WSR 13-23-073
PROPOSED RULES
SPOKANE REGIONAL CLEAN AIR AGENCY
[Filed November 19, 2013, 9:46 a.m.]

Original Notice.

Proposal is exempt under RCW 70.94.141(1).

Title of Rule and Other Identifying Information: SRCAA Regulation I, Article IX - Asbestos Control Standards and SRCAA Regulation I, Article X, Section 10.09 - Asbestos Project and Demolition Notification Waiting Period and Fees.

Hearing Location(s): Spokane Regional Clean Air Agency (SRCAA), 3104 East Augusta Avenue, Spokane, WA 99207, on February 6, 2014, at 9:30 a.m.

Date of Intended Adoption: February 6, 2014.

Submit Written Comments to: Matt Holmquist, 3104 East Augusta Avenue, Spokane, WA 99207, e-mail mholmquist@spokanecleanair.org, fax (509) 477-6828, by January 22, 2014.

Assistance for Persons with Disabilities: Contact Barbara Nelson by January 30, 2013 [2014], (509) 477-4727 ext. 116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarify requirements and exceptions for nonfriable asbestos containing roofing; add a definition for "homogeneous area" and clarify it generally excludes debris piles, soil and ash; remove "asphalt shingles" as a suspect asbestos containing material (ACM); clarify that soil or dust reasonably attributed to ACM must be treated as ACM unless it tests negative for asbestos; summarize asbestos sampling requirements in 40 C.F.R. 763.86; clarify that locations of all homogeneous areas of suspect ACM must be included in the asbestos survey; require that the condition of ACM be included in the survey; provide consistency between asbestos survey and notice of intent (NOI) posting requirements; allow resident homeowners of owner-occupied, single-family residences to have their asphalt shingle roofs removed without an asbestos survey; specify that NOIs will not be accepted more than one year in advance of the project start date; provide consistency between NOI retention and asbestos survey retention; clarify that part of all of the NOI waiting period and project fee may be waived for demolition of abandoned structures; consolidate and clarify mandatory notification amendment requirements; add a provision which allows SRCAA to accept amendments after the last asbestos removal completion date on record for removal of ACM previously unidentified in asbestos surveys; make the provision for adding structures to a previously submitted NOI more flexible; clarify provisions for reusing ACM in good condition; clarify that standard asbestos project work practices require manual removal methods unless approved by SRCAA; clarify that when alternate work plans are prepared, the procedures and requirements in the plan must be followed; clarify that trenchless pipe bursting of asbestos cement pipe is prohibited; reduce the waiting period from three or ten days to "prior notice" and reduce the NOI fee from $250 to $75 for small projects involving removal of <10 ln. ft. or <48 sq. ft. where ≥10 ln. ft. or ≥48 sq. ft. has already been removed from the structure in the calendar year, or due to the cumulative removal of ACM, the next small project will exceed ten ln. ft. or forty-eight sq. ft. from the structure within the calendar year.

Statutory Authority for Adoption: RCW 70.94.141, 70.94.380(2).

Statute Being Implemented: Chapter 70.94 RCW and 42 U.S.C. 7401 et seq., 42 U.S.C. 7412.

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: SRCAA is responsible for implementing federal laws regarding the renovation and demolition of structures that may contain asbestos. Because there is no known safe level of exposure to asbestos and because each exposure to asbetos [asbestos] increases a person's risk of acquiring asbestos related diseases, SRCAA administers an asbestos program under Regulation I, Article IX and Section 10.09 as a reasonable approach to controlling asbestos emissions primarily resulting from asbestos projects, renovation projects, and demolition projects.

Name of Proponent: SRCAA, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Matt Holmquist, SRCAA, 3104 East Augusta Avenue, Spokane, WA 99207, (509) 477-4727.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This is a local clean air agency rule and as such, chapter 19.85 RCW does not apply.

A cost-benefit analysis is not required under RCW 34.05.328. This is a local agency rule and pursuant to RCW 70.94.141(1), RCW 34.05.328 does not apply to this rule.

November 19, 2013
Matt Holmquist
Compliance Administrator

AMENDATORY SECTION

The following article of Spokane Regional Clean Air Agency, Regulation I is amended:

Article IX – Asbestos Control Standards

ARTICLE IX — ASBESTOS CONTROL STANDARDS
SECTION 9.01 PURPOSE

The Board of Directors of the Spokane Regional Clean Air Agency recognizes that airborne asbestos is a serious health hazard. Asbestos fibers released into the air can be inhaled and cause lung cancer, pleural mesothelioma, peritoneal mesothelioma or asbestosis. The Board of Directors has adopted this regulation to control asbestos emissions primarily resulting from asbestos projects, renovation projects, and demolition projects in order to protect the public health.

