in another state that is not otherwise required to report under RCW 42.17A.205 through 42.17A.240 which has made contributions or expenditures to or on behalf of a state, local or judicial candidate or political committee in Washington state. See WAC 390-16-049 reprinted below. A political committee making contributions or expenditures to or on behalf of a state, local or judicial candidate or political committee in Washington state that fails to satisfy all of the conditions of WAC 390-16-049(3) shall not use the C5 form but instead shall register and report as a political committee pursuant to RCW 42.17A.205 through 42.17A.240 and as otherwise required by RCW 42.17A.

**When to Report:** A C5 report is due no later than the 10<sup>th</sup> day of the month following any month in which a contribution or other expenditure of more than \$50 is made to or on behalf of a Washington state candidate or political committee. After filing an initial C5 report, subsequent reports during the same calendar year shall be filed updating or amending the information previously reported. These follow-up reports are also due no later than the 10<sup>th</sup> day of the month following any month in which an additional contribution or other expenditure of more than \$50 is made. The C5 report is considered filed as of the postmark date.

**Send Report to:** Public Disclosure Commission, 711 Capitol Way, Room 206, PO Box 40908, Olympia, Washington 98504-0908

**Questions?** Contact PDC at [www.pdc.wa.gov](http://www.pdc.wa.gov), toll free at 1-877-601-2828 or 1-360-753-1111

**WAC 390-16-049 Out-of-state political committees – Implementation of RCW 42.17A.250**

(1) RCW 42.17A.250 governs campaign reporting in Washington State by committees located outside of Washington. The statute directs that an out-of-state political committee organized for the purpose of supporting or opposing candidates or ballot propositions in another state (and that is not otherwise required to report as an in-state committee) reports the information listed in RCW 42.17A.250 on a C5 form (WAC 390-16-050). The committee begins reporting on a C5 form when it makes an expenditure supporting or opposing a Washington state candidate or political committee.

(2) To file as an out-of-state political committee, all the criteria in (a) and (b) below must be satisfied:

(a) **Out-of-State.** First, the committee must be located out-of-state. It must be maintaining its office or headquarters in another U.S. state or the District of Columbia, and has no office, street address or corporate registered agent in Washington State. If there is no office or headquarters in another state or the District of Columbia, and no corporate registered agent in Washington State, the political committee is deemed out-of-state if its treasurer resides in another U.S. state or the District of Columbia.

(b) **Organizational Purpose and Campaign Activities.** Second, the committee must also be currently organized primarily for engaging in campaign activities in another state. The political committee may be described in other states as a political committee, political action committee (PAC), group (Alaska) or similar terms to describe a committee. Therefore, to qualify as a current out-of-state committee, the committee must also:

(i) Be currently registered and actively filing campaign disclosure reports in one or more other states and has been so filing for the preceding two years; and,

(ii) Have organizational documents showing it was originally formed and is currently organized for the purpose of making expenditures in another state or soliciting contributions for use in another state's election campaigns; and,

(iii) Have spent less than 20 percent of its aggregate expenditures for all political campaign activity nationwide at any point in any calendar year to support and/or oppose Washington candidates for state, local and judicial office, Washington ballot measures and/or Washington political committees.

(3) A committee that does not satisfy the criteria subsection (2) shall file as an in-state committee under RCW 42.17A, including RCW 42.17A.205 – RCW 42.17A.240.

(4) Out-of-state political committees reporting under RCW 42.17A.250 are also subject to reporting pursuant to RCW 42.17A.260 (political advertising independent expenditures) and 42.17A.305 through 42.17A.315 (electioneering communications).

AMENDATORY SECTION (Amending WSR 06-11-132, filed 5/23/06, effective 6/23/06)

**WAC 390-16-060 Forms for report of independent expenditures and electioneering communications.** (1) The official form for reports of independent expenditures and electioneering communications as required by RCW ((42-17-100)) 42.17A.255, ((42-17-103)) 42.17A.260 and ((42-17-565)) 42.17A.305 is designated "C-6," revised ((5/06)) 1/12. Copies of this form are available at the Commission Office, Room 206, Evergreen Plaza Building, Olympia, Washington 98504 and on-line at www.pdc.wa.gov. Any paper attachments shall be on 8 1/2" x 11" white paper.

(2) The C-6 report may be filed electronically consistent with WAC 390-19-040 by using an electronic filing alternative provided or approved by the commission. C-6 reports of electioneering communications shall be filed electronically as provided in RCW ((42-17-565)) 42.17A.305.

((STRICKEN GRAPHIC \_\_\_\_\_))



Form <b>C6</b> 5/06
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Reporting Form for: (check one) Instructions on Page 3

**INDEPENDENT EXPENDITURES** (Occurring at any time) — **\$100 or more**

**INDEPENDENT EXPENDITURE ADS** (Appearing within 21 days of an election) — **\$1,000 or more**

**ELECTIONEERING COMMUNICATIONS, Except Contributions** (Appearing within 60 days of an election) — **\$5,000 or more**

<b>1. Name and complete postal mailing address of sponsor:</b>	E-mail
	Telephone

**2. Itemize expenditures of more than \$100 associated with the independent expenditure or electioneering communication.**

Date Made	Date First Presented/ Mailed	Name and Address of Vendor or Recipient	Description of Expenditure (e.g., direct mail or newspaper, TV or radio ad)	Amount or Value (*See Below)
Expenditures \$100 or less not itemized above				\$

<b>Amount or Value</b>	<b>Total this report</b>
*If no reasonable estimate can be made of value, describe activity, services, property or right furnished precisely and attach copy of item produced or distributed.	\$
	Total independent expenditures and electioneering communications made during this election campaign. Include amounts shown in this report and previously submitted C-6 reports. \$

**3. List of candidate(s) or ballot proposition(s) identified in the advertising.**

Candidate/Proposition	Office/District/ Proposition No.	Party	Check Support or Oppose	Show portion of current expense attributable to each candidate or proposition	Show total C-6 expenses related to each candidate/ proposition during election campaign
			<input type="checkbox"/> <input type="checkbox"/>	\$	\$
			<input type="checkbox"/> <input type="checkbox"/>	\$	\$
			<input type="checkbox"/> <input type="checkbox"/>	\$	\$
			<input type="checkbox"/> <input type="checkbox"/>	\$	\$
			<input type="checkbox"/> <input type="checkbox"/>	\$	\$
Continued on attached sheet <input type="checkbox"/>				\$	\$

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((STRICKEN GRAPHIC))

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**Filer Name:** \_\_\_\_\_

**4. If reporting an Electioneering Communication, it is necessary to disclose information concerning the source of funding for the communication. Select the description that applies:**

- a)  An individual using only personal funds.
- b)  An individual using personal funds and/or funds received from others.
- c)  A business, union, group, association, organization, or other person using only general treasury funds.
- d)  A business, union, group, association, organization, or other person using general treasury funds and/or funds received from others.
- e)  A political committee filing C-3 and C-4 reports. (RCW 42.17.040 - .090)
- f)  A political committee filing C-5 reports. (RCW 42.17.093)
- g)  Other

If (b), (d), (f), or (g) applies, complete section 5 below. If (e) applies, also complete section 5 if the committee received funds that were requested or designated for the communication.

**5. Sources giving in excess of \$250 for the electioneering communication:**

Date Received	Source's Name, Address, City, State, Zip	For individuals, Employer's Name, City and State	Amount
			\$
		Occupation	
			\$
		Occupation	
			\$
		Occupation	
			\$
		Occupation	
			\$
		Occupation	
			\$
		Sub-Total	\$
		Amount from attached pages	\$
		<b>TOTAL FUNDS RECEIVED</b>	\$

Continued on attached sheet

<b>Sponsor of Independent Expenditure or Electioneering Communication</b>		
I certify (or declare) under penalty of perjury under the laws of the State of Washington that this expenditure was not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or an agent of a candidate nor does it otherwise constitute a contribution under RCW 42.17.020. I further certify that the above information is true, complete, and correct to the best of my knowledge.	Signature _____	Printed Name _____
	Street address _____	
	City/State/Zip _____	
	Date Signed _____	Place Signed (city and county) _____
	*RCW9A.72.040 provides that "(1) A person is guilty of false swearing if he makes a false statement, which he knows to be false, under an oath required or authorized by law. (2) False swearing is a misdemeanor."	

\_\_\_\_\_  
((STRICKEN GRAPHIC))





Form <b>C6</b> 1/12
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Reporting Form for: (check one)

Instructions on Page 3

- INDEPENDENT EXPENDITURES** (Occurring at any time) — **\$100 or more**
- INDEPENDENT EXPENDITURE ADS** (Appearing within 21 days of an election) — **\$1,000 or more**
- ELECTIONEERING COMMUNICATIONS, Except Contributions** (Appearing within 60 days of an election) — **\$1,000 or more**

<b>1. Name and complete postal mailing address of sponsor:</b>	E-mail
	Telephone

**2. Itemize expenditures of more than \$100 associated with the independent expenditure or electioneering communication.**

Date Made	Date First Presented/ Mailed	Name and Address of Vendor or Recipient	Description of Expenditure (e.g., direct mail or newspaper, TV or radio ad)	Amount or Value (*See Below)
Expenditures \$100 or less not itemized above				\$
<b>Total this report</b>				\$
<b>Amount or Value</b> <small>*If no reasonable estimate can be made of value, describe activity, services, property or right furnished precisely and attach copy of item produced or distributed.</small>				\$
<small>Total independent expenditures and electioneering communications made during this election campaign. Include amounts shown in this report and previously submitted C-6 reports.</small>				\$

<b>3. List of candidate(s) or ballot proposition(s) identified in the advertising.</b>				Check Support or Oppose	Show portion of current expense attributable to each candidate or proposition	Show total C-6 expenses related to each candidate/ proposition during election campaign
Candidate/Proposition	Office/District/ Proposition No.	Party				
			<input type="checkbox"/>	<input type="checkbox"/>	\$	\$
			<input type="checkbox"/>	<input type="checkbox"/>	\$	\$
			<input type="checkbox"/>	<input type="checkbox"/>	\$	\$
			<input type="checkbox"/>	<input type="checkbox"/>	\$	\$
			<input type="checkbox"/>	<input type="checkbox"/>	\$	\$
Continued on attached sheet <input type="checkbox"/>					\$	\$

**Filer Name:**

**4. If reporting an Electioneering Communication, it is necessary to disclose information concerning the source of funding for the communication. Select the description that applies:**

- a) \_\_\_ An individual using only personal funds.
- b) \_\_\_ An individual using personal funds and/or funds received from others.
- c) \_\_\_ A business, union, group, association, organization, or other person using only general treasury funds.
- d) \_\_\_ A business, union, group, association, organization, or other person using general treasury funds and/or funds received from others.
- e) \_\_\_ A political committee filing C-3 and C-4 reports. (RCW 42.17A.205 - .240)
- f) \_\_\_ A political committee filing C-5 reports. (RCW 42.17A.250)
- g) \_\_\_ Other

If (b), (d), (f), or (g) applies, complete section 5 below. If (e) applies, also complete section 5 if the committee received funds that were requested or designated for the communication.

**5. Sources giving in excess of \$250 for the electioneering communication:**

Date Received	Source's Name, Address, City, State, Zip	For individuals, Employer's Name, City and State	Amount
			\$
		Occupation	
			\$
		Occupation	
			\$
		Occupation	
			\$
		Occupation	
			\$
		Occupation	
		Sub-Total	\$
	Continued on attached sheet <input type="checkbox"/>	Amount from attached pages	\$
		<b>TOTAL FUNDS RECEIVED</b>	\$

Sponsor of Independent Expenditure or Electioneering Communication		
I certify (or declare) under penalty of perjury under the laws of the State of Washington that this expenditure was not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or an agent of a candidate nor does it otherwise constitute a contribution under RCW 42.17A.005. I further certify that the above information is true, complete, and correct to the best of my knowledge.	Signature	Printed Name
	Street address	
	City/State/Zip	
	Date Signed	Place Signed (city and county)
	*RCW9A.72.040 provides that "(1) A person is guilty of false swearing if he makes a false statement, which he knows to be false, under an oath required or authorized by law. (2) False swearing is a misdemeanor."	

AMENDATORY SECTION (Amending WSR 07-07-005, filed 3/8/07, effective 4/8/07)

**WAC 390-17-315 Political committees—Qualifications to contribute.** ~~((In order to make contributions as permitted by RCW 42.17.640, a political committee shall,)) (1) Within ((180)) one hundred eighty days ((prior to)) of making ((the)) a contribution((:)) to a state office candidate, to a state official against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the official, a political committee shall have received contributions of \$10 or more each from at least ten individuals registered to vote in Washington state ((at the time they contributed to the political committee)).~~

~~(2) A political committee shall have received contributions of \$10 or more each from at least ten individuals registered to vote in Washington state before contributing to a Washington state political committee.~~

~~(3) A political committee shall maintain a list of the names and addresses of these registered voters from whom contributions are received, the amount of each contribution, and the date each contribution is received. Upon written request of the commission or other person seeking this information, the political committee shall provide the list within ((14)) fourteen days ((a list of these ten individuals, identified by name, address, amount of contribution and date contribution was received)).~~

AMENDATORY SECTION (Amending WSR 06-11-132, filed 5/23/06, effective 6/23/06)

**WAC 390-18-060 Electioneering communication reporting threshold and sponsors.** (1) A "sponsor of an electioneering communication" is defined in RCW ~~((42.17.020))~~ 42.17A.005(43).

(2) For the purposes of RCW ~~((42.17.020(20)))~~ 42.17A.005(19)(c), an electioneering communication is reportable by the sponsor to the commission when the communication, alone or in combination:

(a) Identifies the same candidate in one or more communications satisfying RCW ~~((42.17.020(20)))~~ 42.17A.005(19)(a) and (b) or commission rules;

(b) Is made by the same sponsor of one or more of the communications;

(c) When it, either alone, or in combination with one or more communications identifying the candidate by the same sponsor during the sixty days before an election, has a fair market or aggregate value of ~~\$(5,000))~~ 1,000 or more; and

(d) Is not a communication exempted from reporting under RCW ~~((42.17.020(21)))~~ 42.17A.005(20) or commission rule.

(3) When the electioneering communication or communications - including radio or television transmissions, mailings, billboards, newspapers and/or periodicals - reach the ~~\$(5,000))~~ 1,000 threshold, the sponsor shall electronically report to the commission as required by RCW ~~((42.17.565))~~ 42.17A.305 within twenty-four hours of, or on the first working day after, the date the electioneering communication is first broadcast, transmitted, erected, distributed, or otherwise published.

(4) Once the ~~\$(5,000))~~ 1,000 threshold is reached, all subsequent electioneering communications by the sponsor identifying the same candidate are reportable as provided in RCW ~~((42.17.565))~~ 42.17A.305 and this rule.

(5) When more than one sponsor pays for the electioneering communication, the entire fair market value of the communication is attributable to all sponsors. All sponsors of the same communication are responsible for reporting once the ~~\$(5,000))~~ 1,000 threshold is met. A failure to report by one joint sponsor is not attributable to all joint sponsors of a specific communication or communications if the remaining sponsors have reported properly.

(6) Consistent with WAC 390-16-060 and the requirements of PDC Form C-6, a prorated portion of independent expenditure and electioneering communications expenditures shall be attributed to each candidate or ballot proposition identified in the advertisement or communication. That proration shall be based on a reasonable, good faith estimate of the value of the portion of the advertisement or communication relating to each candidate or proposition identified.

~~((7))~~ **Examples.** The following is a nonexclusive list of examples of reportable activities for electioneering communications:

~~(a) Single sponsor, single ad.~~ Sponsor A pays for an electioneering communication identifying Candidate 1 and the communication has a fair market value of \$5,000 or more. The electioneering communication is reportable by Sponsor A.

~~(b) Single sponsor, multiple ads.~~ Sponsor A pays for three electioneering communications identifying Candidate 1, and the communications have an aggregate fair market value of \$5,000 (\$1,000 for the first, \$2,000 for the second, and \$2,000 for the third). All three communications are reportable within twenty-four hours of the third communication being first broadcast, transmitted, erected, distributed or otherwise published. All subsequent electioneering communications by Sponsor A identifying Candidate 1 are reportable.

~~(c) Multiple sponsors, multiple ads.~~ Sponsors A and B jointly agree to pay for three electioneering communications identifying Candidate 1, and the communications have a total fair market value of \$5,000 (\$1,000 for the first, \$2,000 for the second, and \$2,000 for the third). All three communications become reportable when the third communication is sponsored. All subsequent electioneering communications by Sponsors A and/or B identifying Candidate 1 are reportable.

~~(d) Multiple sponsors, multiple ads.~~ Sponsors A and B have separately paid for an electioneering communication identifying Candidate 1, and each communication has a fair market value of \$4,000. Those communications are not reportable because they have not yet reached the \$5,000 threshold. However, Sponsors A and B then jointly agree to pay for another electioneering communication identifying Candidate 1, and the communication has a fair market value of \$1,000. Now the \$5,000 reporting threshold has been reached and within twenty-four hours of the jointly sponsored communication being published, that communication and prior separately sponsored communications identifying Candidate 1 are reportable by Sponsors A and B. All subse-

quent electioneering communications by Sponsors A and/or B identifying Candidate 1 are reportable.

(e) ~~Multiple sponsors, multiple ads.~~ Sponsors A, B and C jointly plan and agree to pay for a series of electioneering communications identifying Candidate 1. They decide that Sponsor A will pay for the first ad, Sponsor B will pay for the second ad, and Sponsor C will pay for the third ad. Each ad has a fair market value of \$4,999. Because A, B and C are acting in concert as one sponsoring entity for the electioneering communications, upon the publishing of the second ad the \$5,000 threshold is met and A, B and C have an obligation to report the electioneering communications within 24 hours. Likewise, A, B and C have an obligation to report the third electioneering communication within twenty-four hours of its publication. All subsequent electioneering communications by Sponsors A, B and/or C identifying Candidate 1 are reportable.

(f) ~~Prorating an ad.~~ If 80% of one or more electioneering communications with a fair market value of \$7,000 relates to a message or messages about Candidate 1, and the remaining 20% relates equally to two ballot propositions, the communication is reportable by the sponsor or sponsors because the \$5,000 threshold has been met. All subsequent electioneering communications identifying Candidate 1 are reportable.)

AMENDATORY SECTION (Amending WSR 10-20-011, filed 9/24/10, effective 10/25/10)

**WAC 390-19-030 Electronic filing—Reporting threshold.** (1) The "electronic reporting threshold" that requires electronic filing of all contribution and expenditure reports is met when a candidate or political committee has expended \$((+0,000)) 5,000 or more in the preceding calendar year or expects to expend \$((+0,000)) 5,000 or more in the current calendar year.

(2) It is presumed that a filer "expects to expend" \$((+0,000)) 5,000 or more when any one of the following first occurs:

(a) A filer spends at least \$((+0,000)) 5,000;

(b) A filer is a candidate for the same office last sought, the filer's election is in the current calendar year, and his or her campaign expenditures in the previous election for the same office were \$((+0,000)) 5,000 or more;

(c) A filer's expenditures meet or exceed \$((2,500)) 1,250 on or before March 31 of the current calendar year;

(d) A filer's expenditures meet or exceed \$((5,000)) 2,500 on or before June 30 of the current calendar year;

(e) A filer's expenditures meet or exceed \$((7,500)) 3,750 on or before September 30 of the current calendar year; or

(f) A filer otherwise projects that \$((+0,000)) 5,000 or more will be spent during the current calendar year.

(3) The following expenditures or transactions are excluded from the electronic reporting threshold calculation:

(a) Expenditures made to pay outstanding debts carried forward from a previous election;

(b) Surplus funds disposed of in accordance with RCW ((42.17.095)) 42.17A.430; and

(c) The value of in-kind contributions pledged or received within eight days of a special or general election.

(4) Candidate committees or political committees supporting or opposing ballot propositions that meet, exceed or expect to meet or exceed the electronic reporting threshold shall report electronically for the duration of the campaign.

AMENDATORY SECTION (Amending WSR 03-22-065, filed 11/4/03, effective 12/5/03)

**WAC 390-37-103 Commission options following receipt of a staff report on alleged violations.** Upon receipt of a staff report concerning alleged violations of those sections of chapter 42.17A RCW that the commission enforces, the commission may:

(1) Schedule the matter for a hearing (adjudicative proceeding); or

(2) Issue an order; or

(3) ((In lieu of holding an enforcement hearing (adjudicative proceeding), or issuing an order,)) Refer the matter or apparent violations to the attorney general or other enforcement agency pursuant to RCW ((42.17.360(5))) 42.17A.-105(5) and ((42.17.395)) 42.17A.750.

## WSR 11-20-073

### PROPOSED RULES

#### DEPARTMENT OF TRANSPORTATION

[Filed October 3, 2011, 12:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-20-063.

Title of Rule and Other Identifying Information: Revisions to chapter 468-95 WAC, Manual on uniform traffic control devices for streets and highways.

Hearing Location(s): Department of Transportation, Commission Board Room 1D2, 310 Maple Park Avenue, Olympia, WA 98501, on November 17, 2011, at 1:30 p.m.

Date of Intended Adoption: November 17, 2011.

Submit Written Comments to: Rick Mowlds, P.O. Box 47344, Olympia, WA 98504-7344, e-mail mowlds@wsdot.wa.gov, fax (360) 705-7988, by November 15, 2011.

Assistance for Persons with Disabilities: Contact Grant Heap by November 15, 2011, TTY (360) 705-7760.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule will adopt the 2009 Edition of the Federal Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), with modifications to reflect Washington state law and practices, into chapter 468-95 WAC. This action assures that traffic control device applications are current with the national practices mandated by the MUTCD. Changes to existing rules are typically clarifying in nature.

Reasons Supporting Proposal: Part 655.603 of the Code of Federal Regulations requires the states to adopt traffic control device standards which are substantially compliant with the MUTCD published by the Federal Highway Administration (FHWA).

Statutory Authority for Adoption: RCW 47.36.030, Traffic control devices.

Statute Being Implemented: None.

Rule is necessary because of federal law, Part 655.603, Code of Federal Regulations.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: RCW 47.36.030 requires the Washington state department of transportation to adopt uniform state standards for traffic control devices displayed upon state highways. The statute further provides that traffic control devices displayed upon county roads must comply with the state standards, and traffic control devices displayed upon city or town streets must comply with the state standards so far as practicable. This rule making fulfills the requirements of RCW 47.36.030. There should be no fiscal impact associated with this rule making, because any resultant traffic control device changes will be accomplished through attrition when existing devices wear out.

Name of Proponent: Washington state department of transportation, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Rick Mowlds, Olympia, Washington, (360) 705-7988.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule is exempt from the small business economic impact statement process under RCW 19.85.025(3) and 34.05.310 (4)(c) and (d). There is no economic impact to small business because the placement of traffic control devices upon public roadways is a governmental responsibility.

A cost-benefit analysis is not required under RCW 34.05.328. A cost-benefit analysis is exempt under RCW 34.05.328 (5)(b)(iii) and (iv). The rule does not change federal regulations or Washington state law. The rules incorporate the 2009 Edition of the MUTCD into chapter 468-95 WAC, assuring the most current national practices associated with placing traffic control devices.

October 3, 2011  
Stephen T. Reinmuth  
Chief of Staff

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

**WAC 468-95-010 General.** The ((2003)) 2009 Edition of the *Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD)*, published by the Federal Highway Administration and approved by the Federal Highway Administrator as the national standard for all highways open to public travel, was duly adopted by the Washington state secretary of transportation. Revisions are incorporated into the ((November 2003)) December 2009 Edition of the MUTCD, except as may be modified herein, when published by the Federal Highway Administration. The manual includes in part many illustrations, some of which depend on color for proper interpretation. The code reviser has deemed it inexpedient to convert these regulations and illustrations to the prescribed form and style of WAC and therefore excludes them from publication. The document is available for public

inspection at the headquarters office and all region offices of the Washington state department of transportation. Further, each city, town, and county engineering office in the state will have either a hard copy or an electronic copy of the MUTCD, with revisions and modifications for Washington, in its possession.

#### NEW SECTION

**WAC 468-95-017 Engineering study and engineering judgment.** Add the following Guidance to the end of paragraph 04 in MUTCD Section 1A.09:

*The decision to use a particular device at a particular location should be made on the basis of either an engineering study or the application of engineering judgment. Thus, while this manual provides Standards, Guidance, and Options for the design and application of traffic control devices, this manual should not be considered a substitute for engineering judgment.*

*Engineering judgment should be exercised in the selection and application of traffic control devices, as well as in the location and design of the roads and streets that the devices complement.*

#### NEW SECTION

**WAC 468-95-019 Definitions of headings, words, and phrases used in this manual.** Add the following Standard to the end of Paragraph 01, Subsection A, in MUTCD Section 1A.13:

Site-specific conditions may lead agencies to determine that it is impossible or impractical to comply with a Standard and that they must deviate from the requirement of a particular Standard at that location or others having the same condition. In such limited specific cases, the deviation is allowed provided that the agency or official having jurisdiction fully documents the engineering reasons for the deviation.

The FHWA can also be requested to review the site-specific condition and the proposed deviation and, if appropriate, issue an Official Interpretation to clarify the application of the Standard to that condition.

#### NEW SECTION

**WAC 468-95-022 Definitions of headings, words, and phrases used in this manual.** Pursuant to RCW 46.04.220, amend MUTCD Section 1A.13, definition number 94, Intersections, Subsection (b) to read:

The junction of an alley with a street or highway shall not constitute an intersection.

#### NEW SECTION

**WAC 468-95-024 Definitions of headings, words, and phrases used in this manual.** Add the following to the end of MUTCD Section 1A.13, Paragraph 03:

For the purposes of defining a raised median, the use of block traffic curb (by itself, i.e., along a center line or a lane line) does not create a raised median.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

**WAC 468-95-033 In-street pedestrian crossing sign (R1-6a).** Delete signs R1-5, R1-5a, R1-6, and R1-9 from MUTCD Figure 2B-2, and amend MUTCD Section 2B.12 to read:

Option:

The In-Street Pedestrian Crossing (R1-6a) sign (see Figure 2B-2) or the Overhead Pedestrian Crossing (R1-9a) sign (see Figure 2B-2) may be used to remind road users of laws regarding right of way at an unsignalized pedestrian crossing. The legend STATE LAW may be shown at the top of the R1-6a and R1-9a signs if applicable. On the R1-5b and R1-5c signs, the legend STOP FOR may be used ((in conjunction with)) instead of the appropriate STOP sign symbol.

Highway agencies may develop and apply criteria for determining the applicability of In-Street Pedestrian Crossing signs.

**Standard:**

**If used, the In-Street Pedestrian Crossing sign shall be placed in the roadway at the crosswalk location on the center line, on a lane line, or on a median island. The In-Street Pedestrian Crossing sign shall not be post-mounted on the left-hand or right-hand side of the roadway.**

**If used, the Overhead Pedestrian Crossing sign shall be placed over the roadway at the crosswalk location.**

**An In-Street or Overhead Pedestrian Crossing sign shall not be placed in advance of the crosswalk to educate road users about the State law prior to reaching the crosswalk, nor shall it be installed as an educational display that is not near any crosswalk.**

Guidance:

If an island (see Chapter ((3G)) 3I) is available, the In-Street Pedestrian Crossing sign, if used, should be placed on the island.

Option:

If a Pedestrian Crossing (W11-2) warning sign is used in combination with an In-Street or an Overhead Pedestrian Crossing sign, the W11-2 sign with a diagonal downward pointing arrow (W16-76P) plaque may be post-mounted on the right-hand side of the roadway at the crosswalk location.

**Standard:**

**The In-Street Pedestrian Crossing sign and Overhead Pedestrian Crossing sign shall not be used at signalized locations.**

The STOP FOR legend shall only be used in States where the State law specifically requires that a driver stop for a pedestrian in a crosswalk.

~~((If used, the In-Street Pedestrian Crossing sign shall have a black legend (except for the red STOP sign symbol) and border on either a white and/or fluorescent yellow-green background.~~

If the In-Street Pedestrian Crossing sign is placed in the roadway, the sign support shall comply with the breakaway requirements of the latest edition of AASHTO's "Specification for Structural Supports for Highway Signs, Luminaries, and Traffic Signals" (see Page i:)) **The In-Street Pedestrian Crossing sign shall have a black legend (except for the red STOP sign symbol) and border on a white background, surrounded by an outer yellow or fluorescent yellow-**

**green background area (see Figure 2B-2). The Overhead Pedestrian Crossing sign shall have a black legend and border on a yellow or fluorescent yellow-green background at the top of the sign and a black legend and border on a white background at the bottom of the sign (see Figure 2B-2).**

**Unless the In-Street Pedestrian Crossing sign is placed on a physical island, the sign support shall be designed to bend over and then bounce back to its normal vertical position when struck by a vehicle.**

Support:

The provisions of Section 2A.18 concerning mounting height are not applicable for the In-Street Pedestrian Crossing sign.

**Standard:**

**The top of an In-Street Pedestrian Crossing sign shall be a maximum of 4 feet above the pavement surface. The top of an In-Street Pedestrian Crossing sign placed in an island shall be a maximum of 4 feet above the island surface.**

Option:

The In-Street Pedestrian Crossing sign may be used seasonally to prevent damage in winter because of plowing operations, and may be removed at night ((where)) if the pedestrian activity at night is minimal.

In-Street Pedestrian Crossing signs, Overhead Pedestrian Crossing signs, and Stop Here for Pedestrian signs may be used together at the same crosswalk.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

**WAC 468-95-045 Speed limit sign (R2-1).** Revise MUTCD Section 2B.13 to read:

**Standard:**

**Speed Limits (R2-1) signs (see Figure 2B-1) shall display the speed limit established by statute; or, by an ordinance or regulation adopted by the authorized agency, based on the engineering study or traffic investigation required by RCW 46.61.405, 46.61.410, and 46.61.415. The speed limit shall be set in multiples of ((40 km/h or)) = 5 mph.**

Guidance:

Authorized agencies should reevaluate speed limits on segments of their roadways that have undergone a significant change in roadway characteristics or surrounding land use since the last review.

No more than three speed limits should be posted on any one Speed Limit sign or assembly.

When evaluating speed limits, the following factors should be considered:

((A-)) • The 85th percentile speed of vehicles traveling on the road;

((B-)) • Road characteristics, shoulder condition, grade, alignment, and sight distance;

((C-)) • The pace speed;

((D-)) • Roadside development and environment;

((E-)) • Parking practices and pedestrian activity;

((F-)) • Reported crash experience for at least a 12 month period; and

~~((G-))~~ Other factors such as route development or comprehensive plans.

Option:

Two types of Speed Limit signs may be used: One to designate passenger car speeds, including any nighttime information or minimum speed that may apply; and, the other to show any special speed limits for trucks and other vehicles.

A changeable message sign that changes the speed limit for traffic and ambient conditions may be installed provided that the appropriate speed limit is shown at the proper times.

A changeable message sign that displays to drivers the speed at which they are traveling may be installed in conjunction with a Speed Limit sign.

Guidance:

If a changeable message sign displaying approach speeds is installed, the legend YOUR SPEED XX ~~((km/h))~~ (mph) or such similar legend should be shown. The color of the changeable message legend should be a yellow legend on a black background or the reverse of these colors.

Support:

Advisory Speed signs are discussed in Sections ~~((2C.36))~~ 2C.08, 2C.14, and ~~((2C.46))~~ 2C.15. Temporary Traffic Control Zone Speed signs are discussed in Part 6.

#### NEW SECTION

**WAC 468-95-075 Higher fines signs and plaque (R2-6P, R2-10, and R2-11).** Pursuant to RCW 46.61.527, amend Paragraph 01 to Option in MUTCD Section 2B.17 to read:

Option:

If increased fines are imposed for traffic violations within a designated zone of a roadway, a BEGIN HIGHER FINES ZONE (R2-10) sign (see Figure 2B-3) or a FINES HIGHER (R2-6P) plaque (see Figure 2B-3) may be used to provide notice to road users. If used, the HIGHER FINES plaque shall be mounted below an applicable regulatory or warning sign in a temporary traffic control zone, a school zone, or other applicable designated zone.

#### NEW SECTION

**WAC 468-95-085 Two-way left turn only signs (R3-9a, R3-9b).** Pursuant to RCW 46.61.290(3), amend Paragraph 01 to Option and Paragraph 03 Support in MUTCD Section 2B.24 with the following:

Option:

Two-way left turn only (R9-3a or R9-3b) signs (see Figure 2B-6) may be used in conjunction with the required pavement markings where a nonreversible lane is reserved for the exclusive use of left-turning vehicles in either direction, or turning into the roadway, and is not used for passing, overtaking, or through travel.

Support:

Upon a roadway where a center lane has been provided by distinctive pavement markings for the use of vehicles turning left from either direction, no vehicles may turn left from any other lane. No vehicle may travel further than three hundred feet within the lane. A signal, either electric or manual, for indicating a left turn movement, shall be made at least one hundred feet before the actual left turn movement is made.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

**WAC 468-95-120 Traffic signal signs.** Pursuant to RCW 46.61.055, amend the second Standard of MUTCD Section ~~((2B.45))~~ 2B.54 to read:

The NO TURN ON RED sign (R10-11a, R10-11b) shall be used to prohibit any right turn on red; or a left turn on red from a one-way or two-way street into a one-way street carrying traffic in the direction of the left turn.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

**WAC 468-95-125 Hill blocks view sign.** Delete Section ~~((2C.14))~~ 2C.18 and sign W7-6 from the MUTCD.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

**WAC 468-95-131 Bridge ices before road sign.** Delete Section ~~((2C.28))~~ 2C.32 and sign W8-13 from the MUTCD.

#### NEW SECTION

**WAC 468-95-136 Advance traffic control signs (W3-1, W3-2, W3-3, W3-4).** Add the following Option, Guidance, and Standard at the end of MUTCD Section 2C.36:

Option:

A RAMP METER AHEAD (W3-7) sign (see Figure 2C-6) may be used to warn road users that a freeway entrance ramp is metered and that they will encounter a ramp control signal (see Chapter 4I).

Guidance:

*When ramp control signals are operated only during certain periods of the day, a RAMP METERED WHEN FLASHING (W3-8) sign (see Figure 2C-6) should be installed near the entrance to the ramp in advance of the ramp control signal, or on the arterial on the approach to the ramp, to alert road users to the presence and operation of ramp meters.*

Standard:

**The RAMP METERED WHEN FLASHING sign shall be supplemented with a warning beacon (see Section 4L.03) that flashes when the ramp control signal is in operation.**

#### NEW SECTION

**WAC 468-95-138 Advance ramp control signal signs (W3-7 and W3-8).** Delete MUTCD Section 2C.37.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

**WAC 468-95-140 Signing to regional shopping centers.** Pursuant to RCW 47.36.270, a regional shopping center may be signed as a supplemental guide sign destination from state highways in accordance with the applicable sections of MUTCD Part ~~((H-D))~~ 2 Chapter 2D, Guide Signs - Conventional Roads, and MUTCD Part ~~((H-E))~~ 2 Chapter 2E, Guide Signs - Freeways and Expressways, and in accordance with subsections (1) through (8) of this section.

(1) There shall be at least 500,000 square feet of (~~feasible~~) retail floor space;

(2) There shall be at least three major department stores owned by national or regional retail chain organizations;

(3) The center shall be located within one highway mile of the state highway;

(4) The center shall generate at least 9,000 daily one-way vehicle trips to the center;

(5) Sufficient sign space as specified in the MUTCD shall be available for installation;

(6) Supplemental follow-through directional signing is required on county roads or city streets at key motorist decision points, if the center is not clearly visible from the point of exit from the state highway. The required supplemental follow-through directional signs shall be installed by the city or county prior to the installation of signs on the state highway;

(7) Signing on the state highway to a county road or city street that bears the name of the regional shopping center fulfills the statutory requirements for signing to those centers;

(8) The costs of materials and labor for fabricating, installing, and maintaining regional shopping center signs shall be borne by the center.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

**WAC 468-95-143 Street name sign (D3-1).** Amend the fourth guidance, paragraph 07 of MUTCD Section (~~2D.38~~) 2D.43 to read:

In urban or suburban areas, especially where Advanced Street name signs are not used, the use of overhead Street Name signs should be considered. If overhead Street Name signs are used, the lettering should be at least (~~300 mm (12 in) high in capital letters, or 300 mm (12 in))~~ 12 inch upper case with (~~225 mm (9 in))~~ 9 inch lower case letters where posted speeds are 40 mph or greater. For roads with posted speeds less than 40 mph, lettering should be 8 inch (~~capital~~) upper case letters with 6 inch lower case letters or greater for overhead Street Name signs. New construction should include the larger size letters for overhead signs. Internally illuminated signs may use smaller letter size.

NEW SECTION

**WAC 468-95-145 Regulatory signs for preferential lanes—General.** Amend MUTCD Section 2G.03, Paragraph 14, to read:

Where lateral clearance is limited, preferential lane regulatory signs that are post mounted on a median barrier and that are 72 inches or less in width may be skewed up to 45 degrees in order to fit with the barrier width, or may be mounted higher such that the vertical clearance to the bottom of the sign, light fixture, or structural support, whichever is lowest, is not less than twelve feet above any portion of the pavement and shoulders.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

**WAC 468-95-148 Event signs, banners, and decorations.** Add a new MUTCD Chapter (~~2F~~) 2Q to read:

Chapter (~~2F~~) 2Q, Event Signs, Banners, and Decorations

Pursuant to RCW 47.36.030(3) and 47.42.020(8), the department may permit signs, banners, or decorations visible to state highways that promote a local agency sponsored event in accordance with the applicable following criteria:

**Standard:**

**A. Signs, banners, and decorations shall not interfere or obstruct the view of any traffic control device or impair the operation of transportation management systems or street illumination.**

**B. The sign, banner, or decoration shall not include commercial advertising as determined by the department.**

**C. Signs, banners, or decorations shall be mounted not less than 20 vertical feet above the roadway surface measured at any point.**

**D. Signs, banners, or decorations shall not be visible from Interstate highways, or other state highways having a posted speed limit of 50 miles per hour or greater.**

**E. Signs, banners, or decorations shall be installed no more than 30 days before and removed no more than 3 days after the local agency sponsored event.**

**Option:**

Along multi-lane state highways a sign, banner, or decoration may be mounted vertically on luminaire posts subject to meeting wind load requirements specified by the department.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

**WAC 468-95-160 Other yellow longitudinal markings.** Pursuant to RCW 46.61.150, amend (~~the second Standard~~) paragraph 06 of MUTCD Section 3B.03 to read:

**If a continuous median island formed by pavement markings separating travel in opposite directions is used, the island may be formed by two single normal solid yellow lines, a combination of two single normal solid yellow lines with yellow crosshatching between the lines with a total width not less than eighteen inches, two sets of double solid yellow lines, or a solid yellow line not less than eighteen inches in width. All other markings in the median island area shall be yellow, except crosswalk markings, which shall be white (see Section (~~3B.17~~) 3B.18).**

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

**WAC 468-95-190 Pavement edge lines and raised pavement markers supplementing other markings.** Pursuant to RCW 47.36.280, the Standard in MUTCD Section 3B.07, is revised to read:

**Edge lines shall be used on all interstate highways, rural multilane divided highways, all principal arterials**



and minor arterials within urbanized areas, except when curb or sidewalk exists, and may be used on other classes of roads. A jurisdiction shall conform to these requirements at such time that it undertakes to renew or install permanent markings on new or existing roadways. The edge lines shall be white, except that the edge lines shall be yellow on the left edge of each roadway of divided streets and highways and one-way roadway in the direction of travel.

Edge line markings shall also be placed on paved rural arterials with a traveled way of ~~((6.1 m (20 ft)))~~ **20 feet** or more in width and an ADT of 6,000 or greater vehicles per day.

These standards shall be in effect, as provided in this section, unless the legislative authority of the local governmental body finds that special circumstances exist affecting vehicle and pedestrian safety that warrant a site-specific variance.

AMENDATORY SECTION (Amending WSR 03-06-053, filed 2/28/03, effective 3/31/03)

**WAC 468-95-200 Approach markings for obstructions.** Amend ~~((the first Standard))~~ paragraph 01 of MUTCD Section 3B.10 to read:

Pavement markings shall be used to guide traffic away from fixed obstructions within a paved roadway. Approach markings for bridge supports, refuge islands, median islands, toll plazas, and channelization islands (except channelization islands formed by paint stripes or raised pavement markers) shall consist of a diagonal line or lines extending from the ~~((centerline))~~ **center line** or the lane line to a point ~~((0.3 to 0.6 m (-)))~~ **1 to 2 ((ft)) feet** to the right side, or to both sides, of the approach end of the obstruction (see Figure ~~((3B-13))~~ **3B-15**).

Amend ~~((the third Standard))~~ paragraph 07 of MUTCD Section 3B.10 to read:

If traffic is required to pass only to the right of the obstruction, the markings shall consist of a no-pass marking, approaching the obstruction, at least twice the length of the diagonal portion as determined by the appropriate taper formula (see Figure ~~((3B-13))~~ **3B-15**).

Modify MUTCD Figure ~~((3B-13))~~ **3B-15**, Item a - Center of two-lane road, to show a single no-pass marking on the approach to the obstruction.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

**WAC 468-95-205 Raised pavement markers supplementing other markings.** Pursuant to RCW 47.36.280, amend ~~((the first))~~ paragraph 03 of the Option in MUTCD Section 3B.13 to read:

Raised pavement markers may also be used to supplement other markings for channelizing islands or approaches to other objects. The general use of raised pavement markers along right edge lines is strongly discouraged because the markers can cause steering difficulties and make bicyclists lose control of their vehicles. Raised or recessed pavement markers may be used along right edge lines on the taper in lane transition sections, on approaches to objects, and within

channelization at intersections. Raised or recessed pavement markers can only be used along right edge lines at other locations where an engineering study has determined that the markers are essential to preserving pedestrian, bicycle, and motor vehicle safety. At the initiation of the engineering study, local bicycling organizations, the regional member of the state bicycle advisory committee, or the WSDOT bicycle and pedestrian program manager shall be notified of the study for review and comment. Positioning and spacing of the markers in such cases must be determined by engineering judgment taking into consideration their effect on bicycle, pedestrian, and motor vehicle safety; and, where used, are spaced closely enough (no greater than ~~((3 m (10 ft)))~~ **10 feet** apart) to approximate the appearance of a solid line. Other applications of raised or recessed pavement markers along right edge lines of arterials are considered to be nonconforming with this section. Cities and counties shall remove their nonconforming raised or recessed pavement markers at the time that they prepare to resurface roadways, or earlier at their option.

These standards shall be in effect, as provided in this section, unless the legislative authority of the local governmental body finds that special circumstances exist affecting vehicle and pedestrian safety that warrant a site-specific variance.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

**WAC 468-95-210 Raised pavement markers substituting for pavement markings.** Amend the first sentence in ~~((the first Standard))~~ paragraph 03 of MUTCD Section 3B.14 to read:

If raised pavement markers are substituted for broken line markings, a group of 3 to 5 markers equally spaced at no greater than N/8 (see Section ~~((3B-11))~~ **3B.11**), or at the one-third points of the line segment if N is other than ~~((12 m (40 ft)))~~ **40 feet**, with ~~((a))~~ **at least one** retroreflective or internally illuminated marker used per group.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

**WAC 468-95-220 Stop and yield lines.** Amend ~~((the second Guidance))~~ paragraphs 10 and 12 of MUTCD Section 3B.16 to read:

If used, stop ~~((and yield))~~ line(s) should be placed a minimum of ~~((1.2 m (4 ft)))~~ **4 feet** in advance of the nearest crosswalk line at controlled intersections ~~((-except for))~~. Yield lines at roundabout intersections as provided ~~((for))~~ in Section ~~((3B-24 and at midblock crosswalks))~~ **3C.04**. In the absence of a marked crosswalk, the stop line or yield line should be placed at the desired stopping or yielding point, in no case less than 4 feet from the nearest edge of the intersecting roadway. Stop lines should be placed to allow sufficient sight distance to all other approaches to an intersection.

If used at an unsignalized midblock crosswalk, ~~((yield))~~ **stop** lines should be placed adjacent to the ~~((Yield))~~ **Stop Here ((to)) for Pedestrians** sign located ~~((6.1 to 15 m (20 to 50 ft)))~~ **20 to 50 feet** in advance of the nearest crosswalk line, and parking should be prohibited in the area between the

~~((yield))~~ stop line and the crosswalk (see Figure ~~((3B-15))~~ 3B-17). ~~((Stop lines at midblock signalized locations should be placed at least 12 m (40 ft) in advance of the nearest signal indication (see Section 4D.15).))~~

AMENDATORY SECTION (Amending WSR 03-06-053, filed 2/28/03, effective 3/31/03)

**WAC 468-95-230 Crosswalk markings.** Amend ~~((the second Guidance))~~ paragraph 15 in MUTCD Section ~~((3B.17))~~ 3B.18 to read:

If used, the diagonal or longitudinal lines should form a 24-inch wide marking pattern consisting of two 8-inch wide markings separated by an 8-inch wide gap or a 24-inch wide solid marking pattern. The marking patterns should be spaced 12 to 60 inches apart but with the maximum gap between marking patterns not to exceed 2.5 times the marking pattern width. Longitudinal marking patterns should be located to avoid the wheel paths and should be oriented parallel with the wheel paths.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

**WAC 468-95-235 Preferential lane word and symbol markings.** ~~((Add a guidance statement following the first Standard of MUTCD))~~ Amend Section ~~((3B.22))~~ 3D.01 to ~~((read))~~ include:

~~((Guidance:))~~ Option:

Preferential lane word and symbol markings may be offset up to a maximum of 1'0" from the center of the preferred-use lane to avoid vehicle wheel paths.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

**WAC 468-95-250 Meaning of signal indications.** Pursuant to RCW 46.61.055, amend ~~((the second))~~ paragraph ~~((of))~~ 03 in the Standard of MUTCD Section 4D.04, item C.1, to read:

**Vehicle operators facing a steady circular red signal may, after stopping, proceed to make a right turn from a one-way or two-way street into a two-way street or into a one-way street carrying traffic in the direction of the right turn; or a left turn from a one-way or two-way street into a one-way street carrying traffic in the direction of the left turn; unless a sign posted by a competent authority prohibits such movement. Vehicle operators planning to make such turns shall remain stopped to allow other vehicles lawfully within or approaching the intersection control area to complete their movements. Vehicle operators planning to make such turns shall also remain stopped for pedestrians who are lawfully within the intersection control area.**

Pursuant to RCW 46.61.055, amend the Standard of MUTCD Section 4D.04, item C.2, to read:

**Vehicle operators facing a steady red arrow indication may, after stopping, proceed to make a right turn from a one-way or two-way street or into a one-way street carrying traffic in the direction of the right turn, or a left turn from a one-way street or two-way street into a one-**

**way street carrying traffic in the direction of the left turn, unless a sign posted by a competent authority prohibits such movement. Vehicle operators planning to make such turns shall remain stopped to allow other vehicles lawfully within or approaching the intersection control area to complete their movements. Vehicle operators planning to make such turns shall also remain stopped for pedestrians who are lawfully within the intersection control area.**

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

**WAC 468-95-260 Application of steady signal indications.** Pursuant to RCW 46.61.055, amend the Standard of MUTCD Section 4D.05, item D, to read:

~~((A steady RED ARROW signal indication shall be displayed when it is intended to prohibit vehicular traffic from entering the intersection or other controlled area to make the indicated turn when regulatory signing is in place prohibiting such movement. Pedestrians directed by a pedestrian signal head may enter the intersection or other controlled area.))~~ **A steady RED ARROW signal indication shall be displayed when it is intended to prohibit vehicular traffic from entering the intersection or other controlled area to make the indicated turn when regulatory signing is in place prohibiting such movement. Pedestrians directed by a pedestrian signal head may enter the intersection or other controlled area.**

NEW SECTION

**WAC 468-95-265 Application of freeway entrance ramp control signals.** Add the following Guidance to the end of paragraph 03 in MUTCD Section 4I.01:

*Capacities and demand/capacity relationships should be determined for each freeway section. The locations and causes of capacity restrictions and those sections where demand exceeds capacity should be identified. From these and other data, estimates should be made of desirable metering rates, probable reductions in the delay of freeway traffic, likely increases in delay to ramp traffic, and the potential impact on surface streets. The study should include an evaluation of the ramp's storage capacities for vehicles delayed at the signal, stopping sight distance approaching the ramp control signal, the impact of queued traffic on the local street intersection, and the availability of suitable alternate surface routes having adequate capacity to accommodate any additional traffic volume.*

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

**WAC 468-95-270 Meaning of lane-use control indications.** Pursuant to RCW 46.61.072, amend the Standard of MUTCD Section ~~((4J.02))~~ 4M.02, paragraph B, to read:

**A steady YELLOW X or a flashing RED X means that a driver should prepare to vacate, in a safe manner, the lane over which the signal is located because a lane control change is being made, and to avoid occupying that lane when a steady RED X is displayed.**

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

**WAC 468-95-280 Operation of lane-use control signals.** Pursuant to RCW 46.61.072, in MUTCD Section ~~((4J-04))~~ 4M.04, amend the first sentence of the first paragraph after item G in the first Standard to read:

**A moving condition in one direction shall be terminated either by the immediate display of a RED X signal indication or by a YELLOW X signal indication followed by a RED X signal indication or a flashing RED X indication followed by a RED X indication.**

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

**WAC 468-95-29003 Traffic control devices for low-volume roads—Design.** Change the Guidance of MUTCD Section 5A.03, Design, to become an Option and amend to read:

~~((Oversized sign sizes))~~ The sizes shown under the oversized column in Table 5A-1 may be used where engineering judgment indicates a need based on high vehicle operating speeds, driver expectancy, traffic operations, or roadway conditions.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

**WAC 468-95-29007 Traffic control devices for low-volume roads—One lane bridges.** Change the Guidance of MUTCD Section 5C.06, One Lane Bridges, to become an Option and amend to read:

A ONE LANE BRIDGE (W5-3) sign (see Figure 5C-2) may be used on low-volume two-way roadways in advance of any bridge or culvert:

A. Having a clear roadway width of less than ~~((4-9 m f))~~ 16 ~~((ft))~~ feet; or

B. Having a clear roadway width of less than ~~((5-5 m f))~~ 18 ~~((ft))~~ feet when commercial vehicles constitute a high proportion of the traffic; or

C. Having a clear roadway width of ~~((5-5 m f))~~ 18 ~~((ft))~~ feet or less where the approach sight distance is limited on the approach to the structure.

Additional warning may be provided on the approach to a one lane bridge or culvert by the use of object markers and/or delineators.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

**WAC 468-95-29011 Traffic control devices for low-volume roads—~~((Centerline))~~ Center Line markings.** Change the Guidance of MUTCD Section 5E.02, Centerline Markings, to become an Option and amend to read:

~~((Centerline))~~ Center line markings may be used on paved low-volume roads where engineering judgment or an engineering study indicates a need for them.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

**WAC 468-95-29013 Traffic control devices for low-volume roads—~~((Edgeline))~~ Edge Line markings.** Change the Guidance of MUTCD Section 5E.03, Edgeline Markings, to become an Option and amend to read:

~~((Edgeline))~~ Edge line Markings may be considered for use on paved low-volume roads based on engineering judgment or an engineering study.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

**WAC 468-95-29017 Traffic control devices for low-volume roads—Object markers.** Change the Guidance of MUTCD Section ~~((5E-05))~~ 5C.14, Object Markers, to become an Option and amend to read:

The end of a low-volume road may be marked with an end-of-roadway marker in conformance with Section ~~((3C-04))~~ 2C.66.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

**WAC 468-95-300 Temporary traffic control.** Amend MUTCD Table 6C-1 to read:

**Sign Spacing (1)**

Freeways and Expressways	55/70 MPH	1500' ± <del>((or per MUTCD))</del>
Rural Highways	60/65 MPH	800' ±
Rural Roads	45/55 MPH	500' ±
Rural Roads and Urban Arterials	35/40 MPH	350' ±
Rural Roads, Urban Arterials, Residential, Business Districts	25/30 MPH	200' ± (2)
Urban Streets	25 MPH or less	100' ± (2)

(1) All spacing may be adjusted to accommodate interchange ramps, at-grade intersections, and driveways.

(2) This spacing may be reduced in urban areas to fit roadway conditions.

NEW SECTION

**WAC 468-95-301 Tapers.** Add a new MUTCD Table 6C-5, Channelization Device Spacing, to Section 6C.08 to read:

**Channelizing Device Spacing (Feet)**

MPH	Taper	Tangent
50/70	40	80
35/45	30	60
25/30	20	40

NEW SECTION

**WAC 468-95-3015 Flagger procedures.** Add a new Standard to MUTCD Section 6E.07 to read:

**Standard:**

**Flagger directions at signalized intersections shall not be in conflict with signal displays and the signal must be either shut down or placed in flash mode as appropriate for the intersection operation except during emergencies.**

NEW SECTION

**WAC 468-95-302 Flagger stations.** Add a new Standard to MUTCD Section 6E.08 to read:

**Standard:**

**A flagger shall not flag traffic within an intersection, except for an emergency or law enforcement flagging.**

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

**WAC 468-95-306 Motorcycles use extreme caution supplemental plaque.** Pursuant to RCW 47.36.200, amend MUTCD Section 6F.54 to read:

A supplemental plaque displaying the message MOTORCYCLES USE EXTREME CAUTION is added to MUTCD Figure 6F-4. Delete the Motorcycle symbol (W8-15P) plaque from Figure 6F-4.

((The plaque may supplement primary condition warning signs.)) The MOTORCYCLES USE EXTREME CAUTION (W21-1701P) plaque (see Figure 6F-4) may be mounted below a LOOSE GRAVEL (W8-7) sign, a GROOVED PAVEMENT (W8-15) sign, a ABRUPT LANE EDGE (W21-801), a METAL BRIDGE DECK (W8-16) sign, or a STEEL PLATE AHEAD (W8-24) sign if the warning is intended to be directed primarily to motorcyclists.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

**WAC 468-95-310 Temporary pavement markings.** Amend MUTCD Section ~~((6F-66))~~ 6F.78 to read:

**Standard:**

**All temporary pavement markings shall conform to the requirements of Chapters 3A and 3B. All temporary broken-line pavement markings shall use the same cycle length as permanent markings and be at least ~~((0.6 m (2 ((ft)))~~) **feet** long.**

**Support:**

Temporary pavement markings are those that may be used until it is practical and possible to install permanent markings.

**Option:**

Half-cycle lengths with a minimum of ~~((0.6 m (2 ((ft)))~~) **feet** stripes may be used on roadways with severed curvature (see Section 3A.05) for center lines in passing zones and for lane lines.

For temporary situations, for a two-lane or three-lane road, no-passing zones may be identified by using DO NOT PASS (R4-1), PASS WITH CARE (R4-2), and NO PASSING ZONE (W14-3) signs rather than pavement markings.

Guidance:

When used, the DO NOT PASS, PASS WITH CARE, and NO PASSING ZONE signs should be placed in accordance with Sections ~~((2B.29, 2B.30, and 2C.35))~~ 2B.28, 2B.29, and 2C.45.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

**WAC 468-95-317 Temporary traffic control.** Amend MUTCD Table 6H-3 to read:

Sign Spacing<sup>(1)</sup>

		1500' ±
Freeways and Expressways	55/70 MPH	<del>((or per MUTCD))</del>
Rural Highways	60/65 MPH	800' ±
Rural Roads	45/55 MPH	500' ±
Rural Roads and Urban Arterials	35/40 MPH	350' ±
Rural Roads, Urban Arterials, Residential, Business Districts	25/30 MPH	200' ± <sup>(2)</sup>
Urban Streets	25 MPH or less	100' ± <sup>(2)</sup>

<sup>(1)</sup>All spacing may be adjusted to accommodate interchange ramps, at-grade intersections, and driveways.

<sup>(2)</sup>This spacing may be reduced in urban areas to fit roadway conditions.

NEW SECTION

**WAC 468-95-322 School bus turn signs.** In Figure 7B-1 replace the SCHOOL BUS TURN AHEAD (S3-2) sign with the SCHOOL BUS TURN AROUND (S3-201) sign.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

**WAC 468-95-325 In-street signs in school areas.**

Delete signs R1-6 and R1-6b from MUTCD Figure ~~((7B-4))~~ 7B-6 and amend the first Option of MUTCD Section 7B.08 to read:

A ~~((300 mm (12 in)))~~ **12 inch** reduced size in-street School Advance Warning (S1-1) sign (see Figure 7B-4), installed in compliance with the mounting height and break-away requirements for In-Street Pedestrian Crossing (R1-6a) signs (see Section 2B.12), may be used in advance of a school crossing to supplement the ground-mounted school warning signs. A ~~((300 mm x 150 mm (12 in x 6 in)))~~ **12 inch x 6 inch** reduced size AHEAD (W16-9p) plaque may be mounted below the reduced size in-street School Advance Warning (S1-1) sign.

NEW SECTION

**WAC 468-95-327 Higher fines zone signs (R2-10, R2-11) and plaques.** Pursuant to RCW 46.61.440(3), replace the

paragraph 01 Standard in MUTCD Section 7B.10 with the following Option:

Option:

Where increased fines are imposed for traffic violations within a designated school zone, a BEGIN HIGHER FINES ZONE (R2-10) sign (see Figure 7B-1) or a FINES HIGHER (R2-6P), FINES DOUBLE (R2-6aP), or \$\$\$ FINE (R2-6bP) plaque (see Figure 2B-3) may be installed as a supplement to the School Zone (S1-1) sign to identify the beginning point of the higher fines zone (see Figures 7B-2 and 7B-3).

#### NEW SECTION

**WAC 468-95-328 School crossing assembly.** Pursuant to RCW 46.61.235(1), replace Option paragraphs 04 and 06 and Standard paragraph 07 in MUTCD Section 7B.12 with the following:

Option:

The In-Street Pedestrian Crossing (R1-6a) sign (see Section 2B.12 and Figure 7B-6) or the In-Street Schoolchildren Crossing (R1-6c) sign (see Figure 7B-6) may be used at unsignalized school crossings. If used at a school crossing, a 12 inch x 4 inch SCHOOL (S4-3P) plaque (see Figure 7B-6) may be mounted above the sign. The STATE LAW legend on the R1-6 series signs may be omitted.

A 12 inch reduced size in-street School (S1-1) sign (see Figure 7B-6) may be used at an unsignalized school crossing instead of the In-Street Pedestrian Crossing (R1-6a) sign or the In-Street Schoolchildren Crossing (R1-6c) sign. A 12 inch x 6 inch reduced size diagonal downward pointing arrow (W16-7P) plaque may be mounted below the reduced size in-street School (S1-1) sign.

**Standard:**

**If an In-Street Pedestrian Crossing sign, an In-Street Schoolchildren Crossing sign, or a reduced size in-street School (S1-1) sign is placed in the roadway, the sign support shall comply with the mounting height and special mounting support requirements for In-Street Pedestrian Crossing (R1-6a) signs.**

#### NEW SECTION

**WAC 468-95-3285 In-street signs in school areas.** Delete signs R1-6 and R1-6b from MUTCD Figure 7B-6.

#### NEW SECTION

**WAC 468-95-329 School bus turnaround ahead (S3-201) sign.** Replace the paragraph 01 Option in MUTCD Section 7B.14 with the following:

Option:

The SCHOOL BUS TURN AROUND (S3-201) sign (see Figure 7B-1) may be installed in advance of locations where a school bus turns around on a roadway at a location not visible to approaching road users for a distance determined by Condition B "0" + 100 feet of Table 2C-4, and where there is no opportunity to relocate the school bus turn around to provide as a minimum the distance determined from Table 2C-4.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

**WAC 468-95-330 School speed limit assembly (S4-1, S4-2, S4-3, S4-4, S5-1).** Pursuant to RCW 46.61.440, ~~((the first Guidance)) paragraph 07~~ in MUTCD Section ~~((7B-1)) 7B.15~~ is replaced with a Standard to read:

**Applicable to state highways, county roads, or city streets, the reduced school or playground speed zone shall extend for 300 feet in either direction from the marked crosswalk when the marked crosswalk is fully posted with standard school speed limit signs or standard playground speed limit signs.**

**Applicable to county roads or city streets, the school or playground speed zone may extend up to 300 feet from the border of the school or playground property when fully posted with standard school speed limit signs or standard playground speed limit signs. However, the speed zone may only include the area consistent with active school or playground use.**

**No school or playground speed zone may extend less than 300 feet from a marked school or playground crosswalk, but may extend by traffic regulation beyond 300 feet based on a traffic and engineering investigation.**

~~((Pursuant to RCW 46.61.440,))~~ **The speed limit signs** ~~((distance note))~~ **shown in Figure** ~~((7B-3 is replaced with:~~

~~See WAC 468-95-330 for school or playground speed limit placement distances))~~ **7B-5 shall be located per RCW 46.61.440.**

#### NEW SECTION

**WAC 468-95-335 When children are present.** Amend MUTCD Section 7B.15 by adding the following to paragraph 07:

The supplemental or lower panel of a School Speed Limit 20 sign which reads When Children are Present shall indicate to the motorist that the 20 mile per hour school speed limit is in force under any of the following conditions:

(1) School children are occupying or walking within the marked crosswalk.

(2) School children are waiting at the curb or on the shoulder of the roadway and are about to cross the roadway by way of the marked crosswalk.

(3) School children are present or walking along the roadway, either on the adjacent sidewalk or, in the absence of sidewalks, on the shoulder within the posted school speed limit zone extending 300 feet, or other distance established by regulation, in either direction from the marked crosswalk.

AMENDATORY SECTION (Amending WSR 05-23-003, filed 11/3/05, effective 12/4/05)

**WAC 468-95-340 School speed limit assembly (S4-1, S4-2, S4-3, S4-4, S5-1).** Amend ~~((the second Standard of))~~ paragraphs 08 and 09 of the standard in MUTCD Section ~~((7B-1)) 7B.15~~ to read:

**The School Speed Limit assembly shall be either a fixed-message sign assembly or a changeable message sign. The fixed-message School Speed Limit assembly shall consist of a top plaque (S4-3) with the legend**

SCHOOL, a Speed Limit (R2-1) sign, and a bottom plaque (S4-1, S4-2, S4-4, S4-6, or S4-501) indicating the specific periods of the day and/or days of the week that the special school speed limit is in effect (see Figure 7B-1).

**Amend Figure 7B-1 to include the WHEN FLAGGED (S4-501) sign.**

AMENDATORY SECTION (Amending WSR 03-06-053, filed 2/28/03, effective 3/31/03)

**WAC 468-95-360 Crosswalk markings.** Amend ((the second Guidance of)) paragraph 04 of MUTCD Section ((7C-03)) 7C.02 to read:

If used, the diagonal or longitudinal lines should form a 24-inch wide marking pattern consisting of two 8-inch wide markings separated by an 8-inch wide gap or a 24-inch wide solid marking pattern. The marking patterns should be spaced 12 to 60 inches apart but with the maximum gap between marking patterns not to exceed 2.5 times the marking pattern width. Longitudinal marking patterns should be located to avoid the wheel paths and should be oriented parallel with the wheel paths.

NEW SECTION

**WAC 468-95-365 Light rail transit signals.** Amend the MUTCD Figure 8C-3 notes to read:

Notes:

All aspects (or signal indications) are either white or amber.

(1) Could be in single housing.

(2) "Go" lens may be used in flashing mode to indicate "prepare to stop."

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 468-95-015	Compliance dates.
WAC 468-95-027	Stop sign placement.
WAC 468-95-132	Advisory exit, ramp, and curve speed signs (W13-2, W13-3, and W13-5).
WAC 468-95-133	Intersection warning signs (W2-1 through W2-6).
WAC 468-95-134	Advisory speed plaques (W13-1).
WAC 468-95-135	Cross traffic does not stop plaque (W4-4p).
WAC 468-95-147	General design requirements for recreational and cultural interest area symbol signs.
WAC 468-95-150	No passing zone markings.
WAC 468-95-180	Other white longitudinal pavement markings.

WAC 468-95-303

Sign placement.

WAC 468-95-350

When children are present.

**WSR 11-20-080**

**PROPOSED RULES**

**WESTERN WASHINGTON UNIVERSITY**

[Filed October 4, 2011, 11:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-19-061.

Title of Rule and Other Identifying Information: Chapter 516-23 WAC, Student rights and responsibilities code.

Hearing Location(s): Western Washington University, Main Campus, Board Room, Old Main 340, 516 High Street, Bellingham, WA 98225, on November 15, 2011, at 1:30 p.m.

Date of Intended Adoption: December 9, 2011.

Submit Written Comments to: Suzanne Baker, Rules Coordinator, 516 High Street, Old Main 335, Bellingham, WA 98225-9015, e-mail Suzanne.Baker@wwu.edu, fax (360) 650-6197, by November 14, 2011.

Assistance for Persons with Disabilities: Contact Suzanne Baker by November 14, 2011, (360) 650-3117.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: As part of a comprehensive review of Western Washington University's student conduct code, the university proposes to repeal the current chapter 516-23 WAC and adopt an updated student rights and responsibilities code in a new WAC chapter. The updated rules clarify student responsibilities for complying with the code; clarifies proceedings for violations of the code; and clarifies the relationship of the code to university residences rules and procedures and when cases are coadjudicated by both areas.

The updated rules also address the United States Department of Education's October 2010 Dear Colleague Letter on harassment and bullying and its April 2011 Dear Colleague Letter on sexual violence. The proposed rules state the rights of students accused of violating the code and of students who have filed a complaint or are the victim of an alleged violation of the code, including the rights specific to victims of incidents involving violence or sexual violence.

Reasons Supporting Proposal: The proposal clarifies existing rules and updates the student conduct code on university procedures and federal laws.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

Rule is necessary because of federal law, 20 U.S.C. 1681-1688 (Title IX Education Amendments of 1972).

Name of Proponent: Western Washington University, governmental.

Name of Agency Personnel Responsible for Drafting: Sherry Mallory, Associate Dean, 516 High Street, Bellingham, WA, (360) 650-2484; Implementation and Enforcement: Ted Pratt, Dean of Students, 516 High Street, Bellingham, WA, (360) 650-3450.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed new

chapter on the student conduct code would not impose a disproportionate impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. Proposed new chapter is not considered a significant legislative rule by Western Washington University.

October 4, 2011  
Suzanne M. Baker  
Rules Coordinator

## Chapter 516-21 WAC

### STUDENT RIGHTS AND RESPONSIBILITIES CODE

#### NEW SECTION

**WAC 516-21-010 Introduction.** Western Washington University students enjoy the same basic rights, privileges, and freedoms granted to all members of society. At the same time, acceptance of admission to the university carries with it an obligation to fulfill certain responsibilities and expectations as a member of the Western Washington University community.

As a condition of enrollment at Western, students must assume responsibility for their own actions and maintain an environment conducive to the academic success, safety, and well-being of others. In addition, they are expected to be truthful, respect the rights of others, and abide by all university policies and procedures, as well as all applicable local, state, and federal laws and regulations. All students are responsible for understanding and complying with the responsibilities and expectations set forth in this code.

The student conduct process at Western is designed to be a learning process for students that promotes an understanding of their responsibilities as members of the university community. The objectives of the student conduct system, as set forth in this code, are twofold: To ensure that students act in a manner consistent with high standards of scholarship and behavior, and to maintain the safety and well-being of all members of the university community.

#### NEW SECTION

**WAC 516-21-020 Definitions.** As used in this chapter, the following words and phrases mean:

- (1) **Appeals board.** The student conduct appeals board.
- (2) **Business day.** Any day, Monday through Friday (excluding holidays), during which university offices are open.
- (3) **Catalog.** The *Western Washington University General Catalog*.
- (4) **Code.** The student rights and responsibilities code.
- (5) **Conduct hold or judicial hold.** A block placed on a student's official university record at the request of the conduct officer or dean of students. A conduct or judicial hold prohibits a student from registering for or enrolling in classes, requesting official transcripts, or receiving a degree from the university until the hold has been removed.
- (6) **Conduct officer.** The student conduct officer or their designee.

(7) **Dean of students.** The dean of students or their designee.

(8) **Guest.** Any person who is not a member of the university community, who is on university property or attending an official university function at the invitation and/or hosting of a student.

(9) **Member of the university community.** Any person who is a student, university official, or who is otherwise employed or contracted by the university. A person's status in a particular situation shall be determined by the dean of students.

(10) **Official university function.** Any activity, on or off campus, that is initiated, sponsored, or supervised by any entity of Western Washington University.

(11) **Preponderance of evidence.** Defined as "more likely than not," is the standard of responsibility used when determining whether a violation of the student rights and responsibilities code has occurred.

(12) **Student.** Any person who is:

- (a) Formally admitted to the university;
- (b) Enrolled in one or more classes at the university, including nonmatriculated international students attending language institutes or foreign study programs;
- (c) Participating in a certificate, degree, distance learning, or professional enrichment program, through extended education and summer programs;
- (d) Enrolled in a prior quarter or summer session at the university and eligible to continue enrollment in the quarter or summer session that immediately follows; and
- (e) Former students if violations of the code occurred while they were enrolled or participating in a program offered by the university.

(13) **University.** Western Washington University and all associated programs, including those offered on-line and/or at off-campus program sites.

(14) **University official.** Any person employed or contracted by the university, who is performing assigned teaching, administrative, or professional responsibilities. University officials may be full- or part-time, or may be student staff members.

(15) **University property.** Includes all land, buildings, facilities, and other property that is owned, used, leased, or controlled by Western Washington University. University property also includes adjacent streets and sidewalks.

(16) **WAC.** An abbreviation for the Washington Administrative Code.

#### NEW SECTION

**WAC 516-21-030 Jurisdiction.** (1) The student rights and responsibilities code applies to all conduct that occurs on university property or in connection with any official university function.

(2) Western Washington University does not act as a policing agent for students when they are off campus. However, the university reserves the right to take action if a student's conduct is determined to adversely affect a substantial university interest. Student conduct that occurs off campus may be subject to the student rights and responsibilities code when it:

(a) Adversely affects the safety or well-being of any member of the university community; or

(b) Involves academic work or any records, documents, or identifications of the university.

In determining whether to exercise jurisdiction over such conduct, the student conduct officer shall consider the seriousness of the alleged offense, the risk of harm involved, and whether the alleged victim(s) are members of the university community. Any question of interpretation or application of jurisdiction shall be referred to the dean of students for final determination.

(3) Students are responsible for their conduct from the time they have confirmed their enrollment at Western through the awarding of their degree. This includes conduct that occurs before classes begin, after classes end, and during periods between actual terms of enrollment. Individual students who are found to be in violation of the code may be subject to sanctions under the code.

(4) A student with a pending conduct violation may not avoid the conduct process by withdrawing from the university. In these circumstances, a conduct hold will be placed on the student's official record, preventing them from registering for or enrolling in classes, requesting official transcripts, or receiving a degree from the university. This hold will remain in place until the student has met with the conduct officer to discuss the alleged conduct violation(s).

(5) Sanctions against student organizations are decided by procedures established by the university administrative unit governing that organization's recognition. Conduct proceedings against individual member(s) of a student organization can be initiated under this code, independent of any departmental action(s) taken against the student organization.

#### NEW SECTION

##### **WAC 516-21-040 Student responsibility for guests.**

(1) Guests and visitors on university property or at official university functions are expected to comply with all university policies and procedures, as well as all applicable local, state, and federal laws and regulations.

(2) Students who invite guests into their residence hall or to official university functions open only to Western students are responsible for the behavior of their guests. As a result, a student may be held responsible for any alleged violation(s) of the code committed by their guests. See also WAC 516-24-001 Conduct of campus guests and visitors.

#### NEW SECTION

**WAC 516-21-050 Academic dishonesty.** The university's policy and procedures regarding academic dishonesty are addressed in the academic honesty policy and procedure. As noted in the policy, academic dishonesty at Western Washington University is a serious infraction dealt with severely. For a list of actions that constitute academic dishonesty, refer to the academic honesty policy and procedure in the catalog.

#### NEW SECTION

**WAC 516-21-060 Conduct that threatens health or safety.** Conduct that threatens the health or safety of any person, including oneself, is a violation of the code. Conduct that threatens health or safety includes, but is not limited to:

(1) Intoxication or impairment through the use of alcohol or other substances to the point that a student is unable to exercise care for their own safety or well-being.

(2) Any threat, stated or implied, to the health, safety or well-being of self or others.

(3) Any contact or communication of a threatening nature that intimidates, harasses, or causes a person to fear for their own safety or well-being or the safety or well-being of their immediate family members.

(4) Incidents involving the use or display of a weapon or destructive device likely to cause bodily injury and/or damage to property.

#### NEW SECTION

**WAC 516-21-070 Disruptive behavior.** Behavior that substantially disrupts, disturbs, or interferes with the ability of students to learn or university officials to perform their assigned duties is a violation of the code. Disruptive behavior includes, but is not limited to:

(1) Demonstrations or protests that substantially disrupt, disturb, or interfere with:

(a) Classroom activities or other educational pursuits;

(b) Official university activities or functions including, but not limited to, ceremonies, meetings, office functions, performances, or athletic events;

(c) Pedestrian or vehicular traffic; or

(d) The preservation and protection of university property and/or the personal property of members of the university community.

(2) Any other behavior that substantially disrupts, disturbs, or interferes with:

(a) Classroom activities or other educational pursuits;

(b) Official university activities or functions including, but not limited to, ceremonies, meetings, office functions, performances, or athletic events;

(c) Pedestrian or vehicular traffic; or

(d) The preservation and protection of university property and/or the personal property of members of the university community.

#### NEW SECTION

**WAC 516-21-080 Failure to comply.** Failure to comply with the instructions or directives of any university official or other public official acting in performance of their duties, or failure to identify oneself when requested to do so by a university official or other public official acting in performance of their duties, is a violation of the code.

#### NEW SECTION

**WAC 516-21-090 False information.** Providing or creating false information is a violation of the code. False information includes, but is not limited to:



(1) Forging, altering, mutilating, or destroying any university document or record, or entering false information into such documents or records;

(2) Possessing or presenting as authentic any falsified document, record, or identification;

(3) Intentionally making false accusations or charges against another member of the university community; and

(4) Knowingly providing false information or statements to any university official or other public official acting in performance of their duties.

#### NEW SECTION

**WAC 516-21-100 Fire safety and false alarms.** Tampering with, altering, or disabling fire safety equipment, including emergency call devices, fire alarms, fire exits, fire extinguishers, smoke/heat detectors, or sprinkler systems; intentionally activating a fire alarm; making a false report of a fire or other emergency; or refusing to leave a building when a fire alarm sounds or when directed to by a university official or by emergency personnel are violations of the code.

#### NEW SECTION

**WAC 516-21-110 Harassment.** Harassment, defined as any conduct that is sufficiently severe, pervasive, or persistent to have the purpose or effect of interfering with a member of the university community's ability to work, study, or participate in their regular activities, is a violation of the code. Examples of harassment include, but are not limited to:

(1) Engaging in unwanted contact or communication, including calls, voice messages, electronic mail, text messages, social media posts or messages, written letters, unwanted gifts, or face-to-face contact with a member of the university community;

(2) Repeatedly following a member of the university community; waiting outside their residence, school, or place of employment; or placing them under surveillance; and

(3) Engaging in any form of behavior that is meant to threaten or intimidate a member of the university community on the basis of their membership in a protected class, including race, color, creed, religion, national origin, sex, age, disability, marital status, genetic information, status as a veteran, and/or sexual orientation.

#### NEW SECTION

**WAC 516-21-120 Hazing.** Hazing, defined as any act that, as an explicit or implicit condition for initiation or admission into, affiliation with, or continued membership in a group or organization, endangers the health, safety, or well-being of any member of the university community, is a violation of the code. Examples of hazing include, but are not limited to:

(1) Requiring the consumption of any food, alcohol, drug, or other substance.

(2) Requiring forced participation in physical activities, including calisthenics, exercise, or other games or activities that entail physical exertion.

(3) Requiring exposure to weather elements or to other physically or emotionally uncomfortable situations, includ-

ing sleep deprivation, confinement in small spaces, physical bondage, and/or taking a student to an outlying area and dropping them off.

(4) Requiring conduct that can be reasonably expected to embarrass another, including the performance of public stunts or activities such as scavenger hunts.

(5) Requiring anything that would be illegal under city, state, or federal law, or in violation of any university policies or procedures, including the code.

#### NEW SECTION

**WAC 516-21-130 Illegal possession and/or use of alcohol.** Illegally possessing, using, distributing, selling, or being under the influence of alcohol while on university property or at an official university function is a violation of the code. This includes, but is not limited to:

(1) Possession or consumption of alcohol by anyone under the age of twenty-one;

(2) Providing alcohol to anyone under the age of twenty-one;

(3) Driving on university property while under the influence of alcohol; and

(4) Public intoxication by persons of any age. See also policy concerning alcohol and other drugs in the catalog.

#### NEW SECTION

**WAC 516-21-140 Illegal possession and/or use of drugs.** Illegally possessing, using, manufacturing, cultivating, packaging, distributing, selling, or providing a controlled or illegal substance, or being under the influence of a controlled or illegal substance while on university property or at an official university function, is a violation of the code. This includes, but is not limited to:

(1) Possession of drug paraphernalia;

(2) Driving on university property while under the influence of a controlled or illegal substance; and

(3) Intentionally misusing or distributing prescription drugs. See also policy concerning alcohol and other drugs in the catalog.

#### NEW SECTION

**WAC 516-21-150 Interfering with the conduct process.** Interfering with the conduct process is a violation of the code. This includes, but is not limited to:

(1) Giving a false report or claim;

(2) Attempting to influence the impartiality of witnesses or appeals board member(s);

(3) Participating in or encouraging retribution against complainants or witnesses;

(4) Threatening, harassing, or intimidating complainants or witnesses;

(5) Disrupting or interfering with the orderly conduct of a hearing or meeting; and

(6) Failing to comply with any sanction(s) imposed as the result of a code violation.

NEW SECTION

**WAC 516-21-160 Misuse of computers, electronic data or communication systems.** Misuse of computers, electronic data, or communication systems is a violation of the code. This includes, but is not limited to:

- (1) Unauthorized entry into a file, web page, e-mail account, or on-line profile to use, download, read, transfer, or change the contents, or for any other purpose;
- (2) Unauthorized use of another person's university-issued identification and password;
- (3) The use of campus computing facilities, networks, equipment, or services to interfere with the normal operation of the university computing system or the work of any member of the university community;
- (4) The use of campus computing facilities, networks, equipment, or services to "cyber stalk" another person or to send obscene, abusive or harassing messages;
- (5) The use of campus computing facilities, networks, equipment, or services to illegally copy, distribute, download, or upload information (including movies, music, or other digital content) from the internet or any electronic source;
- (6) The use of campus computing facilities, networks, equipment, or services to illegally copy, reproduce, or distribute licensed software;
- (7) Attempting to modify system facilities or networks, including the introduction of electronic vandalism (e.g., "viruses," "worms," or other disruptive/destructive programs) into university computing resources or those connected to it by the network; and
- (8) The use of campus computing facilities, networks, equipment or services for personal profit or for any use other than authorized university business.

Students are also responsible for reading and complying with all provisions set forth in the Western Washington University policy for responsible computing, the user agreement for WWU network and computing resources, and the using copyrighted materials policy.

NEW SECTION

**WAC 516-21-170 Obstructing police and safety personnel.** Obstructing, interfering with, or delaying police or other fire, safety, or emergency personnel is a violation of the code.

NEW SECTION

**WAC 516-21-180 Sexual misconduct.** (1) Sexual misconduct, defined as any unwelcome behavior of a sexual nature that is committed without consent or by force, intimidation, or coercion, is a violation of the code. Sexual misconduct includes, but is not limited to:

- (a) Sexual harassment (e.g., engaging in unwelcome verbal, written, or physical behavior of a sexual nature that is directed at another person or group, based on that person or group's sex, gender, or perceived sex or gender);
- (b) Sexual intimidation (e.g., engaging in any behavior, either verbal or nonverbal, that has the effect of subjecting

members of either sex to humiliation, embarrassment, or discomfort because of their gender or perceived gender);

(c) Sexual coercion (e.g., engaging in the use of pressure, alcohol or drugs, or force to compel or persuade another person to engage in sexual activity);

(d) Sexual exploitation (e.g., engaging in voyeurism or peeping, distributing intimate or sexual information about another person without that person's consent, knowingly transmitting an STD or HIV to another person, or engaging in any behavior that takes sexual advantage of another person without that person's consent);

(e) Sexual assault (e.g., engaging in actual or attempted sexual touching, genital-oral contact, penetration, and/or intercourse without consent).

(2) Consent for all sexual activity must be given free of force, threat, intimidation, or coercion. Consent requires that, at the time of the sexual activity, there must be actual words or conduct demonstrating freely given agreement; silence or passivity do not imply consent. Activity of a sexual nature is considered nonconsensual when:

(a) An individual is asleep, unconscious, or otherwise physically unable to communicate his or her willingness or unwillingness to engage in sexual activity;

(b) An individual lacks the ability, at the time of sexual activity, to be able to understand the nature or consequences of the activity, whether due to illness; impairment; the influence of alcohol, drugs, or medication; or another cause; or

(c) An individual is not of legal age to give consent.

(3) Sexual misconduct represents a range of behavior; it can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual misconduct can also be committed by individuals of any gender and can occur between people of the same or different sex. See also sexual misconduct policy and procedure in the catalog.

NEW SECTION

**WAC 516-21-190 Student violation of the law.** Students are expected to abide by all local, state, and federal laws while on campus or at official university functions. Failure to comply with these laws is a violation of the code.

While Western does not act as a policing agent for students when they are off campus, the university reserves the right to take action if a student's conduct is determined to adversely affect a substantial university interest. See also WAC 516-21-030 Jurisdiction.

Proceedings under the code may be carried out prior to, simultaneously, or following civil or criminal proceedings in the courts. Since the standard of proof under the code (preponderance of evidence) differs from that of criminal law, decisions made through the student conduct process are not subject to challenge on the grounds that criminal charges involving the same incident have been dismissed or reduced by a court of law.

NEW SECTION

**WAC 516-21-200 Theft or intentional damage of property.** Theft or intentional damage of property is a violation of the code. Theft includes, but is not limited to,

attempted or actual theft of university property or services or the property or services of any member of the university community, visitors, or guests. It is also prohibited to possess stolen property or to intentionally damage, destroy, or vandalize the property of the university or others.

#### NEW SECTION

**WAC 516-21-210 Trespassing.** Trespassing or the unauthorized use of or presence on university property is a violation of the code. Trespassing includes, but is not limited to:

- (1) Unauthorized entry, occupation, or use of any university-owned or controlled property, equipment, or facilities;
- (2) Unauthorized entry, occupation, or use of any restricted areas of the campus, including research areas and utility tunnels;
- (3) Unauthorized possession, duplication, or use of keys, including cards or alphanumeric pass-codes, to any university-owned or controlled property, equipment, or facilities; and
- (4) Remaining in or on university-owned or controlled property after permission to remain has been revoked by any university official, including university police.

#### NEW SECTION

**WAC 516-21-220 Weapons and destructive devices.** Possession, use, unauthorized storage, or manufacture of firearms, ammunition, explosives, or other weapons or destructive devices capable of causing bodily injury or damage to property, on university property or at official university functions, is a violation of the code. Weapons and destructive devices include, but are not limited to:

- (1) Firearms of any kind, including BB, pellet, paintball, and airsoft guns;
- (2) Martial arts weapons of any kind, including nunchucks, swords, or throwing stars;
- (3) Fireworks of any kind, including firecrackers, cherry bombs, or homemade explosives;
- (4) Projectile devices of any kind, including catapults or slingshots;
- (5) Any knife with a blade longer than three inches (excluding kitchen utensils); and
- (6) Any object that can be used as a weapon to cause bodily injury or damage to property.

See also WAC 516-52-020 Firearms and dangerous weapons.

#### NEW SECTION

**WAC 516-21-230 Sanctions.** Sanctions serve many purposes including, but not limited to: Educating students about the seriousness of their actions; reinforcing the high standards of scholarship and behavior expected of Western students; promoting positive growth; and maintaining the safety and well-being of members of the university community. When a student admits responsibility or is found in violation of the code, the conduct officer or dean of students may impose one or more of the sanctions listed in this section. Sanctions may be deferred or effective retroactively. This list

of sanctions is not meant to be exclusive. Other sanctions, designed or intended to enhance the educational value of conduct proceedings, may be applied in a given case.

(1) **Warning.** A formal written notice to the student that a violation of the code has occurred, and that further violations may result in additional sanctions under the code.

(2) **Conditional status.** A probationary status imposed for a specific period of time, during which the student must demonstrate conduct that conforms to university standards. Conditions restricting the student's privileges or eligibility for activities may be imposed. Violations of any conditions specified in the notice of conditional status or violations of any other university policies or regulations during the period of the sanction, may result in additional sanctions under the code.

(3) **Loss of privileges.** A student may be denied specific privileges (i.e., participation in specific activities, restriction from specific areas of campus, etc.) on a temporary or permanent basis. Violations of any conditions specified in the notice of loss of privileges or violations of any other university policies or regulations during the period of the sanction, may result in additional sanctions under the code.

(4) **Restriction from contacting others ("no contact" order).** A student may be restricted from direct or indirect physical, verbal, or electronic contact with another person and/or group. Indirect or direct contact made with another person or group while a "no contact" order is in place may result in additional sanctions under the code.

(5) **Educational activities.** A student may be required to engage in educational activities related to the violation(s). Such activities may include, but are not limited to, required attendance at educational programs, community service, conducting research projects, writing assignments, and/or meeting with campus officials.

(6) **Assessment, counseling, or treatment programs.** A student may be required to participate in an assessment, counseling, and/or treatment program (at the student's expense), to address substance abuse, anger issues, or other issues or types of behaviors that pose a threat to their safety or well-being or the safety or well-being of others.

(7) **Restitution.** A student may be required to provide compensation for loss, damage, or injury resulting from a violation of the code. Restitution may take the form of monetary or material replacement or appropriate service to repair or otherwise compensate for the loss, damage, and/or injury caused.

(8) **Parental notification.** Parents may be notified of conduct findings when a student under the age of twenty-one is found responsible for violations involving alcohol and/or drugs. When possible, students whose parents are to be notified will be informed before such notification occurs and given an opportunity to initiate contact with their parents.

(9) **Residence hall relocation.** A student's living arrangements may be transferred to another university residence hall or apartment.

(10) **Termination of university residences agreement.** A student may be removed from campus housing and their housing agreement terminated.

(11) **Suspension from the university.** A student may be removed from the university for a designated period of time,

after which the student will be eligible to return. While suspended, the student is trespassed from all university facilities and prohibited from participating in official university functions. Specific conditions for readmission to the university may be imposed (e.g., counseling, substance abuse treatment, etc.).

(12) **Deferred suspension.** A student may receive a notice of deferred suspension from the university, with a provision that they are allowed to remain enrolled contingent on meeting specific conditions. Failure to meet any condition(s) specified in the notice of deferred suspension will result in immediate suspension from the university.

(13) **Expulsion from the university.** A student may be permanently separated from the university. A student who has been expelled is not eligible for readmission.

#### NEW SECTION

**WAC 516-21-240 Student conduct system.** (1) The vice-president for enrollment and student services is responsible for administration of the code. Supervision of the code has been delegated by the vice-president, to the dean of students.

(2) The conduct officer shall be appointed and supervised by the dean of students. The conduct officer has the authority to adjudicate and administer sanctions for violations of the code.

(3) A six-member appeals board shall be appointed at the beginning of each fall term to consider reviews of the conduct officer's findings and decision. The appeals board shall include:

(a) Two faculty members, appointed by the faculty senate;

(b) Three student members, appointed by the associated students board of directors; and

(c) One staff member from the division of enrollment and student services, nominated by the dean of students and confirmed by the vice-president for enrollment and student services.

(4) Alternates will be identified for each area represented on the appeals board. The alternates will be appointed at the beginning of each fall term, as noted previously. Student appointments are for one academic year. Faculty and staff appointments are for two-year staggered terms.

(5) All appointments to the committee shall be initiated during the first full month of the fall term. Should a request for a review of the conduct officer's findings and decision come forward during the summer term or during other break periods, the review will be heard by the dean of students or by an interim appeals board appointed by the dean of students.

(6) Both the appeals board and the dean of students have full authority to render a decision under the code. All review decisions are final.

#### NEW SECTION

**WAC 516-21-250 Student rights in the conduct process.** All alleged violations of the code will be resolved through the student conduct process, respecting fairness and due process for all involved parties.

(1) Students accused of violating the code have certain rights in the conduct process. These include the right to:

(a) Receive written notification of the section(s) of the code they are alleged to have violated, including a clear description of the basis for the charge(s), delivered via e-mail to the student's official @students.wvu.edu account;

(b) Meet with the conduct officer to discuss the section(s) of the code they are alleged to have violated and present a response to such allegations;

(c) Provide evidence on their own behalf, including the names or written statements of individuals who can offer information regarding the incident in question;

(d) Be accompanied through the conduct process by a person of their choice (this person may give advice to the student, but may not directly address the conduct officer, any member of the appeals board, or the dean of students);

(e) Refuse to answer any question asked of them and have no inference of guilt drawn from such refusal;

(f) Receive written notification of the conduct officer's findings and decision, delivered via e-mail to the student's official @students.wvu.edu account, within seven business days of the date of the meeting (or, if multiple meetings are necessary to determine responsibility or multiple individuals are involved and information presented by each is deemed necessary to determine responsibility, within seven business days of the date of the final meeting for the specific incident);

(g) Request a review of the conduct officer's findings and decision by the appeals board or dean of students, as described in WAC 516-21-280 Basis for review; and

(h) Waive any of the rights contained in this section.

(2) Individuals who have filed a complaint or are the victim of an alleged violation of the code have certain rights in the conduct process. These include the right to:

(a) Submit a written account of the alleged violation(s);

(b) Be advised of the date, time, and location of the hearing;

(c) Provide evidence on their own behalf, including the names or written statements of individuals who can offer information regarding the incident in question;

(d) Be accompanied through the conduct process by a person of their choice (this person may give advice to the student, but may not directly address the conduct officer, any member of the appeals board, or the dean of students);

(e) Be free of any form of retaliation and to report such retaliation for further action;

(f) Have past unrelated behavior excluded from the investigation or hearing; and

(g) Submit an oral or written impact statement to the conduct officer, appeals board, or dean of students, for consideration during the sanctioning phase of the conduct process, if the charged student is found responsible.

(3) For incidents involving violence or sexual violence, including sexual harassment, misconduct, and/or assault, victims shall have the following additional rights:

(a) To be notified of the availability of counseling, assistance, and support resources, both on campus and in the surrounding community;

(b) To request and be granted a "no contact" order against the accused student(s);

(c) To receive written notification of the conduct officer's findings and decision delivered via e-mail to the student's official @students.wvu.edu account, within seven business days of the date of the meeting (or, if multiple meetings are necessary to determine responsibility or multiple individuals are involved and information presented by each is deemed necessary to determine responsibility, within seven business days of the date of the final meeting for the specific incident); and

(d) Request a review of the conduct officer's findings and decision by the appeals board or dean of students, as described in WAC 516-21-280 Basis for review.

#### NEW SECTION

**WAC 516-21-260 Procedures for immediate interim suspension.** In consultation with university officials, the dean of students may suspend a student from the university on an immediate interim basis, pending disciplinary or criminal proceedings or a medical evaluation.

(1) An interim suspension may only be imposed in the following circumstances:

(a) The student poses a threat to his/her own safety or well-being;

(b) The student poses a threat to the safety or well-being of other members of the university community;

(c) The student poses a threat to university property or disrupts or interferes with the normal operations of the university; and

(d) The student is alleged to have committed a serious violation of local, state, or federal law.

(2) During the interim suspension, a student may be denied access to university activities and privileges, including access to classes, university property, and/or residence halls.

(3) A student suspended from the university on an immediate interim basis shall be notified in writing of the terms of the interim suspension. The notice, which shall be delivered both via e-mail to the student's official @students.wvu.edu account and via certified mail to the student's local address on file, shall include the stated violation(s), the circumstances and terms of the interim suspension, and the time, date and location of a meeting to discuss the interim suspension with the dean of students.

(4) The interim suspension meeting shall occur no less than three business days and no more than seven business days from the date that the notification is sent. The student may elect to waive the three-day notice if an earlier date is mutually agreed upon. The purpose of the interim suspension meeting is for the student to have an opportunity to demonstrate to the dean of students why the terms specified in the interim suspension notice should not continue.

(5) Cases of interim suspension are given priority and will be expedited through the student conduct process. The interim suspension will remain in effect until a final decision has been made on the pending code violation(s) or until the dean of students determines that the reasons for imposing the interim suspension no longer exist or are not supported by the available evidence.

#### NEW SECTION

**WAC 516-21-270 Proceedings for violations of the code.** (1) Any member of the university community may file a complaint against a student or a student organization, alleging a violation of the code. All complaints should be provided in writing to the conduct officer or dean of students and include a statement of the alleged misconduct.

(2) The conduct officer will conduct a preliminary investigation. If, in the conduct officer's judgment, there is insufficient basis to consider a charge, the individual(s) initiating the complaint will be informed. If there is sufficient basis to consider a charge, the conduct officer shall:

(a) Provide the accused student with a written notice of the charge(s), delivered via e-mail to the student's official @students.wvu.edu account. This notice shall include a clear description of the nature and date of the complaint and the specific code section(s) they are alleged to have violated;

(b) Provide the accused student with a copy of the code, and notify them of the availability of procedural advice regarding the code; and

(c) Provide the accused student with written notice that they must contact the dean of students office immediately upon receipt of the notice to schedule a conduct meeting. This meeting should occur no less than three business days and no more than seven business days from the date that the notification is sent. The student may elect to waive the three-day notice if an earlier date is mutually agreed upon.

(3) During the meeting with the accused student, the conduct officer will determine, based on a preponderance of evidence, whether it is more likely than not that a violation of the code has occurred. If a student fails to meet with the conduct officer after receiving proper notification, a decision on the allegation(s) may be rendered in the student's absence.

(4) Within seven business days of the meeting, the conduct officer shall notify the student in writing of the findings and decision, including any imposed sanctions. This notification will be delivered via e-mail to the student's official @students.wvu.edu account and will include a statement of the student's option for a review of the conduct officer's findings and/or decision by either the appeals board or the dean of students.

(5) If multiple meetings are required to determine responsibility, the findings and decision letter will be sent via e-mail to the student's official @students.wvu.edu account no later than seven business days after the final meeting for the specific incident.

(6) If multiple individuals are involved in the incident and the information presented by each student is deemed necessary to determine responsibility, individual findings and decision letters will be sent via e-mail to the student's official @students.wvu.edu account no later than seven business days after the final meeting for the specific incident.

(7) If both parties agree to mediate a complaint and the conduct officer agrees, mediation may be substituted for a conduct meeting. If mediation is unsuccessful, the original complaint will be considered and decided upon by the conduct officer. Mediation may not be substituted for a conduct meeting in cases involving violence or sexual violence, including sexual harassment, misconduct, or assault.

NEW SECTION

**WAC 516-21-280 Basis for review.** (1) A student found in violation of the code may request a review of the conduct officer's findings and decision by either the appeals board or the dean of students. A review may be requested for the following reasons only:

- (a) The original meeting was not conducted in conformity with prescribed procedures;
- (b) The conduct officer misinterpreted the code;
- (c) The sanctions imposed are disproportionate to the violation(s) committed; and
- (d) The decision reached did not properly consider the information presented.

(2) For incidents involving violence or sexual violence, including sexual harassment, misconduct or assault, victims may request a review of the conduct officer's findings and decision by either the appeals board or the dean of students. A review may be requested for the following reasons only:

- (a) The original meeting was not conducted in conformity with prescribed procedures;
- (b) The conduct officer misinterpreted the code;
- (c) The sanctions imposed are disproportionate to the violation(s) committed; and
- (d) The decision reached did not properly consider the information presented.

(3) The request for review must be submitted in writing to the dean of students within seven business days of receipt of the conduct officer's written notice of findings and decision (which shall be delivered via e-mail to the student's official @students.wvu.edu account). The request must state, as clearly and concisely as possible, the basis for the review and specify whether the student wishes to have their review considered by the appeals board or by the dean of students.

(4) Upon receipt of the written request for review, the dean of students will determine whether the request meets one or more of the criteria specified for reviews of the conduct officer's findings and decision. If it does, the review hearing will be scheduled. If it does not, the party requesting the review will be notified in writing and the request will be denied.

(5) For incidents involving violence or sexual violence, including sexual harassment, misconduct or assault, both the student found in violation of the code and the victim will be notified in writing regarding the outcome of the written request for review.

(6) No sanction will begin while a review is pending, except as provided in WAC 516-21-260, Procedures for immediate interim suspension. Temporary relocation of a student to alternative housing and/or restrictions between affected parties may be enforced during an appeal.

NEW SECTION

**WAC 516-21-290 Review procedures.** (1) Upon acceptance of a request for review, the dean of students shall notify the student (or, for incidents involving violence or sexual violence, both the student and the victim) in writing of the:

- (a) Section(s) of the code the student was found to have violated;

- (b) Findings and decision of the conduct officer;
- (c) Time, date, and location of the review hearing; and
- (d) Location of the code, should they wish to view or download a copy.

(2) The review hearing shall be held no less than three business days and no more than seven business days from the date of notification. The student may elect to waive the three-day notice if an earlier date is mutually agreed upon. If the student fails to appear at the hearing, the appeals board or the dean of students may proceed with the review, based upon consideration of all available information, or may dismiss the request for review.

(3) During the review hearing:

(a) The chair of the appeals board or dean of students may ask any person with relevant information to speak or provide a written statement regarding the alleged violation.

(b) The student found in violation of the code may ask any person with relevant information to speak or provide a written statement regarding the alleged violation.

(c) The chair of the appeals board or the dean of students may limit or exclude information that is considered to be irrelevant, immaterial, or repetitious.

(d) Five members shall constitute a quorum of the appeals board. Actions by the appeals board require agreement by a majority of members present at the time of the hearing.

(e) Any member of the appeals board that is unable to render an impartial decision in a particular case shall excuse themselves from the appeals board's deliberations in advance and may be replaced by an alternate.

(f) The appeals board or the dean of students may eliminate, reduce, maintain, modify, or increase the conduct officer's findings and decision.

(4) New substantive information that was not presented at the time of the original conduct meeting will not be considered during the review. When new substantive information is present prior to or during the review hearing and such evidence could impact the original decision, the allegation(s) will be reheard by the conduct officer.

(5) The chair of the appeals board or the dean of students will render a decision regarding the review within seven business days of the hearing and notify the student (or, for incidents involving violence or sexual violence, both the student and the victim) in writing of their findings and decision. All review decisions are final.

NEW SECTION

**WAC 516-21-300 Deviations from established procedures.** Deviations from the timelines set forth in the code may be granted by the dean of students, upon request, for good cause.

NEW SECTION

**WAC 516-21-310 Confidentiality of conduct proceedings and records.** (1) The confidentiality of all conduct proceedings and records will be maintained in compliance with the student records policy, as well as all applicable state and federal laws. Conduct records prepared by the conduct officer, the appeals board, and/or the dean of students:

(a) Will be held in the dean of students office for six years, except in cases of suspension, interim suspension, or expulsion, which are permanent records; and

(b) Will not be shared with any member of the public, except upon the informed written consent of the student(s) involved or as stated in the student records policy.

(2) The conduct officer's findings may be shared with the victim, as required by law, in cases involving violence or sexual violence, including sexual harassment, misconduct or assault. The disciplinary findings may also be shared with university officials who are involved in the completion or supervision of the sanction or the student. See also chapter 516-26 WAC Student records.

#### NEW SECTION

**WAC 516-21-320 Relationship of the code to university residences.** (1) University residences is responsible for adjudicating most alleged violations of the code that are committed by residents on university residences' premises or during university residences' sponsored programs, events, or activities.

(2) The dean of students has the authority to designate which area will consider an alleged violation of the code, or whether the alleged violation will be coadjudicated by university residences and the conduct officer. General referral of conduct cases will be made by consensus between university residences and the conduct officer.

(3) Certain cases shall be referred by university residences to the conduct officer or coadjudicated by both areas. These include, but are not limited to, those involving:

(a) Alleged acts or threats of physical violence or sexual misconduct;

(b) Alleged violations of the distribution or sale of drugs or other controlled substances;

(c) Alleged violations by nonresidential students while on university residences' premises or at university residences' sponsored programs, events, or activities;

(d) Alleged violations that occur near the end of the term or after a resident student's contract with university residences has ended;

(e) Alleged violations involving the misuse of computers, electronic data and/or communication systems, particularly when the victims of the alleged conduct are nonresidents (e.g., sending unsolicited mass e-mails, copyright violations); and

(f) Alleged violations severe enough to result in eviction from housing and/or suspension or expulsion from the university.

#### NEW SECTION

**WAC 516-21-330 Interpretation of the code.** Any question of interpretation or application of the code shall be referred to the dean of students for final determination.

#### NEW SECTION

**WAC 516-21-340 Revision of the code.** (1) The code shall be reviewed every five years or more often, if needed, by the committee on student rights and responsibilities. The

committee on student rights and responsibilities shall include:

(a) Five students, including at least one graduate student. Three students shall be appointed by the associated students board of directors and two shall be appointed by the residence hall association;

(b) One faculty member, appointed by the faculty senate;

(c) One staff member from the division of enrollment and student services, appointed by the dean of students;

(d) One staff member from the department of public safety, appointed by the director of public safety;

(e) One staff member from university residences, appointed by the director of university residences; and

(f) The conduct officer.

(2) Recommendations of the committee on student rights and responsibilities shall be made to the vice-president for enrollment and student services for submission to and consideration by the president's cabinet. Prior to adoption of the code, all proposed modifications shall be reviewed by the office of the assistant attorney general at Western Washington University for consistency with university policies and the law. Final authority for changes to the code rests with the Western Washington University board of trustees.

#### NEW SECTION

**WAC 516-21-350 Referenced policies and regulations in the code.** Policies or regulations referenced in the code are available, upon request, in the office of the dean of students.

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 516-23-200	Preamble.
WAC 516-23-210	Definitions.
WAC 516-23-220	Jurisdiction.
WAC 516-23-230	Principles and violations of the code.
WAC 516-23-240	Academic dishonesty.
WAC 516-23-250	Disruptive behavior.
WAC 516-23-260	Student responsibility for guests.
WAC 516-23-270	Sexual misconduct.
WAC 516-23-280	Violence.
WAC 516-23-290	Harassment and/or threats of violence.
WAC 516-23-300	Theft and intentional damage of property.
WAC 516-23-310	Misuse of computers, electronic data or communication systems.

WAC 516-23-320	Hazing.
WAC 516-23-330	Student violation of law.
WAC 516-23-340	Failure to comply with proper official requests.
WAC 516-23-350	Forgery and fraud.
WAC 516-23-360	Illegal possession and/or use of alcohol.
WAC 516-23-370	Illegal drugs and misuse of drugs.
WAC 516-23-380	Explosives and weapons prohibited from campus.
WAC 516-23-390	Obstructing police and safety personnel.
WAC 516-23-400	Interference with the judicial process.
WAC 516-23-410	Freedom of expression.
WAC 516-23-420	Demonstrations.
WAC 516-23-430	Proceedings for violations of the code.
WAC 516-23-440	Victim rights.
WAC 516-23-450	Rights of accused.
WAC 516-23-460	Sanctions.
WAC 516-23-470	Procedures for immediate interim suspension.
WAC 516-23-480	Basis for appeal.
WAC 516-23-490	Appeal procedures.
WAC 516-23-500	Deviations from established procedures.
WAC 516-23-510	Confidentiality of conduct proceedings and records.
WAC 516-23-520	Administrative withdrawal due to mental disorders.
WAC 516-23-530	University conduct system.
WAC 516-23-540	Relationship of the code to university residences.
WAC 516-23-550	Interpretation of the code.
WAC 516-23-560	Revision of the code and the committee on student rights and responsibilities.
WAC 516-23-570	Referenced policies and regulations in the code.