SECTION 9.02 DEFINITIONS

A. AHERA Building Inspector means a person who has successfully completed the training requirements for a building inspector established by United States Environmental Protection Agency (EPA) Asbestos Model Accreditation

Plan: Interim Final Rule (40 CFR Part 763, Appendix C to Subpart E) and whose certification is current.

B. AHERA Project Designer means a person who has successfully completed the training requirements for an abatement project designer established by EPA Asbestos Model Accreditation Plan: Interim Final Rule (40 CFR Part 763, Appendix C to Subpart E) and whose certification is current.

C. Asbestos means the asbestiform varieties of actinolite, amosite (cummingtonite-grunerite), tremolite, chrysotile (serpentinite), crocidolite (riebeckite), or anthophyllite.

D. Asbestos-Containing Material (ACM) means any material containing more than one percent (1%) asbestos as determined using the method specified in the EPA publication, *Method for the Determination of Asbestos in Building Materials*, EPA/600/R-93/116, July 1993 or a more effective method as approved or required by EPA. It includes all loose vermiculite (e.g., vermiculite attic insulation, vermiculite block fill) and any material presumed to be asbestos-containing.

E. Asbestos-Containing Waste Material (ACWM) means any waste that contains or is contaminated with asbestos-containing material((~~, except for nonfriable asbestos-containing roofing that remains nonfriable~~)). Asbestos-containing waste material includes asbestos-containing material that has been removed from a structure, disturbed, or deteriorated in a way that it is no longer an integral part of the structure or component, asbestos waste from control equipment, materials used to enclose the work area during an asbestos project, asbestos-containing material collected for disposal, asbestos-contaminated waste, debris, containers, bags, protective clothing, or high efficiency particulate air (HEPA) filters. Asbestos-containing waste material does not include samples of asbestos-containing material taken for testing or enforcement purposes.

F. Asbestos Project means any activity involving the abatement, renovation, demolition, removal, salvage, clean-up or disposal of asbestos-containing material, or any other action or inaction that disturbs or is likely to disturb any asbestos-containing material. It includes the removal and disposal of asbestos-containing material or asbestos-containing waste material. It does not include the application of duct tape, rewettable glass cloth, canvas, cement, paint, or other non-asbestos materials to seal or fill exposed areas where asbestos fibers may be released ((~~nor does it include nonfriable asbestos-containing roofing material that will not be rendered friable~~)).

G. Asbestos Survey means a written report resulting from a thorough inspection performed pursuant to Section 9.03 of this Regulation.

H. Asphalt Shingles means asphalt roofing in shingle form, composed of glass felt or felts impregnated and coated on both sides with asphalt, and surfaced on the weather side with mineral granules. Some asphalt shingle styles are commonly referred to as three-tab shingles.

I. Competent Person means a person who is capable of identifying asbestos hazards and selecting the appropriate asbestos control strategy, has the authority to take prompt corrective measures to eliminate the hazards, and has been trained and is currently certified in accordance with the standards established by the Washington State Department of Labor and Industries, the federal Occupational Safety & Health Administration, or the United States Environmental Protection Agency (whichever agency has jurisdiction).

J Component means any equipment, pipe, structural member, or other item or material.

((~~I~~)) K. Contiguous means touching or adjoining.

((~~J. Component means any equipment, pipe, structural member, or other item or material.~~))

((~~K~~)) L. Controlled Area means an area to which only certified asbestos workers, representatives of the Agency, or other persons authorized by the Washington Industrial Safety and Health Act (WISHA), have access.

((~~L~~)) M. Demolition means wrecking, razing, leveling, dismantling, or burning of a structure, making the structure permanently uninhabitable or unusable in part or whole. It includes any related handling operations. ((~~Pursuant to the EPA asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR Part 61, Subpart M, i~~)) It also includes moving a structure (except a mobile home which remains intact) and wrecking or taking out of any load-supporting structural member (except in an owner-occupied, single-family residence) ((~~of a facility together with any related handling operations and includes moving a facility~~)).

((~~M~~)) N. Disposal Container means a carton, bag, drum, box, or crate designed for the purpose of safely transporting and disposing of asbestos-containing waste material.