**WSR 11-20-083**  
**PROPOSED RULES**  
**BOARD OF INDUSTRIAL**  
**INSURANCE APPEALS**  
 [Filed October 4, 2011, 12:03 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: Chapter 263-12 WAC, Practice and procedure before the board of industrial insurance appeals.

Hearing Location(s): Board of Industrial Insurance Appeals, Main Conference Room, 2430 Chandler Court S.W., Olympia, WA 98502, on November 9, 2011, at 1:30 p.m.

Date of Intended Adoption: November 10, 2011.

Submit Written Comments to: J. Scott Timmons, P.O. Box 42401, Olympia, WA 98504-2401, e-mail scott.timmons@biia.wa.gov, fax (360) 586-5611, by November 2, 2011.

Assistance for Persons with Disabilities: Contact Donald Ball by October 26, 2011, (360) 753-6823 ext. 183.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To revise the board's rules of practice and procedure by amending WAC 263-12-01501 and 263-12-165; and by adding two new sections, WAC 263-12-052, regarding contents of claim resolution structured settlement agreements; and WAC 263-12-054, regarding petitions to enforce terms of claim resolution structured settlement agreements.

WAC 263-12-01501, changes are necessary to meet current business needs and to meet the legislative mandate for enacting rules to implement EHB 2123, chapter 37, Laws of 2011, effective June 15, 2011. The proposed amendments add language setting forth the criteria for electronic filing of an application for approval of claim resolution structured settlements.

WAC 263-12-165, changes are necessary to meet current business needs and to meet the legislative mandate for enacting rules to implement EHB 2123, chapter 37, Laws of 2011, effective June 15, 2011. The proposed amendments add language so the rule also applies to claim resolution structured settlement agreements.

WAC 263-12-052, adds a section regarding contents of claim resolution structured settlement agreements.

WAC 263-12-054, adds a section regarding petitions to enforce terms of claim resolution structured settlement agreements.

Reasons Supporting Proposal: Rules are being modified to meet current business needs and to meet the legislative mandate for enacting rules to implement EHB 2123, chapter 37, Laws of 2011, effective June 15, 2011.

Statutory Authority for Adoption: RCW 51.52.020.

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

Name of Proponent: Board of industrial insurance appeals, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: J. Scott Timmons, 2430 Chandler Court S.W., Olympia, WA 98502, (360) 753-6823.



No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no impact on financial issues in the amendments being made. The amendments are to clarify procedural rules relating to administrative hearings.

A cost-benefit analysis is not required under RCW 34.05.328. These rule changes are not legislative; they relate to procedures related to agency hearings.

October 4, 2011  
J. Scott Timmons  
Executive Secretary

#### NEW SECTION

**WAC 263-12-052 Contents of claim resolution structured settlement agreement.** A claim resolution structured settlement agreement shall be submitted electronically with a signed copy of the agreement. The agreement shall contain the following information:

- (1) The names and mailing addresses of the parties to the agreement;
- (2) The date of birth of the worker;
- (3) The date the claim was received by the department or the self-insured employer, and the claim number;
- (4) The date of the order allowing the claim and the date the order became final;
- (5) The payment schedule and amounts to be paid through the claim resolution structured settlement agreement;
- (6) The nature and extent of the injuries and disabilities of the worker and the conditions accepted and segregated in the claim;
- (7) The life expectancy of the worker;
- (8) Other benefits the worker is receiving or is entitled to receive and the effect that a claim resolution structured settlement agreement may have on those benefits;
- (9) The marital or domestic partnership status of the worker;
- (10) The number of dependents, if any, the worker has;
- (11) A statement that:
  - (a) The worker knows that he/she has the right to:
    - (i) continue to receive all the benefits for which they are eligible under this title,
    - (ii) participate in vocational training if eligible, or
    - (iii) resolve their claim with a structured settlement;
  - (b) All parties have signed the agreement. If a state fund employer has not signed the agreement, a statement that:
    - (i) the cost of the settlement will no longer be included in the calculation of the employer's experience factor used to determine premiums, or
    - (ii) the employer cannot be located, or
    - (iii) the employer is no longer in business, or
    - (iv) the employer failed to respond or declined to participate after timely notice of the claim resolution settlement process provided by the department;
  - (c) The parties are seeking approval by the board of the agreement;
  - (d) The agreement binds parties with regard to all aspects of the claim except medical benefits;
  - (e) The periodic payment schedule is equal to at least twenty-five percent but not more than one hundred fifty per-

cent of the average monthly wage in the state pursuant to RCW 51.08.018, except for the initial payment which may be up to six times the average monthly wage in the state pursuant to RCW 51.08.018;

(f) The agreement does not set aside or reverse an allowance order;

(g) The agreement does not subject any employer who is not a signatory to the agreement to any responsibility or burden under any claim;

(h) The agreement does not subject any department funds covered under the title to any responsibility or burden without prior approval from the director or his/her designee;

(i) The unrepresented worker or beneficiary of a self-insured employer was informed that he/she may request that the office of the ombudsman for self-insured injured workers provide assistance or be present during the negotiations;

(j) The claim will remain open for treatment or that the claim will be closed;

(k) The worker will either be required to or not be required to demonstrate aggravation of accepted conditions as contemplated by RCW 51.32.160 if the worker applies to reopen the claim;

(l) The parties understand and agree to the terms of the agreement;

(m) The parties have entered into the agreement knowingly and willingly, without harassment or coercion;

(n) The parties have represented the facts and the law to each other to the best of their knowledge;

(o) The parties believe that the agreement is reasonable under the circumstances;

(p) The parties know that they may revoke consent to the agreement by providing written notice to the other parties and the board within thirty days after the agreement is approved by the board.

(q) The designation of the party that will apply for approval with the board;

(r) Restrictions on the assignment, if any, of rights and benefits under the claim resolution structured settlement agreement.

#### NEW SECTION

**WAC 263-12-054 Petition to enforce terms of claim resolution structured settlement agreement.** A petition to enforce the terms of a claim resolution structured settlement agreement must include:

- (1) a copy of the agreement;
- (2) a copy of the board order approving the agreement;
- (3) a statement setting forth the basis for the parties' failure to comply with the agreement; and
- (4) the current mailing address of each party to the agreement.

AMENDATORY SECTION (Amending WSR 10-14-061, filed 6/30/10, effective 7/31/10)

**WAC 263-12-01501 Communications and filing with the board. (1) Communications with the board.**

(a) **Where to file.** All written communications, except those listed below, shall be filed with the board at its headquarters in Olympia, Washington. With permission of the

industrial appeals judge assigned to an appeal, depositions, witness confirmations, motions (other than motions for stay filed pursuant to RCW 51.52.050), briefs, stipulations, agreements, and general correspondence may be filed in the appropriate regional board facilities located in Tacoma, Spokane, or Seattle.

(b) **Methods of filing.** Unless otherwise provided by statute or these rules any written communication may be filed with the board personally, by mail, or by telephone facsimile.

(i) **Filing personally.** The filing of a written communication with the board personally is perfected by delivering the written communication to an employee of the board at the board's headquarters in Olympia during customary office hours.

(ii) **Filing by mail.** The filing of a written communication with the board is perfected by mail when the written communication is deposited in the United States mail, properly addressed to the board's headquarters in Olympia and with postage prepaid. Where a statute or rule imposes a time limitation for filing the written communication, the party filing the same should include a certification demonstrating the date filing was perfected as provided under this subsection. Unless evidence is presented to the contrary, the date of the United States postal service postmark shall be presumed to be the date the written communication was mailed to the board.

(iii) **Filing by telephone facsimile.**

(A) The filing of a written communication with the board by telephone facsimile is perfected when a legible copy of the written communication is reproduced on the board's telephone facsimile equipment. All facsimile communications, except those listed below, shall be filed with the board at its headquarters in Olympia, Washington. With permission of the industrial appeals judge assigned to an appeal, depositions, witness confirmations, motions (other than motions for stay filed pursuant to RCW 51.52.050), briefs, stipulations, agreements, and general correspondence may be filed in the appropriate regional board facilities located in Tacoma, Spokane, or Seattle.

(B) The hours of operation of the board's telephone facsimile equipment are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays. If a transmission of a written communication commences after these hours of operation the written communication shall be deemed filed on the next business day.

(C) Any written communication filed with the board by telephone facsimile should be preceded by a cover page identifying the party making the transmission, listing the address, telephone and telephone facsimile number of such party, referencing the appeal to which the written communication relates, and indicating the date of, and the total number of pages included in, such transmission.

(D) No written communication should exceed fifteen pages in length, exclusive of the cover page required by this rule.

(E) The party attempting to file the written communication by telephone facsimile bears the risk that the written communication will not be legibly printed on the board's telephone facsimile equipment due to error in the operation or failure of the equipment being utilized by either the party or the board.

(F) The board may require a party to file an original of any document previously filed by telephone facsimile.

(iv) **Electronic filing of a notice of appeal.** A notice of appeal may be filed electronically when using the appropriate form for electronic filing of appeals as provided on the board's internet site. An electronic notice of appeal is filed when it is received by the board's designated computer during the board's customary office hours pursuant to WAC 263-12-015. Otherwise the notice of appeal is considered filed at the beginning of the next business day. The board shall issue confirmation to the filing party that an electronic notice of appeal has been received. The board may reject a notice of appeal that fails to comply with the board's filing requirements. The board must notify the filing party of the rejection.

**(v) Electronic filing of application for approval of claim resolution structured settlement.** An application for approval of claim resolution structured settlement must be filed electronically using the form for electronic filing of applications for approval of claim resolution structured settlement as provided on the board's internet site. An electronic application for approval of claim resolution structured settlement is filed when received by the board's designated computer during the board's customary office hours pursuant to WAC 263-12-015. Otherwise the application for approval of claim resolution structured settlement is considered to be filed at the beginning of the next business day. The board shall issue confirmation to the filing party that an electronic application for approval of claim resolution structured settlement has been received. An electronic copy of the signed agreement for claim resolution structured settlement must be submitted as an attachment to the application for approval. The board will reject an application for approval of claim resolution structured settlement that fails to comply with the board's filing requirements. The board must notify the filing party of the rejection.

(c) **Sending written communication.** All correspondence or written communication filed with the board pertaining to a particular case, before the entry of a proposed decision and order, should be sent to the attention of the industrial appeals judge assigned to the case. Interlocutory appeals should be sent to the attention of the chief industrial appeals judge. In all other instances, written communications shall be directed to the executive secretary of the board.

(d) **Form requirements.** Any written communications with the board concerning an appeal should reference the docket number which was assigned by the board to the appeal, if known. Copies of any written communications filed with the board shall be furnished to all other parties or their representatives of record, and the original shall demonstrate compliance with this requirement. All written communications with the board shall be on paper 8 1/2" x 11" in size.

**AMENDATORY SECTION** (Amending WSR 08-01-081, filed 12/17/07, effective 1/17/08)

**WAC 263-12-165 Attorney's fees. (1) Applications for attorney's fees.**

(a) For the fixing of attorney fees as provided by RCW 51.52.120, the board shall fix a reasonable attorney fee to be paid by the worker, crime victim or beneficiary for services

rendered before the board, or before the department in a claim resolution structured settlement agreement, if written application therefor is made by the attorney, worker, crime victim or beneficiary, within one year after the board's final decision and order, or approval of the claim resolution structured settlement agreement, is communicated to the party making the application. If such application for fixing of a fee is made by the attorney, it shall set forth therein the monetary amount which the attorney considers reasonable for all services rendered before the board in an appeal, or before the department in a claim resolution structured settlement agreement, and the justification supporting the requested fee. The board shall afford to all parties affected a minimum of ten days in which to submit comments and material information which may be helpful to the board in setting a fair and reasonable fee.

(b) For the ordered payment of attorney fees as provided by RCW 51.32.185, the board shall set the attorney fee in a manner consistent with applicable provisions of subsections (2) and (3) below.

(2) **Fee fixing criteria.** All attorney fees fixed by the board, where application therefor has been made, shall be established in accordance with Rule 1.5 of the Rules of Professional Conduct and the following general principles:

(a) Only one fee shall be fixed for legal services in any one appeal or claim resolution structured settlement agreement regardless of the number of attorneys representing the worker, crime victim or beneficiary, except that in cases of multiple beneficiaries represented by one or multiple attorneys the board has the discretion to set more than one attorney fee if so requested.

(b) The board shall defer fixing a fee until such time as information, which it deems sufficient upon which to base a fee, is available.

(c) A fee shall be fixed only in those cases where the attorney's services are instrumental in securing additional benefits to the worker, crime victim or beneficiary (~~or in~~), sustaining the worker's or beneficiary's right to benefits upon an appeal by another party, or in securing a claim resolution structured settlement agreement.

(d) Where increased compensation is obtained, the fee may be fixed without regard to any medical benefits secured.

(e) In setting all fees, the following factors shall be carefully considered and weighed:

(i) Nature of the appeal or the claim resolution structured settlement agreement.

(ii) Novelty and complexity of the issues presented or other unusual circumstances.

(iii) Time and labor expended.

(iv) Skill and diligence in conducting the case or in securing the claim resolution structured settlement agreement.

(v) Extent and nature of the relief. In computing the extent of additional benefits, or the retention of benefits awarded by the department, the cost to the worker, crime victim or beneficiary of the litigation, i.e., medical examination and witness fees, shall be first deducted and the net benefits considered.

(vi) The amount of accrued time-loss payments as a result of proceedings before the board.

(vii) The prevalent practice of charging contingency fees in cases before the board.

(viii) The worker's or crime victim's circumstances and the remedial social purposes of the Industrial Insurance Act and of the Crime Victims Compensation Act, which are intended to provide sure and adequate relief to injured workers and crime victims and their families.

(f) In those cases where the payment of accumulated benefits is insufficient to allow payment of the fee set and allow the worker, crime victim or beneficiary to retain a reasonable monetary amount, the board may also set the schedule and manner in which such fee shall be payable.

**(3) Amount of fees.**

(a) Where additional compensation for permanent partial disability, loss of earning power, or total temporary disability is obtained as a result of settlement of the appeal on agreement of the parties prior to presentation of testimony, a fee of from 10 to 25 percent of the increased compensation due the worker, crime victim or beneficiary on the date of the board's order on agreement of the parties and by reason thereof shall be fixed after considering all factors.

(b) Where additional compensation for permanent partial disability, loss of earning power or total temporary disability is obtained after the presentation of testimony, a fee of from 10 to 30 percent of the increased compensation shall be fixed after considering all factors. This provision shall also apply to retroactive permanent total disability (pension) benefits.

(c) Where no additional compensation is obtained, but the worker or crime victim is relieved of the payment for medical benefits, a fee of from 10 to 25 percent of the amount the worker or crime victim is so relieved of paying shall be fixed after considering all factors.

(d) Where permanent total disability (pension) benefits are obtained for the worker or crime victim, or death benefits are obtained for survivors of a deceased worker or crime victim, 10 percent of the first \$40,000.00 of the pension reserve as calculated by the department of labor and industries, and 15 percent of the pension reserve in excess of \$40,000.00 shall constitute the usual fee, which may be decreased or increased after weighing all factors.

(e) Where indeterminate additional compensation is obtained because the claimant is successful in establishing a proper claim for benefits which was previously rejected or for which responsibility was denied, a fee in accordance with the preceding principles and factors shall be fixed.

(f) Where, upon an appeal by a party other than the worker or his or her beneficiary, the right to receive the benefits awarded by the department is affirmed, a fee in accordance with the preceding principles and factors shall be fixed.

(g) Where a claim resolution structured settlement agreement is approved by the board, fees for attorney's services are limited to fifteen percent of the total amount to be paid to the worker after the agreement becomes final.

**(4) Excess fee unlawful.** Where the board, pursuant to written application by an attorney, worker, crime victim or beneficiary, fixes a reasonable fee for the services of the attorney in proceedings before this board, or before the department in securing a claim resolution structured settlement agreement, it is unlawful for the attorney to charge or

receive any fee for such services in excess of that fee so fixed, per RCW 51.52.132.

**WSR 11-20-084**  
**PROPOSED RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed October 4, 2011, 12:12 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-21-082.

Title of Rule and Other Identifying Information: Amending WAC 181-78A-125 to clarify that only educators without current certificates are required to undergo the requirements of RCW 28A.410.010 for fingerprints and background check.

Hearing Location(s): ESD 112, Klickitat Room, 2500 N.E. 65th Avenue, Vancouver, WA 98661, on November 9, 2011, at 8:30 a.m.

Date of Intended Adoption: November 9, 2011.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by November 1, 2011.

Assistance for Persons with Disabilities: Contact David Brenna by November 1, 2011, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarifies requirements for field experience.

Reasons Supporting Proposal: Clarifies statutory requirements.

Statutory Authority for Adoption: RCW 28A.410.210.

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

Name of Proponent: Professional educators [educator] standards board, governmental.

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, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-3631, e-mail david.brenna@k12.wa.us.

October 4, 2011  
David Brenna  
Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 09-24-047, filed 11/24/09, effective 12/25/09)

**WAC 181-78A-125 Field placement agreements.** Beginning September 1, 2010, all educator preparation programs approved or authorized by the professional educator standards board or programs approved in other states operating field experiences in Washington state shall establish and maintain field placement agreements with all Washington school districts in which candidates are placed for field experiences leading to certification or endorsement.

Each field placement agreement shall include, but not be limited to:

(1) Assurances that:

(a) Fingerprint and character clearance under RCW 28A.410.010 must be current at all times during the field experience for candidates who do not hold a valid Washington certificate; and

(b) Candidates will not be placed in settings in which personal relationships or previous experiences could interfere with objective evaluation of candidates.

(2) Qualifications of the proposed site supervisor for each site and qualifications of each school's cooperating educator/administrator;

(3) Clear description by institution of duties and responsibilities of site supervisor and cooperating educator/administrator;

(4) Anticipated length and nature of field experience;

(5) Signatures from district representative.

**WSR 11-20-088**  
**PROPOSED RULES**  
**DEPARTMENT OF LICENSING**

[Filed October 4, 2011, 1:07 p.m.]

Original Notice.

Expedited rule making—Proposed notice was filed as WSR 11-15-088.

Title of Rule and Other Identifying Information: WAC 308-29-045 Collection agency fees.

Hearing Location(s): Department of Licensing, 405 Black Lake Boulevard S.W., Room 2209, Second Floor, Olympia, WA 98502, on November 10, 2011, at 3:00 p.m.

Date of Intended Adoption: November 11, 2011.

Submit Written Comments to: Harumi Tolbert, Program Manager, Department of Licensing, P.O. Box 1098, Olympia, WA 98507-1098, e-mail collect@dol.wa.gov, by November 7, 2011.

Assistance for Persons with Disabilities: Contact Margaret Vogeli by November 3, 2011, TTY (360) 664-0116 or (360) 664-1529.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule increases licensing fees to support operating costs for the collection agency program. This increase was authorized by the 2011 legislature to enable the program better to address a growing number of consumer complaints. No substantive changes to regulatory requirements or practices are proposed.

Reasons Supporting Proposal: Under RCW 43.24.086 "(i)t shall be the policy of the state of Washington that the cost of each professional, occupational[,] or business licensing program be fully borne by the members of that profession, occupation[,] or business."

Statutory Authority for Adoption: Chapter 50, Laws of 2011 (session law), RCW 19.16.140, 43.24.086.

Statute Being Implemented: Chapter 50, Laws of 2011 (session law).

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: Margaret Vogeli, Department of Licensing, Olympia, Washington, (360) 664-1389; Implementation and Enforcement: Harumi Tolbert, Department of Licensing, Olympia, Washington, (360) 664-1389.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule change is solely for a statutorily required fee increase. It does not modify any substantive regulations, and its impacts cannot be mitigated. Preparation of a small business economic impact statement is not indicated under these circumstances.

A cost-benefit analysis is not required under RCW 34.05.328. Rules solely "adjust(ing) fees . . . pursuant to legislative standards" are exempt from the general requirements of RCW 34.05.328, including preparation of cost-benefit analyses, by RCW 34.05.328 (5)(b)(vi).

October 4, 2011  
Ben T. Shomshor  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-18-043, filed 8/26/04, effective 10/1/04)

**WAC 308-29-045 Collection agency fees.** The following fees (~~shall~~) will be charged by the business and professions division of the department of licensing:

<b>Title of Fee</b>	<b>Fee</b>
Collection agency—Main office:	
Original application	\$ <del>((650.00))</del> 850.00
Renewal	<del>((410.00))</del> \$475.00
Reregistration fee after 30 days	<del>((1,060.00))</del> \$1,325.00
Branch office (with WA main office):	
Original application	<del>((350.00))</del> \$550.00
Renewal	<del>((238.00))</del> \$300.00
Reregistration fee after 30 days	<del>((588.00))</del> \$850.00
<u>Out-of-state collection agency—Main office:</u>	
<u>Original application</u>	<u>\$425.00</u>

<b>Title of Fee</b>	<b>Fee</b>
<u>Renewal</u>	<u>\$237.50</u>
<u>Reregistration fee after 30 days</u>	<u>\$662.50</u>
<u>Branch office—With out-of-state main office:</u>	
<u>Original application</u>	<u>\$275.00</u>
<u>Renewal</u>	<u>\$150.00</u>
<u>Reregistration fee after 30 days</u>	<u>\$425.00</u>

**WSR 11-20-090**  
**PROPOSED RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**  
[Filed October 4, 2011, 2:09 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-05-041.

Title of Rule and Other Identifying Information: Revises WAC 181-85-033 to provide continuing education credits for trained educators to score external standardized teacher assessments.

Hearing Location(s): Educational Service District 112, Klickitat Room, 2500 N.E. 65th Avenue, Vancouver, WA 98661, on November 9, 2011, at 8:30 a.m.

Date of Intended Adoption: November 9, 2011.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by November 1, 2011.

Assistance for Persons with Disabilities: Contact David Brenna by November 1, 2011, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Awards credit to educators scoring the ProTeach Portfolio.

Reasons Supporting Proposal: Supports external assessment process.

Statutory Authority for Adoption: RCW 28A.410.210.

Statute Being Implemented: RCW 28A.410.270.

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

Name of Proponent: Professional educators [educator] standards board, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: David Brenna, P.O. Box 47236 [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, P.O. Box 47236, Olympia, WA

98504, phone (360) 725-6238, fax (360) 586-3631, e-mail david.brenna@k12.wa.us.

October 4, 2011  
David Brenna  
Legislative and  
Policy Coordinator

**AMENDATORY SECTION** (Amending WSR 09-24-047 [11-04-048], filed 11/24/09 [1/25/11], effective 12/25/09 [2/25/11])

**WAC 181-85-033 Continuing education credit hour—Definition—Professional growth team consultation and collaboration—School accreditation site visit team participation—National Board for Professional Teaching Standards assessment—Supervisors—First peoples' language, culture and oral tribal traditions.** (1) Notwithstanding any provisions of this chapter to the contrary, for consultation and collaboration as a member of an approved professional growth team, as defined by WAC 181-78A-010 and 181-78A-505, members of a professional growth team, excluding the candidate, shall receive the equivalent of ten continuing education credit hours. The team member may not receive more than the equivalent of twenty continuing education credit hours, as defined by this section, during a calendar year period.

(2) A person holding a valid educational certificate pursuant to RCW 28A.410.010 shall receive the equivalent of ten continuing education credit hours for serving on a school accreditation site visit team. The person may not receive more than the equivalent of twenty continuing education credit hours during a calendar year period.

(3)(a) Notwithstanding any provisions of this chapter to the contrary, individuals officially designated as a supervisor by a college/university, school district, educational service district, an approved private school, a state agency providing educational services to students or the superintendent of public instruction, a person holding a valid educational certificate pursuant to RCW 28A.410.010 shall receive the equivalent of ten continuing education credit hours for service as a supervisor. The person may not receive more than the equivalent of twenty continuing education credit hours during a calendar year period.

(b) The term "supervisor" shall mean individuals officially designated as a supervisor by a college/university, school district, educational service district, an approved private school, a state agency providing educational services to students, or the office of superintendent of public instruction for supervising the training of teacher interns, administrative interns, educational staff associate interns, and paraprofessionals.

(4) A person holding a valid educational certificate pursuant to RCW 28A.410.010 shall receive the equivalent of forty-five continuing education credit hours for completion of an assessment process as part of the National Board for Professional Teaching Standards certificate application. Upon achieving National Board certification, the individual shall receive the equivalent of an additional forty-five continuing education credit hours for a total of ninety continuing education credit hours per National Board certificate.

(5) Notwithstanding any provisions of this chapter to the contrary, teachers who achieve the professional certification through the external assessment per WAC 181-79A-206 will receive the equivalent of one hundred fifty continuing education credit hours.

(6) Notwithstanding any provisions of this chapter to the contrary, for designing and completing a professional growth plan under the provisions of WAC 181-85-034, participants shall receive the equivalent of no more than sixty continuing education credit hours over a period of two school years, as defined by this chapter.

(7) Notwithstanding any provision of this chapter to the contrary, individuals who receive in-service training or continuing education according to RCW 28A.415.020(6) in first peoples' language, culture and oral tribal traditions provided by a sovereign tribal government participating in the Washington state first peoples' language, culture and oral tribal traditions teacher certification program authorized under RCW 28A.410.045 shall be considered approved in-service training or approved continuing education under this section.

(8) Notwithstanding any provision of this chapter to the contrary, individuals who serve as scorers for the Washington teacher performance assessment shall receive the equivalent of ten continuing education credit hours for each four assessments scored; provided, that an individual may not receive more than the equivalent of twenty continuing education credit hours during a calendar year period. Additionally, individuals who receive initial training as scorers for the Washington teacher performance assessment shall receive the equivalent of ten continuing education credit hours.

**Reviser's note:** The bracketed material preceding the section above was supplied by the code reviser's office.

**WSR 11-20-091**  
**PROPOSED RULES**  
**DEPARTMENT OF HEALTH**  
[Filed October 4, 2011, 2:44 p.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 246-247-035 National standards adopted by reference for sources of radionuclide emissions, 246-247-075 Monitoring, testing, and quality assurance, and 246-247-080 Inspections, reporting, and recordkeeping.

Hearing Location(s): Department of Health, Point Plaza East, Room 152/153, 310 Israel Road S.E., Tumwater, WA 98501, on November 8, 2011, at 10:00 a.m.

Date of Intended Adoption: November 15, 2011.

Submit Written Comments to: Michelle K. Austin, Rules Coordinator, P.O. Box 47827, Olympia, WA 98504-7827, web site <http://www3.doh.wa.gov/policyreview/>, fax (360) 236-2266, by November 8, 2011.

Assistance for Persons with Disabilities: Contact Michelle K. Austin by November 1, 2011, TTY (800) 833-6388 or 711.

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

is necessary to adopt federal requirements into chapter 246-247 WAC, Radiation protection—Air emissions, WAC 246-247-035, 246-247-075 and 246-247-080, to obtain full delegation of the radioactive air emissions program. Currently the department of health (department) has partial delegated authority for national emission standards for hazardous air pollutants (NESHAPs) for radionuclide air emissions from the Environmental Protection Agency (EPA). EPA retains enforcement authority for specific actions. This partial delegation causes a duplication of regulatory oversight for licenses between the department and EPA.

Reasons Supporting Proposal: If the department adopts rules that are as stringent as the federal requirements, the department can request full delegation authority from EPA. To obtain full delegation from EPA and to have consistent rule language at the state level, the department is proposing to adopt rule language that is substantially equivalent to the department of ecology (ecology) WAC 173-400-105. This benefits licensees by providing a single point of regulatory oversight and licensing for radionuclide air emissions, and creating consistent requirements between the ecology and the department for air operating permits.

Statutory Authority for Adoption: RCW 70.98.050 and 70.98.080(5).

Statute Being Implemented: RCW 70.98.050 and 70.98.080(5).

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: John Martell, 309 Bradley Boulevard, Suite 201, Richland, WA 99352, (509) 946-3798.

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

A cost-benefit analysis is not required under RCW 34.05.328. The agency did not complete a cost-benefit analysis under RCW 34.05.328. RCW 34.05.328 (5)(b)(iii) exempts rules that adopt or incorporate by reference without material change federal statutes or regulations, Washington state law, the rules of other Washington state agencies, or national consensus codes that generally establish industry standards.

October 4, 2011  
Mary C. Selecky  
Secretary

AMENDATORY SECTION (Amending WSR 05-12-059, filed 5/26/05, effective 6/26/05)

**WAC 246-247-035 National standards adopted by reference for sources of radionuclide emissions.** (1) The following federal standards, as in effect on July 1, (~~2004~~)

2011, are adopted by reference except as provided in subsections (2) and (3) of this section.

These standards apply in addition to other requirements of this chapter.

(a) For federal facilities:

(i) 40 CFR Part 61, Subpart A - General Provisions.

(ii) 40 CFR Part 61, Subpart H - National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.

(iii) 40 CFR Part 61, Subpart I - National Emission Standards for Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.

(iv) 40 CFR Part 61, Subpart Q - National Emission Standards for Radon Emissions From Department of Energy Facilities.

(b) For nonfederal facilities:

(i) 40 CFR Part 61, Subpart A - General Provisions.

(ii) 40 CFR Part 61, Subpart B - National Emission Standards for Radon Emissions From Underground Uranium Mines.

(iii) 40 CFR Part 61, Subpart K - National Emission Standards for Radionuclide Emissions From Elemental Phosphorus Plants.

(iv) 40 CFR Part 61, Subpart R - National Emissions Standards for Radon from Phosphogypsum Stacks.

(v) 40 CFR Part 61, Subpart T - National Emission Standards for Radon Emissions From the Disposal of Uranium Mill Tailings.

(vi) 40 CFR Part 61, Subpart W - National Emission Standards for Radon Emissions From Operating Mill Tailings.

(2) References to "Administrator" or "EPA" in 40 CFR Part 61 include the department of health except in any section of 40 CFR Part 61 for which a federal rule or delegation indicates that the authority will not be delegated to the state.

(3) Any change or alternative to standards, emission monitoring and test procedures, compliance and reporting requirements, or recordkeeping requirements must be approved by EPA.

AMENDATORY SECTION (Amending WSR 04-18-094, filed 9/1/04, effective 10/2/04)

**WAC 246-247-075 Monitoring, testing and quality assurance.** (1) (~~All radioactive air emissions monitoring, testing, and quality assurance requirements of 40 CFR 61, subparts H and I (as effective on October 9, 2002), are adopted by reference, as applicable as specified by the referenced subparts.~~) The department may, upon request by a nonfederal licensee, authorize provisions specific to that nonfederal licensee, other than those already set forth in WAC 246-247-075 for nonfederal emission unit monitoring, testing, or quality assurance, so long as the department finds reasonable assurance of compliance with the performance objectives of this chapter.

(2) Equipment and procedures used for the continuous monitoring of radioactive air emissions shall conform, as applicable, to the guidance contained in ANSI N13.1, ANSI N42.18, ANSI N323, ANSI N317, reference methods 1, 1A,

2, 2A, 2C, 2D, 4, 5, and 17 of 40 CFR Part 60, Appendix A, 40 CFR Part 52, Appendix E, and any other methods approved by the department.

(3) The operator of an emission unit with a potential-to-emit of less than 0.1 mrem/yr TEDE to the MEI may estimate those radionuclide emissions, in lieu of monitoring, in accordance with 40 CFR 61 Appendix D, or other procedure approved by the department. The department may require periodic confirmatory measurements (e.g., grab samples) during routine operations to verify the low emissions. Methods to implement periodic confirmatory monitoring shall be approved by the department.

(4) The department may allow a facility to use alternative monitoring procedures or methods if continuous monitoring is not a feasible or reasonable requirement.

(5) The following types of facilities shall determine radionuclide emissions in accordance with either a methodology referenced in subsections (1) through (4) of this section or the respective document referenced below:

(a) Nuclear power reactors licensed by the NRC: Offsite Dose Calculation Manual;

(b) Fuel fabrication plants licensed by the NRC: NRC's Regulatory Guide 4.16, dated December 1985;

(c) Uranium mills that are processing material: NRC's Regulatory Guide 4.14, dated April 1980.

(6) Licensed facilities shall conduct and document a quality assurance program. Except for those types of facilities specified in subsection (5) of this section, the quality assurance program shall be compatible with applicable national standards such as ANSI/ASME NQA-1-1988, ANSI/ASME NQA-2-1986, QA/R-2, and QA/R-5.

(7) Those types of facilities specified in subsection (5) of this section shall conduct and document a quality assurance program compatible with either the applicable national standards referenced in subsection (6) of this section or the NRC's Regulatory Guide 4.15, dated February 1979.

(8) Facilities shall monitor nonpoint and fugitive emissions of radioactive material.

(9) The department may conduct an environmental surveillance program to ensure that radiation doses to the public from emission units are in compliance with applicable standards. The department may require the operator of any emission unit to conduct stack sampling, ambient air monitoring, or other testing as necessary to demonstrate compliance with the standards in WAC 246-247-040.

(10) The department may require the owner or operator of an emission unit to make provision, at existing emission unit sampling stations, for the department to take split or collocated samples of the emissions.

(11) The planning for any proposed new construction or significant modification of the emission unit must address accidental releases with a probability of occurrence during the expected life of the emission unit of greater than one percent.

(12) All facilities must be able to demonstrate that appropriate supervisors and workers are adequately trained in the use and maintenance of emission control and monitoring systems, and in the performance of associated test and emergency response procedures.

(13) All facilities must be able to demonstrate the reliability and accuracy of the radioactive air emissions monitoring data.

(14) A person may not render inaccurate any monitoring device or method required under chapter 70.98 RCW, or any ordinance, resolution, regulation, permit, or order in force pursuant thereto.

AMENDATORY SECTION (Amending WSR 04-18-094, filed 9/1/04, effective 10/2/04)

**WAC 246-247-080 Inspections, reporting, and recordkeeping.** (1) The department reserves the right to inspect and audit all construction activities, equipment, operations, documents, data, and other records related to compliance with the requirements of this chapter. The department may require a demonstration of ALARACT at any time.

(2) ~~((All reporting and recordkeeping requirements of 40 CFR 61, subparts H and I (as effective on October 9, 2002), are adopted by reference, as applicable as specified by the referenced subparts.))~~ The department may, upon request by a nonfederal licensee, authorize provisions specific to that nonfederal licensee, other than those already set forth in WAC 246-247-080 for nonfederal emission unit inspections, reporting, or recordkeeping, so long as the department finds reasonable assurance of compliance with the performance objectives of this chapter.

(3) The facility shall annually submit to the department the information requirements adopted in subsection (2) of this section, as applicable, along with the following additional information, as applicable:

(a) The results of emission measurements for those emission units subject only to periodic confirmatory measurements;

(b) Wind rose or joint frequency table;

(c) Annual average ambient temperature;

(d) Annual average emission unit gas temperature, if available;

(e) Annual total rainfall;

(f) Annual average emission unit flow rate and total volume of air released during the calendar year.

If this additional information is available in another annual report, the facility may instead provide a copy of that report along with the information requirements in this subsection. Annual reports are due by June 30 for the previous calendar year's operations.

(4) Any report or application that contains proprietary or procurement-sensitive information shall be submitted to the department with those portions so designated. The department shall hold this information confidential, unless required to release the information pursuant to laws, regulations, or court order.

(5) The facility shall notify the department within twenty-four hours of any shutdown, or of any transient abnormal condition lasting more than four hours or other change in facility operations which, if allowed to persist, would result in emissions of radioactive material in excess of applicable standards or license requirements. If requested by the department, the facility shall submit a written report within ten days including known causes, corrective actions taken, and any



preventive measures taken or planned to minimize or eliminate the chance of recurrence.

(6) The facility shall file a report of closure with the department whenever operations producing emissions of radioactive material are permanently ceased at any emission unit (except temporary emission units) regulated under this chapter. The closure report shall indicate whether, despite cessation of operations, there is still a potential for radioactive air emissions and a need for an active or passive ventilation system with emission control and/or monitoring devices. If decommissioning is planned and will constitute a modification, a NOC is required, as applicable, in accordance with WAC 246-247-060.

(7) The facility shall maintain a log for each emission unit that has received categorical approval under WAC 246-247-060(8). The log shall contain records of important operations parameters including the date, location, and duration of the release, measured or calculated radionuclide concentrations, the type of emissions (liquid, gaseous, solid), and the type of emission control and monitoring equipment.

(8) The facility shall maintain readily retrievable storage areas for all records and documents related to, and which may help establish compliance with, the requirements of this chapter. The facility shall keep these records available for department inspection for at least five years.

(9) The facility shall ensure all emission units are fully accessible to department inspectors. In the event the hazards associated with accessibility to a unit require training and/or restrictions or requirements for entry, the facility owner or operator shall inform the department, prior to arrival, of those restrictions or requirements. The owner or operator shall be responsible for providing the necessary training, escorts, and support services to allow the department to inspect the facility.

(10) The facility shall make available, in a timely manner, all documents requested by the department for review. The facility shall allow the department to review documents in advance of an inspection. The facility shall allow access to classified documents by representatives of the department with the appropriate security clearance and a demonstrable need-to-know.

(11) The facility shall respond in writing in a timely manner, or within a time limit set by the department, to inspection results which require the facility to implement corrective actions or any other actions so directed by the department.

(12) A person may not make any false material statement, representation, or certification in any form, notice, or report required under chapter 70.98 RCW, or any ordinance, resolution, regulation, permit, or order in force pursuant thereto.

**WSR 11-20-093**  
**PROPOSED RULES**  
**PROFESSIONAL EDUCATOR**  
**STANDARDS BOARD**

[Filed October 4, 2011, 3:20 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 10-17-035.

Title of Rule and Other Identifying Information: Amending WAC 181-78A-270 to specify qualifications for school administrator preparation program standards. Set skills and knowledge expectations.

Hearing Location(s): Phoenix Inn, 415 Capitol Way North, Olympia, WA 98501, on January 19, 2012, at 8:30 a.m.

Date of Intended Adoption: January 19, 2012.

Submit Written Comments to: David Brenna, Legislative and Policy Coordinator, P.O. Box 47236, Olympia, WA 98504, e-mail david.brenna@k12.wa.us, fax (360) 586-4548, by January 10, 2012.

Assistance for Persons with Disabilities: Contact David Brenna by January 10, 2012, TTY (360) 664-3631 or (360) 725-6238.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarifies requirements programs providing preparation to candidates for school administrator certificates.

Reasons Supporting Proposal: Clarifies requirements.

Statutory Authority for Adoption: RCW 28A.410.210.

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

Name of Proponent: Professional educators [educator] standards board, governmental.

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, P.O. Box 47236, Olympia, WA 98504, phone (360) 725-6238, fax (360) 586-3631, e-mail david.brenna@k12.wa.us.

October 4, 2011

David Brenna

Senior Policy Analyst

AMENDATORY SECTION (Amending WSR 11-15-049, filed 7/15/11, effective 8/15/11)

**WAC 181-78A-270 Approval standard—Knowledge and skills.** Building on the mission to prepare educators who demonstrate a positive impact on student learning based on the Improvement of Student Achievement Act of 1993 (1209), the following evidence shall be evaluated to determine whether each preparation program is in compliance

with the program approval standards of WAC 181-78A-220(5):

(1) **TEACHER RESIDENCY CERTIFICATION.**

(a) **EFFECTIVE TEACHING.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) **PERFORMANCE ASSESSMENT.** An approved preparation program for teachers shall require that each candidate engage in an assessment process approved by the professional educator standards board. The assessment will verify that the candidate for a residency teacher certificate can meet the teacher standards in (a), (b) and (c) of this subsection and understands teacher impact on student learning. All candidates shall exit the residency certificate program with a draft

professional growth plan oriented toward the expectations for the professional certificate.

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

(a) Effective August 31, 1997, through August 31, 2004, principal and program administrator candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in an approved preparation program which shall include:

(i) Specific performance domains. An approved preparation program shall require the candidate to demonstrate in course work and the internship the following:

(A) **Leadership:** Formulating goals with individuals or groups; initiating and maintaining direction with groups and guiding them to the accomplishment of tasks; setting priorities for one's school in the context of community and district priorities and student and staff needs; integrating own and others' ideas for task accomplishment; initiating and planning organizational change.

(B) **Information collection:** Gathering data, facts, and impressions from a variety of sources about students, parents, staff members, administrators, and community members; seeking knowledge about policies, rules, laws, precedents, or practices; managing the data flow; classifying and organizing information for use in decision making and monitoring.

(C) **Problem analysis:** Identifying the important elements of a problem situation by analyzing relevant information; framing problems; identifying possible causes; identifying additional needed information; framing and reframing possible solutions; exhibiting conceptual flexibility; assisting others to form reasoned opinions about problems and issues.

(D) **Judgment:** Reaching logical conclusions and making high quality, timely decisions given the best available information.

(E) **Organizational oversight:** Planning and scheduling one's own and others' work so that resources are used appropriately, and short-term and long-term priorities and goals are met; monitoring projects to meet deadlines.

(F) **Implementation:** Making things happen; putting programs and plans into action; applying management technologies; applying methods of organizational change including collaborative processes; facilitating tasks; establishing progress checkpoints; considering alternative approaches; providing "mid-course" corrections when actual outcomes start to diverge from intended outcomes; adapting to new conditions.

(G) **Delegation:** Assigning projects or tasks together with clear authority to accomplish them and responsibility for their timely and acceptable completion.

(H) **Instructional program:** Envisioning and enabling instructional and auxiliary programs for the improvement of teaching and learning; recognizing the developmental needs of students; insuring appropriate instructional methods that address students' gender and cultural differences; designing positive learning experiences; accommodating differences in cognition and achievement; mobilizing the participation of appropriate people or groups to develop these programs and to establish a positive learning environment.

(I) **Curriculum design:** Interpreting school district curricula; planning and implementing with staff a framework for

instruction that shall include the implementation of the state learning goals and essential academic learning requirements; initiating needs analyses and monitoring social and technological developments as they affect curriculum; responding to international content levels; adjusting content as needs and conditions change.

(J) **Student guidance and development:** Providing for student guidance, counseling, and auxiliary services; utilizing community organizations; responding to family needs; enlisting the participation of appropriate people and groups to design and conduct these programs and to connect schooling with plans for adult life; planning for a comprehensive program of student activities.

(K) **Staff development:** Identifying with participants the professional needs of individuals and groups; planning and organizing programs to improve staff effectiveness; supervising individuals and groups; engaging staff and others to plan and participate in recruitment and development; initiating self-development.

(L) **Measurement and evaluation:** Determining what diagnostic information is needed about students, staff, and the school environment; examining the extent to which outcomes meet or exceed previously defined standards, goals, or priorities for individuals or groups; drawing inferences for program revisions; interpreting measurements or evaluations for others; relating programs to desired outcomes; developing equivalent measures of competence.

(M) **Resource allocation:** Planning and developing the budget with appropriate staff; seeking, allocating, and adjusting fiscal, human, and material resources; utilizing the physical plant; monitoring resource use and reporting results.

(N) **Motivating others:** Building commitment to a course of action; creating and channeling the energy of self and others; planning and encouraging participation; supporting innovation; recognizing and rewarding effective performance; providing coaching, guidance, or correction for performance that needs improvement; serving as a role model.

(O) **Sensitivity:** Perceiving the needs and concerns of others; dealing with others tactfully; working with others in emotionally stressful situations or in conflict; managing conflict; obtaining feedback; recognizing multicultural sensibilities.

(P) **Oral expression:** Making oral presentations that are clear and easy to understand; clarifying and restating questions; responding, reviewing, and summarizing for groups; utilizing appropriate communicative aids; adapting for audiences.

(Q) **Written expression:** Expressing ideas clearly in writing; writing appropriately for different audiences such as students, teachers, and parents; preparing brief memoranda.

(R) **Philosophical and cultural values:** Acting with a reasoned understanding of the role of education in a democratic society and in accord with accepted ethical standards; recognizing philosophical and historical influences in education; reflecting an understanding of American culture, including current social and economic issues related to education; recognizing global influences on students and society.

(S) **Legal and regulatory applications:** Acting in accordance with relevant federal and Washington state laws, rules, and policies; recognizing governmental influences on

education; working within local rules, procedures, and directives; administering contracts.

(T) **Policy and political influences:** Identifying relationships between public policy and education; recognizing policy issues; examining and affecting policies individually and through professional and public groups; relating policy initiatives to the welfare of students; addressing ethical issues.

(U) **Public and media relationships:** Developing common perceptions about school issues; interacting with parental and community opinion leaders; understanding and responding skillfully to the electronic and printed news media; initiating and reporting news through appropriate channels; enlisting public participation; recognizing and providing for market segments.

(ii) Performance assessment. An approved preparation program for principals shall require that prior to the internship each candidate shall engage in a performance assessment through a process determined by each preparation program. The results of this assessment shall be utilized by the college/university supervisor, the cooperating principal, and the principal candidate to cooperatively design the internship plan.

(b) Effective September 1, 2004, principal and program administrator candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

(i) Successful demonstration of standards.

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

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

(C) A school administrator is an educational leader who ~~((promotes))~~ has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the success of each student by ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment;

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

(E) A school administrator is an educational leader who ~~((promotes))~~ has the knowledge, skills, and cultural competence to improve learning and achievement to ensure the suc-

cess of each student by acting with integrity, fairness, and in an ethical manner; and

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

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

(3) **SUPERINTENDENT.** An approved preparation program for superintendents shall require the candidate to demonstrate in course work and the internship the following standards:

(a) A school administrator is an educational leader who promotes the success of each student by leading the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by school and community stakeholders;

(b) A school administrator is an educational leader who promotes the success of each student by leading through advocating, nurturing, and sustaining district/school cultures and coherent instructional programs that are conducive to student learning and staff professional growth;

(c) A school administrator is an educational leader who promotes the success of each student by ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment;

(d) A school administrator is an educational leader who promotes the success of each student by collaborating with families and community members, responding to diverse community interests and needs, and mobilizing community resources;

(e) A school administrator is an educational leader who promotes the success of each student by acting with integrity, fairness, and in an ethical manner; and

(f) A school administrator is an educational leader who promotes the success of each student by understanding, responding to, and influencing the larger political, social, economic, legal, and cultural context.

(4) **SCHOOL COUNSELOR.** Effective August 31, 1997 through August 31, 2005, school counselor candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in which they acquire and apply knowledge about:

(a) Human growth and development (studies that provide an understanding of the nature and needs of individuals at all developmental levels).

(b) Social and cultural foundations (studies that provide an understanding of issues and trends in a multicultural and diverse society).

(c) Helping relationships (studies that provide an understanding of counseling and consultation processes).

(d) Group work (studies that provide an understanding of group development, dynamics, counseling theories, group counseling methods and skills, and other group work approaches).

(e) Career and lifestyle development (studies that provide an understanding of career development and related life factors).

(f) Appraisal (studies that provide an understanding of individual and group approaches to assessment and evaluation), including assessment of the state learning goals and essential academic learning requirements.

(g) Research and program evaluation (studies that provide an understanding of types of research methods, basic statistics, and ethical and legal considerations in research).

(h) Professional orientation (studies that provide an understanding of all aspects of professional functioning including history, roles, organizational structures, ethics, standards, and credentialing).

(i) Foundations of school counseling including:

(i) History, philosophy, and trends in school counseling;

(ii) Role and function of the school counselor in conjunction with the roles of the professional and support personnel in the school;

(iii) Knowledge of the school setting and curriculum including the state learning goals and essential academic learning requirements;

(iv) Ethical standards and guidelines of the American School Counselor Association (ASCA);

(v) State and federal policies, laws, and legislation relevant to school counseling; and

(vi) Implications of sociocultural, demographic, and lifestyle diversity relevant to school counseling.

(j) Studies that provide an understanding of the coordination of counseling program components as they relate to the total school community including:

(i) Referral of children and adolescents for specialized help;

(ii) Coordination efforts with resource persons, specialists, businesses, and agencies outside the school to promote program objectives;

(iii) Methods of integration of guidance curriculum in the total school curriculum;

(iv) Promotion of the use of counseling and guidance activities and programs by the total school community to enhance a positive school climate; and

(v) Methods of planning and presenting guidance-related educational programs for school personnel and parents.

(k) Theory, knowledge and skills for the practice of school counseling including:

(i) Program development, implementation and evaluation. Studies in this area include:

(A) Use of surveys, interviews, and needs assessments;

(B) Design, implementation and evaluation of a comprehensive, developmental school program;

(C) Implementation and evaluation of specific strategies designed to meet program goals and objectives;

(D) Preparation of a counseling schedule reflecting appropriate time commitments and priorities in a developmental school counseling program; and

(E) Use of appropriate technology and information systems.

(ii) Counseling and guidance. Studies in this area include:

(A) Individual and group counseling and guidance approaches appropriate for the developmental stage and needs of children and adolescents;

(B) Group guidance approaches that are systematically designed to assist children and adolescents with developmental tasks;

(C) Approaches to peer helper programs;

(D) Issues which may affect the development and function of children and adolescents (e.g., abuse, eating disorders, attention deficit hyperactivity disorder, exceptionalities, substance abuse, violence, suicide, dropout);

(E) Developmental approaches to assist students and parents at points of educational transition (e.g., postsecondary education, career and technical education, and career options);

(F) Crisis intervention and referral; and

(G) System dynamics, including family, school, community, etc.

(iii) Consultation. Studies in this area shall include:

(A) Methods of enhancing teamwork within the school community; and

(B) Methods of involving parents, teachers, administrators, support staff and community agency personnel.

(5) **SCHOOL COUNSELOR.** Effective September 1, 2005, school counselor candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

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

(i) **Foundations of the school counseling profession:** Certified school counselors design, deliver, and evaluate student-centered, data-driven school counseling programs that advance the mission of the school in light of recognized theory, research, exemplary models, community context, and professional standards.

(ii) **School counseling and student competencies:** Certified school counselors integrate academic, career, and personal/social student competencies, including Washington state learning goals and essential academic learning requirements, into the school counseling program; teach counseling and guidance related material by using effective curriculum, instructional strategies, and instructional management; support teachers and parents in helping students develop knowledge and skill for learning, living, and working; and provide information about best practices to a school community.

(iii) **Human growth and development:** Certified school counselors apply comprehensive, in-depth knowledge of human growth and development to improve student learning, well-being, and to enhance resiliency; provide guidance to parents and teachers about developmentally appropriate practices that support students throughout their schooling experience.

(iv) **Counseling theories and technique:** Certified school counselors demonstrate an understanding of established and emerging counseling theories through effective use of individual and group techniques for working with a diverse population.

(v) **Equity, fairness, and diversity:** Certified school counselors value and show respect for all members of the community; demonstrate fairness, equity, and sensitivity to every student, and advocate for equitable access to instructional programs and activities; use data for designing and implementing plans that remove barriers to learning; and help to close achievement gaps among subgroups of students.

(vi) **School climate:** Certified school counselors establish and foster a safe, inclusive, and nurturing learning environment for students, staff, and families and use strategies designed to prevent or resolve problems that could limit or diminish the capacity of students to learn and achieve at their highest levels.

(vii) **Collaboration with school staff, family, and community:** Certified school counselors work collaboratively with school staff, families and community members to achieve common goals for the education of students, improvement of schools, and advancement of the larger community; know appropriate behavior management strategies and can team with staff and families to improve student achievement; and use their knowledge of community resources to make appropriate referrals based on the needs of students.

(viii) **Information resources and technology:** Certified school counselors select and use informational resources and technology to facilitate delivery of a comprehensive school counseling program that meets student needs; and skillfully use technology to enhance communication.

(ix) **Student assessment and program evaluation:** Certified school counselors understand the basic principles and purposes of assessment; collection and use of data; regularly monitor student progress and are able to communicate the purposes, design, and results of assessments to various audiences; know basic principles of research design, action research, and program evaluation for purposes of program improvement and accountability.

(x) **Leadership and advocacy:** Certified school counselors support practices and policies that promote academic rigor-skills for learning, living, and working; provide leadership that enhances student academic, career, and personal/social development and advocate for guidance as an integral part of a school's educational system; model practices that help students, parents, teachers, and policy makers understand how curriculum, instruction and assessment can help students see the relationship between effort, performance, and success beyond high school. Certified school counselors help promote understanding of graduation requirements, WASL scores, and development of the high school and beyond plan.