((~~N. Facility means an institutional, commercial, public, industrial or residential structure, installation or building (including any structure, installation or building containing condominiums, or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; or any active or inactive waste disposal site. The term includes any structure, installation or building that was previously subject to the Asbestos NESHAP, regardless of its current function, apartments which are an integral part of a commercial facility, and mobile structures used for non-residential purposes. It also includes homes that are demolished or renovated to build non-residential structures (e.g., homes demolished for highway construction projects).~~))

O. Friable Asbestos-Containing Material means asbestos-containing material that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure or by the forces expected to act upon the material in the course of demolition, renovation, or disposal. Each of these descriptions is separate and distinct, meaning the term includes asbestos-containing material that, when dry, can be:

1. Crumbled by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal;

2. Pulverized by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal; or

3. Reduced to powder by hand pressure or by the forces expected to act upon the material in the course of renovation, demolition, or disposal).

Such materials include, but are not limited to, thermal system insulation, surfacing material, Nicolet roofing paper and similar asbestos papers, and cement asbestos products.

P. Homogeneous Area means an area of surfacing material, thermal system insulation material, or a miscellaneous material that is uniform in color or texture. Unless approved otherwise by SRCAA, rubble piles, debris piles, ash, soil, and similar materials are not homogeneous areas.

((P)) Q. Leak-Tight Container means a dust-tight and liquid tight disposal container, at least 6-mil thick, that encloses asbestos-containing waste material and prevents solids or liquids from escaping or spilling out. Such containers may include sealed plastic bags, metal or fiber drums, and sealed polyethylene plastic.

((Q)) R. Nonfriable Asbestos-Containing Material means asbestos-containing material that is not friable (e.g.((,)) when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure or by the forces expected to act on the material in the course of demolition, renovation, or disposal).

((R)) S. Nonfriable Asbestos-Containing Roofing means an asbestos-containing roofing material where all of the following apply:

1. The roofing is a nonfriable asbestos-containing material;

2. The roofing is in good condition and is not peeling, cracking, or crumbling;

3. The roofing binder is petroleum-based and asbestos fibers are suspended in that base with individual fibers still encapsulated; and

4. The roofing binder exhibits enough plasticity to prevent the release of asbestos fibers in the process of removing and disposing of it.

((S)) T. Owner-Occupied, Single-Family Residence means any non-multiple unit building containing space for uses such as living, sleeping, preparation of food, and eating that is used by one family who owns the property as their domicile (permanent and primary residence) both prior to and after renovation or demolition, and can demonstrate such to the Agency upon request (e.g.((,)) utility bills). This term includes houses, mobile homes, trailers, detached garages, outbuildings, houseboats, and houses with a "mother-in-law apartment" or "guest room". This term does not include rental property, multiple unit buildings (e.g.((,)) duplexes and condominiums with two or more units) or multiple-family units, nor does this term include any mixed-use building (e.g.((,)) a business being operated out of a residence), structure, or installation that contains a residential unit. This term does not include structures used for structural fire training exercises (Regulation I, Article VI, Section 6.01 and 40 CFR Part 61, Subpart M), structures previously subject to the federal asbestos NESHAP (40 CFR Part 61, Subpart M), structures that are part of a larger installation (e.g., military base, company housing, apartment complex, housing complex, institution, industrial operation, etc.), or government ordered demolitions.

((T)) U. Owner's Agent means any person who leases, operates, controls, or is responsible for an asbestos project, renovation, demolition, or property subject to Article IX of this Regulation. It also includes the person(s) submitting a notification pursuant to Section 9.04 of this Regulation and/or performing the asbestos survey.

((U)) V. Person means any individual, firm, public or private corporation, association, partnership, political subdivision, municipality, or government agency.

((V)) W. Renovation means altering a structure or component in any way, other than demolition.

((W)) X. Structure means something built or constructed, in part or in whole. Examples include, but are not limited to, the following in part or in whole: houses, garages, commercial buildings, mobile homes, bridges, "smoke" stacks, pole-buildings, canopies, lean-tos, and foundations. This term does not include normally mobile equipment (e.g., cars, recreational vehicles, boats, etc.).

((X)) Y. Surfacing Material means material that is sprayed-on, troweled-on, or otherwise applied to surfaces including, but not limited to, acoustical plaster on ceilings, paints, fireproofing material on structural members, or other material on surfaces for decorative purposes.