(xi) **Professionalism, ethics, and legal mandates:** Certified school counselors develop a professional identity congruent with knowledge of all aspects of professional functions, professional development, and state and national school counselor organizations. They adhere strictly to the profession's codes of ethics, especially those that have been

established by the American Counseling Association (ACA), the American School Counselor Association (ASCA), the National Board for Certified Counselors (NBCC), and other relevant codes of ethics. They are familiar with state and federal policies, laws, and legislation relevant to school counseling.

(xii) **Reflective practice:** Certified school counselors integrate knowledge, skills, and life experiences to respond effectively to new or unexpected critical events and situations; serve as change agents by using their understanding of schools as social, cultural and political systems within a larger organizational context; monitor practice with continuous, in-depth reflection; and make adjustments as needed.

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

(6) **SCHOOL PSYCHOLOGIST.** Effective August 31, 1997, through August 31, 2005, school psychologist candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in which they acquire and apply knowledge about:

(a) Knowledge of the field. The candidate has knowledge and skill in relevant fields of study, including:

- (i) Learning theory.
- (ii) Personality theory and development.
- (iii) Individual and group testing and assessment.
- (iv) Individual and group counseling and interviewing theory and techniques.
- (v) Basic statistics.
- (vi) Child development.
- (vii) Exceptional children.
- (viii) Social and cultural factors.
- (ix) Deviant personality.
- (x) Curriculum, including the state learning goals and essential academic learning requirements.
- (xi) Research design.
- (xii) Physiological and biological factors.

(b) Assessment and diagnosis. The candidate has knowledge and skill necessary to select, administer, score, and interpret instruments and techniques in the following areas:

- (i) Intellectual and cognitive assessment.
- (ii) Individual and group academic skills: Standardized norm-referenced and criteria-referenced measurements and curriculum-based measurements.
- (iii) Personality assessment.
- (iv) Assessment of perceptual skills.
- (v) Assessment of adaptive behavior; assessment of language skills.

(c) Behavioral observation and analysis. The candidate has knowledge and skill in behavior observation, including:

- (i) Data taking.
- (ii) Frequency measures.

(ii) Qualitative and quantitative analysis of classroom behavior.

(iv) Developmental and personality analysis, including perceptual, cognitive, social, and affective and language development in children.

(d) Counseling and interviewing. The candidate has the knowledge and skill necessary to:

(i) Provide individual and group counseling to students and parents.

(ii) Conduct interviews essential to information collecting from parents, teachers, and other professionals.

(e) Program development. The candidate has the knowledge and skill to make educational prescriptions, including specification of remedial environmental changes, both curricular and behavioral, for a particular student.

(f) Consultation. The candidate has the knowledge and skill to:

(i) Function on multidisciplinary teams in evaluating and placing students.

(ii) Confer with and make recommendations to parents, specialists, teachers, referral personnel, and others relative to student's characteristics and needs in the educational and home environments.

(g) Program evaluation and recordkeeping. The candidate has the knowledge and skill necessary to develop and implement program evaluation and maintain required records.

(h) Professionalism. The candidate has knowledge of professional standards regarding ethical and legal practices relevant to the practice of school psychology. The candidate demonstrates knowledge and skill in written and oral reporting of assessment and remedial recommendations which will meet ethical and legal standards.

- (i) Research. The candidate has knowledge and skill to:
  - (i) Evaluate and perform research.
  - (ii) Apply school-oriented research.
  - (iii) Construct criterion-referenced instruments with reference to such educational decisions as:
    - (A) Retention in grade.
    - (B) Acceleration and early entrance.
    - (C) Early entrance.

(7) **SCHOOL PSYCHOLOGIST.** Effective September 1, 2005, school psychologist candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

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

(i) **Data-based decision making and accountability:** Certified school psychologists have knowledge of varied models and methods of assessment that yield information useful in identifying strengths and needs, in understanding problems, and in measuring progress and accomplishments; use such models and methods as part of a systematic process to collect data and other information, translate assessment results into empirically based decisions about service delivery, evaluate the outcomes of services; and data-based decision making permeates every aspect of professional practice.

(ii) **Consultation and collaboration:** Certified school psychologists have knowledge of behavioral, mental health,

collaborative, and/or other consultation models and methods and of their application to particular situations; collaborate effectively with others in planning and decision-making processes at the individual, group, and system levels.

(iii) **Effective instruction and development of cognitive/academic skills:** Certified school psychologists have knowledge of human learning processes, techniques to assess these processes, and direct and indirect services applicable to the development of cognitive and academic skills; collaborate with others, develop appropriate cognitive and academic goals for students with different abilities, disabilities, strengths, and needs; implement interventions to achieve those goals; and evaluate the effectiveness of interventions, including, but not limited to, instructional interventions and consultation.

(iv) **Socialization and development of life skills:** Certified school psychologists have knowledge of human developmental processes, techniques to assess these processes, and direct and indirect services applicable to the development of behavioral, affective, adaptive, and social skills; collaborate with others, develop appropriate behavioral, affective, adaptive, and social goals for students of varying abilities, disabilities, strengths, and needs; implement interventions to achieve those goals; and evaluate the effectiveness of interventions, including, but not limited to, consultation, behavioral assessment/intervention, and counseling.

(v) **Student diversity in development and learning:** Certified school psychologists have knowledge of individual differences, abilities, and disabilities and of the potential influence of biological, social, cultural, ethnic, experiential, socioeconomic, gender-related, and linguistic factors in development and learning; demonstrate the sensitivity and skills needed to work with individuals of diverse characteristics and to implement strategies selected and/or adapted based on individual characteristics, strengths, and needs.

(vi) **School and systems organization, policy development, and climate:** Certified school psychologists have knowledge of general education, special education, and other educational and related services; understanding of schools and other settings as systems; work with individuals and groups to facilitate policies and practices that create and maintain safe, supportive, and effective learning environments for children and others.

(vii) **Prevention, crisis intervention, and mental health:** Certified school psychologists have knowledge of human development and psychopathology and of associated biological, cultural, and social influences on human behavior; provide or contribute to prevention and intervention programs that promote the mental health and physical well-being of students.

(viii) **Home/school/community collaboration:** Certified school psychologists have knowledge of family systems, including family strengths and influences on student development, learning, and behavior, and of methods to involve families in education and service delivery; work effectively with families, educators, and others in the community to promote and provide comprehensive services to children and families.

(ix) **Research and program evaluation:** Certified school psychologists have knowledge of research, statistics, and evaluation methods; evaluate research, translate research

into practice, and understand research design and statistics in sufficient depth to plan and conduct investigations and program evaluations for improvement of services.

(x) **School psychology practice and development:** Certified school psychologists have knowledge of the history and foundations of their profession; of various service models and methods; of public policy development applicable to services to children and families; and of ethical, professional, and legal standards, including the Washington Administrative Code; practice in ways that are consistent with applicable standards, are involved in their profession, and have the knowledge and skills needed to acquire career-long professional development.

(xi) **Information technology:** Certified school psychologists have knowledge of information sources and technology relevant to their work; access, evaluate, and utilize information sources and technology in ways that safeguard or enhance the quality of services.

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

(8) **SCHOOL SOCIAL WORKER.** Effective August 31, 1997, through August 31, 2005, school social worker candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete a well-planned sequence of courses and/or experiences in which they acquire and apply knowledge about:

(a) Knowledge for social work practice. The candidate has knowledge and skills in relevant fields of study including:

(i) Values.

(A) Knowledge of profession including values, skills, and ethics; and

(B) National Association of Social Workers (NASW) Code of Ethics and school social work guidelines for practice.

(ii) Human behavior and the social environment.

(A) Community theory and community change (e.g., community organization and development, social planning, networking, and case management);

(B) Systems and organizational theory (e.g., school as a bureaucracy);

(C) Social disorganization (e.g., poverty, family and community violence, unemployment, addictions, multiple losses), and context of family in a changing society;

(D) Family dynamics and theories of family therapy;

(E) Human/child growth and development;

(F) Diverse populations of: Race, culture, social class, life style, age, gender and the disabled;

(G) Theories of personality; and

(H) Use of computer technology for social work practice.

(b) Service delivery and program development. The candidate will have knowledge and skills in the following activities:

(i) Direct practice.

(A) Referring, developing, and coordinating resources and services in the local education agency and community;

(B) Knowledge and skills related to families;

(C) Case management;

(D) Working with vulnerable and "hard to reach" individuals and families, including those from diverse populations;

(E) Crisis intervention, conflict resolution, stress management and decision-making skills;

(F) Individual and group counseling to improve students' self-knowledge and interactional skills for personal empowerment;

(G) Interviewing and counseling students in relation to social-personal problems adjudged to be impairing student's ability to learn;

(H) Family interventions including parent education; referral to resources; family counseling;

(I) Teaching children communication and interpersonal relationship skills through individual/group/classroom interventions;

(J) Collaborating and consulting with parents and community to assure readiness to learn for all students;

(K) Multidimensional assessment of student's social-emotional adjustment, adaptive behaviors, individual strengths, and environmental assets;

(L) Intervention case planning processes; and

(M) Career and academic guidance to students in their school to work transitions.

(ii) Indirect practice.

(A) Liaison and facilitator between and among home, school and community;

(B) Collaborate and consult with other educational staff to assure student progress;

(C) Use computer technology for practice and efficiency;

(D) Develop strategies for increased parental and community involvement with the school;

(E) Develop programs of remediation for students and their families;

(F) Design, coordinate and facilitate programs such as suicide prevention, truancy and drop-out prevention, and prevention of teenage pregnancy;

(G) Provide staff development programs;

(H) Work collaboratively with educational staff to develop programs to address school-community identified needs; and

(I) Function as change agents.

(c) Research and evaluation. The candidate will have necessary skills and knowledge to:

(i) Collect and interpret data in order to evaluate student, school, and community needs;

(ii) Evaluate own practice;

(iii) Become consumer of research findings;

(iv) Understand use of program evaluation methods; and

(v) Utilize computer technology for research and evaluation.

(d) Context for educational system. The candidate will have necessary knowledge and skills to apply the following:

(i) State learning goals and essential academic learning requirements;

(ii) Theories of learning;

(iii) School law and professional ethics;

(iv) Computer technology in the workplace; and

(v) Understanding of policies, laws, and procedures.

(9) **SCHOOL SOCIAL WORKERS.** Effective September 1, 2005, school social worker candidates, in order to support student achievement of the state learning goals and essential academic learning requirements, will complete formalized learning opportunities, including an internship, in an approved program that includes:

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

(i) **Core concepts and professional practice foundations:** The certified school social worker understands and applies the core concepts, tools of inquiry, theories, and skills and values of the general field of social work to the educational system; relates these core concepts to the Washington state learning goals, essential academic learning requirement (EALRS), Revised Code of Washington (RCW), Washington Administrative Code (WAC) and the Individuals With Disabilities Education Act (IDEA); and utilizes these constructs to facilitate the educational, social and emotional development of students by working towards reducing the impact of nonacademic barriers to academic success.

(ii) **Planning, ecological assessment and evaluation:** The certified school social worker understands and knows how to apply various formal and informal assessment tools to identify student, family, school and community needs using a strengths and systems perspective; engage students (individually or in groups), families, school staff and/or the larger community in designing interventions and developing programs, which bolsters the strengths and meets the needs identified; uses best practices in evaluation criteria to monitor the success of the intervention; revisions to the intervention plan are based on systematic data collection; and to utilize the principles of research design and program evaluation to improve student learning outcomes.

(iii) **Prevention/intervention services:** The certified school social worker has knowledge of and ability to provide prevention education and skill building in such areas as violence, mediation, bullying, substance misuse and abuse, conflict resolution/management, and stress management; provide direct intervention services to students through crisis management, case management, counseling, skill building, behavior management, teaching of psycho-educational curriculums, personal development skills and classroom presentations; and provide both prevention and intervention services to students individually, in small group or classroom settings as well as with students' families.

(iv) **Home, school and community consultation and collaboration:** The certified school social worker understands and has the ability to develop consultative and collaborative relationships both individually and on a systemic level with students, colleagues, families and the community to support students' learning and social/emotional development; assist students and their families in networking with various social support systems in order to benefit student



learning; and use their extensive knowledge of community resources to appropriately refer students and families to various community services.

(v) **Advocacy and facilitation:** The certified school social worker understands and has the ability to advocate and facilitate changes that empower students, families, educators and others to gain access to and effectively use school and community resources.

(vi) **Diversity and school climate:** The certified school social worker understands how a student's learning is influenced and impacted by culture, family dynamics, community values, individual learning styles, talents, gender, sexual orientation, language, prior learning, economics and disabilities; utilize this knowledge to design, implement and evaluate programs that enhance student learning and social interaction in school, family and community settings; and how to create and support a safe, nurturing and secure learning environment by designing and using strategies to prevent or resolve ecological barriers that could limit or diminish the capacity of students to learn and achieve at their highest levels.

(vii) **Professional development:** The certified school social worker understands and values the need for professional development and is able to use supervision, consultation, collaboration, continuing education and professional research to evaluate and enhance their practice.

(viii) **Information resources and technology:** The certified school social worker uses informational resources and technology to communicate, monitor student progress and evaluate programs; and access, appraise and utilize information sources and technology in ways that safeguard and enhance their quality of services.

(ix) **Professional code of conduct and ethics:** The certified school social worker understands, maintains and applies the professional codes of conduct and ethical practice guidelines embodied in the National Association of Social Work (NASW) code of ethics and School Social Work standards developed for the field of education; and are familiar with district, state and federal laws and policies relevant to the educational setting.

(b) **Performance assessment.** An approved preparation program for school social workers shall require that each candidate engage in an assessment process using the standards-based benchmarks approved by the professional educator standards board and published by the office of the superintendent of public instruction. The benchmarks may not be changed without prior professional educator standards board approval. All candidates shall exit the residency certificate program with a draft professional growth plan.

Preproposal statement of inquiry was filed as WSR 11-02-032.

Title of Rule and Other Identifying Information: Chapter 388-513 WAC, Long-term care services (long-term care partnership).

Hearing Location(s): Office Building 2, Auditorium, 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> or by calling (360) 664-6094), on November 8, 2011, at 10 a.m.

Date of Intended Adoption: Not earlier than November 9, 2011.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax (360) 664-6185, by 5 p.m. on November 8, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by October 25, 2011, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [jennisha.johnson@dshs.wa.gov](mailto:jennisha.johnson@dshs.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is adding language regarding long-term care partnerships approved by the Washington state insurance commissioner based on projected 2011 implementation of the Deficit Reduction Act (DRA) of 2005.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.520.

Rule is necessary because of federal law, [no further information supplied by agency].

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Lori Rolley, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2271.

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.

October 3, 2011  
Katherine I. Vasquez  
Rules Coordinator

**WSR 11-20-097**

**PROPOSED RULES**

**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Aging and Disability Services Administration)

[Filed October 5, 2011, 8:10 a.m.]

Original Notice.

**NEW SECTION**

**WAC 388-513-1400 Long-term care (LTC) partnership program (index).** Under the long term care (LTC) partnership program, individuals who purchase qualified long-term care partnership insurance policies can apply for long-term care medicaid under special rules for determining finan-

cial eligibility. These special rules generally allow the individual to protect assets up to the insurance benefits received from a partnership policy so that such assets will not be taken into account in determining financial eligibility for long-term care medicaid and will not subsequently be subject to estate recovery for medicaid and long-term care services paid. The Washington long term care partnership program is effective on December 1, 2011.

The following rules govern long-term care eligibility under the long-term care partnership program:

- (1) WAC 388-513-1405 Definitions.
- (2) WAC 388-513-1410 What qualifies as a LTC partnership policy?
- (3) WAC 388-513-1415 What assets can't be protected under the LTC partnership provisions?
- (4) WAC 388-513-1420 Who is eligible for asset protection under a LTC partnership policy?
- (5) WAC 388-513-1425 When would I not qualify for LTC medicaid if I have a LTC partnership policy that does not have exhausted benefits?
- (6) WAC 388-513-1430 What change of circumstances must I report when I have a LTC partnership policy paying a portion of my care?
- (7) WAC 388-513-1435 Will Washington recognize a LTC partnership policy purchased in another state?
- (8) WAC 388-513-1440 How many of my assets can be protected?
- (9) WAC 388-513-1445 How do I designate a protected asset and what proof is required?
- (10) WAC 388-513-1450 How does transfer of assets affect LTC partnership and medicaid eligibility?
- (11) WAC 388-513-1455 If I have protected assets under a LTC partnership policy, what happens after my death?

#### NEW SECTION

**WAC 388-513-1405 Definitions.** For purposes of this section, the following terms have the meanings given them. Additional definitions can be found at Chapter 388-500 WAC and WAC 388-513-1301.

**"Issuer"** means any entity that delivers, issues for delivery, or provides coverage to, a resident of Washington, any policy that claims to provide asset protection under the Washington long-term care partnership act, chapter 48.85 RCW. Issuer as used in this chapter specifically includes insurance companies, fraternal benefit societies, health care service contractors, and health maintenance organizations.

**"Long-term care (LTC) insurance"** means a policy described in Chapter 284-83 WAC.

**"Long-term care services"** means services received in a medical institution, or under a home and community based waiver authorized by home and community services or division of developmental disabilities. Hospice services are considered long-term care services for the purposes of the long-term care partnership when medicaid eligibility is determined under chapter 388-513 or 388-515 WAC.

**"Protected assets"** means assets that are designated as excluded or not taken into account upon determination of long-term care medicaid eligibility described in WAC 388-513-1315. The protected or excluded amount is up to the dol-

lar amount of benefits that have been paid for long-term care services by the qualifying long-term care partnership policy on the medicaid applicant's or client's behalf. The assets are also protected or excluded for the purposes of estate recovery described in chapter 388-527 WAC, in up to the amount of benefits paid by the qualifying policy for medical and long-term care services.

**"Qualified long-term care insurance partnership"** means an agreement between the Centers for Medicare and Medicaid Services (CMS), and the health care authority (HCA) which allows for the disregard of any assets or resources in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a long-term care insurance policy that has been determined by the Washington state insurance commission to meet the requirements of section 1917 (b)(1)(c)(iii) of the act. These policies are described in chapter 284-83 WAC.

**"Reciprocity Agreement"** means an agreement between states approved under section 6021(b) of the Deficit Reduction Act of 2005, Public Law 109-171 (DRA) under which the states agree to provide the same asset protections for qualified partnership policies purchased by an individual while residing in another state and that state has a reciprocity agreement with the state of Washington.

#### NEW SECTION

**WAC 388-513-1410 What qualifies as a LTC partnership policy?** A LTC partnership policy is a LTC policy that has been approved by the office of insurance commissioner as a LTC partnership policy described in chapter 284-83 WAC.

#### NEW SECTION

**WAC 388-513-1415 What assets can't be protected under the LTC partnership provisions?** The following assets cannot be protected under a LTC partnership policy.

- (1) Resources in a trust described in WAC 388-561-0100 (6) and (7).
- (2) Annuity interests in which Washington must be named as a preferred remainder beneficiary as described in WAC 388-561-0201.
- (3) Home equity in excess of the standard described in WAC 388-513-1350. Individuals who have excess home equity interest are not eligible for long-term care medicaid services.
- (4) Any portion of the value of an asset that exceeds the dollar amount paid out by the LTC partnership policy.
- (5) The unprotected value of any partially protected asset (an example would be the home) is subject to estate recovery described in chapter 388-527 WAC.

#### NEW SECTION

**WAC 388-513-1420 Who is eligible for asset protection under a partnership policy?** (1) The LTC partnership policy must meet all the requirements in chapter 284-83 WAC. For existing LTC policies which are converted to a LTC partnership policy via an exchange or through the addition of a policy rider or endorsement, the conversion must

take place on or after December 1, 2011 unless the policy is paying out benefits at the time the policy is exchanged.

(2) You meet all applicable eligible requirements for LTC medicaid and:

(a) Your LTC partnership policy benefits have been exhausted and you are in need of LTC services.

(b) Your LTC partnership policy is not exhausted and is:

(i) Covering all costs in a medical institution and you are still in need for medicaid; or

(ii) Covering a portion of the LTC costs under your LTC partnership policy but does not meet all of your LTC needs.

(c) At the time of your LTC partnership policy has paid out more benefits than you have designated as protected. In this situation your estate can designate additional assets to be excluded from the estate recovery process up to the dollar amount the LTC partnership policy has paid out.

#### NEW SECTION

**WAC 388-513-1425 When would I not qualify for LTC medicaid if I have a LTC partnership policy in pay status?** You are not eligible for LTC medicaid when the following applies:

(1) The income you have available to pay toward your cost of care described in WAC 388-513-1380, combined with the amount paid under the qualifying LTC partnership policy, exceeds the monthly private rate at the institution.

(2) The income you have available to pay toward your cost of care on a home and community based (HCB) waiver described in chapter 388-515 WAC, combined with the amount paid under the qualifying LTC partnership policy, exceeds the monthly private rate in a home or residential setting.

(3) You fail to meet another applicable eligibility requirement for LTC medicaid.

#### NEW SECTION

**WAC 388-513-1430 What change of circumstances must I report when I have a LTC partnership policy paying a portion of my care?** You must report changes described in WAC 388-418-0005 plus the following:

(1) You must report and verify the value of the benefits that your issuer has paid on your behalf under the LTC partnership policy upon request by the department, and at each annual eligibility review.

(2) You must provide proof when you have exhausted the benefits under your LTC partnership policy.

(3) You must provide proof if you have given away or transferred assets that you have previously designated as protected. Although, there is no penalty for the transfer of protected assets once you have been approved for LTC medicaid, the value of transferred assets reduces the total dollar amount that is designated as protected and must be verified.

(4) You must provide proof if you have sold an asset or converted a protected asset into cash or another type of asset. You will need to make changes in the asset designation and verify the type of transaction and new value of the asset.

#### NEW SECTION

**WAC 388-513-1435 Will Washington recognize a LTC partnership policy purchased in another state?** The Washington long term care partnership program provides reciprocity with respect to qualifying long-term care insurance policies covered under other state long-term care insurance partnerships. This allows you to purchase a partnership policy in one state and move to Washington without losing your asset protection. If your LTC policy is in pay status at the time you move to Washington and you are otherwise eligible for LTC medicaid, Washington will recognize the amount of protection you accumulated in the other state.

#### NEW SECTION

**WAC 388-513-1440 How many of my assets can be protected?** You can protect assets based on the amount paid by your LTC partnership policy. Assets are protected in both LTC eligibility and estate recovery. If the partnership for long-term care program is discontinued, an individual who purchased an approved plan before the date the program is discontinued remains eligible to receive dollar-for-dollar asset disregard and asset protection under the long-term care (LTC) medicaid program.

#### NEW SECTION

**WAC 388-513-1445 How do I designate a protected asset and what proof is required?** (1) Complete a DSHS LTCP asset designation form listing assets and the full fair market value that are earmarked as protected at the time of initial application for LTC medicaid.

(a) The full fair market value (FMV) of real property or interests in real property will be based on the current assessed value for property tax purposes for real property. A professional appraisal by a licensed appraiser can establish the current value if the assessed value is disputed.

(b) The value of a life estate in real property is determined using the life estate tables found in: <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/LTCOappendix2.shtml>.

(c) If you own an asset with others, you can designate the value of your pro-rata equity share.

(d) If the dollar amount of the benefits paid under a LTCP policy is greater than the fair market value of all assets protected at the time of the application for long-term care medicaid you may designate additional assets for protection under this section. The DSHS LTCP asset designation form must be submitted with the updated assets indicated along with proof of the current value of designated assets.

(e) The value of your assets protected for you under your LTC partnership policy do not carry over to your spouse should they need medicaid long-term care services during your lifetime or after your death. If your surviving spouse has their own LTC partnership policy he or she may designate assets based on the dollar amount paid under his or her own policy.

(f) Assets designated as protected under this subsection will not be subject to transfer penalties described in WAC 388-513-1363.

(2) Proof of the current fair market value of all protected assets is required at the initial application and each annual review.

(3) Submit current verification from the issuer of the LTCP policy of the current dollar value paid toward long-term care benefits. This verification is required at application and each annual eligibility review.

(4) Any individual or the personal representative of the individual's estate who asserts that an asset is protected has the initial burden of:

(a) Documenting and proving by clear and convincing evidence that the asset or source of funds for the asset in question was designated as protected;

(b) Demonstrating the value of the asset and the proceeds of the asset beginning from the time period the LTC partnership has paid out benefits to the present; and

(c) Documenting that the asset or proceeds of the asset remained protected at all times.

#### NEW SECTION

**WAC 388-513-1450 How does transfer of assets affect LTC partnership and medicaid eligibility?** (1) If you transfer an asset within the sixty months prior to the medicaid application or after medicaid eligibility has been established, we will evaluate the transfer based on WAC 388-513-1363 and determine if a penalty period applies unless:

(a) You have already been receiving institutional services;

(b) Your LTC partnership policy has paid toward institutional services for you; and

(c) The value of the transferred assets has been protected under the LTC partnership policy.

(2) The value of the transferred assets that exceed your LTC partnership protection will be evaluated for a transfer penalty.

(3) If you transfer assets whose values are protected, you lose that value as future protection unless all the transferred assets are returned.

(4) The value of your protected assets less the value of transferred assets equals the adjusted value of the assets you are able to protect.

#### NEW SECTION

**WAC 388-513-1455 If I have protected assets under a LTC partnership policy, what happens after my death?**

Assets designated as protected prior to death are not subject to estate recovery for medical or LTC services paid on your behalf as described in chapter 388-527 WAC as long as the following requirements are met:

(1) A personal representative who asserts an asset is protected under this section has the initial burden of providing proof as described in chapter 388-527 WAC.

(2) A personal representative must provide verification from the LTC insurance company of the dollar amount paid out by the LTC partnership policy.

(3) If the LTC partnership policy paid out more than was previously designated, the personal representative has the right to assert that additional assets should be protected based on the increased protection. The personal representative

must use the DSHS LTCP asset designation form and send it to the office of financial recovery.

(4) The amount of protection available to you at death through the estate recovery process is decreased by the FMV of any protected assets that were transferred prior to death.

#### **WSR 11-20-098**

#### **PROPOSED RULES**

#### **DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

(Division of Child Support)

[Filed October 5, 2011, 8:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-14-098.

Title of Rule and Other Identifying Information: The division of child support (DCS) proposes to adopt changes to chapter 388-14A WAC to implement sections 9, 10 and 11 of ESSB 5921 (chapter 42, Laws of 2011), under which recipients of "child care subsidies or working connections child care (WCCC) subsidies" are required to seek child support enforcement services and cooperate with the department of social and health services, DCS unless granted good cause not to do so.

DCS adopted emergency rules under WSR 11-14-086, effective July 1, 2011, the effective date of ESSB 5921. In addition, the department of early learning (DEL), has adopted rules implementing ESSB 5921; those rules are available on the DEL web site at [www.del.wa.gov](http://www.del.wa.gov).

New sections WAC 388-14A-2007 Does an application for subsidized child care automatically become an application for support enforcement services?, 388-14A-2042 What happens if I don't cooperate with DCS while I receive a child care subsidy? and 388-14A-2093 Who receives notice of DCS' intent to close a case when the custodial parent receives a child care subsidy or a working connections child care subsidy?; and amending WAC 388-14A-2040 Do I have to cooperate with the division of child support in establishing or enforcing child support?, 388-14A-2041 What happens if I don't cooperate with DCS while I receive public assistance?, 388-14A-2045 What can I do if I am afraid that cooperating with the division of child support will be harmful to me or to my children?, 388-14A-2050 Who decides if I have good cause not to cooperate?, and 388-14A-2075 What happens if the division of child support determines that I am not cooperating?

Hearing Location(s): Office Building 2, Auditorium, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public hearing at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on November 8, 2011, at 10:00 a.m.

Date of Intended Adoption: Not earlier than November 9, 2011.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery

1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on November 8, 2011.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by October 21, 2011, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at johnsjl4@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DCS is adopting changes to chapter 388-14A WAC to implement sections 9, 10 and 11 of ESSB 5921 (chapter 42, Laws of 2011), under which recipients of child care subsidies or WCCC subsidies are required to seek child support enforcement services and cooperate with the department of social and health services, DCS unless granted good cause not to do so.

Rules adopted by DEL provide that child care subsidy program clients must seek child support services from DCS unless the client can show good cause (either under WAC 388-422-0020 or under chapter 170-290 WAC).

These rules describe how DCS notifies the community services division (CSD) and DEL if a child care subsidy recipient fails to cooperate with DCS or closes his or her case; any sanctions for failure to cooperate are determined by CSD and/or DEL.

Statutory Authority for Adoption: RCW 34.05.020, 34.05.220, 74.08.090, 74.20.040 and ESSB 5921 (chapter 42, Laws of 2011).

Statute Being Implemented: Sections 9, 10 and 11 of ESSB 5921 (chapter 42, Laws of 2011), RCW 74.20.040, 74.20.330, and 43.215.135.

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: Nancy Koptur, DCS Headquarters, P.O. Box 9162, Olympia, WA 98507-9162, (360) 664-5065.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not have an economic impact on small businesses. It only affects individuals who have support obligations or individuals who are owed child support.

A cost-benefit analysis is not required under RCW 34.05.328. The rule does meet the definition of a significant legislative rule but DSHS/DCS rules relating to the care of dependent children are exempt from preparing further analysis under RCW 34.05.328 (5)(b)(vii).

September 28, 2011  
Katherine I. Vasquez  
Rules Coordinator

#### NEW SECTION

**WAC 388-14A-2007 Does an application for subsidized child care automatically become an application for support enforcement services?** (1) As a condition of receiving a child care subsidy, which includes any subsidy under chapter 43.215 RCW, including working connections child care (WCCC) or seasonal childcare (SCC), the applicant or

recipient must seek child support enforcement services, unless the department or the department of early learning (DEL) finds that the applicant or recipient has good cause not to cooperate.

(a) An application for a child care subsidy does not automatically become an application for support enforcement services.

(b) The person receiving the child care subsidy must file a signed application for support enforcement services as described in WAC 388-14A-2000 and 388-14A-2010, unless the person is also receiving cash assistance.

(2) Payment for subsidized child care services constitutes an authorization to DCS to provide the recipient of the child care subsidy with support enforcement services, but the recipient must submit a signed application, as provided in subsection (1)(b) of this section.

(3) DCS collects, but does not retain, child support payments unless there is also an assignment of rights based on receipt of cash assistance or medical assistance.

(4) If DCS documents failure to cooperate by the custodial parent (CP), and that cooperation is essential for the next step in enforcement, DCS closes the child support enforcement case under WAC 388-14A-2080(8) or as that section may hereinafter be amended.

(5) If the person receiving the child care subsidy requests that DCS stop providing services and there is no current assignment of medical or support rights, DCS closes the child support enforcement case under WAC 388-14A-2080(4) or as that section may hereinafter be amended.

(6) If DCS closes a case as provided in subsection (4) or (5) of this section, DCS notifies the community services division (CSD) that the recipient of the child care subsidy has failed to cooperate with DCS. Any sanctions for failure to cooperate are determined by CSD or DEL.

AMENDATORY SECTION (Amending WSR 06-03-120, filed 1/17/06, effective 2/17/06)

**WAC 388-14A-2040 Do I have to cooperate with the division of child support in establishing or enforcing child support?** (1) You must cooperate with the division of child support (DCS) when you receive public assistance unless the department determines there is good cause not to cooperate under WAC 388-422-0020.

(2) You must cooperate with the division of child support (DCS) when you receive a child care subsidy, unless the department determines there is good cause not to cooperate under WAC 388-422-0020 or another rule of the department of early learning (DEL).

(3) As described in WAC 388-14A-2080, DCS may close a nonassistance case if the custodial parent (CP) fails to cooperate, if cooperation is essential for the next step in enforcement.

(4) For purposes of this section and WAC 388-14A-2075, cooperating with DCS includes cooperating with those acting on behalf of DCS (its "representatives"), namely the prosecuting attorney, the attorney general, or a private attorney paid per RCW 74.20.350. In cases where paternity is at issue, the custodial parent (CP) of a child who receives assis-

tance must cooperate whether or not the parent receives assistance.

~~((2))~~ (5) Cooperation means giving information, attending interviews, attending hearings, or taking actions to help DCS establish and collect child support. This information and assistance is necessary for DCS to:

- (a) Identify and locate the responsible parent;
- (b) Establish the paternity of the child(ren) on assistance in the CP's care; and
- (c) Establish or collect support payments or resources such as property due the CP or the child(ren).

~~((3))~~ (6) The CP must also cooperate by sending to DCS any child support received by the CP while on assistance, as required by RCW 74.20A.275 (3)(c). If the client keeps these payments, known as retained support, the CP must sign an agreement to repay under RCW 74.20A.275, and the CP must honor that agreement.

~~((4))~~ (7) The cooperation requirements of subsections (1), (4) and ~~((2))~~ (5) above, but not subsection ~~((3))~~ (6), apply to a recipient of medicaid-only assistance.

(8) The cooperation requirements of subsections (2), (4) and (5) above, but not subsection (6), apply to a recipient of a child care subsidy.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

**WAC 388-14A-2041 What happens if I don't cooperate with DCS while I receive public assistance?** (1) If you receive public assistance, there may be penalties, called sanctions, for not cooperating with the division of child support (DCS). These sanctions and the noncooperation process are described in WAC 388-14A-2075. You may be sanctioned if:

- (a) You do not go to scheduled interviews and answer questions;
  - (b) There is credible evidence showing that you could have given the information but did not;
  - (c) You have been giving inconsistent or false information without a good reason; or
  - (d) You refuse to sign or honor a repayment agreement under WAC 388-14A-2040(3).
- (2) You must be given the opportunity to swear you do not have the information.
- (3) You cannot be sanctioned because you provided information on a possible parent who was then excluded by genetic testing. In this event you must continue to cooperate in naming other possible parents and taking part in any resulting genetic testing.

(4) You may not be able to help DCS if you do not know, do not possess, or cannot reasonably obtain the requested information. To avoid a sanction, you must, under penalty of perjury, swear or attest to your lack of information in an interview held by DCS or its representative.

(5) If you fear that cooperation may cause harm to you or your children, you may contact the community services division (CSD) to claim good cause not to cooperate under WAC 388-422-0020.

NEW SECTION

**WAC 388-14A-2042 What happens if I don't cooperate with DCS while I receive a child care subsidy?** (1) If the division of child support (DCS) closes your nonassistance case either at your request or based on your failure to cooperate while you are a recipient of a child care subsidy, DCS notifies the community services division (CSD) that your case was closed.

(2) Any sanctions for your failure to cooperate are determined by CSD or the department of early learning (DEL).

(3) If you fear that cooperation may cause harm to you or your children, you may contact the community services division (CSD) to claim good cause not to cooperate under WAC 388-422-0020 or under DEL rules.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

**WAC 388-14A-2045 What can I do if I am afraid that cooperating with the division of child support will be harmful to me or to my children?** (1) If a custodial parent (CP) receiving public assistance fears that the establishment or enforcement of support may result in harm to the CP or the children, the CP may be excused from the cooperation requirements. ~~((You can))~~ The CP must contact the community services division (CSD) to claim good cause not to cooperate under WAC 388-422-0020. ~~((Go to the community services office (CSO) to claim good cause.))~~ The CP may claim good cause:

- (a) At the time of application for public assistance; or
- (b) At any time thereafter.

(2) If a CP who is not receiving public assistance fears that the establishment or enforcement of support may result in harm to the CP or the children, the CP should tell the division of child support (DCS) that family violence is an issue in the case, so that DCS may take appropriate action. The CP may ask DCS to close the nonassistance support enforcement case.

(3) If a CP who receives a child care subsidy but does not receive public assistance claims good cause not to comply with the requirement to seek support enforcement services, the department of early learning (DEL) or CSD may grant good cause, either under WAC 388-422-0020 or under DEL rules.

(a) If the CP does not claim good cause at the time the child care subsidy is granted, the CP may later claim good cause by contacting CSD.

(b) If the CP requests DCS to close a nonassistance case, DCS notifies CSD that the case has been closed. The CP may claim good cause if CSD takes action to sanction the CP for closing the DCS case.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

**WAC 388-14A-2050 Who decides if I have good cause not to cooperate?** (1) The community services ~~((office (CSO)))~~ division (CSD) decides whether you have good cause not to cooperate with the division of child support (DCS). You must tell CSD if you want to claim good cause.

(a) CSD determines good cause under WAC 388-422-0020 or under the rules adopted by the department of early learning (DEL).

(b) You may claim good cause at the time you apply for public assistance or for a child care subsidy, or at any time thereafter.

(2) When you make a claim of good cause not to cooperate, DCS does not take any action on ~~((the))~~ your case while ~~((the CSO))~~ CSD is reviewing your good cause claim.

(3) If you are not receiving public assistance but are applying for a child care subsidy, you may be granted good cause and not be required to apply for child support enforcement services.

**AMENDATORY SECTION** (Amending WSR 03-20-072, filed 9/29/03, effective 10/30/03)

**WAC 388-14A-2075 What happens if the division of child support determines that I am not cooperating?** (1) When the division of child support (DCS) or its representatives believe ~~((you are))~~ that a custodial parent (CP) who receives cash assistance or medical assistance is not cooperating as defined in WAC 388-14A-2040, DCS sends a notice to ~~((you))~~ the CP and to the community ~~((service office (CSO) stating))~~ services division (CSD) about the noncooperation ~~((and explaining)).~~

(a) The notice contains the following information:

~~((a))~~ (i) How the noncooperation was determined, including what actions were required;

~~((b))~~ (ii) What actions ~~((you))~~ the CP must take to resume cooperation;

~~((c))~~ (iii) That this notice was sent to ~~((the CSO))~~ CSD;

~~((d))~~ (iv) That ~~((you))~~ the CP may contact ~~((the CSO))~~ CSD immediately if ~~((you))~~ the CP disagrees with the notice, needs help in order to cooperate, or believes the actions required are unreasonable; and

~~((e))~~ (v) That ~~((the CSO))~~ CSD may sanction ~~((you))~~ the CP by either reducing or terminating the grant.

~~((2))~~ (b) ~~((The CSO))~~ CSD sends a notice of planned action to ~~((you))~~ the CP as provided by WAC 388-472-0005 (1)(i).

~~((3))~~ (c) Either the notice of alleged noncooperation or ~~((the CSO's))~~ CSD's notice of planned action may serve as the basis for a sanction.

~~((4))~~ (d) If the noncooperation was due to missing an interview without reasonable excuse, ~~((you))~~ the CP will be considered to be cooperating when ~~((you))~~ the CP appears for a rescheduled interview and either provides information or attests to the lack of information. DCS or its representative must reschedule the interview within seven business days from the date ~~((you))~~ the CP contacts them to reschedule an interview.

~~((5))~~ (e) If the noncooperation was due to not taking a required action, cooperation resumes when ~~((you))~~ the CP takes that action.

~~((6))~~ (2) There is no hearing right for a notice of noncooperation, but ~~((you can))~~ the CP may request a hearing on the sanction imposed by ~~((the CSO))~~ CSD.

(3) When DCS or its representatives believe that a CP who does not receive public assistance but does receive a

child care subsidy is not cooperating, and that cooperation is essential for the next step in establishment or enforcement, DCS sends a notice of case closure to the CP.

(a) The notice of case closure contains the following information:

(i) That DCS cannot take the next step in establishment or enforcement because of the CP's failure to cooperate;

(ii) What actions the CP must take to resume cooperation;

(iii) The DCS will notify CSD of case closure;

(iv) That DCS may close the nonassistance case if the CP does not cooperate within sixty days; and

(v) That CSD may sanction the CP. Any sanctions for failure to cooperate are determined by CSD.

(4) If the CP takes the actions required to resume cooperation within sixty days, DCS leaves the case open and continues to establish or enforce the support obligation.

(5) The CP may request a hearing to contest case closure, as described in WAC 388-14A-2095.

(6) If DCS closes the case due to noncooperation, a CP who does not receive public assistance but does receive a child care subsidy may request a hearing on the sanction imposed by CSD.

#### NEW SECTION

**WAC 388-14A-2093 Who receives notice of DCS' intent to close a case when the custodial parent receives a child care subsidy?** (1) Unless the department finds good cause not to require it, a recipient of a child care subsidy who does not receive cash assistance or medical assistance must apply for support enforcement services.

(2) If the division of child support (DCS) intends to close the case because the custodial parent (CP) who receives a child care subsidy fails to cooperate as described in WAC 388-14A-2075(3), DCS sends a copy of the notice of intent to close the case to the CP. DCS also notifies the community services division (CSD).

(3) As provided in WAC 388-14A-2090, DCS does not send a notice of intent to close when the CP requests case closure. When DCS closes a case at the request of a CP who receives a child care subsidy, DCS sends a copy of the case closure notice to the CP, and also notifies CSD.

(4) Requesting case closure while receiving a child care subsidy counts as a failure to cooperate with DCS.

#### **WSR 11-20-099**

#### **PROPOSED RULES**

#### **DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

(Division of Child Support)

[Filed October 5, 2011, 8:13 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-15-093.

**Title of Rule and Other Identifying Information:** The division of child support (DCS) proposes to adopt changes to chapter 388-14A WAC to implement E2SHB 1267 (chapter 283, Laws of 2011), effective date July 22, 2011.

DCS is amending WAC 388-14A-1020, 388-14A-3100, 388-14A-3102, and 388-14A-3115.

**Hearing Location(s):** Office Building 2, Auditorium, 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> or by calling (360) 664-6094), on November 22, 2011, at 10:00 a.m.

**Date of Intended Adoption:** November 22, 2011.

**Submit Written Comments to:** DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax (360) 664-6185, by 5 p.m. on November 22, 2011.

**Assistance for Persons with Disabilities:** Contact Jennisha Johnson, DSHS rules consultant, by November 8, 2011, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [johnsj14@dshs.wa.gov](mailto:johnsj14@dshs.wa.gov).

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** DCS is amending existing sections in chapter 388-14A WAC to implement E2SHB 1267 (chapter 283, Laws of 2011), which made changes to chapter 26.26 RCW, the Uniform Parentage Act.

DCS has adopted emergency rules under WSR 11-16-007, effective July 22, 2011.

**Reasons Supporting Proposal:** Implementation of changes in chapter 26.26 RCW from the 2011 legislative session.

**Statutory Authority for Adoption:** E2SHB 1267 (chapter 283, Laws of 2011), effective date July 22, 2011; RCW 34.05.220, 43.20A.550, 74.04.055, 74.04.057, 74.08.090, 74.20A.055, 74.20A.056, 74.20A.310.

**Statute Being Implemented:** E2SHB 1267 (chapter 283, Laws of 2011).

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:** Nancy Koptur, DCS Headquarters, P.O. Box 9162, Olympia, WA 98507-9162, (360) 664-5065.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule does not have an economic impact on small businesses. It only affects individuals who have support obligations or individuals who are owed child support.

A cost-benefit analysis is not required under RCW 34.05.328. The rule does meet the definition of a significant legislative rule but DSHS/DCS rules relating to the care of dependent children are exempt from preparing further analysis under RCW 34.05.328 (5)(b)(vii).

September 29, 2011  
Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 11-21 issue of the Register.

**WSR 11-20-100**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

[Filed October 5, 2011, 8:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-13-092.

**Title of Rule and Other Identifying Information:** The department is amending and deleting sections to chapter 388-101 WAC, Certified community residential services and supports. The department is proposing amendments to WAC 388-101-3000 Definitions, 388-101-3050 Application for initial certification, 388-101-3220 Administrator responsibilities and training, 388-101-3245 Background check—General, 388-101-3250 Background checks—Washington state, 388-101-3255 Background checks—Provisional hire—Pending results, 388-101-3258 Training requirements for staff hired before January [1,] 2011, 388-101-3302 Certified community residential services and supports—General training requirements, and 388-101-3545 Using client funds for health services.

The department is proposing eliminating WAC 388-101-3253 National fingerprint based background checks—Required.

**Hearing Location(s):** Office Building 2, Auditorium, 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> or by calling (360) 664-6094), on November 8, 2011, at 10:00 a.m.

**Date of Intended Adoption:** Not earlier than November 9, 2011.

**Submit Written Comments to:** DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax (360) 664-6185, by 5 p.m. on November 8, 2011.

**Assistance for Persons with Disabilities:** Contact Jennisha Johnson, DSHS rules consultant, by October 25, 2011, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at [jennisha.johnson@dshs.wa.gov](mailto:jennisha.johnson@dshs.wa.gov).

**Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules:** The purpose of amending these rules is to comply with changes to state law made by the 2011 legislature in SSB 5042, 2E2SHB 1738, and ESHB 1548.

Highlights of proposed changes related to SSB 5042:

- Expands the definition of "financial exploitation" to include improper control over or withholding of a vulnerable adult's resources by another person or entity.



- Refers to examples of "financial exploitation" found in chapter 74.34 RCW.
- In addition, the proposed rules amend the definition of "sexual abuse" to include examples of interactions that do not involve physical touching.

Highlights of proposed changes related to 2E2SHB 1738:

- Adds term "health care authority" to WAC 388-101-3545 to reflect change in responsibility for the medicaid program.

Highlights of proposed changes related to ESHB 1548:

- Proposed rules revert back to long-term care working training requirements in effect prior to January 1, 2011.
- Deletes changes to criminal background check requirements that were to become effective after January 1, 2012.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 71A.12.030 and [71A.12].080.

Statute Being Implemented: Chapter 71A.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: John Gaskell, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-3210; Implementation and Enforcement: Joyce Stockwell, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2401.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3), a small business economic impact statement is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or federal statutes or regulations.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b), a cost-benefit analysis is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or regulations.

September 14, 2011

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-16-084, filed 7/30/10, effective 1/1/11)

**WAC 388-101-3000 Definitions. "Abandonment"** means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

**"Abuse"** means:

(1) The willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult;

(2) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish; and

(3) Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) **"Sexual abuse"** means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching, including but not limited to sending sexually explicit messages, or cuing or encouraging a resident/client to perform sexual acts. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(b) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints unless the restraints are consistent with licensing and certification requirements, and includes restraints that are otherwise being used inappropriately.

(c) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(d) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

**"Associated with the applicant"** means any person listed on the application as a partner, officer, director, or majority owner of the applying entity, or who is the spouse or domestic partner of the applicant.

**"Case manager"** means the division of developmental disabilities case resource manager or social worker assigned to a client.

**"Certification"** means a process used by the department to determine if an applicant or service provider complies with the requirements of this chapter and is eligible to provide certified community residential services and support to clients.

**"Chaperone agreement"** means a plan or agreement that describes who will supervise a community protection program client when service provider staff is not present. This plan or agreement is negotiated with other agencies and individuals who support the client, including the client's legal representative and family.

**"Chemical restraint"** means the use of psychoactive medications for discipline or convenience and not prescribed to treat the client's medical symptoms.

**"Client"** means a person who has a developmental disability as defined in RCW 71A.10.020(3) and who also has been determined eligible to receive services by the division of developmental disabilities under chapter 71A.16 RCW. For purposes of informed consent and decision making requirements, the term "client" includes the client's legal representative to the extent of the representative's legal authority.

**"Client services"** means instruction and support services that service providers are responsible to provide as identified in the client's individual support plan.

**"Crisis diversion"** means temporary crisis residential services and supports provided to clients at risk of psychiatric hospitalization and authorized by the division of developmental disabilities.

**"Crisis diversion bed services"** means crisis diversion that is provided in a residence maintained by the service provider.

**"Crisis diversion support services"** means crisis diversion that is provided in the client's own home.

**"Department"** means the Washington state department of social and health services.

**"Financial exploitation"** means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020(6).

**"Functional assessment"** means a comprehensive evaluation of a client's challenging behavior(s). This evaluation is the basis for developing a positive behavior support plan.

**"Group home"** means a residence that is licensed as either a boarding home or an adult family home by the department under chapters 388-78A or 388-76 WAC. Group homes provide community residential instruction, supports, and services to two or more clients who are unrelated to the provider.

**"Group training home"** means a certified nonprofit residential facility that provides full-time care, treatment, training, and maintenance for clients, as defined under RCW 71A.22.020(2).

**"Immediate"** or **"immediately"** means within twenty-four hours for purposes of reporting abandonment, abuse, neglect, or financial exploitation of a vulnerable adult.

**"Individual financial plan"** means a plan describing how a client's funds will be managed when the service provider is responsible for managing any or all of the client's funds.

**"Individual instruction and support plan"** means a plan developed by the service provider and the client. The individual instruction and support plan:

(1) Uses the information and assessed needs documented in the individual support plan to identify areas the client would like to develop;

(2) Includes client goals for instruction and support that will be formally documented during the year; and

(3) Must contain or refer to other applicable support or service information that describes how the client's health and welfare needs are to be met (e.g. individual financial plan, positive behavior support plan, cross system crisis plan, indi-

vidual support plan, individual written plan, client-specific instructions).

**"Individual support plan"** means a document that authorizes and identifies the division of developmental disabilities paid services to meet a client's assessed needs.

**"Instruction"** means goal oriented teaching that is designed for acquiring and enhancing skills.

**"Instruction and support services staff"** means long-term care workers of the service provider whose primary job function is the provision of instruction and support services to clients. Instruction and support services staff shall also include employees of the service provider whose primary job function is the supervision of instruction and support services staff. In addition, both applicants, prior to initial certification, and administrators, prior to assuming duties, who may provide instruction and support services to clients shall be considered instruction and support services staff for the purposes of the applicable training requirements (~~(of chapter 388-112 WAC)~~).

**"Legal representative"** means a person's legal guardian, a person's limited guardian when the subject matter is within the scope of the limited guardianship, a person's attorney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

**"Managing client funds"** means that the service provider:

(1) Has signing authority for the client;

(2) Disperses the client's funds; or

(3) Limits the client's access to funds by not allowing funds to be spent.

**"Mechanical restraint"** means a device or object, which the client cannot remove, applied to the client's body that restricts his/her free movement.

**"Medication administration"** means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the client by an individual legally authorized to do so.

**"Medication assistance"** means assistance with self administration of medication rendered by a nonpractitioner to a client receiving certified community residential services and supports in accordance with chapter 69.41 RCW and chapter 246-888 WAC.

**"Medication service"** means any service provided by a certified community residential services and support provider related to medication administration or medication assistance provided through nurse delegation and medication assistance.

**"Neglect"** means:

(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or

(2) An act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

**"Physical intervention"** means the use of a manual technique intended to interrupt or stop a behavior from occur-

ring. This includes using physical restraint to release or escape from a dangerous or potentially dangerous situation.

**"Physical restraint"** means physically holding or restraining all or part of a client's body in a way that restricts the client's free movement. This does not include briefly holding, without undue force, a client in order to calm him/her, or holding a client's hand to escort the client safely from one area to another.

**"Psychoactive"** means possessing the ability to alter mood, anxiety level, behavior, cognitive processes, or mental tension, usually applied to pharmacological agents.

**"Psychoactive medications"** means medications prescribed to improve or stabilize mood, mental status or behavior. Psychoactive medications include anti-psychotics/neuroleptics, atypical antipsychotics, antidepressants, stimulants, sedatives/hypnotics, and antimania and antianxiety drugs.

**"Qualified professional"** means a person with at least three years' experience working with individuals with developmental disabilities and as required by RCW 71A.12.220 (12).

**"Restrictive procedure"** means any procedure that restricts a client's freedom of movement, restricts access to client property, requires a client to do something which he/she does not want to do, or removes something the client owns or has earned.

**"Risk assessment"** means an assessment done by a qualified professional and as required by RCW 71A.12.230.

**"Service provider"** means a person or entity certified by the department who delivers services and supports to meet a client's identified needs. The term includes the state operated living alternative (SOLA) program.

**"Support"** means assistance a service provider gives a client based on needs identified in the individual support plan.

**"Supported living"** means instruction, supports, and services provided by service providers to clients living in homes that are owned, rented, or leased by the client or their legal representative.

**"Treatment team"** means the program participant and the group of people responsible for the development, implementation, and monitoring of the person's individualized supports and services. This group may include, but is not limited to, the case manager, therapist, the service provider, employment/day program provider, and the person's legal representative and/or family, provided the person consents to the family member's involvement.

**"Vulnerable adult"** includes a person:

- (1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or
- (2) Found incapacitated under chapter 11.88 RCW; or
- (3) Who has a developmental disability as defined under RCW 71A.10.020; or
- (4) Admitted to any facility; or
- (5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or
- (6) Receiving services from an individual provider.

**"Willful"** means the deliberate, or nonaccidental, action or inaction by an individual that he/she knew or reasonably

should have known could cause a negative outcome, including harm, injury, pain, or anguish.

AMENDATORY SECTION (Amending WSR 10-16-084, filed 7/30/10, effective 1/1/11)

**WAC 388-101-3050 Application for initial certification.** (1) To apply for initial certification an applicant must submit to the department:

- (a) A letter of intent that includes:
  - (i) Contact information;
  - (ii) Geographical area of service; and
  - (iii) Type of service provided, including group home, supported living, community protection, or group training home.
- (b) A completed and signed application on forms designated by the department;
- (c) All attachments specified in the application and any other information the department may request including but not limited to:
  - (i) Administrator resumes;
  - (ii) Statements of financial stability;
  - (iii) Professional references;
  - (iv) Relevant experiences and qualifications of the individual or agency; and

(v) ~~((On or after January 1, 2011, a certificate of completion of the instruction and support services staff training required under chapter 388-112 WAC, if the applicant may provide instruction and support services to a client or may supervise staff who provide such services; and~~

~~(vi))~~ Assurances the applicant will not discriminate against any client or employee.

(d) A copy of the license if applying for certification as a group home;

- (e) The name of the administrator of the program; and
- (f) The department background authorization form for:
  - (i) The applicant;
  - (ii) Anyone associated with the applicant; and
  - (iii) The individual or individuals designated to serve as administrator of the proposed program.

(2) The applicant must submit a revised application, if any information on the application changes before the initial certification is issued.

(3) The department will only process a completed application.

(4) Each person named in the application for initial certification is considered separately and jointly by the department.

(5) Based on the documentation received, the department will notify the applicant in writing regarding the department's certification decision.

(6) The applicant must comply with additional requirements identified in this chapter if intending to support community protection clients.

AMENDATORY SECTION (Amending WSR 10-16-084, filed 7/30/10, effective 1/1/11)

**WAC 388-101-3220 Administrator responsibilities and training.** (1) The service provider must ensure that the administrator delivers services to clients consistent with this

chapter, and the department's residential services contract. This includes but is not limited to:

- (a) Overseeing all aspects of staffing, such as recruitment, staff training, and performance reviews;
  - (b) Developing and maintaining policies and procedures that give staff direction to provide appropriate services and support as required by this chapter and the department contract; and
  - (c) Maintaining and securely storing client, personnel, and financial records.
- (2) Before assuming duties, an administrator (~~(hired on or after January 1, 2011,)~~) must complete ~~((the))~~ required instruction and support services staff training ~~((requirements under chapter 388-112 WAC))~~ if the administrator may provide instruction and support services to clients or may supervise instruction and support services staff.

AMENDATORY SECTION (Amending WSR 10-16-084, filed 7/30/10, effective 1/1/11)

**WAC 388-101-3245 Background check—General.**

- (1) Background checks conducted by the department and required in this chapter include but are not limited to ~~((~~ Washington state background checks including:
- ~~((a))~~ (a) Department and department of health findings; and
  - ~~((b))~~ (b) Criminal background check information from the Washington state patrol and Washington state courts ~~((~~ and
- ~~(b) After January 1, 2012, a national fingerprint-based check in accordance with RCW 74.39A.055)).~~
- (2) Nothing in this chapter should be interpreted as requiring the employment of a person against the better judgment of the service provider.

AMENDATORY SECTION (Amending WSR 10-16-084, filed 7/30/10, effective 1/1/11)

**WAC 388-101-3250 Background checks—Washington state.** (1) Service providers must follow the background check requirements described in chapter 388-06 WAC and in this chapter. In the event of an inconsistency, this chapter applies. ~~((The service provider must also follow background check requirements under WAC 388-101-3253.))~~

(2) The service provider must obtain background checks from the department for all administrators, employees, volunteers, students, and subcontractors who may have unsupervised access to clients.

(3) The service provider must not allow the following persons to have unsupervised access to clients until the service provider receives the department's background check results, verifying that the person does not have any convictions, pending criminal charges, or findings described in WAC 388-101-3090:

- (a) Administrators;
- (b) Employees;
- (c) Volunteers or students; and
- (d) Subcontractors.

(4) If the background check results show that the individual has a conviction, pending criminal charge, or finding that is not disqualifying under WAC 388-101-3090, then the ser-

vice provider must conduct a character, suitability, and competence review as described in WAC 388-06-0190.

(5) The service provider must:

- (a) Inform the person of the results of the background check;
- (b) Inform the person that they may request a copy in writing of the results of the background check. If requested, a copy of the background check results must be provided within ten working days of the request;

(c) Notify the department and other appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record.

(6) The service provider must renew the Washington state background check at least every thirty-six months and keep current background check results for each administrator, employee, volunteer, student, or subcontractor of a service provider.

(7) Licensed boarding homes or adult family homes must adhere to the current regulations in this chapter and in the applicable licensing laws.

(8) Service providers must prevent unsupervised access to clients by any administrator, employee, subcontractor, student, or volunteer who has a disqualifying conviction, pending criminal charge, or finding described in WAC 388-101-3090.

(9) All applicants for certification must have a background check.

AMENDATORY SECTION (Amending WSR 10-16-084, filed 7/30/10, effective 1/1/11)

**WAC 388-101-3255 Background checks—Provisional hire—Pending results.** ~~((1))~~ Persons identified in WAC 388-101-3250(2) ~~((who are hired on or before January 1, 2012))~~ and who have lived in Washington state less than three years, or who are otherwise required to complete a fingerprint-based background check, may be hired for a one hundred twenty-day provisional period when:

- ~~((a))~~ (1) The person is not disqualified based on the initial results of the background check from the department; and
- ~~((b))~~ (2) A national fingerprint-based background check is pending.

~~((2) Persons identified in WAC 388-101-3250(2) who are hired after January 1, 2012, may be hired for a one hundred twenty-day provisional period when:~~

- ~~(a) The person is not disqualified based on the initial result of the background check from the department; and~~
- ~~(b) A national fingerprint-based background check is pending.))~~

AMENDATORY SECTION (Amending WSR 10-16-084, filed 7/30/10, effective 1/1/11)

**WAC 388-101-3258 Training requirements for staff** ~~((hired before January 1, 2011))~~. The service provider must ensure that staff ~~((hired before January 1, 2011))~~ have met the training requirements under WAC 388-101-3260 through 388-101-3300.

AMENDATORY SECTION (Amending WSR 10-16-084, filed 7/30/10, effective 1/1/11)

**WAC 388-101-3302 Certified community residential services and supports—General training requirements.**

(1) ~~((On or after January 1, 2011,))~~ The service provider must ensure the following instruction and support services staff meet the training requirements ~~((under))~~ of this chapter ~~((388-112 WAC, including orientation and safety training, and basic training))~~:

(a) Administrators ~~((, hired on or after the effective date,))~~ who may provide instruction and support services to clients or may supervise instruction and support services staff; and

(b) Instruction and support services staff including their supervisors ~~((, who are hired on or after the effective date))~~.

(2) ~~((On or after January 1, 2011,))~~ Applicants for initial certification and applicants for change of ownership that are not current providers, who may provide instruction and support services to clients or may supervise instruction and support services staff must meet the training requirements of this chapter ~~((388-112 WAC, including orientation and safety training, and basic training))~~.

~~((3) Under RCW 18.88B.040 and chapter 246-980 WAC, certain persons including registered nurses, licensed practical nurses, certified nursing assistants or persons who are in an approved certified nursing assistant program are exempt from long-term care worker training requirements.))~~

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

**WAC 388-101-3545 Using client funds for health services.** The service provider must document all denials for client health services from the ~~((department's medical assistance administration))~~ health care authority, the department, and medical insurance companies. The service provider:

(1) Must notify the case manager of the denial in writing; and

(2) May use client funds for the client's health services if no other funding is available.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-101-3253	National fingerprint-based background checks—Required.
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**WSR 11-20-108  
PROPOSED RULES  
OFFICE OF  
FINANCIAL MANAGEMENT**

[Filed October 5, 2011, 10:38 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-31-435 Must employees use their own leave before using shared leave?

Hearing Location(s): Office of Financial Management, 521 Capitol Way South, Olympia, WA, on November 10, 2011, at 8:30 a.m.

Date of Intended Adoption: November 10, 2011.

Submit Written Comments to: Connie Goff, Office of Financial Management, P.O. Box 47500, e-mail Connie.Goff@OFM.WA.GOV, fax (360) 586-4694, by November 3, 2011. FOR OFM TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact office of financial management by November 3, 2011, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These changes are a result of the passage of ESSB 5860. This bill requires that during the 2011-13 biennium, base salaries are reduced three percent for all state employees except for elected officials whose salaries are established by the commission on salaries for elected officials; employees at state institutions of higher education; certificated employees of the state School for the Blind and the Center for Childhood Deafness and Hearing Loss; commissioned officers of the state patrol; represented ferry workers of the department of transportation; and employees whose monthly full-time equivalent salary is less than \$2,500 per month. Employees subject to the salary reduction accrue additional temporary salary reduction (TSR) leave of up to 5.2 hours per month. Per language in the bill, amounts paid during the 2011-13 fiscal biennium to state employees who cash-out annual or sick leave at the time of retirement or sick leave in excess of sixty days at any time are not reduced by temporary compensation reductions.

There are provisions in the bill which require us to make changes and additions to the current rules in order to implement the temporary salary reduction and TSR leave as described in the bill.

This rule was inadvertently left off the original filing effective July 1, 2011.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, (360) 664-6408; Implementation and Enforcement: Office of financial management.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

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

October 5, 2011

Eva N. Santos

State Human

Resources Director

AMENDATORY SECTION (Amending WSR 10-23-040, filed 11/10/10, effective 12/13/10)

**WAC 357-31-435 Must employees use their own leave before using shared leave?** Employees who qualify for shared leave under WAC 357-31-390 (1)(a) must first use all compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, sick leave, temporary salary reduction leave, and vacation leave that they have accrued before using shared leave. Employees who qualify under WAC 357-31-390 (1)(b) must first use all of their compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, accrued vacation leave, accrued temporary salary reduction leave, and paid military leave allowed under RCW 38.40.060 before using shared leave. Employees who qualify under WAC 357-31-390 (1)(c) and (d) must first use all compensatory time, recognition leave as described in WAC 357-31-565, personal holiday, temporary salary reduction leave, and vacation leave that they have accrued before using shared leave. Employees who qualify for shared leave under WAC 357-31-390 (1)(e) must first use all compensatory time, recognition leave as described in WAC 357-31-565, temporary salary reduction leave, and vacation leave that they have accrued before using shared leave.

**WSR 11-20-109**  
**PROPOSED RULES**  
**SECRETARY OF STATE**  
(Elections Division)  
[Filed October 5, 2011, 10:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-07-033.

Title of Rule and Other Identifying Information: 2011 legislation, definition of minor political party for purposes of campaign finance laws, ballot materials, PCO elections, certifying elections.

Hearing Location(s): Office of the Secretary of State, Elections Division, 520 Union Avenue S.E., Olympia, WA, on November 8, 2011, at 10:00 a.m.

Date of Intended Adoption: November 9, 2011.

Submit Written Comments to: Katie Blinn, P.O. Box 40220, Olympia, WA 98504-0220, katie.blinn@sos.wa.gov, fax (360) 586-5629, by November 8, 2011.

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules implement ESSB 5124, HB 1000, 2ESSB 5171, RCW 42.17A.005 (6)(a), and *Washington State Republican Party, et al. v. State of Washington, et al.*, case no. C05-0927-JCC (January 11, 2011). The proposed rules also update the timing of county reviews, requirements for certification of election administrators, and deadlines for submissions to the state voters' pamphlet.

Reasons Supporting Proposal: The changes are necessary to reconcile WACs with new state law and litigation.

Statutory Authority for Adoption: RCW 29A.04.611.

Statute Being Implemented: RCW 29A.04.311, 29A.24.050, 29A.24.131, 29A.24.171, 29A.24.181, 29A.24.191, 29A.36.010, 29A.40.010, 29A.40.070, 29A.40.091, 29A.40.110, 29A.60.190, 42.12.040, and 42.12.070.

Rule is necessary because of federal court decision, *Washington State Republican Party, et al. v. State of Washington, et al.*, case no. C05-0927-JCC (January 11, 2011).

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

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

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.

October 5, 2011

Steve Excell

Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 11-05-008, filed 2/3/11, effective 3/6/11)

**WAC 434-208-060 Electronic filings.** (1) In addition to those documents specified by RCW 29A.04.255, the secretary of state or the county auditor shall accept and file in his or her office electronic transmissions of the following documents:

(a) The text of any proposed initiative, referendum, or recall measure and any accompanying documents required by law;

(b) Any minor party or independent candidate filing material for president and vice-president, except nominating petitions;

(c) Lists of presidential electors selected by political parties or independent candidates;

(d) Voted ballots and signed (~~affidavits~~) ballot declarations from service and overseas voters received no later than 8:00 p.m. on election day. Voted ballots and signed ballot declarations from voters who are neither service nor overseas voters received no later than 8:00 p.m. on election day, as long as hard copies are received (~~prior to~~) no later than the day before certification of the election. Consistent with WAC 434-250-080, it is the first ballot and (~~affidavit~~) declaration received that may be processed and counted. Voted ballots received electronically no later than 8:00 p.m. on election day are timely even if the postmark on the return envelope is after election day;

(e) Resolutions from cities, towns, and other districts calling for a special election; (~~and~~)

(f) Voter registration forms, unless the form is illegible or the signature image is poor quality requiring the county auditor to reject the form;

(g) Signed ballot declarations, and any accompanying materials, submitted pursuant to WAC 434-261-050; and

(h) Requests to withdraw.

(2) If payment of a fee is required, (~~acceptance of an~~) the electronic filing is ((conditional)) not complete until the fee is received.

(3) ~~((If the original document must be signed, acceptance of an electronic filing is conditional until receipt of the original document. Except for mail ballots, the original document must be received no later than seven calendar days after receipt of the electronic filing.~~

(4) ~~No initiative, referendum, ((or)) recall, or other signature petitions ((signatures)) may be filed electronically.~~

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

**WAC 434-208-110** ~~((Applicable dates and deadlines.))~~ References to time. ~~((If dates, deadlines, and time periods referenced in chapter 2, Laws of 2005, conflict with subsequently enacted law, such as chapter 344, Laws of 2006, the subsequently enacted law is effective.))~~ References to times of day (i.e., 8:00 p.m.) are according to Pacific Time.

#### NEW SECTION

**WAC 434-208-130 Political parties.** (1) For purposes of RCW 29A.04.086, "major political party" means a political party whose nominees for president and vice-president received at least five percent of the total votes cast for that office at the last preceding presidential election. A political party that qualifies as a major political party retains such status until the next presidential election at which the presidential and vice-presidential nominees of that party do not receive at least five percent of the votes cast.

(2) For purposes of RCW 42.17A.005, the secretary of state recognizes as a minor political party a political party whose nominees for president and vice-president qualified to appear on the ballot in the last preceding presidential election according to the minor party nomination process provided in RCW 29A.20.111 through 29A.20.201. A political party that qualifies as a minor political party retains such status until certification of the next presidential election. This definition is for purposes of chapter 42.17A RCW only.

(3) As allowed by WAC 434-215-012, 434-215-120, and 434-215-130, candidates for partisan office may state a preference for any political party and are not restricted to stating a preference for a political party that meets the definition of major or minor political party. A candidate's party preference does not imply that the candidate is nominated or endorsed by that party, or that the party approves of or associates with that candidate. With the exception of elections for president and vice-president, a party's status as a major or minor political party, or a candidate's preference for a major or minor political party, plays no role in how candidates qualify to appear on the primary election ballot, qualify to appear on the general election ballot, or are elected to public office.

#### NEW SECTION

**WAC 434-208-140 Election notices.** Election notices are governed by RCW 29A.04.220 and 29A.52.XXX (section 45, chapter 10 (ESSB 5124), Laws of 2011).

(1) "Short titles for ballot measures" means the name of the jurisdiction, the measure number, and the heading or caption.

(2) The notice for elderly and disabled person required by RCW 29A.04.220 may be combined with the notice of election required by RCW 29A.52.XXX (section 45, chapter 10 (ESSB 5124), Laws of 2011) in a single publication.

(3) Public meetings associated with the election include county canvassing board meetings.

AMENDATORY SECTION (Amending WSR 10-14-091, filed 7/6/10, effective 8/6/10)

**WAC 434-215-005 Filing information—Questionnaire—Compiling and dissemination.** (1) Prior to ~~((March))~~ February 1, the county auditor shall send a questionnaire to the administrative authority of each local jurisdiction for which the auditor is the candidate filing officer subject to the provisions of RCW 29A.04.321 and 29A.04.330. The questionnaire must be sent ~~((in))~~ during the year before the local jurisdiction is scheduled to elect officers. The purpose of the questionnaire shall be to confirm information which the auditor must use to properly conduct candidate filings for each office. The questionnaire should request, at a minimum, confirmation of offices to be filled at the general election that year, the name of the incumbent, and the annual salary for the position at the time of the filing period. Responses should be received prior to ~~((April))~~ March 1 of that year so that the filing information can be compiled and disseminated to the public at least two weeks prior to the candidate filing period.

(2) If a jurisdiction fails to notify the county auditor prior to the regular candidate filing period that an office is to be filled at the general election and therefore the office is not included in the regular candidate filing period, the county auditor shall ~~((conduct a special three-day filing period for that office under the time frames established in RCW 29A.24.171 through 29A.24.191))~~:

(a) Open the position during the remainder of the regular filing period if the county auditor is notified in time to provide at least three days in the regular filing period. The county auditor must post information on-line and notify the press; or

(b) Open the position during a special three-day filing period as though there is a void in candidacy per RCW 29A.24.181.

AMENDATORY SECTION (Amending WSR 09-18-098, filed 9/1/09, effective 10/2/09)

**WAC 434-215-040 Filing notification.** Declarations of candidacy for legislative, court of appeals, and superior court districts located within one county must be filed with the county auditor. All information listed on the declaration of candidacy for these offices must be sent electronically to the secretary of state ~~((within one business))~~ the same day the filing was accepted.

AMENDATORY SECTION (Amending WSR 11-05-008, filed 2/3/11, effective 3/6/11)

**WAC 434-215-065 Withdrawal of candidacy.** Consistent with RCW 29A.24.131, a candidate may withdraw his or her declaration of candidacy at any time before the close of

business on the ~~((Thursday))~~ Monday following the last day for candidates to file. The candidate must file a signed request that his or her name not be printed on the ballot. This request to withdraw must be filed with the officer who accepted the declaration of candidacy ~~((and,))~~. Once filed, the withdrawal cannot be revoked. There shall be no withdrawal period for declarations of candidacy filed during special filing periods. ~~((The filing officer has discretion to permit the withdrawal of a filing for any elected office of a city, town, or special district at the request of the candidate at any time before a primary if the primary election ballots have not been formatted. If no primary election is held for that office, the filing officer has discretion to permit the withdrawal at any time before the general election ballots are formatted. If the jurisdiction is located in more than one county, withdrawal of a filing may only be accepted if ballots have not been formatted in all affected counties.))~~

#### NEW SECTION

**WAC 434-215-165 Presidential nominations by major political parties.** Nominations for president and vice-president by major political parties are conducted at each party's national convention. Immediately following the convention, each party must submit a certificate of nomination and list of electors to the secretary of state in order to place the nominees on the presidential general election ballot.

#### NEW SECTION

**WAC 434-215-180 Write-in candidates.** A candidate desiring to file as a write-in candidate must file the write-in declaration of candidacy no later than eighteen days before election day, the deadline in RCW 29A.40.070 that ballots must be mailed.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-215-020	Declaration of candidacy— Precinct committee officer.
WAC 434-215-140	Void in candidacy and vacancies in office.

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

**WAC 434-219-080 Petition process for ballot access.** Members of a major political party may petition the secretary of state, pursuant to the provisions of RCW 29A.56.030, to include on the presidential primary ballot the name of any candidate of that party not designated by the secretary of state under WAC 434-219-060. Petitions may be circulated for signatures not earlier than the first day following the designation of candidates by the secretary of state under WAC 434-219-060. Such petitions must be filed with the secretary of state not later than ~~((sixty))~~ seventy-five days prior to the primary, shall be accompanied by a signed, notarized statement

by the candidate concerned giving his or her consent to the nomination, and must bear the signatures of at least one thousand persons registered to vote in the state of Washington at the time the petition signatures are verified.

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

**WAC 434-219-100 Verification of signatures by secretary of state.** Upon receipt of any nominating petition filed pursuant to WAC 434-219-080, the secretary of state shall promptly canvass and verify the signatures in order to determine the validity of the petition. The secretary may reject, without verification of signatures, any petition that clearly bears insufficient signatures, any petition that is not accompanied by a consent to the nomination by the candidate, or any petition that is in a form inconsistent with the provisions of WAC 434-219-090. To the extent that it is not inconsistent with other provisions of these rules, the canvass and verification process may be observed in the same manner as that specified in RCW 29A.72.230 for the observation of the canvass and verification of initiative signatures. The secretary of state shall reject the signature of any person not registered to vote in Washington, and ~~((any multiple signatures from the same voter)),~~ if the same name is signed more than once, shall reject all but the first valid signature. No signature may be rejected solely on the basis that it is not accompanied by the address or precinct name or number of the signer.

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

**WAC 434-219-115 Withdrawal.** Each candidate shall appear on the primary ballot unless, not later than ~~((fifty-two))~~ sixty-seven days prior to the primary, the candidate files with the secretary of state a signed, notarized statement that he or she is not now and will not become a candidate for president. The secretary of state shall promptly notify the county auditors, the chairperson of the national political party of that candidate, and all remaining candidates of any names removed from the list of candidates for the presidential primary.

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

**WAC 434-219-155 Party declaration ~~((for absentee ballots))~~ on ballot materials.** (1) Each political party declaration shall be printed on the return envelope with the standard ~~((absentee))~~ ballot ~~((oath))~~ declaration required by WAC 434-250-050. Each declaration shall be printed with a checkbox for voters to indicate the party declaration to which they subscribe. The county auditor shall provide an instruction for the party declarations substantially similar to the following: "You must mark a party checkbox in order for your presidential primary vote to count. You may only select one party."

(2) The date and signature lines for the ~~((absentee))~~ ballot ~~((oath))~~ declaration shall also serve as the date and signature lines for the political party declaration.



(3) In addition to other instructions normally provided to ~~((absentee))~~ voters, the county auditor shall ensure that voters are given specific instructions on how to mark their ballot so that it will be counted in accordance with the oath they signed on the return envelope.

AMENDATORY SECTION (Amending WSR 09-18-098, filed 9/1/09, effective 10/2/09)

**WAC 434-219-190 Special election held in conjunction with the presidential primary.** If a presidential primary ~~((is scheduled concurrently with))~~ occurs at the same election as a special election ((under RCW 29A.04.321 or 29A.04.330)), all measures or candidates for office for which the voters are eligible to vote at that special election shall be listed on the ballot in such a manner that each voter can identify and vote on those candidates or measures separately from the presidential primary candidates.

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

**WAC 434-219-230 Processing of ~~((absentee))~~ ballots.**

(1) If the voter checked a political party declaration ~~((on the absentee ballot return envelope))~~, a notation of the party checked must be made in the voter's registration file.

(2) If the ~~((return envelope))~~ declaration is not signed or the signature on the ~~((envelope))~~ declaration does not match the signature on file, the county auditor must attempt to contact the voter as outlined in WAC 434-261-050. If the voter also failed to check a political party declaration, the county auditor must also provide the voter the opportunity to check a party declaration.

(3) The ballot must be sorted according to major party declaration choice before it is removed from the return envelope. Once the ballot is removed from the return envelope and secrecy envelope, it must be inspected and processed consistent with the party declaration ~~((on the return envelope))~~.

(4) If the voter's signature is verified, the voter may be credited with having participated in the election, even if the voter failed to check a political party declaration.

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

**WAC 434-219-290 Certification of presidential primary by secretary of state.** County canvassing boards shall certify the results of the presidential primary ~~((fifteen))~~ fourteen days following the primary. The county auditor shall transmit the returns to the secretary of state immediately. Not later than twenty-one days following the presidential primary, the secretary of state shall certify the results of the presidential primary and notify the candidates and the chairperson of the national and state committees of each major political party of the votes cast for all candidates listed on the ballot.

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

**WAC 434-219-320 Transmittal of political party preference data and results to the major political parties.** No later than thirty days following the presidential primary:

(1) Upon request, each county auditor shall provide to the county committee of each major political party, at actual reproduction cost, the results of the presidential primary by precinct, and the names and addresses of voters registered in the county who signed a party ~~((oath for that party in a poll book, or signed a party))~~ declaration for that party ((on a return envelope)) and the signature was verified.

(2) Upon request, the secretary of state shall provide to the state committees of each major political party, at actual reproduction cost, the names and addresses of all voters registered in the state who signed a party ~~((oath for that party in a poll book, or signed a party))~~ declaration for that party ((on a return envelope)) and the signature was verified.

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

**WAC 434-219-330 Retention of election material.**

The county auditor shall maintain all presidential primary material, including ballot request forms, ~~((absentee))~~ ballot envelopes, ~~((poll books,))~~ and ballots, for a period of twenty-two months following the presidential primary. Sixty days following certification of the presidential primary by the secretary of state, the county auditor must remove from the voter registration files any record of party designation in the presidential primary.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-219-150	Party declaration at the polling place.
WAC 434-219-210	Issuing polling place ballots.

AMENDATORY SECTION (Amending WSR 09-18-098, filed 9/1/09, effective 10/2/09)

**WAC 434-230-015 Ballots ~~((format))~~ and instructions.** (1) Each ballot shall specify the county, the date, and whether the election is a primary, special or general.

(2) Each ballot must include instructions directing the voter how to mark the ballot, including write-in votes if candidate races appear on the ballot.

(3) Instructions that accompany a ballot must:

(a) Instruct the voter how to cancel a vote by drawing a line through the text of the candidate's name or ballot measure response;

(b) Notify the voter that, unless specifically allowed by law, more than one vote for an office or ballot measure will be an overvote and no votes for that office or ballot measure will be counted;

(c) Explain how to complete and sign the ballot declaration. The following declaration must accompany the ballot:

"I do solemnly swear or affirm under penalty of perjury that I am:

A citizen of the United States;

A legal resident of the state of Washington;

At least 18 years old on election day;

Voting only once in this election;

Not under the authority of the Department of Corrections for a Washington felony conviction; and

Not disqualified from voting due to a court order.

It is illegal to forge a signature or cast another person's ballot. Attempting to vote when not qualified, attempting to vote more than once, or falsely signing this oath is a felony punishable by a maximum imprisonment of five years, a maximum fine of \$10,000, or both."

The declaration must include space for the voter to sign and date the declaration, for the voter to write his or her phone number, and for two witnesses to sign if the voter is unable to sign.

County auditors may use existing stock of declarations until June 1, 2012.

(d) Explain how to make a mark, witnessed by two other people, if unable to sign the declaration:

(e) Explain how to place the ballot in the security envelope and place the security envelope in the return envelope:

(f) Explain how to obtain a replacement ballot if the original ballot is destroyed, spoiled, or lost:

(g) Explain that postage is required, if applicable:

(h) Explain that, in order for the ballot to be counted, it must be either postmarked no later than election day or deposited at a ballot drop box no later than 8:00 p.m. election day:

(i) Explain how to learn about the locations, hours, and services of voting centers and ballot drop boxes, including the availability of accessible voting equipment:

(j) Include, for a primary election that includes a partisan office, a notice on an insert explaining:

"In each race, you may vote for any candidate listed. The two candidates who receive the most votes in the primary will advance to the general election.

Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(k)(i) Include, for a general election that includes a partisan office, the following explanation:

"If a primary election was held for an office, the two candidates who received the most votes in the primary advanced to the general election.

Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(ii) In a year that president and vice-president appear on the general election ballot, the following must be added to the statement required by (k)(i) of this subsection:

"The election for president and vice-president is different. Candidates for president and vice-president are the official nominees of their political party."

(4) Instructions that accompany a special absentee ballot authorized by RCW 29A.40.050 must also explain that the voter may request and subsequently vote a regular ballot, and that if the regular ballot is received by the county auditor, the regular ballot will be tabulated and the special absentee ballot will be voided.

(5) Each ballot must explain, either in the general instructions or in the heading of each race, the number of candidates for whom the voter may vote (e.g., "vote for one").

((4)) (6)(a) If the ballot includes a partisan office, the ballot must include the following notice in bold print immediately above the first partisan congressional, state or county office: "READ: Each candidate for partisan office may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(b) When the race for president and vice-president appears on a general election ballot, instead of the notice required by (a) of this subsection, the ballot must include the following notice in bold print after president and vice-president but immediately above the first partisan congressional, state or county office: "READ: Each candidate for president and vice-president is the official nominee of a political party. For other partisan offices, each candidate may state a political party that he or she prefers. A candidate's preference does not imply that the candidate is nominated or endorsed by the party, or that the party approves of or associates with that candidate."

(c) The same notice may also be listed in the ballot instructions.

((5)) (7) Counties may use varying sizes and colors of ballots ~~(cards if)~~, provided such size and color is used consistently throughout a region, area or jurisdiction (e.g., legislative district, commissioner district, school district, etc.). Varying color and size may also be used to designate ~~(absentee ballots, poll ballots, or provisional)~~ various types of ballots.

((6)) (8) Ballots shall be formatted as provided in RCW 29A.36.170. Ballots shall not be formatted as stated in RCW 29A.04.008 (6) and (7), 29A.36.104, 29A.36.106, 29A.36.121, 29A.36.161 ~~((4))~~ (5), and 29A.36.191.

((7)) (9) Removable stubs are not considered part of the ballot.

AMENDATORY SECTION (Amending WSR 06-14-049, filed 6/28/06, effective 7/29/06)

**WAC 434-230-030 Placement of ballot measures for local units of government.** All county-wide ballot measures shall be listed immediately following state ballot measures. In the absence of state ballot measures, county-wide ballot measures shall appear first where state ballot measures would appear. For other local ballot measures and offices, each county shall establish written procedures to determine the order in which local units of government are to be listed on the ballot. Such order of local governmental units shall be

substantially consistent on (~~official, absentee, and sample~~) all ballots. The order may be determined by, but is not limited to the following: Size of jurisdictional area, alphabetical order by jurisdictional area, or such order as to provide for efficient use of ballot spacing and voting positions. Such procedures are to provide consistency from election to election within a county.

Except for county-wide ballot measures, local ballot measures and offices, if any, may be positioned in the area dedicated for that jurisdiction; or, local ballot measures may be grouped in a separate area dedicated to special measures only. This may be an area on the ballot separate from the candidates of such local government unit.

AMENDATORY SECTION (Amending WSR 97-21-045, filed 10/13/97, effective 11/13/97)

**WAC 434-230-090 Determining nominees for multi-position positions.** If there are two or more places to be filled for a nonpartisan office, the number of candidates (~~equalling~~) equaling the number of positions to be filled who receive the highest number of votes at the primary and an equal number who receive the next highest number of votes shall appear under the designation for that office.

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

**WAC 434-230-100 Political party precinct committee officer.** (~~(1) In even-numbered years, the election for the position of political party precinct committee officer must be held on the third Tuesday of August.~~

~~(2) Unlike candidates for public partisan office, candidates for precinct committee officer file and appear on the ballot as members of a major political party. The election of precinct committee officer is an intraparty election. Candidates compete against other candidates from the same political party. The candidate of each political party who receives the most votes is declared elected. Precinct committee officers are not elected according to the top two primary system established by chapter 2, Laws of 2005 (Initiative 872).~~

~~(3) Unlike candidates for public office, the order in which candidates for precinct committee officer appear on the ballot is based on each candidate's political party. The political party that received the highest number of votes from the electors of this state for the office of president at the last presidential election must appear first, with the other political parties following according to the number of votes cast for their nominees for president at the last presidential election. Within each party, candidates shall be listed in the order determined by lot.~~

~~(4) If no candidate files for political party precinct committee officer, the position appears on the ballot with space for a write-in. There is no special filing period, the political party does not appoint a candidate, and the election does not lapse. If no candidate is elected, the party may fill the position by appointment, pursuant to RCW 29A.28.071.~~

~~(5)(a) The position of political party precinct committee officer must appear following all measures and public offices.~~

~~(b) The heading must state, "election of political party precinct committee officer."~~

~~(c) The following explanation must be provided before the list of candidates: "Precinct committee officer is a position in each major political party. For this office only: If you consider yourself a democrat or republican, you may vote for a candidate of that party."~~

~~(d)(i) If all candidates are listed under one heading, the applicable major political party affiliation of either "democratic party candidate" or "republican party candidate" must be printed under each candidate's name. The first letter of each word must be capitalized, as shown in the following example:~~

~~John Smith~~

~~Democratic Party Candidate~~

~~The race must explain, "for a write-in candidate, include party."~~

~~(ii) If candidates are listed under a major political party heading, the applicable heading of either "democratic party candidates" or "republican party candidates" must be printed above each group of candidates. The first letter of each word must be capitalized. Space for a write-in must be provided for each political party heading.~~

~~(6) A voter may vote for only one candidate for precinct committee officer. If a voter votes for more than one candidate, the votes must be treated as overvotes. For the limited purpose of voting in a precinct committee officer election, a voter affiliates with a major political party when he or she votes for a candidate of that party.) The method for electing precinct committee officers on party ballots established in chapter 271, Laws of 2004 (the pick-a-party primary), was repealed by chapter 2, Laws of 2005. The method for electing precinct committee officers on a top two primary ballot under chapter 2, Laws of 2005 (the top two primary), was declared unconstitutional by the U.S. District Court for the Western District of Washington in *Washington State Republican Party, et al. v. State of Washington, et al.*, Case No. C05-0927-JCC (January 11, 2011). "The central holding is that the political parties, not the government, are free to define the scope of their membership." Consequently, precinct committee officer elections are no longer conducted by state or county government. As private organizations, the political parties determine how to conduct their internal affairs, including selection of their officers.~~

#### NEW SECTION

**WAC 434-230-130 Envelopes.** Mail-in ballots must be accompanied by the following:

(1) A security envelope, which may not identify the voter and must have a hole punched in a manner that will reveal whether a ballot is inside;

(2) A return envelope, which must be addressed to the county auditor and have a hole punched in a manner that will reveal whether the security envelope is inside. The return envelope must display the official election materials notice required by the United States Postal Service, display the words "POSTAGE REQUIRED" or "POSTAGE PAID" in the upper right-hand corner, and conform to postal department regulations.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-230-060	Primary votes required for appearance on general election ballot.
WAC 434-230-070	Method for billing expense for printing and distributing ballot materials.

AMENDATORY SECTION (Amending WSR 11-05-008, filed 2/3/11, effective 3/6/11)

**WAC 434-235-010 Scope.** (1) This chapter implements the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Sec. 1973ff, the Military and Overseas Voter Empowerment Act, 42 U.S.C. Sec. 1973ff, and the provisions for service and overseas voters in Title 29A RCW.

(2) Uniformed service voter is defined in 42 U.S.C. Sec. 1973ff-6(1) as:

(a) A member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote;

(b) A member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; or

(c) A spouse or dependent who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.

(3) Service voter is defined in RCW 29A.04.163 as any elector of the state of Washington who:

(a) Is a member of the armed forces under 42 U.S.C. Sec. 1973ff-6 while in active service;

(b) Is a member of a reserve component of the armed forces;

(c) Is a student or member of the faculty at a United States military academy;

(d) Is a member of the merchant marine of the United States; or

(e) Is a member of a religious group or welfare agency officially attached to and serving with the armed forces of the United States.

(4) References in Title 434 WAC to "service voter" include voters who meet either the federal definition for "uniformed service voter" or the state definition for "service voter."

(5) Overseas voter is defined in 42 U.S.C. Sec. 1973ff-6(5) as:

(a) An absent uniformed services voter who, by reason of active duty or service is absent from the United States on the date of the election involved;

(b) A person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(c) A person who resides outside the United States and (but for such residence) would be qualified to vote in the last

place in which the person was domiciled before leaving the United States.

~~((5))~~ (6) Overseas voter is defined in RCW 29A.04.109 as any elector of the state of Washington outside the territorial limits of the United States.

AMENDATORY SECTION (Amending WSR 11-05-008, filed 2/3/11, effective 3/6/11)

**WAC 434-235-020 Voter registration.** (1) A ~~((uniformed,))~~ service(;) or overseas voter may register to vote by providing:

(a) A voter registration application issued by the state of Washington;

(b) A federal post card application issued by the federal voting assistance program;

(c) A federal write-in absentee ballot issued by the federal voting assistance program;

(d) A national mail voter registration form issued by the election assistance commission; or

(e) ~~((An absentee))~~ A ballot with a valid signature on the ~~((return envelope oath))~~ ballot declaration.

(2) Pursuant to RCW 29A.40.010 and 29A.40.091, a ~~((uniformed,))~~ service(;) or overseas voter does not have to be registered in order to request ~~((an absentee))~~ a ballot. Consequently, a ~~((uniformed,))~~ service(;) or overseas voter may request a ballot and be registered after the registration deadlines of RCW 29A.08.140 have passed.

(a) If the voter is not currently registered, the county auditor must register the voter immediately. The voter must be flagged in the voter registration system as a service or overseas voter.

(b) A ~~((uniformed,))~~ service(;) or overseas voter must use his or her most recent residential address in Washington, or the most recent residential address in Washington of a family member.

(c) If the county auditor is unable to precinct the voter due to a missing or incomplete residential address on the application, the county auditor must attempt to contact the voter to clarify the application. If, in the judgment of the county auditor, there is insufficient time to correct the application before the next election or primary, the county auditor must issue the ~~((absentee))~~ ballot as if the voter had listed the county auditor's office as his or her residence. A special precinct for this purpose may be created. ~~((Upon its return, the ballot must be referred to the county canvassing board.))~~ The only offices and issues that may be tabulated are those common to the entire county and congressional races based on the precinct encompassing the auditor's office.

(d) A voter who registers to vote by signing the ~~((return envelope of the absentee))~~ ballot declaration is not required to provide a driver's license number, Social Security number or other form of identification as required in RCW 29A.08.-107.

(3) The county auditor must offer a ~~((uniformed,))~~ service(;) or overseas voter the option of receiving blank ballots by e-mail or postal mail. This requirement is satisfied if the ~~((uniformed,))~~ service(;) or overseas voter registers on an application that offers electronic ballot delivery as an option, or if the voter expresses a preference when register-

ing, updating a registration, or requesting a ballot. The county auditor must attempt to contact the voter by phone, e-mail, postal mail, or other means. If the voter does not indicate a preference or does not respond, the county auditor must send ballots by postal mail.

AMENDATORY SECTION (Amending WSR 11-05-008, filed 2/3/11, effective 3/6/11)

**WAC 434-235-030 ((Absentee)) Voting.** (1) A ~~((uniformed,))~~ service~~(,)~~ or overseas voter may request or return ~~((an absentee))~~ a ballot by:

- (a) Any manner authorized by WAC 434-250-030;
- (b) A federal post card application issued by the federal voting assistance program; or
- (c) A federal write-in absentee ballot issued by the federal voting assistance program.

~~(2) ((Pursuant to RCW 29A.40.070, absentee ballots issued to registered uniformed, service, or overseas voters must be mailed at least thirty days prior to the election or primary. Requests for absentee ballots received after that day must be processed immediately.~~

~~((3))~~ The county auditor must issue ~~((an absentee))~~ a ballot by mail, e-mail, or fax if specifically requested by the voter. A ballot does not have to be mailed if it is e-mailed or faxed to the voter. If an e-mail is returned as undeliverable and the voter has not provided an alternate e-mail address, then the ballot must be sent by postal mail.

~~((4))~~ (3) Ballot materials must include the mailing address, phone number, fax number, e-mail address, and web site of the county auditor's office to enable a voter to contact the elections office for additional information about the election. Ballot materials must include instructions on how to return the ballot by fax, e-mail, or postal mail, including how to include the ballot privacy sheet between the declaration page and the ballot. Ballot materials must include instructions on how to confirm that the voted ballot has been received by the elections office~~((This information must be provided))~~, in a format that the voter can keep after the voted ballot has been returned.

~~((5))~~ (4) If the county auditor is unable to issue ~~((an absentee))~~ a ballot due to insufficient information, the county auditor must attempt to contact the voter to clarify the request. If the county auditor is unable to obtain sufficient information to issue the ~~((absentee))~~ ballot, the county auditor must attempt to notify the voter of the reason that the ballot was not issued.

~~((6))~~ (5) Pursuant to RCW ~~((29A.40.150))~~ 29A.40.091, return envelopes must be printed to indicate that they may be returned postage-free.

AMENDATORY SECTION (Amending WSR 11-05-008, filed 2/3/11, effective 3/6/11)

**WAC 434-235-040 Processing ~~((absentee))~~ ballots.** (1) Any abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party shall be disregarded in determining the validity of a federal write-in absentee ballot or a special absentee ballot if the intention of the voter can be ascertained.

(2) For service and overseas voters, the date on the ~~((envelope))~~ ballot declaration associated with the voter's signature~~((, rather than the postmark on the envelope,))~~ determines the validity of the ballot. The signature on the ~~((oath))~~ ballot declaration must be dated no later than election day.

(3) Voted ballots returned by fax or e-mail must ~~((meet the requirements of RCW 29A.40.150 and WAC 434-208-060))~~ be received no later than 8:00 p.m. on election day. All materials associated with a ballot must be received no later than 8:00 p.m. The county auditor must apply procedures to protect the secrecy of voted ballots returned by fax or e-mail. Voted ballots returned by e-mail may be returned as multiple attachments or multiple e-mails. In order to maintain the secrecy of the ballot, the county auditor must print the e-mail and attachments. The printed e-mail and declaration page must be processed and retained the same as a ballot declaration. The printed ballot must be processed and retained the same as other ballots. In order to maintain the secrecy of the ballot, the electronic versions of the e-mail, ballot declaration, and ballot are exempt from public disclosure.

(4) The county auditor must provide statistics on voting by ~~((uniformed,))~~ service and overseas voters in the certification report required by RCW 29A.60.235 and in response to requests by the federal election assistance commission.

## Chapter 434-250 WAC

### ~~((VOTING))~~ ELECTIONS BY MAIL

#### ~~((BALLOTS))~~

#### ~~((ELECTIONS BY MAIL))~~

AMENDATORY SECTION (Amending WSR 11-05-008, filed 2/3/11, effective 3/6/11)

**WAC 434-250-030 ~~((Applications,))~~ Special absentee ballots.** (1) ~~((Each county auditor who does not conduct all elections by mail must provide a form to allow a poll voter to become an ongoing absentee voter. The form must include, but not be limited to, the following:~~

- (a) A space for the voter to print his or her name and the address at which he or she is registered to vote;
- (b) The address to which the ballot is to be mailed; and
- (c) A space for the voter to sign and date the application.

~~(2) As authorized by RCW 29A.40.020 and 29A.40.030, requests for a single absentee ballot may be made in person, by telephone, electronically, in writing, or by a family member or registered domestic partner. With the exception of county auditors who conduct primaries and elections entirely by mail, each county auditor must provide applications for requests made in writing. The form must include, but not be limited to, the following:~~

- (a) A space for the voter to print his or her name and the address at which he or she is registered to vote;
- (b) The address to which the ballot is to be mailed;
- (c) A space for the voter to indicate for which election or elections the application is made; and
- (d) A space for the voter to sign and date the application.

~~(3))~~ As authorized by RCW 29A.40.050, requests for a special absentee ballot must be made in writing and each county auditor must provide the applications. ~~((In addition to the requirements for a single absentee ballot, as provided in subsection (2) of this section,))~~ The form must include:

(a) A space for the voter to print his or her name and address where registered to vote;

(b) A postal or mailing address;

(c) A space for an overseas or service voter not registered to vote in Washington to indicate his or her last residential address in Washington; ~~(and~~

~~(b))~~ (d) A checkbox indicating that the voter will be unable to vote and return a regular ballot by normal delivery within the period provided for regular ballots; and

(e) A checkbox requesting that a ~~((single absentee))~~ regular ballot be forwarded as soon as possible.

(2) The county auditor shall honor any application for a special absentee ballot that is in substantial compliance with the provisions of this section. Any application for a special absentee ballot received more than ninety days prior to a primary or general election may be either returned to the applicant with the explanation that the request is premature or held by the auditor until the appropriate time and then processed.

~~((4) As authorized by RCW 29A.40.080, requests for an absentee ballot may be made by a resident of a health care facility, as defined by RCW 70.37.020(3). Each county shall provide an application form for such a registered voter to apply for a single absentee ballot by messenger on election day. The messenger may pick up the voter's absentee ballot and deliver it to the voter and return it to the county auditor's office.))~~ (3) Upon receipt of a special absentee ballot request, a regular ballot is mailed if available. If regular ballots are not available, the county auditor shall immediately send a special absentee ballot containing the known offices and measures scheduled to appear on the ballot; space for the voter to write in the name of any eligible candidate for each office and vote on any measure; and a list of any candidates who have filed and issues referred to the ballot.

Dear Voter:

[date]

Based on your recent registration, federal law requires that you provide identification with your ballot. **If you fail to provide identification, your ballot will not be counted.**

Please provide your driver's license number, Washington state identification card number, the last four digits of your Social Security number, or a ((copy)) photocopy of one of the following:

- Valid photo identification;
- A valid enrollment card of a federally recognized tribe in Washington;
- A current utility bill;
- A current bank statement;
- A current government check;
- A current paycheck; or
- A government document, other than a voter registration card, that shows both your name and address.

(4) If a regular ballot is returned, the special ballot is not counted.

(5) Write-in votes on special ballots are counted in the same manner as other write-in votes.

AMENDATORY SECTION (Amending WSR 09-03-110, filed 1/21/09, effective 2/21/09)

**WAC 434-250-035 Protected records voters.** (1) At least ~~((twenty))~~ eighteen days before every special, primary, or general election, authorized personnel shall review all protected records voter files and forward the appropriate ~~((absentee))~~ ballot for each protected records voter via the substitute mailing address.

(2) The ballot, ballot security envelope, and return envelope must be placed in an envelope addressed to the substitute address. The return envelope shall be ~~((printed))~~ marked in a manner that ensures that the returned ballot will be segregated and routed to the authorized personnel for processing.

(3) The voted ~~((absentee))~~ ballot for a protected records voter shall be processed by county authorized personnel. The authorized personnel shall maintain a record of ballots sent to protected records voters and a record of ballots returned. This record shall be maintained in accordance with WAC 434-324-034.

AMENDATORY SECTION (Amending WSR 09-03-110, filed 1/21/09, effective 2/21/09)

**WAC 434-250-045 Voters requiring verification of identity.** (1) If the voter registration record ~~((of an absentee voter))~~ is flagged as requiring verification of identity, a notice must be sent at the time of the election explaining that a photocopy of identification must be provided in order for the ballot to be counted, and listing what forms of identification are acceptable. The county auditor may provide an inner envelope separate from the security envelope for return of the photocopy of the identification.

(2) The notice to the ~~((absentee))~~ voter must be in substantially the following form:

You may return ~~((the))~~ a photocopy with your ballot but, in order to protect the secrecy of your ballot, do not place the photocopy inside the security envelope.

**If you do not provide a copy of your identification, your ballot will not be counted.**

If you have any questions, please feel free to contact the \_\_\_\_\_ County Auditor's Office at \_\_\_\_\_.

(3) If the voter provides one of the acceptable forms of identification no later than the day before certification of the election, the flag on the voter registration record must be removed and the ballot must be counted.

(4) If the voter fails to provide one of the acceptable forms of identification by the day prior to certification of the election, the ballot shall not be counted. If the voter provides one of the acceptable forms of identification at a later date, the ballot cast in that election shall not be counted but the flag on the voter registration record must be removed.

**Reviser's note:** The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

**WAC 434-250-070 Forwarding ballots.** (1) If the county auditor chooses to forward ballots ~~((as authorized by RCW 29A.40.091))~~, the county auditor must utilize postal service endorsements that allow the ballots to be forwarded, allow the county auditor to receive the updated address information, and allow the return of ballots not capable of being forwarded. A voter may only vote a ballot specific to the address where he or she is registered to vote, rather than a ballot specific to a new address. ~~((The county auditor must include instructions substantially similar to the following:~~

~~If you have changed your permanent residence address, please contact your county auditor to ensure the ballot you receive in future elections contains the races and issues for your residential address. If you have any questions about your eligibility to vote in this election, please contact your county auditor.))~~

(2) If the county auditor does not forward ballots, the envelope must clearly indicate the ballot is not to be forwarded and is to be returned to the county auditor with any available address updates. If the county auditor receives updated address information from the post office, the county auditor may send the voter a ballot specific to the address where the voter is registered to vote.

(3) If a ballot is returned or forwarded, the county auditor must, following certification of the election, either:

(a) Transfer the voter registration and send the voter an acknowledgment notice, if the updated address is within the county; or

(b) Place the voter on inactive status and send the voter a confirmation notice to all known addresses, if no updated address information was received or the updated address is outside the county.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

**WAC 434-250-080 Replacement ballots.** The county auditor may issue a replacement ballot, as authorized by RCW ~~((29A.40.061))~~ 29A.40.070, if the request is received prior to 8:00 p.m. on election day. Requests may be made in person, in writing, by telephone, or electronically, by the voter, a family member, or a registered domestic partner.

Replacement ballots or the original ballot, whichever is received first, shall be credited to the voter's registration file and tabulated if the ballot meets all requirements for tabulation. If the auditor receives additional ballots from a voter, as indicated by the fact that the voter is already credited with voting, the additional ballots shall not be counted and shall be forwarded to the county canvassing board for rejection.

AMENDATORY SECTION (Amending WSR 06-02-028, filed 12/28/05, effective 1/28/06)

**WAC 434-250-095 ~~((Voting-on))~~ Direct recording electronic voting devices.** (1) If a voter ~~((who was issued an absentee or mail ballot))~~ requests to vote on a direct recording electronic voting device, the county auditor must first confirm that the voter has not already returned a voted ballot. Confirmation that the voter has not already returned a voted ballot may be achieved by accessing the county voter registration system by electronic, telephonic, or other means. If the county auditor is unable to confirm that the voter has not already returned a voted ballot, the voter may not vote on a direct recording electronic voting device.

~~((Consistent with RCW 29A.46.110,))~~ In order to prevent multiple voting, the voter must be immediately credited or otherwise flagged as having voted. If a voted ~~((absentee or))~~ mail ballot is subsequently returned after a ballot is cast on the direct recording electronic voting device, the ~~((absentee or))~~ mail ballot must not be counted.

(2) Before a direct recording electronic voting device may be used by a voter, an election officer must verify:

(a) The paper printer or paper canister is secured so that the paper record may not be removed from the device by anyone other than an election officer;

(b) Only a blank portion of the paper record is visible to the voter as he or she approaches the device; and

(c) The paper printer or paper canister is sealed with a numbered seal to ensure the paper tape cannot be removed by the voter.

(3)(a) If a ballot on a direct recording electronic device has not been cast but has been printed by the voter, the election officer may cast the ballot.

(b) If a ballot on a direct recording electronic device has not been printed nor cast by the voter, the election officer

must cancel the ballot and make a corresponding notation in the accountability form.

(4) If any seal or lock on a direct recording electronic device, including seals for the paper printer or paper canister, has been broken or tampered with, the direct recording electronic device and paper printer must be removed from service for the remainder of the election. A written report regarding the circumstances of the removal from service must be sent to the county canvassing board.

(5) If the paper printer for a direct recording electronic device malfunctions or runs out of paper, the following must occur:

(a) If the election officer has confirmed that no ballots have been cast after the printer ran out of paper or malfunctioned, he or she must remove the direct recording electronic device and paper printer from service, and document the problem. The direct recording electronic device and paper printer may be returned to service only if the problem has been corrected.

(b) If the election officer is unable to confirm that no ballots were cast after the printer ran out of paper or malfunctioned, or if the problem cannot be corrected, the direct recording electronic device and paper printer must be removed from service for the remainder of the election. The auditor must present a written report regarding the circumstances of the removal from service to the county canvassing board.

(6) If an electronic ballot has been cast without a readable corresponding paper record, the county auditor may print the ballot image stored on the device for use as a paper record for that device, in the case of an audit or manual recount. This may require printing all ballot images from that machine.

(7) A provisional ballot may only be voted on a direct recording electronic voting device if the voting system has been certified by the secretary of state for provisional voting and the county auditor has submitted approved procedures to the secretary of state.

(8)(a) If a direct recording electronic voting device must be transferred from a voting center that is not in the same location as the counting center, the paper records must be either:

(i) Placed in transfer containers; or

(ii) Transferred in the paper printer or paper canister if the paper printer or paper canister is sealed so the paper record cannot be removed without breaking the seal.

(b) Paper records must be accompanied by a transmittal sheet which must include at a minimum:

(i) The voting center where the direct recording electronic device was utilized;

(ii) The seal number from the paper printer; and

(iii) The serial number or other identifier of the direct recording electronic device if distinctly unique from the seal number on the paper record printer or paper canister.

(c) If paper records are placed in a transfer container, the election officer must sign the transmittal sheet and place it in the transfer container. The number of paper record tapes included in the container must be recorded on the transmittal sheet. A unique prenumbered seal must be applied to the container.

(d) The data pack or cartridge of the direct recording device must be transported to the counting center in a sealed container.

AMENDATORY SECTION (Amending WSR 10-14-091, filed 7/6/10, effective 8/6/10)

**WAC 434-250-100 Ballot deposit sites ((and voting centers)).** (1) If a location only receives ballots and does not issue any ballots, it is considered a ballot deposit site. Ballot deposit sites may be staffed or unstaffed.

(a) If a ballot deposit site is staffed, it must be staffed by at least two people. Deposit site staff may be employees of the county auditor's office or persons appointed by the auditor. If a deposit site is staffed by two or more persons appointed by the county auditor, the appointees shall be representatives of different major political parties whenever possible. Deposit site staff shall subscribe to an oath regarding the discharge of their duties. Staffed deposit sites open on election day must be open ((from 7:00 a.m.)) until 8:00 p.m. Staffed deposit sites may be open ((prior to the election)) according to dates and times established by the county auditor. Staffed deposit sites must have a secure ballot box that is constructed in a manner to allow return envelopes, once deposited, to only be removed by the county auditor or by the deposit site staff. If a ballot envelope is returned after 8:00 p.m. on election day, deposit site staff must note the time and place ((of deposit on the ballot envelope,)) and ((such ballots must be referred)) refer the ballot to the canvassing board.

(b) Unstaffed ballot deposit sites consist of secured ballot boxes that allow return envelopes, once deposited, to only be removed by authorized staff. Ballot boxes located outdoors must be constructed of durable material able to withstand inclement weather, and be sufficiently secured to the ground or another structure to prevent their removal. From eighteen days prior to election day until 8:00 p.m. on election day, two people who are either employees of or appointed by the county auditor must empty each ballot box with sufficient frequency to prevent damage and unauthorized access to the ballots.

(2) ((If a location offers replacement ballots, provisional ballots, or voting on a direct recording electronic device, it is considered a voting center. The requirements for staffed ballot deposit sites apply to voting centers. Each voting center must:

~~(a) Be posted according to standard public notice procedures;~~

~~(b) Be an accessible location consistent with chapters 29A.16 RCW and 434.257 WAC;~~

~~(c) Be marked with signage outside the building indicating the location as a place for voting;~~

~~(d) Offer disability access voting in a location or manner that provides for voter privacy;~~

~~(e) Offer provisional ballots, which may be sample ballots that meet provisional ballot requirements;~~

~~(f) Require each voter who votes on a direct recording electronic voting device to sign and date the following oath, and record the information in such a manner that the ballot cannot be traced back to the voter:~~



~~I do solemnly swear or affirm under penalty of perjury that I am:~~

- ~~A citizen of the United States;~~
- ~~A legal resident of the state of Washington;~~
- ~~At least eighteen years old on election day;~~
- ~~Voting only once in this election;~~
- ~~Not ineligible to vote due to a felony conviction; and~~
- ~~Not disqualified from voting due to a court order.~~

~~It is illegal to forge a signature or cast a ballot in another person's name. Attempting to vote when not qualified, attempting to vote more than once, or falsely signing this oath is a felony punishable by a maximum imprisonment of five years, a maximum fine of ten thousand dollars, or both.~~

~~(g) Request identification, consistent with RCW 29A.44.205 and WAC 434-253-024, from each voter voting on a direct recording electronic voting device or voting a provisional ballot;~~

~~(h) Issue a provisional ballot to each voter who is unable to provide identification in accordance with (g) of this subsection;~~

~~(i) Have electronic or telephonic access to the voter registration system consistent with WAC 434-250-095 if voters are voting on a direct recording electronic voting device;~~

~~(j) Provide either a voters' pamphlet or sample ballots;~~

~~(k) Provide voter registration forms;~~

~~(l) Display a HAVA voter information poster;~~

~~(m) Display the date of that election;~~

~~(n) Provide instructions on how to properly mark the ballot;~~

~~(o) Provide election materials in alternative languages if required by the Voting Rights Act; and~~

~~(p) Use an accountability form to account for all ballots issued.~~

~~(3)) Ballot boxes must be secured at all times, with seal logs that document each time the box is opened and by whom. Ballots must be placed into secured transport carriers and returned to the county auditor's office or another designated location. At exactly 8:00 p.m. on election day, all ballot boxes must be emptied or secured to prevent the deposit of additional ballots.~~

#### NEW SECTION

**WAC 434-250-105 Voting centers.** (1) If a location offers replacement ballots, provisional ballots, or voting on a direct recording electronic device, it is considered a voting center. The requirements for staffed ballot deposit sites apply to voting centers. Each voting center must:

(a) Be an accessible location. "Accessible" means the combination of factors which create an environment free of barriers to the mobility or functioning of voters. The environment consists of the routes of travel to and through the buildings or facilities used for voting. The Americans with Disabilities Act Checklist for Polling Places shall be used when determining the accessibility of a voting center. A voting center is fully accessible if all responses in each category are "Yes";

(b) Be marked with signage outside the building indicating the location as a place for voting;

(c) Issue ballots that include a declaration in the ballot materials;

(d) Offer disability access voting in a location or manner that provides for voter privacy. For each voting center, the county auditor must have a contingency plan to accommodate accessible voting in the event that an accessible voting unit malfunctions or must be removed from service;

(e) Offer provisional ballots, which may be sample ballots that meet provisional ballot requirements;

(f) For voters voting on a direct recording electronic voting device, require the voter to provide photo identification, consistent with chapter 10, Laws of 2011, section 43(7), and to sign and date the declaration in WAC 434-230-015. The county auditor is not required to compare the signature on the declaration to the signature in the voter registration record if the voter provided identification. To prevent double voting, the voting center must have electronic or telephonic access to the voter registration system, consistent with WAC 434-250-095;

(g) Provide either a voters' pamphlet or sample ballots;

(h) Provide voter registration forms;

(i) Display a HAVA voter information poster;

(j) Display the date of that election;

(k) During a primary that includes a partisan office, display the notice provided in WAC 434-230-015 (3)(j), and during a general election that includes a partisan office, display the notice provided in WAC 434-230-015 (3)(k). The party preference notices may also be posted on-screen in direct recording electronic voting devices;

(l) Provide instructions on how to properly mark the ballot; and

(m) Provide election materials in alternative languages if required by the Voting Rights Act.

(2) Where it appears that a particular voter is having difficulty casting his/her vote, and as a result, is impeding other voters from voting, the staff may provide assistance to that voter in the same manner as provided by law for those voters who request assistance. Where it appears that a voter is impeding other voters from voting to simply cause delay, the staff shall ask the voter to expedite the voting process. In the event the voter refuses to cooperate, the staff shall, whenever practical, contact the county auditor, who may request assistance from the appropriate law enforcement agencies if he or she deems such action necessary.

(3) At exactly 8:00 p.m. on election day, all ballot boxes must be emptied or secured to prevent the deposit of additional ballots. Voted ballots, including provisional, mail-in, and direct recording electronic and paper records, must be placed into secured transport carriers for return to the county auditor's office or another designated location.

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

#### **WAC 434-250-110 Processing ((of absentee)) ballots.**

(1) "Initial processing" means all steps taken to prepare ballots for tabulation. Initial processing includes, but is not limited to: Verification of the signature and postmark on the ballot declaration; removal of the security envelope from the return envelope; removal of the ballot from the security envelope;

lope; manual inspection for damage, write-in votes, and incorrect or incomplete marks; duplication of damaged and write-in ballots; scanning and resolution of ballots on a digital scan voting system; and other preparation of ballots for final processing.

(2) "Final processing" means the reading of ballots by an electronic vote tallying system for the purpose of producing returns of votes cast, but does not include tabulation.

(3) "Tabulation" means the production of returns of votes cast for candidates or ballot measures in a form that can be read by a person, whether as precinct totals, partial cumulative totals, or final cumulative totals.

(4) Prior to initial processing of ballots, the county auditor shall notify the county chair of each major political party of the time and date on which ~~((absentee))~~ processing shall begin, and shall request that each major political party appoint official observers to observe the processing and tabulation of ~~((absentee))~~ ballots. If any major political party has appointed observers, such observers may be present for initial processing, final processing, or tabulation, if they so choose, but failure to appoint or attend shall not preclude the processing or tabulation of ~~((absentee))~~ ballots.

~~((2))~~ ~~In counties tabulating absentee ballots on an electronic vote tallying system, the canvassing board or its representatives may perform~~ (5) Initial processing of ~~((absentee))~~ voted ballots ~~((upon their return))~~, which may include scanning and resolving ballots on a digital scan voting system, may begin as soon as voted ballots are received. All ~~((absentee))~~ ballots must be kept in secure storage until final processing. Secure storage must employ the use of numbered seals and logs, or other security measures which will detect any inappropriate or unauthorized access to the secured ballot materials when they are not being prepared or processed by authorized personnel. The county auditor must ensure that all security envelopes and return envelopes are empty, either by a visual inspection of the punched hole to confirm that no ballots or other materials are still in the envelopes, or by storing the envelopes with a tie, string, or other object through the holes.

~~((3))~~ (6) Final processing of voted ballots, which may include scanning ballots on an optical scan voting system, may begin after 7:00 a.m. on the day of the election. Final processing may begin after 7:00 a.m. the day before the election if the county auditor has submitted an approved security plan to the secretary of state that prevents tabulation until after 8:00 p.m. on the day of the election.

~~((4))~~ (7) Tabulation may begin after 8:00 p.m. on the day of the election.

~~((5))~~ (8) In counties tabulating ballots on an optical scan vote tallying system, the vote tallying system must reject all overvotes and blank ballots.

(a) All rejected ballots shall be outstacked for additional manual inspection.

(b) The outstacked ballots shall be inspected in a manner similar to the original inspection with special attention given to stray marks, erasures, and other conditions that may have caused the vote-tallying device to misread and reject the ballot.

(c) If inspection reveals that a ballot must be duplicated in order to be read correctly by the vote tallying system, the ballot must be duplicated.

AMENDATORY SECTION (Amending WSR 10-14-091, filed 7/6/10, effective 8/6/10)

**WAC 434-250-120 Verification of the signature and ~~((postmark on ballots))~~ return date.** (1) A ballot shall be counted only if:

(a) ~~((It is returned in the return envelope, or a similar envelope if it contains the same information;~~

~~((b))~~ The ~~((affidavit))~~ ballot declaration is signed with a valid signature ~~((in the place afforded for the signature on the envelope));~~

~~((c))~~ ~~((b))~~ The signature has been verified pursuant to WAC 434-379-020, or if the voter is unable to sign his or her name, two other persons have witnessed the voter's mark; and

~~((d))~~ ~~((c))~~ ~~((i))~~ The envelope is postmarked not later than the day of the election ~~((, or deposited in the auditor's office, a polling location, or a designated deposit site not later than 8:00 p.m. on election day; and~~

~~((e))~~ The ballot is received prior to certification of the election) and received not later than the day before certification of the election;

(ii) The ballot is deposited in a ballot drop box no later than 8:00 p.m. on election day; or

(iii) The ballot of a service or overseas voter received by fax or e-mail is received no later than 8:00 p.m. on election day.

(2) Postage that includes a date, such as meter postage or a dated stamp, does not qualify as a postmark. If an envelope lacks a postmark or if the postmark is unreadable, the date to which the voter has attested on the ~~((oath))~~ ballot declaration determines the validity of the ballot, per RCW 29A.40.110. If a ballot is from a service or overseas voter, the date to which the voter has attested on the ballot declaration determines the validity of the ballot, per RCW 29A.40.100.

(3) The signature on the ~~((return envelope, or on a copy of the return envelope,))~~ ballot declaration must be compared with the signature in the voter's voter registration file using the standards established in WAC 434-379-020. The signature on a ~~((return envelope))~~ ballot declaration may not be rejected merely because the name in the signature is a variation of the name on the voter registration record. The canvassing board may designate in writing representatives to perform this function. All personnel assigned to the duty of signature verification shall subscribe to an oath administered by the county auditor regarding the discharge of his or her duties. Personnel shall be instructed in the signature verification process prior to actually canvassing any signatures. Local law enforcement officials may instruct those employees in techniques used to identify forgeries.

(4) The signature verification process shall be open to the public, subject to reasonable procedures adopted and promulgated by the canvassing board to ensure that order is maintained and to safeguard the integrity of the process.

AMENDATORY SECTION (Amending WSR 07-12-032, filed 5/30/07, effective 6/30/07)

**WAC 434-250-130 Maintenance of an audit trail.**

Each county auditor shall maintain an audit trail with respect to the processing of ~~((absentee))~~ ballots, which shall include, but not be limited to, the following:

- (1) A record of ~~((the date each absentee ballot application was received,))~~ the date the ballot was mailed or issued, and the date the ballot was received;
- (2) The number of ~~((absentee))~~ ballots issued and returned, by legislative and congressional district, for each primary and general election;
- (3) A record of the disposition of each request for ~~((an absentee))~~ a ballot that was not honored;
- (4) A record of the disposition of each returned ~~((absentee))~~ ballot that was not counted;
- (5) A record of the time and place each time the county canvassing board met; and
- (6) ~~((A))~~ Documentation of the security procedures undertaken to protect the integrity of all ballots after receipt, including the seal numbers used to secure the ballots during all facets of the ~~((absentee ballot))~~ process.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

**WAC 434-250-140 Ballot process to be expedited.**

All election officials charged with any duties or responsibilities with respect to ~~((absentee))~~ ballots shall ensure that those duties are performed in an expeditious manner, in order to maximize the opportunity for voters to receive, vote, and return the ballots in time to be counted.

AMENDATORY SECTION (Amending WSR 07-20-074, filed 10/1/07, effective 11/1/07)

**WAC 434-250-320 ~~((Ballot deposit sites and voting centers in mail elections.))~~ Locations to deposit ballots.**

A county auditor ~~((conducting a county-wide election entirely by mail))~~ must provide at least two locations to deposit ballots. These locations may be either a ballot deposit site, as defined in WAC 434-250-100, or a voting center, as defined in WAC ~~((434-250-100))~~ 434-250-105. At least one location may be at the county auditor's office. All other deposit sites must be at geographical locations that are different from the county auditor's office.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-250-010	Purpose.
WAC 434-250-020	Definitions.
WAC 434-250-040	Instructions to voters.
WAC 434-250-050	Envelopes.
WAC 434-250-085	Provisional ballots issued before election day.

WAC 434-250-090	Absentee ballots issued after the poll lists have been marked.
WAC 434-250-300	Elections by mail.
WAC 434-250-310	Notice of elections by mail.
WAC 434-250-330	County auditor's office as a voting center.

AMENDATORY SECTION (Amending WSR 09-18-098, filed 9/1/09, effective 10/2/09)

**WAC 434-260-020 Definitions.** As used in this chapter:

- (1) "Election review" means the process of examining all or a part of a county's election policies and procedures and includes the review of any documentation of those procedures;
- (2) "Election review staff" means the person or persons employed by the secretary of state for the purpose of conducting election reviews;
- (3) "Special election review" means an election review conducted in a county or counties whenever the unofficial returns of a primary or election indicate that a mandatory recount is likely in a race for the state legislature, congress, or statewide office;
- (4) "Preliminary review report of findings and recommendations" means that draft report made by the election review staff to the county auditor and which contains any recommendations made by the review staff and a preliminary conclusion regarding the county's election procedures;
- (5) "Draft election review report" means that report made by the election review staff to the county auditor and the designated members of the county canvassing board. The auditor and/or county canvassing board must respond to the draft election review report in writing and may appeal the report to the election administration and certification board;
- (6) "Final election review report" means that report made by the election review staff which contains a copy of the recommendations made by the review staff, the response to those recommendations made by the county auditor or the county canvassing board, and a conclusion written by the staff;
- (7) "Special review recommendations" means recommendations made by the review staff to the county auditor and the county canvassing board following the conduct of any special review;
- (8) "County auditor designee" is that person designated by the county auditor to participate in the review process, pursuant to the provisions of RCW 29A.04.580. Such a designee must be certified as required by chapter 29A.04 RCW.
- (9) "Election administrator" means the person or persons appointed by the county auditor to election management positions as required by RCW 36.22.220 and the state director of elections, assistant directors of elections, certification and training program staff members, and any other secretary of state election division employees designated by the director of elections;
- (10) "Assistant election administrator" means any person involved in the administration of elections at the state or county level who has been designated as an assistant election

administrator by the state director of elections or the county auditor as applicable;

(11) "County canvassing board members" means those officers designated as such pursuant to the provision of chapter 29A.60 RCW;

(12) "Election administration and certification board" means that board created pursuant to the provisions of RCW 29A.04.510(;

(13) "~~Creditable training hours~~" means ~~each creditable training hour contemplated in WAC 434-260-230 and shall consist of a minimum of fifty minutes of instructional activity programmed for the purpose of mastering information beneficial to the performance of the duties of administering elections~~)).

AMENDATORY SECTION (Amending WSR 09-18-098, filed 9/1/09, effective 10/2/09)

**WAC 434-260-040 Election reviews—Secretary of state to designate.** Not later than ~~((May 15))~~ thirty days prior to the start of an election review the secretary of state shall notify, in writing, the counties selected for an election review ~~((and the chairs of the state committees of any major political party))~~. Whenever possible, election reviews shall be conducted on dates that are mutually agreeable to the secretary and to the county auditor ~~((; except that those parts of the review process dealing with the actual conduct and canvassing of the election itself must be conducted between election day and the certification of the election returns))~~ allowing the reviewer to observe all election procedures. In designating counties to be reviewed, the secretary shall take into consideration any complaints filed with his or her office pursuant to the provisions of RCW 29A.04.570 (1)(b).

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

**WAC 434-260-050 Notice of special review.** Notice of a special review shall be provided to the county auditor ~~((and the political party chairs;))~~ by telephone ~~((and by electronic facsimile transmission;))~~ or e-mail not later than twenty-four hours after the determination has been made to conduct the special review.

AMENDATORY SECTION (Amending WSR 09-18-098, filed 9/1/09, effective 10/2/09)

**WAC 434-260-110 Election review checklist.** The secretary of state shall develop an election review checklist, which shall be the basis for any election review and which shall also serve, in whole or in part, as the basis for any special review. The checklist for a regular review shall be provided to the county auditor at least one week prior to the beginning of the reviews. ~~((A checklist shall be provided to the chairs of the state central committees of each major political party at least once per year.))~~

AMENDATORY SECTION (Amending WSR 99-12-004, filed 5/19/99, effective 6/19/99)

**WAC 434-260-130 Preliminary review report of findings and recommendations.** The review staff shall verbally relay any recommendations found during observation of the county's procedures by certification of the election. As soon as practical, but in any event not later than ~~((sixty))~~ ninety days following the certification of the election, the review staff shall issue a preliminary review report of a findings and recommendations. The report shall be made to the county auditor.

The preliminary review report of findings and recommendations is exempt from public inspection and copying, as provided by RCW ~~((42.17.310))~~ 42.56.280.

AMENDATORY SECTION (Amending WSR 09-18-098, filed 9/1/09, effective 10/2/09)

**WAC 434-260-150 Final election review report.** As soon as practicable, but in any event not later than ~~((thirty))~~ ten business days after the ~~((issuance of the draft election review report))~~ receipt of the county's response, the review staff shall issue a final election review report. The report shall be made to the county canvassing board, and shall include, but not be limited to, the following:

- (1) A narrative description of any general observations by the review staff;
- (2) A narrative description of any recommendations made by the review staff;
- (3) A response by the county auditor or the county canvassing board;
- (4) A conclusion by the review staff.

A copy of the final review report shall be provided to the chairperson of the election administration and certification board and a copy shall also be kept on file by the secretary of state.

AMENDATORY SECTION (Amending WSR 09-18-098, filed 9/1/09, effective 10/2/09)

**WAC 434-260-155 County review follow-up.** Within one year following the issuance of the final review report, the secretary of state shall verify that the county has taken the steps listed in the response to correct the problems noted in the report. ~~((If steps have not been taken;))~~ The secretary of state shall send a letter to the county canvassing board listing the ((areas needing correction)) results of the follow-up interview. A copy of the letter shall be provided to the county auditor and kept on file with the secretary of state.

AMENDATORY SECTION (Amending WSR 06-18-103, filed 9/6/06, effective 10/7/06)

**WAC 434-260-220 Certification of election administrators.** Election administrators shall become certified upon completion of the following:

- (1) Completion of the secretary of state's mandatory orientation course;
- (2) Two years of service during the three-year period immediately prior to the request for initial certification;

(3) Taking and passing the open book written test described in WAC 434-260-260;

(4) A minimum of forty hours participation in conferences and workshops (~~(involving elections related subjects or subjects approved by the election administration and certification board and sponsored)~~) provided by:

- (a) The Washington Association of County Auditors;
- (b) The secretary of state;
- (c) The elections center;
- (d) ~~((Visiting other county election departments for training and/or orientation purposes (maximum four hours);~~
- (e) ~~The Federal Election Commission;~~
- (f) ~~Other national associations related to elections or government administration, approved by the Election Administration and Certification Board; or~~
- (g) ~~Other conferences or courses approved by the Election Administration and Certification Board.~~

Such)) The United States Election Assistance Commission;

(e) The Federal Voting Assistance Program; or

(f) Other conferences or courses related to election administration or government administration approved by the Election Administration and Certification Board.

Election administrators may also claim up to four hours of training credit for training received while visiting other county election departments.

All training shall be received not more than five years prior to the date of a request for initial certification and shall include at least thirty hours of election-specific training.

(5) A high school diploma or its equivalent.

AMENDATORY SECTION (Amending WSR 10-14-091, filed 7/6/10, effective 8/6/10)

**WAC 434-261-005 Definitions.** (1) "Manual inspection" is the process of inspecting each voter response position on each voted ballot. Inspection is performed (~~(on an absentee ballot)~~) as part of the initial processing (~~(, and on a poll ballot after breaking the seals and opening the ballot containers from the precincts or, in the case of precinct counting systems, prior to the certification of the election)~~);

(2) "Duplicating ballots" is the process of making a true copy of valid votes from ballots that may not be properly counted by the vote tallying system. Ballots may be duplicated on blank ballots or by making changes on an electronic image of the ballot. The original ballot may not be altered in any way;

(3) "Readable ballot" is any ballot that the certified vote tallying system can accept and read as the voter intended without alteration, and that meets the standards of the county canvassing board subject to the provisions contained in this title;

(4) "Unreadable ballot" is any ballot that cannot be read by the vote tallying system as the voter intended without alteration. Unreadable ballots may include, but not be limited to, ballots with damage, write-in votes, incorrect or incomplete marks, and questions of voter intent. Unreadable ballots may subsequently be counted as provided by these administrative rules;

(5) "Valid signature" on a ballot (~~(envelope))~~ declaration for a registered voter eligible to vote in the election is:

(a) A signature verified against the signature in the voter registration file; or

(b) A mark witnessed by two people.

(6) "Overvote" is votes cast for more than the permissible number of selections allowed in a race or measure. An overvoted race or measure does not count in the final tally of that race or measure. Example of an overvote would be voting for two candidates in a single race with the instruction, "vote for one."

(7) "Undervote" is no selections made for a race or measure.

(8) "Election observers" means those persons designated by the county political party central committee chairperson to observe the counting of ballots and related elections procedures.

(9) "Seal log" is a log documenting each time a numbered seal is attached or removed from a ballot container. The log must include the seal number, date, and identifying information of persons attaching or removing the seal. Following certification of the election, the seal log must include documentation as to why the seal was removed from a ballot container.

AMENDATORY SECTION (Amending WSR 97-21-045, filed 10/13/97, effective 11/13/97)

**WAC 434-261-010 Counting center location—Direction of proceedings.** (~~(In counties using voting devices and vote tallying systems where the ballots are to be processed and/or tabulated at a location other than the precinct,))~~ The county auditor shall designate a location to serve as the counting center. If that location is other than the ((court-house)) county auditor's office or county election office, the auditor shall include the location of the counting center in the published notice of elections. The county auditor shall be responsible for all counting center functions. Within the counting center, no person except those authorized by the county auditor may touch any ballot or ballot container, or operate a vote tallying system. The auditor shall identify either by roster or identification tag, or both, those persons so authorized. The vote tallying process shall be open to the public to the extent that public observation does not interfere with the proceedings or jeopardize the security of the ballots. The auditor shall establish local administrative rules pertaining to public observers including the media and how they may be accommodated and the necessary limitations thereto.

AMENDATORY SECTION (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

**WAC 434-261-020 ((Counting center—))Political party observers.** Counting center operations shall be observed by at least one representative from each political party, if representatives have been appointed by the respective political parties and those representatives are present while the counting center is in operation.

Prior to the primary or election, the county auditor shall determine the number of observers required in order to observe all aspects of the counting center proceedings, and

shall request, in writing, that each major political party appoint representatives to fill the requirements. Where more than one observer is to be appointed, the political party shall designate one of their observers as supervisor. ~~((Counting center))~~ The county auditor may require observers ~~((shall be provided))~~ to receive training with respect to ballot processing procedures and the vote tallying system ~~((as required by RCW 29A.12.120))~~.

Before final assignment as observers, major political party representatives so appointed shall be reviewed by the county auditor, who may refuse to approve any person so appointed. In the event the auditor rejects a person designated, he or she shall promptly notify the political party concerned and request that a substitute observer be appointed, and shall ensure that the substitute observer is trained ~~((as provided in subsection (2) of this section))~~.

Representatives of the major political parties appointed as observers shall be identified by roster, including assigned observer stations if more than one in the counting center, and by identification tags which will indicate the observer's name and the party represented.

AMENDATORY SECTION (Amending WSR 10-14-091, filed 7/6/10, effective 8/6/10)

**WAC 434-261-050 Unsigned ~~((oath))~~ ballot declaration or mismatched signatures.** (1) If a voter neglects to sign ~~((the oath on an absentee or provisional ballot envelope))~~ a ballot declaration, signs ~~((the oath))~~ with a mark and fails to have two witnesses attest to the signature, or signs ~~((the ballot envelope))~~ but the signature on the ~~((envelope))~~ ballot declaration does not match the signature on the voter registration record, the auditor shall notify the voter by first class mail of the correct procedures for curing the signature. If the ballot is received during the last three business days before the final meeting of the canvassing board, or the voter has been notified by first class mail and has not responded by the last three business days before the final meeting of the canvassing board, the auditor must attempt to notify the voter by telephone using information in the voter registration record.

(2) If the voter neglects to sign ~~((the oath on an absentee or provisional ballot envelope;))~~ or signs ~~((the oath))~~ with a mark and fails to have two witnesses attest to the signature, the voter must either:

(a) Appear in person and sign the ~~((affidavit))~~ declaration no later than the day before certification of the primary or election; or

(b) Sign a copy of the ~~((affidavit))~~ declaration provided by the auditor, or mark the ~~((affidavit))~~ declaration in front of two witnesses, and return it to the auditor no later than the day before certification of the primary or election.

(3) If the signature on the ~~((oath of an absentee or provisional ballot envelope))~~ declaration does not match the signature on the voter registration record, the voter must either:

(a) Appear in person and sign a new registration form no later than the day before certification of the primary or election. The updated signature provided on the new registration form becomes the signature on the voter registration record for the current election and future elections; or

(b) Sign a copy of the ~~((affidavit))~~ declaration provided by the auditor, and provide a photocopy of a valid government or tribal identification that includes the voter's current signature. The signature on the ~~((affidavit))~~ copy of the declaration must match the signature on the identification, and both of those signatures must match the signature on the ballot ~~((envelope))~~ declaration. The voter must return the signed ~~((affidavit))~~ declaration and identification to the auditor no later than the day before certification of the primary or election. The county auditor may also send the voter a new registration form to update the signature on the voter registration record for future elections; or

(c) Sign a copy of the ~~((affidavit))~~ declaration provided by the auditor in front of two witnesses who attest to the signature. The signature on the ~~((affidavit))~~ copy of the declaration must match the signature on the ballot ~~((envelope))~~ declaration. The voter must return the signed ~~((affidavit))~~ declaration to the auditor no later than the day before certification of the primary or election. The county auditor may also send the voter a new registration form to update the signature on the voter registration record for future elections.

(4) If the signature on ~~((an absentee or provisional ballot envelope))~~ a ballot declaration does not match the signature on the registration record because the name is different, the ballot may be counted as long as the handwriting is clearly the same. If it appears that the voter has changed his or her name, and the information required under RCW 29A.08.440 to complete a name change is not provided or is illegible, the auditor shall send the voter a change-of-name form under RCW 29A.08.440 and direct the voter to complete the form. If the signature on ~~((an absentee or provisional ballot envelope))~~ a ballot declaration does not match the signature on the registration record because the voter used initials or a common nickname, the ballot may be counted as long as the surname and handwriting are clearly the same.

(5) If the name on the signature does not match the printed name ~~((printed on the absentee ballot envelope))~~, and the signature on the ~~((absentee))~~ ballot ~~((envelope))~~ declaration does not match the signature on the voter registration record, because the ballot was signed by another registered voter, the ballot may be counted for the registered voter who actually signed the ~~((envelope))~~ ballot declaration if:

(a) The voter who signed the ~~((envelope))~~ declaration can be identified;

(b) The voter who signed the ~~((envelope))~~ declaration is registered at the same address as the voter to whom the ~~((envelope))~~ ballot was issued, or the two voters are otherwise eligible to vote on the same races and issues in that election;

(c) The signature on the ~~((envelope))~~ declaration matches the signature on the voter registration record; and

(d) The voter who signed the ~~((envelope))~~ declaration has not returned another ballot.

(6) If, prior to 8:00 p.m. on election day, a voter asserts that the signature on a ballot declaration is not his or her signature, the voter may be provided the opportunity to vote a replacement ballot.

(7) A voter may not cure a missing or mismatched signature for purposes of counting the ballot in a recount.

~~((7))~~ (8) A record must be kept of all ballots with missing and mismatched signatures. The record must contain the date on which the voter was contacted or the notice was mailed, as well as the date on which the voter ~~((signed the envelope, a copy of the envelope, a new registration form, or a change-of-name form))~~ subsequently submitted a signature to cure the missing or mismatched signature. That record is a public record under chapter 42.56 RCW and may be disclosed to interested parties on written request.

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

**WAC 434-261-055 Returned ballot lacking verification of identity.** If a voter who is provisionally registered and must still verify his or her identity as part of the registration process ~~((votes an absentee or provisional))~~ casts a ballot without providing adequate identification, the ballot cannot be counted unless the voter provides adequate identification no later than the day before certification of the election.

AMENDATORY SECTION (Amending WSR 07-12-032, filed 5/30/07, effective 6/30/07)

**WAC 434-261-070 Manual inspection of ballots.** (1) ~~((Upon receiving absentee ballots and upon breaking the seals and opening the ballot containers from the precincts,))~~ All voting positions on voted ballots shall be manually inspected on both sides of the ballot to determine whether the ballot is readable by the vote tabulating system. This manual inspection is a required part of processing ballots.

(2) ~~((The inspection of ballots tabulated at the poll site is not required provided that the poll site ballot programming provisions of RCW 29A.44.340 are in effect.~~

~~((3))~~ If the manual inspection process detects any physically damaged ballots, unreadable ballots which might not be correctly counted by the tabulating equipment, or marks that differ from those specified in the voting instructions, the county auditor shall refer such ballots to the county canvassing board to be counted according to the statewide standards on what is a vote, as provided in WAC 434-261-086. The county canvassing board shall make the final determination of voter intent for ballots not addressed in the statewide standards on what is a vote.

~~((4))~~ (3) The county canvassing board may delegate duplication of the ballots consistent with RCW 29A.60.140.

AMENDATORY SECTION (Amending WSR 07-12-032, filed 5/30/07, effective 6/30/07)

**WAC 434-261-075 Votes on something other than a ballot.** If the voter returns voting responses by mail on any form other than ~~((the))~~ a ballot ~~((sent))~~, the votes thereon shall be acceptable and tallied provided that:

(1) Only votes for offices or measures for which the voter is eligible are counted.

(2) The candidate or measure response position for which the voter is voting can be clearly identified.

(3) The ballot issued is not returned, or if returned, contains no marks indicating an attempt to vote it.

(4) A valid signature on ~~((an absentee oath))~~ a ballot declaration is received with the voting responses.

The votes accepted must then be duplicated to a ballot that can be read by the electronic voting equipment.

AMENDATORY SECTION (Amending WSR 06-23-094, filed 11/15/06, effective 12/16/06)

**WAC 434-261-102 Resolving ballots on digital scan vote tallying systems.** In counties tabulating ballots on a digital scan vote tallying system, two staff designated by the auditor's office must resolve ballots identified as requiring resolution. A log of the resolutions must be printed ~~((and))~~ linking staff conducting the resolutions to the ballots resolved. The log must be signed by the two staff.

#### NEW SECTION

**WAC 434-261-106 Manual counting of ballots.** Procedures for manual counting of ballots shall be substantially the same as a manual recount according to chapter 434-264 WAC.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

**WAC 434-261-110 Election results anomalies.** Precinct results, showing overvotes and undervotes, shall be inspected by the county canvassing board, or their designees, for anomalies that may indicate problems with the hardware or programming used to tabulate the votes. Anomalies may include, but are not limited to, an abnormal number of overvotes, undervotes, vote distribution, and voter turnout in any precinct, race, or jurisdiction. This inspection shall be completed within two days of the election.

Additionally, these results shall be used in the reconciliation process required in ~~((WAC 434-253-165 and))~~ RCW 29A.60.235.

AMENDATORY SECTION (Amending WSR 06-23-094, filed 11/15/06, effective 12/16/06)

**WAC 434-261-120 Referral of questionable ballots to canvassing board.** Whenever ~~((a precinct election officer or))~~ counting center personnel has a question about the validity of a ballot or the votes contained on the ballot that they are unable to resolve, the ballot shall be ~~((placed in a special container marked "for canvassing board."))~~ forwarded to the canvassing board for review. The facts giving rise to the question of validity must be noted.

~~((If the question arises at a polling place, the precinct inspector shall note the ballot on the ballot accountability form in a manner similar to recording other irregularly voted ballots and shall transfer it to the elections office in accordance with WAC 434-253-170.~~

~~((If the question arises in the counting center, the counting center supervisor shall record the ballot on an irregularly voted ballot log sheet.))~~

Ballots being held for determination of validity or voter's intent shall be provided the same security as regular voted

ballots and shall be kept in a secure area when not being processed.

NEW SECTION

**WAC 434-261-125 Free access system for provision ballots.** (1) Each county shall establish a free access system, as required by the Help America Vote Act, 42 U.S.C. sec. 15482 (a)(5), and RCW 29A.60.195 for provisional ballot voters.

(2) The free access system must employ measures to ensure that access is free of cost to the voter and restricted to the individual who cast the ballot, and that the voter's personal information is secure and confidential.

(3) For provisional ballots sent to other counties in the state, the free access system must provide the voter with information as to where the ballot was sent and how to find out if the ballot was counted in that county.

(4) For ballots received from another county, the free access system must provide the voter with information as to whether the ballot was counted and, if not, why. The county may send instructions to the voter on how to access the information.

(5) Provisional ballot disposition information must be available on a county's free access system no later than one week following certification of the election.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-261-030	Receipt of ballots at intermediate collection station.
WAC 434-261-040	Receipt of ballots at the counting center.
WAC 434-261-105	Tabulation of ballots to be continuous—Exception.

AMENDATORY SECTION (Amending WSR 06-14-046, filed 6/28/06, effective 7/29/06)

**WAC 434-262-010 Definitions.** As used in these regulations:

(1) "Canvassing" is that process of examining in detail a ballot, groups of ballots, election subtotals, or grand totals, in order to determine the final official returns of a primary, special, or general election, and to safeguard the integrity of the election process.

(2) "County canvassing board" is that body charged by law with the duty of canvassing ballots, of ruling on the validity of questioned or challenged ballots, of the verifying all unofficial returns as listed in the auditor's abstract of votes, and the producing of the official county canvass report; it shall be composed of the county auditor, prosecuting attorney, and chairman of the board of the county legislative authority, or their designated representatives.

(3) "Auditor's abstract of votes" is that report prepared by the county auditor which lists the number of registered voters, votes cast, all of the vote totals by precinct, or by com-

ination of precincts if applicable (~~(, absentee ballot totals)~~), legislative and congressional district subtotals, if any, and county-wide totals. In a gubernatorial general election, the auditor's abstract of votes must also include the number of write-in votes cast for governor. The auditor's abstract of votes must also include the reconciliation report required by RCW 29A.60.235 ~~((+))~~. Vote totals in the auditor's abstract of votes shall be unofficial until verified and certified by the county canvassing board.

(4) "County canvass report" is the auditor's abstract of votes after verification by the county canvassing board and shall contain a certificate which shall include the oath as specified in RCW 29A.60.200, the original signatures of each member of the county canvassing board, the county seal, and all other material pertinent to the election.

~~((5) "Certified copy of the county canvass report" is that report transmitted by the county auditor to the secretary of state which contains registered voters and votes cast by precinct, or combination of precincts if applicable, votes cast for and against state measures, and votes cast for candidates for federal and statewide offices and for any office whose jurisdiction encompasses more than one county, absentee ballot totals for those measures and candidates, subtotals if applicable, and county wide totals. It shall also include a certificate, bearing original signatures and an original county seal, identical to that included in the official county canvass report, and any other material which may be pertinent to the canvass of the election.))~~

AMENDATORY SECTION (Amending WSR 06-02-028, filed 12/28/05, effective 1/28/06)

**WAC 434-262-013 Crediting voters.** Voters shall be credited ~~((for voting))~~ in the statewide voter registration data base after each special, primary and general election.

(1) A voter may not be credited for voting if the ballot was voted after election day, was received ~~((after))~~ later than the day before certification of the election, or will otherwise not be counted.

(2) The crediting of ~~((absentee or mail ballot))~~ voters must be completed prior to the certification of the election. ~~((The crediting of poll voters must be completed within thirty days of the election, and prior to the certification of the election when possible.))~~

(3) The reconciliation of voters credited with ballots counted shall be completed ~~((within thirty days following certification of a primary or))~~ prior to certification of the election. The certification must include, but is not limited to, information indicating that the number of ballots counted equals the number of voters credited. If these numbers do not match, the county auditor must take steps to reconcile the numbers and any discrepancies. If the county auditor cannot reconcile the numbers, documentation of steps taken to reconcile and any other applicable information must be included with the official reconciliation.

(4) Changes to the list of registered voters, such as new registrations, transfers, or cancellations, may not be made following a general election until the crediting reconciliation is complete. Correction of errors is allowed.



(5) The county auditor shall make an electronic or paper copy of the list of registered voters immediately following this reconciliation. Using this data, the county auditor shall also produce validation statistics for each minor taxing district in the county. Once the list is copied and the validation statistics are complete, changes to the data base may be made.

AMENDATORY SECTION (Amending WSR 07-09-036, filed 4/11/07, effective 5/12/07)

**WAC 434-262-020 Preliminary abstract of votes.** ~~((Following the election and))~~ (1) Prior to the official canvass, the county auditor shall prepare a preliminary abstract of votes, listing the number of registered voters and votes cast. ~~((Provisional ballot results must be combined with precinct results.~~

~~((+))~~ The preliminary abstract of votes must list separately for each precinct:

(a) Votes cast by ~~((absentee or))~~ mail ballot ~~((and votes cast at the polls));~~

(b) Votes cast for and against measures;

(c) Votes cast for candidates; and

(d) Overvotes and undervotes.

(2) Pursuant to RCW 29A.60.230, the county auditor may aggregate results or take other necessary steps to maintain the secrecy of ballots.

(3) The county auditor shall inspect the preliminary abstract of votes for errors or anomalies that may affect the results of the election. Correction of any errors or anomalies discovered must be made prior to the official canvass.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

**WAC 434-262-025 Canvassing board—Notice of open public meeting.** All activities of the canvassing board shall be open to the public, although the board may limit the number of persons observing any aspect of the process whenever, in the judgment of the board, it is necessary to do so to preserve order and to safeguard the integrity of the process. The canvassing board may adopt and promulgate rules and regulations, not inconsistent with the provisions of this section, to ensure that the process is open to the public and that the procedures themselves are performed by the board free of any outside interference. The auditor shall publish notice of the meetings of the canvassing board. ~~((Such notice or notices shall be in substantially the following form:~~

OPEN PUBLIC MEETING NOTICE

The canvassing board of (Name of County) County, pursuant to chapter 29A.60 RCW, will hold public meetings at (Time of Meetings), (Dates), at (Locations), to (Purpose of Meetings). These meetings of the canvassing board are open, public meetings, and shall be continued until the activity for which the meetings are held has been completed.

~~A record of the proceedings of the county canvassing board shall be made and maintained in the county auditor's office, and shall be available for public inspection and copy-~~

~~ing. The record shall be retained for the same time period required by law for the retention of absentee ballots.))~~

AMENDATORY SECTION (Amending WSR 09-12-078, filed 5/29/09, effective 6/29/09)

**WAC 434-262-030 County auditor's abstract of votes.** No later than ~~((the fifteenth))~~ fourteen days following any primary or special election and ~~((the twenty-first))~~ twenty-one days following any general election the county canvassing board shall meet and canvass all ballots. Upon completion of this canvass, the board shall direct the county auditor to prepare the auditor's abstract of votes as defined by WAC 434-262-010. The reconciliation of ~~((absentee and vote by mail))~~ ballots must include documentation that the number of ballots counted plus the number of ballots rejected is equal to the number of ballots received. In addition, county auditors must provide any additional information necessary to explain variances between the number of ballots counted compared to the number of ballots received and credited. The certification report ~~((s established in))~~ required by RCW 29A.60.235 ~~((+))~~ must be included with the abstract of votes and must be submitted at the time of the county certification.

AMENDATORY SECTION (Amending WSR 09-12-078, filed 5/29/09, effective 6/29/09)

**WAC 434-262-031 Rejection of ballots or parts of ballots.** (1) The disposition of provisional ballots is governed by WAC ~~((434-253-047))~~ 434-262-032. The county canvassing board must reject any ballot cast by a voter who was not qualified to vote, or for other reasons required by law or administrative rule. A log must be kept of all voted ballots rejected, and must be included in the minutes of each county canvassing board meeting.

(2) Ballots or parts of ballots shall be rejected by the canvassing board in the following instances:

(a) Where a voter has already voted one ballot;

(b) Where two voted ballots are contained within a returned mail ballot envelope containing only one valid signature ~~((under the affidavit))~~ on the ballot declaration, unless both ballots are voted identically, in which case one ballot will be counted. If there are two valid signatures ~~((under the affidavit))~~ on the ballot declaration, both ballots must be counted;

(c) Where a ballot or parts of a ballot are marked in such a way that it is not possible to determine the voter's intent consistent with WAC 434-261-086;

(d) Where the voter has voted for candidates or issues for whom he or she is not entitled to vote;

(e) Where the voter has overvoted;

(f) Where the voter validly transferred out of the county.

NEW SECTION

**WAC 434-262-032 Provisional ballots—Disposition.** Upon receipt of the provisional ballot, including provisional ballots from other counties or states, the county auditor must investigate the circumstances surrounding the provisional ballot prior to certification of the primary or election. A provisional ballot cannot be counted unless the voter's name, sig-

nature and the date of birth, if available, matches a voter registration record. Once the provisional ballot has been investigated, disposition of the ballot is as follows:

(1) If there is no record of the voter ever having been registered, the voter must be offered the opportunity to register and the provisional ballot is not counted.

(2) If the voter was previously registered and later canceled and the auditor determines that the cancellation was in error, the voter's registration must be immediately restored and the provisional ballot counted.

(3) If the voter was previously registered and later canceled and the auditor determines that the cancellation was not in error, the voter must be offered the opportunity to reregister and the provisional ballot is not counted.

(4) If the voter is a registered voter but has voted a ballot other than the one which the voter would have received for his or her precinct, the auditor must ensure that only those votes for the positions and measures for which the voter was eligible to vote are counted.

(5) If the voter is a registered voter in another county, the auditor shall forward the ballot and a corresponding voter guide, or other means by which the ballot can be interpreted, to the elections official for the jurisdiction in which the voter is registered. The ballot must be forwarded within seven calendar days after a primary or special election and fourteen calendar days after a general election, and as soon as possible if past that date.

(6) If the voter voted a regular ballot and a provisional ballot, the provisional ballot is not counted if the regular ballot has already been counted. The regular ballot is not counted if the provisional ballot has already been counted.

(7) If the voter voted a provisional ballot because he or she failed to produce identification at a voting center, the ballot is counted if the signature on the envelope matches the signature in the voter registration record.

(8) If the voter voted a provisional ballot because the voter is provisionally registered and the voter's registration record is still flagged as requiring verification of identity, the provisional ballot is not counted.

(9) Provisional ballots voted for reasons not covered by this section or state statute must be determined by the county canvassing board.

AMENDATORY SECTION (Amending WSR 97-21-045, filed 10/13/97, effective 11/13/97)

**WAC 434-262-040 Verification of auditor's abstract of votes.** The county canvassing board shall examine the auditor's abstract of votes and shall verify that all of the ~~((individual))~~ precinct ~~((and absentee))~~ ballot totals have been included in the abstract, and that the subtotals and county-wide totals for registered voters and votes cast are an accurate reflection of the sum of those ~~((individual))~~ precinct ~~((and absentee))~~ ballot totals.

AMENDATORY SECTION (Amending WSR 04-15-089, filed 7/16/04, effective 8/16/04)

**WAC 434-262-070 Official county canvass report.** Upon completion of the verification of the auditor's abstract of votes and the documentation of any corrective action

taken, the county canvassing board shall sign a certification that the abstract is a full, true, and correct representation of the votes cast for the issues and offices listed thereon. The certification shall also state the total number of registered voters and votes cast in the county. The certification shall contain the oath required by RCW 29A.60.200, signed by the county auditor and attested to by the chairman of the board of the county legislative authority, and shall have a space where the official seal of the county shall be attached. This certification, the auditor's abstract of votes, ~~((any adding machine tapes produced during the verification process, and))~~ the written narrative of errors and discrepancies discovered and corrected, if applicable, and the reconciliation report required by RCW 29A.60.235 shall constitute the official county canvass report. This report may not be subsequently amended or altered, except in the event a recount conducted pursuant to chapter 29A.64 RCW, or upon order of the superior court, or by the county canvassing board reconvened specifically for that purpose. The vote totals contained therein shall constitute the official returns of that election.

AMENDATORY SECTION (Amending WSR 06-02-028, filed 12/28/05, effective 1/28/06)

**WAC 434-262-080 Transmittal of ~~((certified copy of))~~ county canvass report to the secretary of state.** Immediately following the certification of the returns of any primary, special, or general election in which state measures, federal or state offices, or legislative or judicial offices whose jurisdiction encompasses more than one county appeared on the ballot, the county auditor must transmit ~~((those returns))~~ a copy of the official county canvass report to the secretary of state by ~~((fax, e-mail, or other))~~ electronic means. ~~((No later than the next business day, the county auditor must send to the secretary of state a certified copy of that part of the county canvass report and, if applicable, the written narrative, covering those issues and offices.))~~

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

**WAC 434-262-090 Receipt of ~~((certified copy of))~~ county canvass report by secretary of state.** The secretary of state shall ensure that all material required to be submitted pursuant to state law and these regulations has been included in the ~~((certified))~~ copy of the county canvass report transmitted to his or her office. In the event the secretary of state determines that the report is incomplete, he or she shall notify the county auditor of that fact and shall request that the missing part be forwarded immediately. No ~~((county's certified copy of the))~~ county canvass report shall be considered complete for acceptance by the secretary of state until all of the material required by statute and regulation has been received by the secretary of state. ~~((In the event the certified copy of the county canvass report is illegible or in improper form, the secretary of state shall return it and require an immediate resubmission of the report in proper or legible form.))~~

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

**WAC 434-262-100 Canvass of returns by the secretary of state—Powers and duties.** Upon receipt of a complete ~~((certified))~~ copy of the county canvass report from a county auditor, the secretary of state shall proceed to include the results from that abstract in the official canvass of the primary, special, or general election. This shall be accomplished by adding the certified returns from each county abstract of votes in order to determine the final results for those offices and issues he or she is required by law to certify. The secretary of state shall accept the ~~((certified copy of the))~~ official abstract of votes from each county as being full, true, and correct in all respects. The secretary of state may include in the official canvass, a narrative which details or describes any apparent discrepancies discovered during the canvassing procedure, and may notify the county or counties involved of such discrepancies.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

**WAC 434-262-110 Certification of primary returns by the secretary of state.** Pursuant to RCW 29A.60.240, upon completion of the canvass of each county's ~~((certified copy of the))~~ auditor's abstract of votes and no later than ~~((the third Tuesday))~~ seventeen days following the primary, the secretary of state shall certify to the appropriate county auditors the returns for all state ballot measures, federal and statewide offices, and those legislative and judicial offices whose jurisdiction encompasses more than one county. In the event the secretary of state is unable to certify all or part of a primary election ~~((by the third Tuesday))~~ seventeen days following that primary because he or she has not received a ~~((certified))~~ copy of a county canvass report from one or more counties, or because there are discrepancies on a received report, he or she shall certify the state ballot measures and candidates for which completed abstracts have been received ~~((The secretary of state shall also set forth, by letter to the county auditors, those)), and provide reasons which render him or her unable to certify the entire primary.~~ The certification of the remainder of the primary shall take place when all outstanding ~~((certified copies of))~~ county canvass reports have been received and filed.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

**WAC 434-262-120 Certification of general election returns by the secretary of state.** Pursuant to RCW 29A.60.250, upon completion of the canvass of each county's ~~((certified copy of the auditor's))~~ abstract of votes and no later than ~~((the thirtieth))~~ thirty days following a general election, the secretary of state shall certify to the governor, president of the senate, and speaker of the house of representatives the returns for all state ballot measures, federal and statewide offices, and those legislative and judicial offices whose jurisdiction encompasses more than one county. In the event the secretary of state is unable to certify all or part of a general election ~~((by the thirtieth))~~ thirty days following that election

because he or she has not received a ~~((certified))~~ copy of a county canvass report from one or more counties, or because there are discrepancies on a received report, he or she shall certify the state ballot measures and candidates for which completed abstracts have been received. The secretary of state shall also set forth, by letter to the governor, president of the senate, and speaker of the house of representatives those reasons which render him or her unable to certify the entire election. The certification of the remainder of the election shall take place when all outstanding county canvass reports have been received.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-262-075	Election of political party precinct committee officers.
WAC 434-262-135	Thirty day reconciliation report.
WAC 434-262-203	Poll-site ballot reconciliation—Central count optical scan.
WAC 434-262-204	Poll-site ballot reconciliation—Precinct count optical scan and direct recording devices.

AMENDATORY SECTION (Amending WSR 07-12-032, filed 5/30/07, effective 6/30/07)

**WAC 434-264-090 Manual recount—~~((Preparation))~~ Sorting.** ~~((Prior to beginning a manual recount, all ballots that were originally tabulated at the poll site must be inspected.))~~ All ballots must be sorted by precinct. If a results report from the original count or the previous machine recount can be produced by batch, ballots may be sorted by batch instead of precinct.

AMENDATORY SECTION (Amending WSR 07-12-032, filed 5/30/07, effective 6/30/07)

**WAC 434-264-130 Recount—Completion.** On completion of the recount:

(1) The county auditor ~~((shall))~~ must prepare an amended abstract of the recounted ballots for the county canvassing board. The amended abstract ~~((shall))~~ must include a revised cumulative summary, as well as the votes cast in each precinct for the office or measure that was recounted.

(2) The results must be formally reviewed and approved by the county canvassing board.

(3) If the results of the manual count do not match the results of the original count, the county canvassing board ~~((shall))~~ must verify all ballots have been recounted. The county canvassing board shall take all necessary steps to investigate and resolve any discrepancies.

(4) The county canvassing board ~~((shall))~~ must certify the amended abstract that, for each precinct, displays the

results of the office that has been recounted. The new abstract ((shall)) must be included in the amended certified canvass report.

(5) Copies of the certified amended abstract ((with)) must be distributed to the same persons or agencies as the original certified abstract of votes.

(6) The amended certified canvass report must be available to the public by the next business day following the recount.

(7) Interim reports of the recount may be published at the discretion of the county canvassing board.

(8) If the recount involves ballots from more than one county, the secretary of state may require that amended abstracts be certified by each county canvassing board on a uniform date.

**AMENDATORY SECTION** (Amending WSR 09-18-098, filed 9/1/09, effective 10/2/09)

**WAC 434-324-005 Definitions.** As used in this chapter:

(1) "Active status" means a designation assigned to voters with complete voter registration records signifying that the voter is eligible to vote.

(2) "Applicant" means a person who has applied, or is applying, to become a registered voter in the state of Washington.

(3) "Auditor" means "county auditor" and means the county auditor in a noncharter county or the officer in a charter county, irrespective of title, having the overall responsibility to maintain voter registration to conduct state and local elections.

(4) "County election management system" means software used by county auditors to manage computer files pertaining to elections and includes, but is not limited to, voter registration records.

(5) "County registration number" means an identifier assigned to each registered voter by the county auditor.

(6) "Electronic registration" means the electronic submission of voter registration applications.

(7) "Extraction," as used in this chapter, means the creation of an electronic list of specific information from the entire official statewide voter registration data base.

(8) "New county" means a county in Washington state that a registered voter is moving to from another county within Washington state.

(9) "Previous county" means a county in Washington state that a registered voter lived in prior to moving to a new county.

(10) "Pending status" means a voter registration record is not yet complete, and the applicant is not yet a registered voter.

(11) "Pending cancellation" means the registered voter's registration record must be canceled within a specified amount of time and he or she is not eligible to vote.

(12) "Registered voter" means any elector who has completed the statutory registration procedures established by Title 29A RCW.

(13) "Secretary" means secretary of state or any other person authorized by the secretary of state to act on his or her behalf.

(14) "State registration number" means a unique identifier assigned to each registered voter by the state, pursuant to RCW ((29A.08.651)) 29A.08.125.

**AMENDATORY SECTION** (Amending WSR 09-18-098, filed 9/1/09, effective 10/2/09)

**WAC 434-324-008 Review of county election management systems.** (1) Each auditor must notify the secretary of the intent to purchase or install a new county election management system. The county election management system must be approved by the secretary to ensure it meets the technical specifications promulgated by the secretary to interface with the official statewide voter registration data base. This approval must be obtained prior to the purchase or installation of the system.

(2) A county election management system must have the capability to:

(a) Store information required in WAC 434-324-010;

(b) Generate a list of registered voters in a county and their registration statuses;

(c) Track information specific to single elections, including the issuance and return of ((~~vote by mail and absentee~~)) ballots;

(d) Scan voter registration forms; and

(e) Store and provide access to images of signatures of registered voters.

(3) A county's election management system must conform to all of the requirements of state law and of these regulations, and if it does not, the secretary must notify the auditor of the nature of the nonconformity. The auditor must correct the nonconforming aspects of the county election management system and provide to the secretary such evidence of the change or changes in the system as the secretary may deem appropriate.

**AMENDATORY SECTION** (Amending WSR 09-18-098, filed 9/1/09, effective 10/2/09)

**WAC 434-324-010 County election management system—Applications for voter registration.** (1) Each auditor must enter and maintain voter registration records in the official statewide voter registration data base by using a county election management system. Each record must contain at least the following information from the voter registration application in a format compatible with the official statewide voter registration data base:

(a) Name;

(b) Complete residential address;

(c) Complete mailing address;

(d) County registration number;

(e) State registration number;

(f) Gender;

(g) Date of birth;

(h) Date of registration;

(i) Applicable district and precinct codes;

(j) Elections in which the individual has voted, if available;

(k) Washington state driver license number, Washington state identification card number, and/or the last four digits of the applicant's Social Security number; and

(1) A scanned image file (format .tiff) of the applicant's signature.

(2) In the case of an applicant who provides a copy of one of the alternative forms of identification listed in RCW 29A.08.107 for registration purposes, the auditor must either maintain a scanned image of the identifying document or make a notation in the registration record indicating which alternative form of identification was provided to the auditor. Pursuant to RCW 29A.08.710, a scanned image of the identification is not available for public inspection or copying.

(3)(a) If a voter registration application is incomplete, the county auditor may use other government resources and public records to confirm the missing information, except if the missing information is the applicant's signature or confirmation of United States citizenship. The county auditor may also attempt to contact the applicant by phone, e-mail or other means to obtain identification information.

(b) If, after these attempts, the county auditor is still unable to obtain the incomplete information, the county auditor must send the applicant a verification notice as defined by RCW 29A.08.030.

(4) Upon entry of an applicant's information, the auditor must check for duplicate entries.

((4)) (5) Each auditor must have a quality assurance program to maintain accurate data entry into the statewide voter registration data base.

AMENDATORY SECTION (Amending WSR 05-24-039, filed 11/30/05, effective 12/31/05)

**WAC 434-324-020 County codes.** All auditors shall use the following system of two character codes for designating the county in which the voter is registered:

((Adams	- AD	Lewis	- LE
Asotin	- AS	Lincoln	- LI
Benton	- BE	Mason	- MA
Chelan	- CH	Okanogan	- OK
Clallam	- CM	Pacific	- PA
Clark	- CR	Pend Oreille	- PE
Columbia	- CU	Pierce	- PI
Cowlitz	- CZ	San Juan	- SJ
Douglas	- DG	Skagit	- SK
Ferry	- FE	Skamania	- SM
Franklin	- FR	Snohomish	- SN
Garfield	- GA	Spokane	- SP
Grant	- GR	Stevens	- ST
Grays Harbor	- GY	Thurston	- TH
Island	- IS	Wahkiakum	- WK
Jefferson	- JE	Walla Walla	- WL
King	- KI	Whatecom	- WM
Kitsap	- KP	Whitman	- WT
Kittitas	- KS	Yakima	- YA
Klickitat	- KT))		

- (1) Adams: AD;
- (2) Asotin: AS;
- (3) Benton: BE;
- (4) Chelan: CH;
- (5) Clallam: CM;
- (6) Clark: CR;
- (7) Columbia: CU;
- (8) Cowlitz: CZ;
- (9) Douglas: DG;
- (10) Ferry: FE;
- (11) Franklin: FR;
- (12) Garfield: GA;
- (13) Grant: GR;
- (14) Grays Harbor: GY;
- (15) Island: IS;
- (16) Jefferson: JE;
- (17) King: KI;
- (18) Kitsap: KP;
- (19) Kittitas: KS;
- (20) Klickitat: KT;
- (21) Lewis: LE;
- (22) Lincoln: LI;
- (23) Mason: MA;
- (24) Okanogan: OK;
- (25) Pacific: PA;
- (26) Pend Oreille: PE;
- (27) Pierce: PI;
- (28) San Juan: SJ;
- (29) Skagit: SK;
- (30) Skamania: SM;
- (31) Snohomish: SN;
- (32) Spokane: SP;
- (33) Stevens: ST;
- (34) Thurston: TH;
- (35) Wahkiakum: WK;
- (36) Walla Walla: WL;
- (37) Whatcom: WM;
- (38) Whitman: WT; and
- (39) Yakima: YA.

AMENDATORY SECTION (Amending WSR 07-24-044, filed 11/30/07, effective 12/31/07)

**WAC 434-324-031 Electronic voter registration.** (1) The secretary of state's electronic voter registration web page must have the capability to:

- (a) Reject applicants without a Washington state driver's license or state identification card;
- (b) Require the applicant to affirmatively assent to the use of his or her driver's license or state identification card signature for voter registration purposes;
- (c) Require the applicant to attest to the truth of the information provided on the application;
- (d) Retrieve a digital copy of each applicant's driver's license or state identification card signature from the department of licensing and include it with the other information required for each applicant's voter registration; and
- (e) Electronically transfer all information required for each applicant's voter registration to his or her county auditor

for entry into the statewide voter registration data base through the county election management system.

(2) Once election registration information is entered into county election management systems, the same timelines and processes used for registration by mail apply to electronic registration. A county auditor may allow voters registering in person at the county auditor's office between twenty-nine days before an election and eight days before an election to register using the electronic voter registration system.

AMENDATORY SECTION (Amending WSR 09-18-098, filed 9/1/09, effective 10/2/09)

**WAC 434-324-045 Verification of applicant's identity.** (1) If the applicant is provisionally registered pursuant to WAC 434-324-040(5), the county auditor (~~(must verify the applicant's identity before counting the applicant's ballot. The county auditor)~~) may use other government resources and public records to confirm the applicant's driver's license or state identification card number or the last four digits of the applicant's Social Security number. The county auditor may also attempt to contact the applicant by phone, e-mail or other means to obtain identification information.

(2) If, after these attempts, the county auditor is still unable to verify the applicant's identity, the county auditor must send the applicant an identification notice at the time of registration that includes a postage prepaid, preaddressed form by which the applicant may verify or send information. The identification notice must include:

(a) A statement explaining that because the applicant's identity cannot be verified with the information provided on the application, he or she is provisionally registered to vote.

(b) A statement explaining that if this information is not provided, the applicant's ballot will not be counted.

(c) A statement explaining that federal law requires the applicant to provide a copy of one of the following forms of identification either before or when they vote:

- (i) A Washington driver's license or state ID card;
- (ii) The last four digits of his or her Social Security number;
- (iii) Valid photo identification;
- (iv) A valid enrollment card of a federally recognized tribe in Washington;
- (v) A current utility bill, or a current bank statement;
- (vi) A current government check;
- (vii) A current paycheck; or
- (viii) A government document, other than a voter registration card, that shows both the registrant's name and current address.

(3) If the applicant responds with updated driver's license, state ID card, or Social Security information, or with a copy of one of the alternative forms of identification, the flag on the voter registration record must be removed, allowing the applicant's ballot to otherwise be counted the first time he or she votes after registering.

(4) If the applicant fails to respond with adequate documentation to verify his or her identity, the applicant's voter registration record must remain flagged. ~~((#))~~ The applicant (votes by mail, he or she) must be notified at the time of

each election that the ballot will not be counted unless he or she provides adequate verification of identity.

(5) A provisional registration must remain on the official list of registered voters for at least two general elections for federal office. If, after two general elections for federal office, the voter still has not verified his or her identity, the provisional registration shall be canceled.

AMENDATORY SECTION (Amending WSR 10-03-072, filed 1/18/10, effective 2/18/10)

**WAC 434-324-106 Felony screening process.** (1) The law on when the right to vote is restored following a felony conviction is established in RCW 29A.08.520. Three times a year, the secretary must compare the voter registration records to lists of felons who are either incarcerated or on community supervision with the Washington state department of corrections, and to lists of felons convicted in federal district courts with a sentence of at least fifteen months incarceration. The secretary must create a list of felon voters by matching the first name, last name, date of birth, and other identifying information.

(2) For each felon voter, the secretary must change the voter's registration status to "pending cancellation." This change of status must be entered prior to the first extraction or pull of ~~((absentee or))~~ mail ballots. The official statewide voter registration data base must automatically notify the county election management system of the change. Voters with pending cancellation status must not be ~~((included in a poll book or be mailed an absentee or mail))~~ issued a ballot.

(3) The secretary must mail a notification letter to each felon whose status is pending cancellation. The notification letter must be sent to the felon's last known registration mailing address and, if the person is incarcerated or on community supervision with the department of corrections, to the offender's department of corrections address indicating that his or her voter registration is about to be canceled. The letter must contain language notifying the felon that he or she must contact the auditor's office to contest the pending cancellation. The letter must also inform the felon that he or she may request a provisional ballot for any pending elections. The notification letter must include:

(a) An explanation that a felon loses the right to vote until the right is restored;

(b) For a conviction in a Washington state court, the right to vote is restored as long as the felon is not serving a sentence of confinement or subject to community custody with the department of corrections. For a conviction in another state or federal court, the right to vote is restored as long as the felon is no longer incarcerated;

(c) The reason the felon has been identified as ineligible to vote;

(d) An explanation that the felon's voter registration will be canceled due to the felony conviction; and

(e) How to contest the pending cancellation. The secretary must send to each auditor the voter registration and conviction information for each matched felon registered in that county.

(4) If the felon fails to contact the auditor within thirty days, the felon's voter registration must be canceled. If an

election in which the felon would otherwise be eligible to vote is scheduled to occur during the thirty days, the felon must be allowed to vote a provisional ballot.

(5) The felon's eligibility status may be resolved and the pending cancellation status reversed without scheduling a hearing if the felon provides satisfactory documentation that the felon's voting rights have been restored, the conviction is not a felony, the person convicted is not the registered voter, or the felon is otherwise eligible to vote. The auditor must notify the voter, retain a scanned copy of all documentation provided, and notify the secretary. The secretary must flag the voter registration record to prevent future cancellation on the same basis.

(6) If the felon requests a hearing, the auditor must schedule a public hearing to provide the felon an opportunity to dispute the finding. In scheduling the hearing, the auditor may take into account whether an election in which the felon would otherwise be eligible to vote is scheduled. The notice must be mailed to the felon's last known registration mailing address and must be postmarked at least seven calendar days prior to the hearing date. Notice of the hearing must also be provided to the prosecuting attorney.

(7) The auditor must provide the prosecuting attorney a copy of all relevant registration and felony conviction information. The prosecuting attorney must obtain documentation, such as a copy of the judgment and sentence, or custody or supervision information from the Washington department of corrections, the out-of-state court or prison, or the federal court or Bureau of Prisons, sufficient to prove by clear and convincing evidence that the felon is ineligible to vote. It is not necessary that the copy of the document be certified.

(8) If the prosecuting attorney is unable to obtain sufficient documentation to ascertain the felon's voting eligibility in time to hold a hearing prior to certification of an election in which the felon would otherwise be eligible to vote, the prosecuting attorney must request that the auditor dismiss the current cancellation proceedings. The auditor must reverse the voter's pending cancellation status, cancel the hearing, and notify the voter. A provisional ballot voted in the pending election must be counted if otherwise valid. The prosecuting attorney must continue to research the felon's voting eligibility. If the prosecuting attorney is unable to obtain sufficient documentation to ascertain the felon's voting eligibility prior to the next election in which the felon would otherwise be eligible to vote, the prosecuting attorney must notify the auditor. The auditor must notify the secretary, who must flag the voter registration record to prevent future cancellation on the same basis.

(9) A hearing to determine voting eligibility is an open public hearing pursuant to chapter 42.30 RCW. If the hearing occurs within thirty days before, or during the certification period of, an election in which the felon would otherwise be eligible to vote, the hearing must be conducted by the county canvassing board. If the hearing occurs at any other time, the county auditor conducts the hearing. Before a final determination is made that the felon is ineligible to vote, the prosecuting attorney must show by clear and convincing evidence that the voter is ineligible to vote due to a felony conviction. The felon must be provided a reasonable opportunity to respond. The hearing may be continued to a later date if con-

tinuance is likely to result in additional information regarding the felon's voting eligibility. If the felon is determined to be ineligible to vote due to felony conviction and lack of rights restoration, the voter registration must be canceled. If the voter is determined to be eligible to vote, the voter's pending cancellation status must be reversed and the secretary must flag the voter registration record to prevent future cancellation on the same basis. The felon must be notified of the outcome of the hearing and the final determination is subject to judicial review pursuant to chapter 34.05 RCW.

(10) If the felon's voter registration is canceled after the felon fails to contact the auditor within the thirty day period, the felon may contact the auditor at a later date to request a hearing to dispute the cancellation. The auditor must schedule a hearing in substantially the same manner as provided in subsections (6) through (9) of this section.

AMENDATORY SECTION (Amending WSR 06-14-050, filed 6/28/06, effective 7/29/06)

**WAC 434-324-115 Challenge of voter's registration.** All county auditors and the secretary of state shall furnish to the public on request forms substantially similar to the sample included below for the purpose of allowing a registered voter to challenge the registration of another voter pursuant to RCW 29A.08.810 through 29A.08.850.

**VOTER REGISTRATION CHALLENGE**

**AFFIDAVIT**

I, . . . . . declare under penalty of perjury under the laws of the State of Washington that I am a registered voter in the State of Washington and that I hereby challenge the voter registration of:

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Name	Registered Address
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I have personal knowledge and belief that this person is not qualified to vote or does not reside at the address given on his or her voter registration record, as evidenced below. I have exercised due diligence to personally verify the evidence presented.

**REASON FOR CHALLENGE**

Check the appropriate box below. The voter:

- Is not a U.S. Citizen.
- Will not be at least eighteen years old by the next election.
- Has been convicted of a felony and his or her right to vote has not been restored.
- Has been judicially declared ineligible to vote due to mental incompetency.
- Does not reside at the address at which he or she is registered to vote, in which case I am submitting either:
  - 1) The address at which the challenged voter actually resides: . . . . .
  - or

- 2) Evidence that I exercised due diligence to verify that the voter does not reside at the address provided and to attempt to contact the voter to learn the voter’s actual residence. I personally:
  - Sent a letter with return service requested to all known addresses for the voter;
  - Visited the voter’s residential address to contact persons at the address to determine if the voter actually resides there. If I was able to contact anyone who owns, manages, resides, or is employed at the address, I am submitting a signed affidavit from that person stating that, to his or her personal knowledge, the voter does not reside at the address;
  - Searched local telephone directories to determine whether the voter maintains a telephone listing at an address within the county;
  - Searched county auditor property records to determine whether the voter owns any property in the county; **and**
  - Searched the statewide voter registration data base to determine if the voter is registered at any other address in the state.

List the evidence for the challenge:

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Signature of Challenger	Date and Place Signed
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Address	City, State, Zip
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Attach all necessary documentation.

**FILING A VOTER REGISTRATION CHALLENGE**

**General Information**

The registration of a person as a voter is presumptive evidence of that person’s right to vote. A voter registration challenge cannot be based on unsupported allegations or allegations by anonymous third parties. All documents pertaining to a challenge are public records. A challenge may be dismissed if it is not in proper form or if the reason is not grounds for a challenge. The challenge process is established in RCW 29A.08.810 through 29A.08.850. Residency requirements are established in Article VI, section 4 of the Washington state Constitution, RCW 29A.04.151 and 29A.08.112.

**Who May File a Challenge and When**

A registered voter or the prosecuting attorney may file a challenge. To affect an upcoming election, the challenge must be filed at least forty-five days before the election. However, if the challenged voter registered less than sixty days before the election or moved less than sixty days before the election without transferring the registration, the challenge must be filed at least ten days before the election or ten days after the voter registered, whichever is later. (~~Additionally, a poll site~~

~~judge or inspector may challenge a voter’s right to vote on election day at the poll site.))~~

**Exceptions to the Residency Requirements**

A voter does not lose his or her voting residency if absent due to state or federal employment, military service, school attendance, confinement in a public prison, out-of-state business, or navigation at sea. A voter who lacks a traditional residential address, such as a person who resides in a shelter, park, motor home or marina, is assigned a precinct based on the voter’s physical location.

**The Hearing**

The county auditor notifies the voter and challenger of the hearing date and time. The voter and challenger may either appear in person or submit testimony by affidavit. The county auditor presides over the hearing, unless the challenge was filed during the forty-five days before an election, in which case the county canvassing board presides over the hearing. The challenger has the burden to prove by clear and convincing evidence that the voter’s registration is improper. The voter has an opportunity to respond. The final decision may only be appealed in superior court.

NEW SECTION

**WAC 434-324-125 Voter registration data base manual.** The secretary of state and each county auditor must conduct voter registration list maintenance, process on-line voter registrations, motor voter registrations and agency-based registrations, and update registrations according to procedures and instructions in the voter registration data base on-line help manual.

AMENDATORY SECTION (Amending WSR 09-03-110, filed 1/21/09, effective 2/21/09)

**WAC 434-335-040 Voting system requirements. (1)** No voting device or its component software may be certified by the secretary of state unless it:

- (a) Secures to the voter secrecy in the act of voting;
- (b) Permits the voter to vote for any person for any office and upon any measure that he or she has the right to vote for;
- (c) Correctly registers all votes cast for any and all persons and for or against any and all measures;
- (d) Provides that a vote for more than one candidate cannot be cast by one single operation of the voting device or vote tally system except when voting for President and Vice-President of the United States;
- (e) Produces a machine countable and human readable paper record for each vote that may be accepted or rejected by the voter before finalizing his or her vote. The paper record of an electronic vote may not be removed from the device by the voter. If the voting device is programmed to display the ballot in multiple languages, the paper record produced must be printed in the language used by the voter; and
- (f) Has been tested and approved by the appropriate voting system test laboratory approved by the United States election assistance commission.

(2) No vote tabulating system may be certified by the secretary of state unless it:



(a) Correctly counts votes on ballots on which the proper number of votes have been marked for any office or issue;

(b) Ignores votes marked for any office or issue where more than the allowable number of votes have been marked, but correctly counts the properly voted portions of the ballot;

(c) Accumulates a count of the specific number of ballots tallied for each precinct, total votes by candidate for each office, and total votes for and against each ballot measure on the ballot in that precinct;

(d) Produces precinct and cumulative totals in printed form; and

(e) Produces legislative and congressional district totals for statewide races and issues in electronic and printed form.

(3) A vote tabulating system must:

(a) Be capable of being secured with lock and seal when not in use;

(b) Be secured physically and electronically against unauthorized access;

(c) Not be connected to, or operated on, any electronic network including, but not limited to, internal office networks, the internet, or the world wide web. A network may be used as an internal, integral part of the vote tabulating system but that network must not be connected to any other network, the internet, or the world wide web; and

(d) Not use wireless communications in any way.

~~((4) The source code of electronic voting system software that has been placed in escrow must be identical to the source code of software that has been tested and certified by the federal voting system test laboratory and installed in the county. The applicant must place in escrow both the human-readable source code and the working or compiled version. In lieu of placing them in escrow, the source code and the working or compiled version may be deposited with the national software reference library. The software may be verified by matching the system's digital software signatures with the digital signatures the elections assistance commission has on file, when available.))~~

AMENDATORY SECTION (Amending WSR 10-03-072, filed 1/18/10, effective 2/18/10)

**WAC 434-335-060 Examination of equipment.** Secretary of state staff will initiate an examination of the applicant's equipment after receiving a completed application and a working model of the equipment, documentation, and software to be reviewed.

The examination verifies that the system or equipment meets all applicable federal guidelines, and consists of a series of functional application tests designed to ensure that the system or equipment meets Washington state law and rules. The software tested shall be the approved software from the voting system test laboratory.

The examination may include an additional voting system test laboratory test at the discretion of the secretary of state. The examination shall include the set-up and conduct of mock elections, including a machine recount. The elections must feature at least ten precincts, with at least ten ballots in each precinct, and must test split precincts (~~(-precinct committee officer contests)~~), partisan and nonpartisan offices, and contests that allow the voter to vote for multiple candi-

dates. The tests must include ballots of various ballot styles, and include multiple candidates, write-in candidates and overvoted contests.

AMENDATORY SECTION (Amending WSR 10-03-072, filed 1/18/10, effective 2/18/10)

**WAC 434-335-520 Logic and accuracy testing of accessible voting units.** (1) The logic and accuracy test of accessible voting units must be completed before they may be used for marking or casting ballots. Counties must complete the testing to have in-person accessible voting available starting ~~((twenty))~~ eighteen days before the day of a primary or election.

(2) This test serves as the official logic and accuracy test. A log must be created during the test, recording the time of each test, the precinct numbers, the seal number, the machine number, and the initials of each person testing the system. The log must be included in the official logic and accuracy test materials. This process is open to observation and subject to all notices and observers pursuant to WAC 434-335-290 and 434-335-320.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-335-490

Poll site-based optical scan ballot counter preparation and testing.

AMENDATORY SECTION (Amending WSR 11-05-008, filed 2/3/11, effective 3/6/11)

**WAC 434-381-120 Deadlines.** (1) Candidate statements and photographs shall be submitted to the secretary of state no later than the Friday following the last day of the filing period.

(2) For ballot measures, including initiatives, referenda, alternatives to initiatives to the legislature, and constitutional amendments, the following documents shall be filed with the secretary of state on or before the following deadlines:

(a) Appointments of the initial two members of committees to prepare arguments for and against measures:

(i) For an initiative to the people or referendum measure: Within ~~((ten))~~ seven business days after the submission of signed petitions to the secretary of state;

(ii) For an initiative to the legislature, with or without an alternative, constitutional amendment or referendum bill, within ~~((ten))~~ seven business days after the adjournment of the regular or special session at which the legislature approved or referred the measure to the ballot:

(b) Appointment of additional members of committees to prepare arguments for and against ballot measures, not later than the date the committee submits its initial argument to the secretary of state;

(c) Arguments for or against a ballot measure, no later than ~~((fifteen))~~ ten business days following appointment of the initial committee members;

(d) Rebuttals of arguments for or against a ballot measure, by no later than ~~(ten)~~ five business days following the transmittal of the final statement to the committees by the secretary. The secretary shall not transmit arguments to opposing committees for the purpose of rebuttals until both arguments are complete.

(3) If a ballot measure is the product of a special session of the legislature and the secretary of state determines that the deadlines set forth in subsection (2) of this section are impractical due to the timing of that special session, then the secretary of state may establish a schedule of deadlines unique to that measure.

(4) The deadlines stated in this rule are intended to promote the timely publication of the voters' pamphlet. Nothing in this rule shall preclude the secretary of state from accepting a late filing when, in the secretary's judgment, it is reasonable to do so. Once statements or arguments are submitted to the secretary, changes by the candidate or committee will not be accepted unless requested by the secretary.

#### REPEALER

The following chapter of the Washington Administrative Code is repealed:

		WAC 434-253-100	Electronic voting devices— Identified for specific offices or measures.
		WAC 434-253-110	Examination of voting devices.
		WAC 434-253-115	Direct recording electronic device paper printer malfunc- tion.
		WAC 434-253-120	Spoiled ballot procedures.
		WAC 434-253-130	Assistance to voters.
		WAC 434-253-140	Voter intentionally causing delay.
		WAC 434-253-150	Closing the polls.
		WAC 434-253-160	Ballot accountability form— Poll-sites without direct recording devices.
		WAC 434-253-165	Ballot accountability form— Precincts with direct record- ing devices.
		WAC 434-253-170	Securing provisional, chal- lenged, spoiled, unused, and absentee ballots.
		WAC 434-253-200	Count of regular voted bal- lots.
		WAC 434-253-203	Precinct count optical scan and direct recording devices—Poll-site reconcili- ation.
		WAC 434-253-220	Transfer of ballots prior to closing of the polls.
		WAC 434-253-225	Preparation for transfer of direct recording electronic device paper records.
		WAC 434-253-240	Return of election supplies and materials.
		WAC 434-253-250	Paper ballot precincts—Gen- eral applicability of rules.
		WAC 434-253-270	Counting of ballots after polls close.
		WAC 434-253-280	Paper ballots—Counting and tabulation—Procedure.
		WAC 434-253-290	Counting and tabulation of paper ballots where more than one set of precinct elec- tion officers are appointed— Procedure.
		WAC 434-253-300	Paper ballots—Count contin- uous—When duties com- pleted.
WAC 434-253-005	Broken or missing seals.		
WAC 434-253-010	Polling place—Activities prohibited.		
WAC 434-253-020	Polling place—Election sup- plies.		
WAC 434-253-023	Voter verified paper audit trail—Duties prior to open- ing of the polls.		
WAC 434-253-024	Poll book of registered vot- ers.		
WAC 434-253-025	Polling place—Items to be posted.		
WAC 434-253-030	Securing the ballot box.		
WAC 434-253-045	Provisional ballots— Required information.		
WAC 434-253-047	Provisional ballots—Dispo- sition.		
WAC 434-253-048	Provisional ballots—Free access system.		
WAC 434-253-049	Provisional ballots—Pro- cessing.		
WAC 434-253-050	Voter unable to sign name— Authority to vote.		
WAC 434-253-070	Accounting for ballot stub.		
WAC 434-253-080	Voter leaving polling place prior to casting ballot.		
WAC 434-253-090	Designation of poll watchers.		

- WAC 434-253-310 Paper ballots—Unofficial results—Copies—Posting—Transmittal.
- WAC 434-253-320 Rejection of ballots or parts of ballots—Questions on the legality of ballots.

**REPEALER**

The following chapter of the Washington Administrative Code is repealed:

- WAC 434-257-010 Purpose.
- WAC 434-257-020 Definitions.
- WAC 434-257-030 Standards for accessible polling places.
- WAC 434-257-040 Use of public buildings as polling places.
- WAC 434-257-070 Report of precincts and polling places.
- WAC 434-257-090 Accessible polling places—Exceptions.
- WAC 434-257-100 Procedures for inaccessible polling places.
- WAC 434-257-130 Voting instructions.
- WAC 434-257-140 Contingency plans for disability access units.
- WAC 434-257-150 Notice of accessibility.

**WSR 11-20-110  
PROPOSED RULES  
OFFICE OF  
FINANCIAL MANAGEMENT**

[Filed October 5, 2011, 10:41 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 357-01-015 Affirmative action plan, 357-01-110 Director, 357-04-065 What are the duties of the board?, 357-04-070 What are the powers and duties of director?, 357-13-025 What criteria must be met in order for the director to adopt revisions or salary adjustments to the classification plan?, 357-13-075 Must the notice of reallocation inform the employee of the right to request a director's review of the reallocation?, 357-13-080 Can an employee request a director's review of a position review or reallocation of the employee's position?, 357-13-085 How is the effective date of a reallocation determined?, 357-13-090 How is an employee affected when his/her position is reallocation?, 357-16-005 What is the department of enterprise services' role in recruiting applicants and assessing candidates for

positions in the classified service?, 357-16-010 What authority do general government employers have to recruit applicants, assess candidates, and certify candidates for hiring consideration?, 357-16-015 What authority do higher education employers have to recruit applicants, assess candidates, and certify candidates for hiring consideration?, 357-16-020 Who is responsible for determining what recruitment methods are appropriate to meet the hiring needs of the employer?, 357-16-030 For affirmative action purposes, may employers add job seekers who are affected group members to applicant pools?, 357-16-155 Can an eligible's name be removed from an applicant or candidate pool for a class or all classes in a class series?, 357-16-160 Must an applicant or candidate who has been removed for good and sufficient reason per WAC 357-16-155 be notified of the removal?, 357-16-175 To whom and by when must an applicant or candidate request a review of the results of an examination or removal from an applicant or candidate pool?, 357-19-525 What are the employer's responsibilities for return-to-work?, 357-22-025 What information must be sent from one employer to another when an employee changes employers within state government?, 357-25-015 Who administers the statewide affirmative action program?, 357-25-020 What are the administrative responsibilities of the director's office?, 357-25-025 What are the policy statement requirements that employers must comply with for the purpose of chapter 357-25 WAC?, 357-25-030 What are the affirmative action reporting requirements that employers must comply with for purposes of chapter 357-25 WAC?, 357-28-029 When making a special pay request for higher education, what information must the requesting party provide?, 357-28-130 How is an employee's base salary determined if the director creates, abolishes, or revises a class?, 357-31-230 When can an employee use accrued compensatory time?, 357-31-645 Who will administer the uniformed service shared leave pool?, 357-34-090 Who provides the required supervisory or managerial training?, 357-34-100 How often are general government employees required to complete sexual harassment awareness and prevention training?, 357-34-105 How often are general government managers and supervisors required to complete additional sexual harassment awareness and prevention training?, 357-34-110 Under what circumstances may the general government employer waive the required sexual harassment awareness and prevention training for a new employee?, 357-34-115 What must be included in the required sexual harassment awareness and prevention training?, 357-34-120 Who provides the required sexual harassment awareness and prevention training?, 357-46-100 Who administers and establishes operating procedures for the general government transition pool program?, 357-46-135 What causes an individual's name to be removed from a layoff list?, 357-46-145 To whom or by when must an individual request a review of the removal from an internal or statewide layoff list?, 357-49-010 For what actions may an individual request a director's review?, 357-52-030 Are standardized forms available for filing appeals?, 357-58-015 Who is authorized to adopt rules for the WMS?, 357-58-032 What is the requirement for agencies to develop procedures which address determining inclusion in WMS and evaluating positions for placement within the management bands?, 357-58-050 What

chapters of civil service rules apply to WMS positions?, 357-58-055 What civil service rules do not apply to WMS?, 357-58-065 Definitions for WMS, 357-58-075 What is the requirement for agencies to develop compensation policies?, 357-58-080 How are positions assigned to the management bands?, 357-58-085 Can WMS salaries be set outside the maximum of an assigned management band?, 357-58-105 When can exceptions to the progression increase limits be made?, 357-58-130 Do salary increases greater than five percent for a group of employees need approval?, 357-58-135 Who can provide lump sum performance recognition payment to employees?, 357-58-140 Is there a limit to the amount an employee can receive for performance recognition pay?, 357-58-395 What will be the role of the department of enterprise services?, 357-58-430 How does an employer receive performance management confirmation which enables them to factor performance into compensation and layoff decisions for WMS employees?, 357-58-435 What elements will the director evaluate to determine if an employer should be granted performance recognition confirmation?, 357-58-515 When a WMS employee disagrees with an employer's action, can the employee request the employer reconsider the action that was taken?, 357-58-546 What is the director's authority to review actions taken by an agency under chapter 357-58 WAC or to audit an agency's WMS processes?, and 357-58-565 What mechanism must be used to report WMS inclusion and evaluation activities?

Hearing Location(s): Office of Financial Management, 521 Capitol Way South, Olympia, WA, on November 10, 2011, at 8:30 a.m.

Date of Intended Adoption: November 10, 2011.

Submit Written Comments to: Connie Goff, Office of Financial Management, P.O. Box 47500, e-mail Connie.Goff@OFM.WA.GOV, fax (360) 586-4694, by November 3, 2011. FOR OFM TRACKING PURPOSES PLEASE NOTE ON SUBMITTED COMMENTS "FORMAL COMMENT."

Assistance for Persons with Disabilities: Contact office of financial management by November 3, 2011, TTY (360) 753-4107 or (360) 586-8260.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Part IV of ESSB 5931 (consolidation bill) transfers powers and duties from the department of personnel (DOP) to the office of financial management (OFM) or to the department of enterprise services (DES). Some of the proposed modifications below reflect the necessary changes to transfer these powers and duties.

We searched Title 357 WAC for all references to "department," "department of personnel," and "director." We have determined which references to "department" and "department of personnel" should be changed to OFM, director's office (meaning director's office within OFM), or to DES, or if the rule should be moved under the jurisdiction of one of these agencies. We are changing the definition of "director" to reflect the new definition found in RCW 41.06.020 therefore it is not necessary to change all references to "director" found in Title 357 WAC. We are also cleaning up references to RCWs that have been repealed or decodified by ESSB 5931.

Statutory Authority for Adoption: Chapter 41.06 RCW.

Statute Being Implemented: RCW 41.06.150.

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

Name of Agency Personnel Responsible for Drafting: Kristie Wilson, 521 Capitol Way South, (360) 664-6408; Implementation and Enforcement: Office of financial management.

No small business economic impact statement has been prepared under chapter 19.85 RCW.

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

October 5, 2011

Eva N. Santos

State Human

Resources Director

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

**WAC 357-01-015 Affirmative action plan.** Results-oriented programs to which employers commit their good faith efforts to attain and maintain equal employment opportunity. Guidelines for development of affirmative action plans are established by the ((department)) director's office and are consistent with requirements set forth by federal Executive Order 11246 and Affirmative Action Guidelines issued by the U.S. Departments of Labor and Justice.

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

**WAC 357-01-110 Director.** ((Director of the department of personnel.)) State human resources director within the office of financial management.

AMENDATORY SECTION (Amending WSR 04-15-017, filed 7/8/04, effective 7/1/05)

**WAC 357-04-065 What are the duties of the board?** The board is composed of three members appointed by the governor and confirmed by the senate as provided in RCW 41.06.110.

(1) The board must annually elect a chair and vice chair from among its members to serve one year.

(2) The board must conduct business in accordance with RCW 41.06.120.

(3) The board is responsible for:

(a) ((Adopting rules that establish goals for the classification plan, define)) Defining criteria for exemption from the civil service rules ((and establish a training requirement for employees appointed to a supervisory or management position)) as provided in RCW 41.06.070(1).

(b) Hearing and determining employee appeals in accordance with chapter 357-52 WAC.

(((e) Prioritizing and adopting class studies and salary adjustments under the provisions of RCW 41.06.152(2).))

AMENDATORY SECTION (Amending WSR 05-01-203, filed 12/21/04, effective 7/1/05)

**WAC 357-04-070 What are the powers and duties of the director?** (1) The director ~~((of personnel))~~ is appointed by the governor under the provisions of ~~((RCW 41.06.130))~~ chapter 43, Laws of 2011.

(2) The director ~~((directs and supervises all the department of personnel's administrative and technical activities in accordance with the provisions of chapter 41.06 RCW and the civil service rules))~~ may delegate to any general government agency the authority to perform administrative and technical personnel activities if the general government agency requests such authority and the director is satisfied that the general government agency has the personnel management capabilities to effectively delegate activities.

(3) The director shall prescribe standards and guidelines for the performance of delegated activities.

(4) The director is responsible for:

(a) Adopting rules consistent with the purposes and provisions of the state civil service law and the best standards of personnel administration.

(b) Auditing and reviewing the personnel administration and management at each agency, institution of higher education, and related higher education board periodically and at other such times as may be necessary.

(c) Adopting and revising as necessary a comprehensive classification plan for all positions in the classified service. In adopting the revisions, the director must comply with RCW 41.06.152, ~~((41.06.150(4)))~~ chapter 43, Laws of 2011, and chapter 43.88 RCW.

~~((d) Adopting and revising as necessary a state salary schedule in accordance with RCW 41.06.133(10).))~~

#### NEW SECTION

**WAC 357-04-130 What rules ensure that the director's office complies with the provisions of the State Public Records Act?** Chapter 82-48 WAC are the rules which ensure the office of financial management complies with the State Public Records Act. These rules apply to the director's office.

AMENDATORY SECTION (Amending WSR 08-07-062, filed 3/17/08, effective 4/18/08)

**WAC 357-13-025 What criteria must be met in order for the director to adopt revisions or salary adjustments to the classification plan?** (1) The following ~~((three))~~ criteria must be met for the director to adopt revisions or salary adjustments to the classification plan:

(a) ~~((Implementation of the proposed revision or salary adjustment will result in net cost savings, increased efficiencies, or improved management of personnel or services;~~

~~((b))~~) The office of financial management has reviewed the fiscal impact statement of the affected employer and concurs that the biennial cost of the revision or salary adjustment is absorbable within the employer's current authorized level of funding for the current fiscal biennium and subsequent fiscal biennia; and

~~((c))~~) ~~((b))~~ The revision or salary adjustment is due to one of the following causes, as defined by the director in the classification and pay guidelines:

- (i) Documented recruitment or retention difficulties;
- (ii) Salary compression or inversion;
- (iii) Classification plan maintenance;
- (iv) Higher level duties and responsibilities; or
- (v) Inequities.

(2) The provisions of subsection (1)~~((b) and (1)(c))~~ of this section do not apply to the higher education hospital special pay plan or to any adjustments to the classification plan that are due to emergency conditions requiring the establishment of positions necessary for the preservation of the public health, safety, or general welfare.

AMENDATORY SECTION (Amending WSR 05-01-201, filed 12/21/04, effective 7/1/05)

**WAC 357-13-075 Must the notice of reallocation inform the employee of the right to request a director's review of the reallocation?** Notice of reallocation must include information regarding the employee's right to request a director's review of the reallocation per WAC 357-13-080. ~~((This requirement does not apply when the employee is being reallocated to a class with the same salary range maximum based upon the director taking action to implement a new classification plan under the provisions of RCW 41.06.136.))~~

AMENDATORY SECTION (Amending WSR 05-01-201, filed 12/21/04, effective 7/1/05)

**WAC 357-13-080 Can an employee request a director's review of a position review or reallocation of the employee's position?** ~~((+))~~ An employee may request a director's review of the results of a position review or reallocation of the employee's position, per WAC 357-49-010. The employee must request the director's review within thirty calendar days of being provided the results of a position review or the notice of reallocation.

~~((2) When an employee's position is reallocated to a class with the same salary range maximum based upon the director implementing a new classification plan under the provisions of RCW 41.06.136, an employee does not have the right to request a director's review. The employee may request a position review in accordance with the provisions of WAC 357-13-065. Following the position review, the employee may request a director's review of the results of the position review per WAC 357-49-010.))~~

AMENDATORY SECTION (Amending WSR 10-23-042, filed 11/10/10, effective 12/13/10)

**WAC 357-13-085 How is the effective date of a reallocation determined?** The effective date of a reallocation is determined as follows:

(1) The effective date of a reallocation resulting from the director's ~~((implementation or))~~ revisions to the classification plan is the effective date of the director's action.

(2) The effective date of an employer-initiated reallocation is determined by the employer. Notice of a reallocation

to a class with a lower salary range maximum must be provided in accordance with WAC 357-13-070.

(3) The effective date of a reallocation resulting from an employee request for a position review is the date the request was filed with the employer unless the result of the position review is a reallocation to a class with a lower salary range maximum. Notice of reallocation to a class with a lower salary range maximum must be provided in accordance with WAC 357-13-070.

(4) The effective date of a reallocation to a class with a lower salary range maximum resulting from a director's

review determination to reallocate to a lower classification than the employer's determination is thirty calendar days from the date of the director's determination unless the review determination is appealed to the ((~~personnel resources~~)) board. The effective date of a reallocation to a class with a lower salary range maximum resulting from a board order to reallocate to a lower classification than the employer's determination is thirty calendar days from the date of the board's order.

AMENDATORY SECTION (Amending WSR 06-23-090, filed 11/14/06, effective 12/18/06)

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

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

This table is used to determine how an employee whose position is reallocated is affected.			
	Employee's position reallocated to:		
	Class with a higher salary range maximum	Class with an equal salary range maximum	Class with a lower salary range maximum
	<p>If the employee is not selected for the position, the employer's layoff procedure applies. If the employee is appointed and he/she has already gained permanent status, the employee must serve a trial service period. If the employee has not completed the probationary period, then the new trial service period will overlap provided the higher and lower classes are in the same or a closely related field. If the classes are not in the same or closely related field, then the employee will start their probationary period over in the new class.</p> <p>Upon appointment to the higher class, the employee's base salary must be increased a minimum of a two step increase, not to exceed the top step of the range as provided in WAC 357-28-115.</p>	<p><i>If the employee does not meet the competencies and other position requirements:</i></p> <p>⇒ The employer's layoff procedure applies.</p>	<p>⇒ The employer's layoff procedure applies.</p>
<p>The director (<del>implementing a new classification plan under provisions of RCW 41.06.136 or</del>) revising the classification plan.</p>	<p>The employee remains in the position and keeps existing appointment status. See WAC (<del>357-28-125 and</del>) 357-28-130 for determining the employee's salary.</p>		

AMENDATORY SECTION (Amending WSR 05-01-200, filed 12/21/04, effective 7/1/05)

**WAC 357-16-005 What is the ~~((department's))~~ department of enterprise services' role in recruiting applicants and assessing candidates for positions in the classified service?** On the behalf of employers, the department of enterprise services may recruit applicants, assess candidates, create candidate pools, and assist with the certification of candidates for positions in the classified service.

AMENDATORY SECTION (Amending WSR 05-01-200, filed 12/21/04, effective 7/1/05)

**WAC 357-16-010 What authority do general government employers have to recruit applicants, assess candidates, and certify candidates for hiring consideration?** Under the authority of the director, general government employers may carry out the activities detailed in chapter 357-16 WAC including recruiting, creating and maintaining pools of eligible candidates, assessing candidates, and determining the certified pool. At anytime, the director may designate

the department of enterprise services to carry out any of these activities on the employer's behalf.

AMENDATORY SECTION (Amending WSR 05-01-200, filed 12/21/04, effective 7/1/05)

**WAC 357-16-015 What authority do higher education employers have to recruit applicants, assess candidates, and certify candidates for hiring consideration?** Higher education employers are authorized under RCW 41.06.133 and 41.06.150 to carry out the activities detailed in chapter 357-16 WAC including recruiting, creating and maintaining pools of eligible candidates, assessing candidates, and determining the certified pool. ~~((Upon the request of a higher education employer, the director may designate the department to act on the employer's behalf.))~~

AMENDATORY SECTION (Amending WSR 05-01-200, filed 12/21/04, effective 7/1/05)

**WAC 357-16-020 Who is responsible for determining what recruitment methods are appropriate to meet**

**the hiring needs of the employer?** ~~((The department and))~~ Employers may use the recruiting methods that they determine to be most appropriate for their hiring needs when soliciting job seekers or establishing pools of eligible applicants.

AMENDATORY SECTION (Amending WSR 05-01-200, filed 12/21/04, effective 7/1/05)

**WAC 357-16-030 For affirmative action purposes, may ~~((the department or))~~ employers add job seekers who are affected group members to applicant pools?** For affirmative action purposes, ~~((the department or))~~ employers may at any time recruit and screen persons with disabilities, Vietnam era veterans, disabled veterans, and persons age ~~((40))~~ forty and over for placement in eligible applicant pools in those areas where goals exist.

AMENDATORY SECTION (Amending WSR 09-11-063, filed 5/14/09, effective 6/16/09)

**WAC 357-16-155 Can an eligible's name be removed from an applicant or candidate pool for a class or all classes in a class series?** An employer or the ~~((department))~~ director's office may disqualify an individual by removing or directing the removal of the individual's name from an applicant and/or candidate pool for a class or all classes in a class series at anytime for good and sufficient reason.

AMENDATORY SECTION (Amending WSR 06-03-071, filed 1/12/06, effective 2/13/06)

**WAC 357-16-160 Must an applicant or candidate who has been removed for good and sufficient reason per WAC 357-16-155 be notified of the removal?** When an applicant or candidate is removed from an applicant or candidate pool for good and sufficient reason per WAC 357-16-155, the employer or the ~~((department))~~ director's office must notify the applicant or candidate at the time of the removal. The notice must be in writing and specify the reason for the removal. The notice must explain the right to request a review of the removal under the provisions of WAC 357-16-170, 357-16-175 and 357-16-180. For purposes of this rule, written notice may be provided using alternative methods such as e-mail, campus mail, the state mail service, or commercial parcel delivery in accordance with WAC 357-04-105.

AMENDATORY SECTION (Amending WSR 05-01-187, filed 12/21/04, effective 7/1/05)

**WAC 357-16-175 To whom and by when must an applicant or candidate request a review of the results of an examination or removal from an applicant or candidate pool?** (1) If the employer is responsible for the assessment process, requests for reviews of examination results under the provisions of WAC 357-16-170 must be made to the employer. If the department of enterprise services is responsible for the assessment process, requests for reviews of examination results under the provisions of WAC 357-16-170 must be made ~~((to the director))~~ under the provisions of WAC 357-49-010.

(2) If the employer is responsible for the removal of an individual's name from an applicant or candidate pool for good and sufficient reason, the request for review under the provisions of WAC 357-16-170 must be made to the employer. If the director's office is responsible for the removal of an individual's name from an applicant or candidate pool for good and sufficient reason, the request for review will be under the provisions of WAC 357-49-010.

(3) The request for a review must be received at the employer's office or the director's office within twenty calendar days following notice of the action for which a review is requested.

AMENDATORY SECTION (Amending WSR 05-01-206, filed 12/21/04, effective 7/1/05)

**WAC 357-19-525 What are the employer's responsibilities for return-to-work?** Each employer must:

(1) Adopt a written return-to-work policy ~~((and submit a copy to the department)).~~

(2) Designate an employer representative to be responsible for coordinating the employer's return-to-work program.

(3) Provide information on the employer's return-to-work policy to employees.

(4) Provide training of appropriate supervisors on implementation of the employer return-to-work policy, including but not limited to assessment of the appropriateness of the return-to-work job for the employee; general knowledge of available return-to-work options~~((;))~~ and resources available~~((; and awareness that the return-to-work program expects cooperation and participation by all employers)).~~

(5) Coordinate participation of applicable employee assistance programs, as appropriate.

(6) If possible, provide time-limited opportunities to employees who are in the return-to-work program.

AMENDATORY SECTION (Amending WSR 05-01-198, filed 12/21/04, effective 7/1/05)

**WAC 357-22-025 What information must be sent from one employer to another when an employee changes employers within state government?** When an employee accepts an appointment with a different employer, the most recent former employer must provide employee information to the new employer in a transmittal package ~~((developed))~~ specified by the ~~((department))~~ director's office.

AMENDATORY SECTION (Amending WSR 05-01-197, filed 12/21/04, effective 7/1/05)

**WAC 357-25-015 Who administers the statewide affirmative action program?** The ~~((department))~~ director's office is responsible for administering the statewide affirmative action program~~((The department provides))~~ and providing technical assistance to employers in the development and implementation of affirmative action plans, updates, and programs.



AMENDATORY SECTION (Amending WSR 05-01-197, filed 12/21/04, effective 7/1/05)

**WAC 357-25-020 What are the administrative responsibilities of the ((department)) director's office?** In accordance with state and federal laws, the ((department)) director's office:

- (1) Establishes guidelines to assist in developing and implementing affirmative action plans;
- (2) Provides the essential data for determining availability of affected groups;
- (3) Reviews and approves the technical aspect of affirmative action plans and updates;
- (4) ~~((Assists in recruiting affected group members, including targeted recruitment when the representation of affected group members is less than its availability;~~
- ~~((5))~~ Reviews the progress of employers in meeting goals and addressing problems identified in affirmative action plans and programs; and
- ~~((6))~~ (5) Reviews statewide employment trends for general government such as appointment, promotion, transfer, terminations, and formal disciplinary actions for adverse impact, as necessary.

AMENDATORY SECTION (Amending WSR 07-23-010, filed 11/8/07, effective 12/11/07)

**WAC 357-25-025 What are the policy statement requirements that employers must comply with for the purpose of chapter 357-25 WAC?** (1) All employers must maintain:

- (a) An affirmative action and equal employment opportunity policy statement; and
  - (b) Policy statements on sexual harassment and reasonable accommodation.
- (2) The employer's affirmative action and equal employment opportunity policy statement must be reviewed and approved by the head of the agency, institution, or related higher education board each year. The policy statements on sexual harassment and reasonable accommodation must be updated as needed.

~~((3) Agencies as defined in RCW 41.06.020 must submit their sexual harassment policy as follows:~~

- ~~(a) Agencies with fifty or more full-time equivalent employees must submit their policy to the department with the employer's affirmative action plan and affirmative action plan update.~~
- ~~(b) Agencies with twenty-five to forty-nine full-time equivalent employees must submit their policy to the department with their small agency workforce profile.~~
- ~~(c) Agencies with fewer than twenty-five full-time equivalent employees must submit their policy to the department at least every two years.)~~

AMENDATORY SECTION (Amending WSR 05-01-197, filed 12/21/04, effective 7/1/05)

**WAC 357-25-030 What are the affirmative action reporting requirements that employers must comply with for purposes of chapter 357-25 WAC?** Employers must

report affirmative action information to the ((department)) director's office as follows:

- (1) If an employer has federal affirmative action reporting obligations, the employer must submit an affirmative action plan on a two-year cycle as set by the ((department)) director's office.
- (2) If the employer does not have federal affirmative action reporting obligations, the reporting requirements depend upon the employer's size.
  - (a) Employers with 25 - 49 full-time equivalent (FTE) employees must submit a small agency/institution workforce profile annually.
  - (b) Employers with 50 or more FTE employees must submit an affirmative action plan on a four-year cycle as set by the ((department)) director's office, with an update to the affirmative action plan two years into the cycle.

AMENDATORY SECTION (Amending WSR 07-03-050, filed 1/12/07, effective 2/15/07)

**WAC 357-28-029 When making a special pay request for higher education, what information must the requesting party provide ((department of personnel staff))?** It is the responsibility of the requesting party to provide ((department of personnel)) the director's staff with information necessary to make a recommendation to the director. Information to be provided must include:

- (1) Data supporting the pay practice in the locality of the institution for which the request is being made; ~~((and))~~
- (2) Rationale supporting the request; and
- (3) When applicable, data showing recruitment/retention difficulty.

AMENDATORY SECTION (Amending WSR 07-11-100, filed 5/16/07, effective 7/1/07)

**WAC 357-28-130 How is an employee's base salary determined if the director creates, abolishes, or revises a class ((after the initial implementation of the classification plan))?** When reallocation is necessary because the director creates, abolishes, or revises a class ((after the initial implementation of the classification plan)), an employee's base salary is determined as follows:

- (1) An employee occupying a position reallocated to a class with the same or lower salary range must be paid an amount equal to his/her previous base salary.
- (2) An employee occupying a position reallocated to a class with a higher salary range must have his/her base salary adjusted to the same step in the new range as held in the previous range unless otherwise determined by the director.

AMENDATORY SECTION (Amending WSR 10-23-120, filed 11/17/10, effective 12/18/10)

**WAC 357-31-230 When can an employee use accrued compensatory time?** (1) Employees must request to use accrued compensatory time in accordance with the employer's leave policy. When considering employees' requests, employers must consider ((the work requirements of the department)) their business needs and the wishes of the employee.

(2) An employee must be granted the use of accrued compensatory time to care for a spouse, registered domestic partner, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency health condition, or to care for a minor/dependent child with a health condition that requires treatment or supervision. In accordance with the employer's leave policy, approval of the employee's request to use accrued compensatory time may be subject to verification that the condition exists.

(3) An employee must be granted the use of accrued compensatory time if the employee or the employee's family member, as defined in chapter 357-01 WAC, is a victim of domestic violence, sexual assault, or stalking as defined in RCW 49.76.020. An employer may require the request for leave under this section be supported by verification in accordance with WAC 357-31-730.

(4) In accordance with WAC 357-31-373, an employee must be granted the use of accrued compensatory time to be with a spouse or registered domestic partner who is a member of the armed forces of the United States, National Guard, or reserves after the military spouse or registered domestic partner has been notified of an impending call or order to active duty, before deployment, or when the military spouse or registered domestic partner is on leave from deployment.

(5) Compensatory time off may be scheduled by the employer during the final sixty days of a biennium.

(6) Employers may require that accumulated compensatory time be used before vacation leave is approved, except in those instances where this requirement would result in loss of accumulated vacation leave.

(7) During the 2009-2011 fiscal biennium only, an employee whose monthly full-time equivalent base salary is two thousand five hundred dollars or less is eligible to use compensatory time in lieu of temporary layoff as described in chapter 32, Laws of 2010.

AMENDATORY SECTION (Amending WSR 07-17-123, filed 8/20/07, effective 10/1/07)

**WAC 357-31-645 Who will administer the uniformed service shared leave pool?** The military department, in consultation with the ~~((department of personnel and the))~~ office of financial management, shall administer the uniformed service shared leave pool.

AMENDATORY SECTION (Amending WSR 06-19-062, filed 9/19/06, effective 10/20/06)

**WAC 357-34-090 Who provides the required supervisory or managerial training?** The department of enterprise services provides training activities to fulfill the requirement in WAC 357-34-055 and/or consultative services, as requested, to assist employers in development of their own programs. Employer-developed training must satisfy the requirements of WAC 357-34-060 and 357-34-065.

AMENDATORY SECTION (Amending WSR 07-23-010, filed 11/8/07, effective 12/11/07)

**WAC 357-34-115 What must be included in the required sexual harassment awareness and prevention**

**training?** The requirements of the sexual harassment awareness and prevention training will be published by the ~~((department. All training must satisfy the requirements by July 1, 2008))~~ director's office.

AMENDATORY SECTION (Amending WSR 07-23-010, filed 11/8/07, effective 12/11/07)

**WAC 357-34-120 Who provides the required sexual harassment awareness and prevention training?** Either the department of enterprise services or the agency may provide the sexual harassment awareness and prevention training.

AMENDATORY SECTION (Amending WSR 07-23-010, filed 11/8/07, effective 12/11/07)

**WAC 357-34-100 How often are general government employees required to complete sexual harassment awareness and prevention training?** General government employees ~~((of agencies defined in RCW 41.06.020))~~ are required to complete sexual harassment awareness and prevention training at least every five years. For new employees sexual harassment awareness and prevention training should be completed within the first six months of employment, or earlier if required by the employer's sexual harassment policy.

AMENDATORY SECTION (Amending WSR 07-23-010, filed 11/8/07, effective 12/11/07)

**WAC 357-34-105 How often are general government managers and supervisors required to complete additional sexual harassment awareness and prevention training?** Effective July 1, 2008, in addition to the training described in WAC 357-34-100, all managers and supervisors of general government agencies ~~((defined in RCW 41.06.020))~~ are required to complete training on managers' roles and responsibilities regarding sexual harassment every three years. For new supervisors and managers, training on roles and responsibilities should be completed within the first six months of becoming a manager or supervisor.

AMENDATORY SECTION (Amending WSR 07-23-010, filed 11/8/07, effective 12/11/07)

**WAC 357-34-110 Under what circumstances may the general government employer waive the required sexual harassment awareness and prevention training for a new employee?** ~~((Agencies as defined in RCW 41.06.020))~~ General government employers may waive the sexual harassment awareness and prevention training or the managers' roles and responsibilities training required for a new employee if the employee can show proof of attending training given by another state agency, within the time frame that satisfies the requirements of this chapter.

If the sexual harassment awareness and prevention training is waived for a new employee the agency must review their sexual harassment policy with the new employee. The employee must take the next training within five years of completion of the sexual harassment awareness and preven-

tion training or within three years of completion of the managers' roles and responsibilities training with their former state agency.

AMENDATORY SECTION (Amending WSR 07-03-053, filed 1/12/07, effective 2/15/07)

**WAC 357-46-100 Who administers and establishes operating procedures for the general government transition pool program?** The department of enterprise services administers the general government transition pool program. The director develops and implements appropriate operating procedures to facilitate the program. The operating procedures include the following requirements:

(1) General government employers must provide for consideration of transition pool candidates when a certified pool contains eligible candidates other than candidates from the employer's internal or statewide layoff list or the employer's internal promotional eligibles.

(2) Transition pool candidates must satisfy the competency and other position requirements to be considered for a position.

AMENDATORY SECTION (Amending WSR 09-11-063, filed 5/14/09, effective 6/16/09)

**WAC 357-46-135 What causes an individual's name to be removed from a layoff list?** (1) An individual's name **must** be removed from an internal layoff list or statewide layoff list at the request of the individual or upon an employee's retirement, resignation, expiration of eligibility or dismissal from the employer.

(2) An individual's name **may** be removed from the internal and/or statewide layoff list for a class when:

(a) The individual is appointed to a permanent position in the class. The individual may also be removed from the internal and/or statewide layoff list for any classes with a lower salary range maximum in that class series.

(b) The individual is appointed to a permanent position in a class with a higher salary range maximum in a different class series.

(c) The individual has been certified from the layoff list and waives consideration for a position in the class three times.

(d) The employer or the director's office determines good and sufficient reason exists.

AMENDATORY SECTION (Amending WSR 06-03-071, filed 1/12/06, effective 2/13/06)

**WAC 357-46-145 To whom and by when must an individual request a review of the removal from an internal or statewide layoff list?** (1) Requests for review of removal from a layoff list must be made to the employer when:

(a) The removal is based on the employer's determination that good and sufficient reason exists under the provisions of WAC 357-46-135 (2)(d); or

(b) The employer is responsible for maintaining the layoff list and removed the individual for a reason listed in WAC 357-46-135 (2)(b) or (c).

If the individual is not in agreement with the results of the employer's review, he/she may request a director's review of the removal.

(2) Requests for review of removal from a layoff list must be made ~~((to the director))~~ in accordance with WAC 357-49-010 when:

(a) The removal is based on the ~~((department's))~~ determination by the director's office that good and sufficient reason exists under the provisions of WAC 357-46-135 (2)(d);

(b) The department of enterprise services is responsible for maintaining the layoff list and removed the individual for a reason listed in WAC 357-46-135 (2)(a), (b) or (c); or

(c) The individual is not in agreement with the results of the employer's review of the removal.

(3) The request for a review must be received at the employer's office within twenty ~~((20))~~ calendar days or the director's office within thirty ~~((30))~~ calendar days following notice of the action for which a review is requested.

AMENDATORY SECTION (Amending WSR 06-03-071, filed 1/12/06, effective 2/13/06)

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

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

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

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

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

(4) In addition to the subject listed in ~~((section))~~ subsection (2) of this ((rule)) section, an employee who has been adversely affected by a violation of the civil service laws or rules may request a director's review within thirty calendar days of the date the employee could reasonably be expected to have knowledge of the action giving rise to a law or rule violation claim or the stated effective date, whichever is later. An employee may not request a director's review of:

(a) ~~((Allegations arising from the development and adoption of the classification plan under the provisions of WAC 357-10-020;~~

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

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

(5) An individual may request the director review his/her request for remedial action per WAC 357-19-430 or 357-19-450. Requests for remedial action must be received within

thirty calendar days of the date the individual could reasonably be expected to have knowledge of the action giving rise to violation of the nonpermanent appointment or temporary appointment rules.

AMENDATORY SECTION (Amending WSR 05-01-190, filed 12/21/04, effective 7/1/05)

**WAC 357-52-030 Are standardized forms available for filing appeals?** The ~~((department))~~ director's office makes standardized forms available for filing appeals. Appellants may prepare and use their own appeal documents. Appellants' documents must contain all of the information required by WAC 357-52-020.

AMENDATORY SECTION (Amending WSR 05-12-068, filed 5/27/05, effective 7/1/05)

**WAC 357-58-015 Who is authorized to adopt rules for the WMS?** The director ~~((of the department of personnel))~~ adopts the WMS rules after consultation with state agencies.

AMENDATORY SECTION (Amending WSR 10-11-076, filed 5/14/10, effective 6/15/10)

**WAC 357-58-050 What chapters of civil service rules apply to WMS positions?** Other chapters of civil service rules do not apply to WMS positions or employees except for the chapters listed below. If a WMS issue is identified that the director ~~((of the department of personnel))~~ has not specifically addressed in the adoption of the WMS rules, the other civil service rules do not apply or take precedence in addressing the issue.

Except where specifically stated otherwise, the following chapters apply to positions or employees included in the WMS.

- ~~((WAC))~~ chapter 357-04 WAC General provisions
- ~~((WAC 357-07 Public records~~
- ~~WAC))~~ chapter 357-22 WAC Personnel files
- ~~((WAC))~~ chapter 357-25 WAC Affirmative action program
- ~~((WAC))~~ chapter 357-26 WAC Reasonable accommodation
- ~~((WAC))~~ chapter 357-31 WAC Leave
- ~~((WAC))~~ chapter 357-34 WAC Employee training and development
- ~~((WAC))~~ chapter 357-37 WAC Performance management
- ~~((WAC))~~ chapter 357-40 WAC Discipline
- ~~((WAC))~~ chapter 357-43 WAC Employee business units
- ~~((WAC))~~ chapter 357-52 WAC Appeals

AMENDATORY SECTION (Amending WSR 07-11-092, filed 5/16/07, effective 7/1/07)

**WAC 357-58-065 Definitions for WMS.** The following definitions apply to chapter 357-58 WAC:

(1) **Competencies.** Those measurable or observable knowledge, skills, abilities, and behaviors critical to success in a key job role or function.

(2) **Director.** State human resources director within the office of financial management.

(3) **Dismissal.** The termination of an individual's employment for disciplinary purposes.

~~((3))~~ (4) **Employee.** An individual working in the classified service. Employee business unit members are defined in WAC 357-43-001.

~~((4))~~ (5) **Evaluation points.** Evaluation points are the points resulting from an evaluation of a position using the managerial job value assessment chart.

~~((5))~~ (6) **Layoff unit.** A clearly identified structure within an employer's organization within which layoff options are determined in accordance with the employer's layoff procedure. Layoff units may be a series of progressively larger units within an employer's organization.

~~((6))~~ (7) **Management bands.** Management bands are a series of management levels included in the Washington management service. Placement in a band reflects the nature of management, decision-making environment and policy impact, and scope of management accountability and control assigned to the position.

~~((7))~~ (8) **Performance management confirmation.** Approval granted by the director ~~((of the department of personnel))~~ to an employer allowing the employer to link individual employee performance to compensation or layoff decisions.

~~((8))~~ (9) **Premium.** Pay added to an employee's base salary on a contingent basis in recognition of special requirements, conditions, or circumstances associated with the job.

~~((9))~~ (10) **Reassignment.** A reassignment is an employer initiated movement of:

(a) A WMS employee from one position to a different position within WMS with the same salary standard and/or evaluation points; or

(b) A WMS position and its incumbent from one section, department, or geographical location to another section, department, or geographical location.

~~((10))~~ (11) **Review period.** The review period is a period of time that allows the employer an opportunity to ensure the WMS employee meets the requirements and performance standards of the position.

~~((11))~~ (12) **Salary standard.** Within a management band a salary standard is the maximum dollar amount assigned to a position in those agencies that use a salary standard in addition to, or in place of, evaluation points.

~~((12))~~ (13) **Separation.** Separation from state employment for nondisciplinary purposes.

~~((13))~~ (14) **Suspension.** An absence without pay for disciplinary purposes.

~~((14))~~ (15) **Transfer.** A WMS transfer is an employee initiated movement from one position to a different position with the same salary standard and/or same evaluation points.

~~((15))~~ (16) **Washington general service (WGS).** Washington general service is the system of personnel administration that applies to classified employees or positions under the jurisdiction of chapter 41.06 RCW which do not meet the definition of manager found in RCW 41.06.022.

~~((16))~~ (17) **Washington management service (WMS).** Washington management service is the system of personnel administration that applies to classified managerial

employees or positions under the jurisdiction of RCW 41.06.022 and 41.06.500.

AMENDATORY SECTION (Amending WSR 05-12-068, filed 5/27/05, effective 7/1/05)

**WAC 357-58-080 How are positions assigned to the management bands?** Each agency must evaluate its WMS positions using a managerial job value assessment chart developed by the ~~((department of personnel))~~ director's office. The number of points resulting from the evaluation determines the management band to which a position is assigned.

AMENDATORY SECTION (Amending WSR 05-21-060, filed 10/13/05, effective 11/15/05)

**WAC 357-58-085 Can WMS salaries be set outside the maximum of an assigned management band?** Compensation for a WMS position may be set outside the maximum of the assigned management band when allowed under any provision of this chapter or when approved by the ~~((department of personnel))~~ director.

AMENDATORY SECTION (Amending WSR 05-12-068, filed 5/27/05, effective 7/1/05)

**WAC 357-58-105 When can exceptions to the progression increase limits be made?** Only the director ~~((of the department of personnel))~~ may grant requests for exception to the progression increase limit.

AMENDATORY SECTION (Amending WSR 05-12-069, filed 5/27/05, effective 7/1/05)

**WAC 357-58-130 Do salary increases greater than five percent for a group of employees need approval?** Salary changes greater than five percent proposed for any group of employees must be reviewed and approved by the director ~~((of the department of personnel))~~.

AMENDATORY SECTION (Amending WSR 05-12-069, filed 5/27/05, effective 7/1/05)

**WAC 357-58-135 Who can provide lump sum performance recognition payment to employees?** The director ~~((of the department of personnel))~~ or an agency that has received performance management confirmation for decentralized compensation administration may provide additional pay to employees on a lump sum basis. Such payment to an individual or group of employees is to recognize outstanding performance or the achievement of predefined work goals. Any pay granted under this section is a premium that is not part of the base salary.

AMENDATORY SECTION (Amending WSR 05-12-069, filed 5/27/05, effective 7/1/05)

**WAC 357-58-140 Is there a limit to the amount an employee can receive for performance recognition pay?** Over an annual period, performance recognition pay may not

exceed fifteen percent of an employee's annual base salary unless approved by the director ~~((of the department of personnel))~~.

AMENDATORY SECTION (Amending WSR 05-12-070, filed 5/27/05, effective 7/1/05)

**WAC 357-58-395 What will be the role of the department of ~~((personnel))~~ enterprise services?** The department of ~~((personnel))~~ enterprise services shall assist state agencies by providing a quality developmental and leadership training program and consultative and technical assistance to help agencies address the development needs of their managers.

AMENDATORY SECTION (Amending WSR 05-12-071, filed 5/27/05, effective 7/1/05)

**WAC 357-58-430 How does an employer receive performance management confirmation which enables them to factor performance into compensation and layoff decisions for WMS employees?** Employers may request performance management confirmation from the director ~~((of the department of personnel))~~ for WMS employees. The director ~~((of the department of personnel))~~ will use the elements listed in WAC 357-58-435 to assess and evaluate an employer's readiness to fairly and objectively factor performance into compensation, recognition leave and layoff decisions. If the director ~~((of the department of personnel))~~ determines that the employer has developed a performance management program that encompasses the necessary elements, the employer will be granted performance management confirmation.

AMENDATORY SECTION (Amending WSR 05-12-071, filed 5/27/05, effective 7/1/05)

**WAC 357-58-435 What elements will the director ~~((of the department of personnel))~~ evaluate to determine if an employer should be granted performance management confirmation?** The director ~~((of the department of personnel))~~ will evaluate the following elements to determine if an employer should receive performance management confirmation:

- (1) Executive commitment to a performance-based culture;
- (2) Present status of performance management in the organization;
- (3) Defined roles and responsibilities for implementing and sustaining a performance management system;
- (4) Policy and process for holding managers accountable for properly carrying out their roles and responsibilities in performance management;
- (5) Internal policies and procedures for a performance management system;
- (6) Strategy for communicating to employees regarding policies, procedures, and timelines for performance management;
- (7) Performance management orientation and training for managers and supervisors;
- (8) Internal mechanisms for managing funding for performance-based compensation;

(9) Implementation of a performance and development plan for all employees subject to performance factor decisions; and

(10) Process for monitoring and measuring success.

AMENDATORY SECTION (Amending WSR 05-12-072, filed 5/27/05, effective 7/1/05)

**WAC 357-58-515 When a WMS employee disagrees with an employer's action, can the employee request the employer reconsider the action that was taken?** Each agency will develop procedures to reconsider agency actions at the request of the employee. The agency's procedure must identify those actions for which an employee may request reconsideration. At a minimum, the agency's procedure must allow an employee to request reconsideration of the following:

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

(2) Placement following reversion of a permanent employee.

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

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

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

AMENDATORY SECTION (Amending WSR 10-23-043 and 11-01-158, filed 11/10/10 and 12/22/10, effective 4/1/11)

**WAC 357-58-546 What is the ~~((department's))~~ director's authority to review actions taken by an agency under chapter 357-58 WAC or to audit an agency's WMS processes?** (1) Under the authority of (~~RCW 41.06.130 and~~) chapter 43, Laws of 2011 and RCW 41.06.500, the director (~~(of the department of personnel)~~) retains the right to review:

(a) Any action taken by an agency under chapter 357-58 WAC; and

(b) An agency's administration of the WMS program.

(2) An agency's compliance with WMS procedures and rules will be audited. Audit requirements will be prescribed by the ~~((department))~~ director's office.

AMENDATORY SECTION (Amending WSR 10-23-043 and 11-01-158, filed 11/10/10 and 12/22/10, effective 4/1/11)

**WAC 357-58-032 What is the requirement for agencies to develop procedures which address determining inclusion in WMS and evaluating positions for placement within the management bands?** (1) Each agency must develop a WMS inclusion and evaluation procedure consistent with this chapter and guidelines established by the ~~((department))~~ director's office.

(2) The inclusion and evaluation procedure must be approved by the director.

(3) The procedure must include processes for requesting and determining inclusion and evaluating and ~~((re-evaluating))~~ reevaluating positions for placement within management bands. The procedure must require, at a minimum:

(a) Appointment of a human resource professional as the agency's WMS coordinator who serves as the single point of contact for the ~~((department))~~ director's office regarding WMS issues.

(b) Use of a form prescribed by the director or an alternate form approved by the director for requests to establish or ~~((re-evaluate))~~ reevaluate WMS positions.

(c) Approval of the request for inclusion or evaluation by the position's agency head or designee.

(d) Inclusion determination and position evaluation must be performed by a committee of three or more people, which must include:

~~((i))~~ (i) The agency's WMS coordinator;

~~((ii))~~ (ii) A manager from the agency who has comprehensive knowledge of the agency's business; and

~~((iii))~~ (iii) A management representative from another agency or human resource professional from another agency.

(e) Only those who have successfully completed training may participate on a WMS committee. The training must satisfy the core curriculum as defined by the ~~((department))~~ director's office.

AMENDATORY SECTION (Amending WSR 05-12-068, filed 5/27/05, effective 7/1/05)

**WAC 357-58-055 What civil service rules do not apply to WMS?** Except where specifically stated otherwise, the following WAC chapters do not apply to positions or employees included in the Washington management service:

~~((WAC))~~ Chapter 357-01 WAC, Definitions

~~((WAC 357-10 Personnel resources board classification~~

~~WAC))~~ Chapter 357-13 WAC, Classification

~~((WAC))~~ Chapter 357-16 WAC, Recruitment, assessment, and certification

~~((WAC))~~ Chapter 357-19 WAC, Appointments and reemployment

~~((WAC))~~ Chapter 357-28 WAC, Compensation

~~((WAC))~~ Chapter 357-46 WAC, Layoff and separation

~~((WAC))~~ Chapter 357-49 WAC, Director's reviews

AMENDATORY SECTION (Amending WSR 05-12-068, filed 5/27/05, effective 7/1/05)

**WAC 357-58-075 What is the requirement for agencies to develop compensation policies?** Each agency must develop salary administration policies that are consistent with this chapter and guidelines established by the ~~((department))~~ director's office for WMS positions.

AMENDATORY SECTION (Amending WSR 10-23-043 and 11-01-158, filed 11/10/10 and 12/22/10, effective 4/1/11)

**WAC 357-58-565 What mechanism must be used to report WMS inclusion and evaluation activities?** (1) Agencies must submit their WMS activity reports to the

((department)) director's office and make them available as prescribed by the ((department)) director's office.

(2) A roll-up of all agencies' WMS activities will be made available to agencies.

#### REPEALER

Chapter 357-07	Public records
Chapter 357-10	Classification plan
WAC 357-01-100	Department
WAC 357-16-025	How must employers and the department inform prospective applicants of recruitments?
WAC 357-19-510	Who is responsible for administering the return-to-work initiative program?
WAC 357-19-515	Who is eligible to participate in the return-to-work initiative program?
WAC 357-28-125	How is an employee's base salary affected when the employee's position is allocated to a new class as a result of the director taking action to implement the new classification plan as required by WAC 357-10-010(1)?
WAC 357-34-025	What are the director's training and development responsibilities?
WAC 357-34-035	Can an employee get a copy of the employer's training and development plan?

#### **WSR 11-20-117**

#### **PROPOSED RULES**

#### **BOARD OF**

#### **PILOTAGE COMMISSIONERS**

[Filed October 5, 2011, 11:34 a.m.]

Original Notice.

Exempt from preproposal statement of inquiry under RCW 34.05.310(4).

Title of Rule and Other Identifying Information: WAC 363-116-300 Pilotage rates for the Puget Sound pilotage district.

Hearing Location(s): 2901 Third Avenue, 5th Floor, Alki Conference Room, Seattle, WA 98121, on November 10, 2011, at 9:30 a.m.

Date of Intended Adoption: November 10, 2011.

Submit Written Comments to: Captain Harry Dudley, Chairman, 2901 Third Avenue, Suite 500, Seattle, WA

98121, e-mail [larsonp@wsdot.wa.gov](mailto:larsonp@wsdot.wa.gov), fax (206) 515-3906, by November 2, 2011.

Assistance for Persons with Disabilities: Contact Shawna Erickson by November 7, 2011, (206) 515-3647.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to set a Puget Sound pilotage district annual tariff for the calendar year 2012.

The proposed rule reflects (1) a new tariff category and (2) a range of across-the-board tariff adjustments excluding the *training surcharge* category and the *transportation to vessels on Puget Sound* category. Both methods of establishing a tariff are shown in the proposal in order to depict what options the board will be considering.

(1) The board will consider a new tariff category proposed by PSP called the *variable expense component* (VEC). Puget Sound Pilots (PSP) is proposing a VEC charge of \$700 per pilot assignment. Pacific Merchant Shipping Association (PMSA) is opposed to the addition of this new line item. The board will consider \$0.00 (thus creating no new category) up to \$700 per assignment.

(2) The board will consider a range of tariff adjustments between a decrease of ten percent and an increase of 6.8 percent. The low end of the range is proposed by the PMSA and the high end of the range is proposed by the PSP.

Also, the board will consider an adjustment to the transportation charge portions of the *British Columbia Direct Transit Charge*. PSP proposes a two percent increase. PMSA proposes no increase. The board will consider zero percent up to a two percent increase.

Reasons Supporting Proposal: Major stakeholders have contributed to the development of this proposal.

Statutory Authority for Adoption: RCW 88.16.035.

Statute Being Implemented: Chapter 88.16 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Current rates for the Puget Sound pilotage district expire on December 31, 2011. New rates must be set annually.

The board may adopt a rule that varies from the proposed rule upon consideration of written and oral testimony; this includes the adoption of a rule reflecting no changes to the current tariff.

Name of Proponent: Puget Sound Pilots and Pacific Merchant Shipping Association, private.

Name of Agency Personnel Responsible for Drafting: Peggy Larson, 2901 Third Avenue, Floor 1, Seattle, WA 98121, (206) 515-3904; Implementation and Enforcement: Board of Pilotage Commissioners, 2901 Third Avenue, Floor 1, Seattle, WA 98121, (206) 515-3904.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule is being considered in the context of the required annual review of the rates charged for pilotage services.

The application of the range of proposed adjustments is clear in the description of the proposal and its anticipated effects as well as the proposed tariff shown below.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this rule adop-

tion. The Washington state board of pilotage commissioners is not a listed agency in RCW 34.05.328 (5)(a)(i).

October 5, 2011  
 Peggy Larson  
 Executive Director

AMENDATORY SECTION (Amending WSR 11-10-051, filed 4/29/11, effective 5/30/11)

**WAC 363-116-300 Pilotage rates for the Puget Sound pilotage district.** Effective 0001 hours ~~((July 1, 2010))~~ January 1, 2012, through 2400 hours December 31, ~~((2011))~~ 2012.

CLASSIFICATION	RATE
Ship length overall (LOA)	
Charges:	
Per LOA rate schedule in this section.	
Boarding charge:	<del>\$(48.00)</del> <u>43.00 to \$51.00</u>
Per each boarding/deboarding at the Port Angeles pilot station.	
Harbor shift - Live ship (Seattle Port)	LOA Zone I
Harbor shift - Live ship (other than Seattle Port)	LOA Zone I
Harbor shift - Dead ship	Double LOA Zone I
Towing charge - Dead ship:	Double LOA Zone
LOA of tug + LOA of tow + beam of tow	
Any tow exceeding seven hours, two pilots are mandatory. Harbor shifts shall constitute and be limited to those services in moving vessels from dock to dock, from anchorage to dock, from dock to anchorage, or from anchorage to anchorage in the same port after all other applicable tariff charges for pilotage services have been recognized as payable.	
Compass Adjustment	<del>\$(349.00)</del> <u>314.00 to \$373.00</u>
Radio Direction Finder Calibration	<del>\$(349.00)</del> <u>314.00 to \$373.00</u>
Launching Vessels	<del>\$(524.00)</del> <u>472.00 to \$560.00</u>
Trial Trips, 6 hours or less (minimum <del>\$(984.00)</del> <u>888.00 to \$1,050.00</u> )	<del>\$(164.00)</del> <u>148.00 to \$175.00</u> per hour
Trial Trips, over 6 hours (two pilots)	<del>\$(328.00)</del> <u>295.00 to \$350.00</u> per hour
Shilshole Bay – Salmon Bay	<del>\$(205.00)</del> <u>185.00 to \$219.00</u>
Salmon Bay – Lake Union	<del>\$(159.00)</del> <u>143.00 to \$170.00</u>
Lake Union – Lake Washington (plus LOA zone from Webster Point)	<del>\$(205.00)</del> <u>185.00 to \$219.00</u>
Cancellation Charge	LOA Zone I
Cancellation Charge – Port Angeles:	LOA Zone II
(When a pilot is ordered and vessel proceeds to a port outside the Puget Sound pilotage district without stopping for a pilot or when a pilot order is canceled less than twelve hours prior to the original ETA.)	

**Waterway and Bridge Charges:**

*Ships up to 90' beam:*

A charge of ~~\$(258.00)~~ 232.00 to \$276.00 shall be in addition to bridge charges for any vessel movements both inbound and outbound required to transit south of Spokane Street in Seattle, south of Eleventh Street in any of the Tacoma waterways, in Port Gamble, or in the Snohomish River. Any vessel movements required to transit through bridges shall have an additional charge of ~~\$(123.00)~~ 111.00 to \$131.00 per bridge.

*Ships 90' beam and/or over:*

A charge of ~~\$(350.00)~~ 315.00 to \$374.00 shall be in addition to bridge charges for any vessel movements both

inbound and outbound required to transit south of Spokane Street in Seattle and south of Eleventh Street in any of the Tacoma waterways. Any vessel movements required to transit through bridges shall have an additional charge of ~~\$(244.00)~~ 220.00 to \$261.00 per bridge.

(The above charges shall not apply to transit of vessels from Shilshole Bay to the limits of Lake Washington.)

*Two or three pilots required:*

In a case where two or three pilots are employed for a single vessel waterway or bridge transit, the second and/or third pilot charge shall include the bridge and waterway charge in addition to the harbor shift rate.



**Docking Delay After Anchoring:**

Applicable harbor shift rate to apply, plus ~~\$(266.00)~~ 239.00 to \$284.00 per hour standby. No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is ~~\$(266.00)~~ 239.00 to \$284.00 for every hour or fraction thereof.

**Sailing Delay:**

No charge if delay is 60 minutes or less. If the delay is more than 60 minutes, charge is ~~\$(266.00)~~ 239.00 to \$284.00 for every hour or fraction thereof. The assessment of the standby charge shall not exceed a period of twelve hours in any twenty-four-hour period.

**Slowdown:**

When a vessel chooses not to maintain its normal speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater, from the predicted arrival time had the vessel maintained its normal speed capabilities, a charge of ~~\$(266.00)~~ 239.00 to \$284.00 per hour, and each fraction thereof, will be assessed for the resultant difference in arrival time.

**Delayed Arrival – Port Angeles:**

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the vessel does not arrive within two hours of its ETA, or its ETA is amended less than six hours prior to the original ETA, a charge of ~~\$(266.00)~~ 239.00 to \$284.00 for each hour delay, or fraction thereof, shall be assessed in addition to all other appropriate charges.

When a pilot is ordered for an arriving inbound vessel at Port Angeles and the ETA is delayed to six hours or more beyond the original ETA, a cancellation charge shall be assessed, in addition to all other appropriate charges, if the ETA was not amended at least twelve hours prior to the original ETA.

**Tonnage Charges:**

*0 to 20,000 gross tons:*

Additional charge to LOA zone mileage of ~~\$(0.0082)~~ 0.0074 to \$0.0088 a gross ton for all gross tonnage up to 20,000 gross tons.

*20,000 to 50,000 gross tons:*

Additional charge to LOA zone mileage of ~~\$(0.0846)~~ 0.0761 to \$0.0904 a gross ton for all gross tonnage in excess of 20,000 gross tons up to 50,000 gross tons.

*50,000 gross tons and up:*

In excess of 50,000 gross tons, the charge shall be ~~\$(0.1012)~~ 0.0911 to \$0.1081 per gross ton.

For vessels where a certificate of international gross tonnage is required, the appropriate international gross tonnage shall apply.

**Transportation to Vessels on Puget Sound:**

March Point or Anacortes	\$195.00
Bangor	190.00
Bellingham	225.00
Bremerton	167.50
Cherry Point	260.00
Dupont	120.00
Edmonds	42.50
Everett	72.50
Ferndale	247.50
Manchester	162.50
Mukilteo	65.00
Olympia	155.00
Point Wells	42.50
Port Gamble	230.00
Port Townsend (Indian Island)	277.50
Seattle	18.75
Tacoma	87.50

(a) Intraharbor transportation for the Port Angeles port area: Transportation between Port Angeles pilot station and Port Angeles harbor docks - \$15.00.

(b) Interport shifts: Transportation paid to and from both points.

(c) Intraharbor shifts: Transportation to be paid both ways. If intraharbor shift is canceled on or before scheduled reporting time, transportation paid one way only.

(d) Cancellation: Transportation both ways unless notice of cancellation is received prior to scheduled reporting time in which case transportation need only be paid one way.

(e) Any new facilities or other seldom used terminals, not covered above, shall be based on mileage x \$2.00 per mile.

**Delinquent Payment Charge:**

1 1/2% per month after 30 days from first billing.

**Nonuse of Pilots:**

Ships taking and discharging pilots without using their services through all Puget Sound and adjacent inland waters shall pay full pilotage charges on the LOA zone mileage basis from Port Angeles to destination, from place of departure to Port Angeles, or for entire distance between two ports on Puget Sound and adjacent inland waters.

**British Columbia Direct Transit Charge:**

In the event that a pilot consents to board or disembark a vessel at a British Columbia port, which consent shall not unreasonably be withheld, the following additional charges shall apply in addition to the normal LOA, tonnage and other charges provided in this tariff that apply to the portion of the transit in U.S. waters:

**Direct Transit Charge**

\$2,107.00 to \$2,149.00

**Sailing Delay Charge.** Shall be levied for each hour or fraction thereof that the vessel departure is delayed beyond its scheduled departure from a British Columbia port, provided that no charge will be levied for delays of one hour or less and further provided that the charge shall not exceed a period of 12 hours in any 24 hour period.

\$283.00 to \$289.00 per hour

**Slow Down Charge.** Shall be levied for each hour or fraction thereof that a vessel's arrival at a U.S. or BC port is delayed when a vessel chooses not to maintain its normal safe speed capabilities for reasons determined by the vessel and not the pilot, and when the difference in arrival time is one hour, or greater from the arrival time had the vessel maintained its normal safe speed capabilities.

\$283.00 to \$289.00 per hour

**Cancellation Charge.** Shall be levied when a pilot arrives at a vessel for departure from a British Columbia port and the job is canceled. The charge is in addition to the applicable direct transit charge, standby, transportation and expenses.

\$525.00 to \$536.00

**Transportation Charge Vancouver Area.** Vessels departing or arriving at ports in the Vancouver-Victoria-New Westminster Range of British Columbia.

\$499.00 to \$509.00

**Transportation Charge Outports.** Vessels departing or arriving at British Columbia ports other than those in the Vancouver-Victoria-New Westminster Range.

\$630.00 to \$643.00

**Training Surcharge:**

On January 1, 2011, a surcharge of \$15.00 for each pilot trainee then receiving a stipend pursuant to the training program provided in WAC 363-116-078 shall be added to each pilotage assignment.

**Variable Expense Component:**

\$0.00 to \$700.00 per assignment

**LOA Rate Schedule:**

The following rate schedule is based upon distances furnished by National Oceanic and Atmospheric Administration, computed to the nearest half-mile and includes retirement fund contributions.

(LOA (Length Overall))	ZONE I Intra Harbor	ZONE II 0-30 Miles	ZONE III 31-50 Miles	ZONE IV 51-75 Miles	ZONE V 76-100 Miles	ZONE VI 101 Miles & Over
<del>UP to 449</del>	<del>255</del>	<del>396</del>	<del>675</del>	<del>1,006</del>	<del>1,354</del>	<del>1,757</del>
<del>450-459</del>	<del>266</del>	<del>403</del>	<del>679</del>	<del>1,021</del>	<del>1,376</del>	<del>1,766</del>
<del>460-469</del>	<del>268</del>	<del>407</del>	<del>690</del>	<del>1,038</del>	<del>1,395</del>	<del>1,774</del>
<del>470-479</del>	<del>277</del>	<del>419</del>	<del>698</del>	<del>1,059</del>	<del>1,399</del>	<del>1,777</del>
<del>480-489</del>	<del>285</del>	<del>426</del>	<del>701</del>	<del>1,078</del>	<del>1,408</del>	<del>1,785</del>
<del>490-499</del>	<del>289</del>	<del>432</del>	<del>712</del>	<del>1,098</del>	<del>1,424</del>	<del>1,794</del>
<del>500-509</del>	<del>304</del>	<del>440</del>	<del>722</del>	<del>1,110</del>	<del>1,436</del>	<del>1,805</del>
<del>510-519</del>	<del>306</del>	<del>448</del>	<del>729</del>	<del>1,127</del>	<del>1,451</del>	<del>1,812</del>
<del>520-529</del>	<del>310</del>	<del>464</del>	<del>740</del>	<del>1,132</del>	<del>1,464</del>	<del>1,826</del>
<del>530-539</del>	<del>319</del>	<del>470</del>	<del>749</del>	<del>1,145</del>	<del>1,487</del>	<del>1,847</del>
<del>540-549</del>	<del>324</del>	<del>476</del>	<del>766</del>	<del>1,157</del>	<del>1,510</del>	<del>1,864</del>
<del>550-559</del>	<del>331</del>	<del>492</del>	<del>771</del>	<del>1,174</del>	<del>1,522</del>	<del>1,882</del>
<del>560-569</del>	<del>343</del>	<del>512</del>	<del>786</del>	<del>1,185</del>	<del>1,536</del>	<del>1,899</del>
<del>570-579</del>	<del>350</del>	<del>516</del>	<del>789</del>	<del>1,190</del>	<del>1,552</del>	<del>1,912</del>
<del>580-589</del>	<del>365</del>	<del>524</del>	<del>808</del>	<del>1,199</del>	<del>1,561</del>	<del>1,931</del>
<del>590-599</del>	<del>382</del>	<del>536</del>	<del>813</del>	<del>1,205</del>	<del>1,584</del>	<del>1,954</del>
<del>600-609</del>	<del>396</del>	<del>552</del>	<del>824</del>	<del>1,209</del>	<del>1,604</del>	<del>1,963</del>
<del>610-619</del>	<del>418</del>	<del>557</del>	<del>838</del>	<del>1,214</del>	<del>1,619</del>	<del>1,981</del>
<del>620-629</del>	<del>434</del>	<del>564</del>	<del>846</del>	<del>1,229</del>	<del>1,638</del>	<del>2,004</del>
<del>630-639</del>	<del>454</del>	<del>574</del>	<del>855</del>	<del>1,232</del>	<del>1,652</del>	<del>2,021</del>
<del>640-649</del>	<del>472</del>	<del>587</del>	<del>864</del>	<del>1,234</del>	<del>1,666</del>	<del>2,036</del>

(LOA (Length Overall))	ZONE I Intra Harbor	ZONE II 0-30 Miles	ZONE III 31-50 Miles	ZONE IV 51-75 Miles	ZONE V 76-100 Miles	ZONE VI 101 Miles & Over
<del>650-659</del>	505	597	880	1,244	1,686	2,057
<del>660-669</del>	515	605	887	1,251	1,705	2,073
<del>670-679</del>	534	620	896	1,274	1,724	2,086
<del>680-689</del>	541	630	908	1,284	1,739	2,106
<del>690-699</del>	557	640	922	1,307	1,757	2,150
<del>700-719</del>	582	661	939	1,324	1,791	2,174
<del>720-739</del>	616	679	963	1,342	1,826	2,210
<del>740-759</del>	640	712	982	1,354	1,864	2,250
<del>760-779</del>	665	734	1,006	1,376	1,899	2,279
<del>780-799</del>	698	767	1,021	1,395	1,931	2,320
<del>800-819</del>	726	789	1,041	1,402	1,963	2,355
<del>820-839</del>	749	818	1,065	1,424	2,004	2,382
<del>840-859</del>	781	851	1,086	1,441	2,034	2,423
<del>860-879</del>	810	880	1,105	1,478	2,073	2,458
<del>880-899</del>	838	905	1,127	1,512	2,106	2,494
<del>900-919</del>	863	935	1,146	1,551	2,150	2,528
<del>920-939</del>	890	963	1,174	1,584	2,172	2,563
<del>940-959</del>	922	988	1,191	1,619	2,210	2,594
<del>960-979</del>	943	1,017	1,212	1,652	2,250	2,633
<del>980-999</del>	974	1,041	1,233	1,686	2,279	2,667
<del>1000-1019</del>	1,034	1,108	1,288	1,776	2,387	2,782
<del>1020-1039</del>	1,062	1,141	1,328	1,826	2,459	2,863
<del>1040-1059</del>	1,094	1,169	1,367	1,882	2,529	2,948
<del>1060-1079</del>	1,127	1,210	1,407	1,938	2,608	3,035
<del>1080-1099</del>	1,161	1,244	1,448	1,994	2,684	3,127
<del>1100-1119</del>	1,194	1,282	1,492	2,056	2,765	3,221
<del>1120-1139</del>	1,231	1,323	1,538	2,116	2,848	3,317
<del>1140-1159</del>	1,266	1,360	1,582	2,179	2,934	3,418
<del>1160-1179</del>	1,304	1,399	1,632	2,245	3,021	3,518
<del>1180-1199</del>	1,344	1,442	1,679	2,312	3,113	3,625
<del>1200-1219</del>	1,385	1,485	1,728	2,382	3,206	3,732
<del>1220-1239</del>	1,424	1,530	1,779	2,453	3,300	3,844
<del>1240-1259</del>	1,467	1,575	1,831	2,526	3,400	3,958
<del>1260-1279</del>	1,510	1,621	1,887	2,602	3,503	4,077
<del>1280-1299</del>	1,555	1,671	1,945	2,680	3,605	4,200
<del>1300-1319</del>	1,603	1,718	2,001	2,759	3,714	4,324
<del>1320-1339</del>	1,651	1,771	2,063	2,842	3,824	4,455
<del>1340-1359</del>	1,698	1,824	2,124	2,926	3,939	4,589
<del>1360-1379</del>	1,750	1,877	2,187	3,016	4,055	4,724
<del>1380-1399</del>	1,801	1,933	2,254	3,104	4,178	4,868
<del>1400-1419</del>	1,856	1,992	2,319	3,196	4,302	5,013
<del>1420-1439</del>	1,911	2,052	2,389	3,293	4,433	5,163
<del>1440-1459</del>	1,970	2,114	2,462	3,391	4,565	5,317
<del>1460-1479</del>	2,025	2,175	2,534	3,492	4,702	5,474

(LOA (Length Overall))	ZONE I Intra Harbor	ZONE II 0-30 Miles	ZONE III 31-50 Miles	ZONE IV 51-75 Miles	ZONE V 76-100 Miles	ZONE VI 101 Miles & Over
1480-1499	2,087	2,240	2,609	3,596	4,841	5,639
1500 & Over	2,150	2,308	2,686	3,706	4,985	5,807))

(Length Overall)	ZONE I Intra Harbor		ZONE II 0-30 Miles		ZONE III 31-50 Miles		ZONE IV 51-75 Miles		ZONE V 76-100 Miles		ZONE VI 101 Miles & Over	
	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High
UP to 449	230	272	356	423	608	721	905	1,074	1,219	1,446	1,581	1,876
450 - 459	239	284	363	430	611	725	919	1,090	1,238	1,470	1,589	1,886
460 - 469	241	286	366	435	621	737	934	1,109	1,256	1,490	1,597	1,895
470 - 479	249	296	377	447	628	745	953	1,131	1,259	1,494	1,599	1,898
480 - 489	257	304	383	455	631	749	970	1,151	1,267	1,504	1,607	1,906
490 - 499	260	309	389	461	641	760	988	1,173	1,282	1,521	1,615	1,916
500 - 509	274	325	396	470	650	771	999	1,185	1,292	1,534	1,625	1,928
510 - 519	275	327	403	478	656	779	1,014	1,204	1,306	1,550	1,631	1,935
520 - 529	279	331	418	496	666	790	1,019	1,209	1,318	1,564	1,643	1,950
530 - 539	287	341	423	502	674	800	1,031	1,223	1,338	1,588	1,662	1,973
540 - 549	292	346	428	508	689	818	1,041	1,236	1,359	1,613	1,678	1,991
550 - 559	298	354	443	525	694	823	1,057	1,254	1,370	1,625	1,694	2,010
560 - 569	309	366	461	547	707	839	1,067	1,266	1,382	1,640	1,709	2,028
570 - 579	315	374	462	548	710	843	1,071	1,271	1,397	1,658	1,721	2,042
580 - 589	329	390	472	560	727	863	1,079	1,281	1,405	1,667	1,738	2,062
590 - 599	344	408	482	572	732	868	1,085	1,287	1,426	1,692	1,759	2,087
600 - 609	356	423	470	557	742	880	1,088	1,291	1,444	1,713	1,767	2,096
610 - 619	376	446	501	595	754	895	1,093	1,297	1,457	1,729	1,783	2,116
620 - 629	391	464	508	602	761	904	1,106	1,313	1,474	1,749	1,804	2,140
630 - 639	409	485	517	613	770	913	1,109	1,316	1,487	1,764	1,819	2,158
640 - 649	425	504	528	627	778	923	1,111	1,318	1,499	1,779	1,832	2,174
650 - 659	455	539	537	638	792	940	1,120	1,329	1,517	1,801	1,851	2,197
660 - 669	464	550	545	646	798	947	1,126	1,336	1,535	1,821	1,866	2,214
670 - 679	481	570	558	662	806	957	1,147	1,361	1,552	1,841	1,877	2,228
680 - 689	487	578	567	673	817	970	1,156	1,371	1,565	1,857	1,895	2,249
690 - 699	501	595	576	684	830	985	1,176	1,396	1,581	1,876	1,935	2,296
700 - 719	524	622	595	706	845	1,003	1,192	1,414	1,612	1,913	1,957	2,322
720 - 739	554	658	611	725	867	1,028	1,208	1,433	1,643	1,950	1,989	2,360
740 - 759	576	684	641	760	884	1,049	1,219	1,446	1,678	1,991	2,025	2,403
760 - 779	599	710	661	784	905	1,074	1,238	1,470	1,709	2,028	2,051	2,434
780 - 799	628	745	690	819	919	1,090	1,256	1,490	1,738	2,062	2,088	2,478
800 - 819	653	775	710	843	937	1,112	1,262	1,497	1,767	2,096	2,120	2,515
820 - 839	674	800	736	874	959	1,137	1,282	1,521	1,804	2,140	2,144	2,544
840 - 859	703	834	766	909	977	1,160	1,297	1,539	1,831	2,172	2,181	2,588
860 - 879	729	865	792	940	995	1,180	1,330	1,579	1,866	2,214	2,212	2,625
880 - 899	754	895	815	967	1,014	1,204	1,361	1,615	1,895	2,249	2,245	2,664
900 - 919	777	922	842	999	1,031	1,224	1,396	1,656	1,935	2,296	2,275	2,700
920 - 939	801	951	867	1,028	1,057	1,254	1,426	1,692	1,955	2,320	2,307	2,737
940 - 959	830	985	889	1,055	1,072	1,272	1,457	1,729	1,989	2,360	2,335	2,770
960 - 979	849	1,007	915	1,086	1,091	1,294	1,487	1,764	2,025	2,403	2,370	2,812
980 - 999	877	1,040	937	1,112	1,110	1,317	1,517	1,801	2,051	2,434	2,400	2,848
1000 - 1019	931	1,104	997	1,183	1,159	1,376	1,598	1,897	2,148	2,549	2,504	2,971
1020 - 1039	956	1,134	1,027	1,219	1,195	1,418	1,643	1,950	2,213	2,626	2,577	3,058
1040 - 1059	985	1,168	1,052	1,248	1,230	1,460	1,694	2,010	2,276	2,701	2,653	3,148

LOA  (Length Overall)	ZONE I		ZONE II		ZONE III		ZONE IV		ZONE V		ZONE VI	
	Intra Harbor		0-30 Miles		31-50 Miles		51-75 Miles		76-100 Miles		101 Miles & Over	
	Low	High	Low	High	Low	High	Low	High	Low	High	Low	High
1060 - 1079	1.014	1.204	1.089	1.292	1.266	1.503	1.744	2.070	2.347	2.785	2.732	3.241
1080 - 1099	1.045	1.240	1.120	1.329	1.303	1.546	1.795	2.130	2.416	2.867	2.814	3.340
1100 - 1119	1.075	1.275	1.154	1.369	1.343	1.593	1.850	2.196	2.489	2.953	2.899	3.440
1120 - 1139	1.108	1.315	1.191	1.413	1.384	1.643	1.904	2.260	2.563	3.042	2.985	3.543
1140 - 1159	1.139	1.352	1.224	1.452	1.424	1.690	1.961	2.327	2.641	3.134	3.076	3.650
1160 - 1179	1.174	1.393	1.259	1.494	1.469	1.743	2.021	2.398	2.719	3.226	3.166	3.757
1180 - 1199	1.210	1.435	1.298	1.540	1.511	1.793	2.081	2.469	2.802	3.325	3.263	3.872
1200 - 1219	1.247	1.479	1.337	1.586	1.555	1.846	2.144	2.544	2.885	3.424	3.359	3.986
1220 - 1239	1.282	1.521	1.377	1.634	1.601	1.900	2.208	2.620	2.970	3.524	3.460	4.105
1240 - 1259	1.320	1.567	1.418	1.682	1.648	1.956	2.273	2.698	3.060	3.631	3.562	4.227
1260 - 1279	1.359	1.613	1.459	1.731	1.698	2.015	2.342	2.779	3.153	3.741	3.669	4.354
1280 - 1299	1.400	1.661	1.504	1.785	1.751	2.077	2.412	2.862	3.245	3.850	3.780	4.486
1300 - 1319	1.443	1.712	1.546	1.835	1.801	2.137	2.483	2.947	3.343	3.967	3.892	4.618
1320 - 1339	1.486	1.763	1.594	1.891	1.857	2.203	2.558	3.035	3.442	4.084	4.010	4.758
1340 - 1359	1.528	1.813	1.642	1.948	1.912	2.268	2.633	3.125	3.545	4.207	4.130	4.901
1360 - 1379	1.575	1.869	1.689	2.005	1.968	2.336	2.714	3.221	3.650	4.331	4.252	5.045
1380 - 1399	1.621	1.923	1.740	2.064	2.029	2.407	2.794	3.315	3.760	4.462	4.381	5.199
1400 - 1419	1.670	1.982	1.793	2.127	2.087	2.477	2.876	3.413	3.872	4.595	4.512	5.354
1420 - 1439	1.720	2.041	1.847	2.192	2.150	2.551	2.964	3.517	3.990	4.734	4.647	5.514
1440 - 1459	1.773	2.104	1.903	2.258	2.216	2.629	3.052	3.622	4.109	4.875	4.785	5.679
1460 - 1479	1.823	2.163	1.958	2.323	2.281	2.706	3.143	3.729	4.232	5.022	4.927	5.846
1480 - 1499	1.878	2.229	2.016	2.392	2.348	2.786	3.236	3.841	4.357	5.170	5.075	6.022
1500 & Over	1.935	2.296	2.077	2.465	2.417	2.869	3.335	3.958	4.487	5.324	5.226	6.202