((Y)) Z. Suspect Asbestos-Containing Material means material that has historically contained asbestos including, but not limited to, surfacing material, thermal system insulation, roofing material (excluding asphalt shingles), fire barriers, gaskets, flooring material, and cement siding. Suspect asbestos-containing material must be presumed to be asbestos-containing material unless demonstrated otherwise (e.g.((,)) as determined using the method specified in the EPA publication, ((~~Method for the Determination of Asbestos in Building Materials~~)) *Method for the Determination of Asbestos in Building Materials*, EPA/600/R-93/116, July 1993((.)). Debris (e.g., soil, dust) which may be reasonably attributed to the removal, disturbance or natural degradation of asbestos-containing material from a structure is considered suspect asbestos-containing material and therefore, must be presumed to be asbestos-containing material unless demonstrated otherwise (e.g. debris tests negative for asbestos using the *Method for the Determination of Asbestos in Building Materials*, EPA/600/R-93/116, July 1993 or more effective method approved or required by EPA; or testing shows the sample contains less than 50,000 structures per square centimeter, using ASTM D6480-05, *Standard Method for Wipe Sampling of Surfaces, Indirect Preparation, and Analysis for Asbestos Structure Number Concentration by Transmission Electron Microscopy).*

((Z)) AA. Thermal System Insulation (TSI) means material applied to pipes, fittings, boilers, tanks, ducts, or other structural components to prevent heat loss or gain.

AB ((A)). Visible Emissions means any emissions that are visually detectable without the aid of instruments. The term does not include condensed uncombined water vapor.

AC ((B)). Wallboard System means joint compound and tape specifically applied to cover nail holes, joints and wall corners. It does not mean "add on materials" such as sprayed on materials, paints, textured ceilings or wall coverings. A wallboard system where joint compound and tape have become an integral system (40 CFR Part 61 FRL4821-7) may be analyzed as a composite sample for determining if it is an asbestos-containing material.

AD (C). Waste Generator means any owner or owner's agent that generates, produces, or is in part or whole, responsible for an activity that results in asbestos-containing waste material.

AE ((D)). Workday means Monday through Friday 8:00 a.m. to 4:30 p.m. excluding legal holidays observed by the Agency. For purposes of filing a notification or notification amendment via SRCAA's website pursuant to Section 9.04, and unless specified otherwise on SRCAA's website, a workday means any day of the week and any time of the day.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

SECTION 9.03 ASBESTOS SURVEY REQUIREMENTS

A. Except as provided for in Section 9.03.F of this Regulation, it shall be unlawful for any person to cause or allow any renovation, demolition, or asbestos project unless the property owner or the owner's agent first obtains an asbestos survey, performed by an AHERA building inspector.

B. Asbestos Survey Procedures.

1. An asbestos survey must consist of a written report resulting from a thorough inspection performed by an AHERA building inspector. The AHERA building inspector must use the procedures in EPA regulations 40 CFR 763.86 or an alternate asbestos survey method pursuant to Section 9.03.F.3 of this Regulation. The inspection, and resulting asbestos survey report, must be performed to determine whether materials, components, or structures to be worked on, renovated, removed, disturbed, impacted, or demolished (including materials on the outside of structures) contain asbestos.

2. Except as provided for in Section 9.03.F of this Regulation, only an AHERA building inspector may determine, by performing an asbestos survey, that a material is not a suspect asbestos-containing material and that a suspect asbestos-containing material does not contain asbestos.

3. The required number of bulk asbestos samples must be collected per the sampling procedures detailed in EPA regulations 40 CFR Part 763.86 and analyzed pursuant to this Article to determine that suspect asbestos-containing material does not contain asbestos.

a. An AHERA building inspector shall collect, in a statistically random manner, a minimum of three bulk samples from each homogeneous area of any surfacing that is not assumed to be asbestos-containing material, and shall collect the samples as follows:

i. At least three (3) bulk samples shall be collected from each homogeneous area that is 1,000 square feet or less.

ii. At least five (5) bulk samples shall be collected from each homogeneous area that is greater than 1,000 square feet but less than or equal to 5,000 square feet.

iii. At least seven (7) bulk samples shall be collected from each homogeneous area that is greater than 5,000 square feet.

b. Except as provided for in 40 CFR 763.86 (b)(2)-(4), an AHERA building inspector shall collect, in a statistically random manner, at least three (3) bulk samples from each homogeneous area of thermal system insulation that is not assumed to be asbestos-containing material.

c. An AHERA building inspector shall collect, in a manner sufficient to determine whether material is asbestos-containing material or not asbestos-containing material, at least two (2) bulk samples from each homogeneous area of any miscellaneous material that is not assumed to be asbestos-containing material.

d. Bulk samples must be analyzed by laboratories accredited by the National Institute of Standards and Technology's (formerly the National Bureau of Standards) National Voluntary Laboratory Accreditation Program (NVLAP) or an equivalent standard approved by SRCAA. Except for wallboard systems as defined in Section 9.02.AC, bulk samples shall not be composited for analysis.

e. Bulk samples shall be analyzed for asbestos content by polarized light microscopy (PLM) using the method specified in the EPA publication, *Method for the Determination of Asbestos in Building Materials*, EPA/600/R-93/116, July 1993 or a more effective method as approved or required by EPA.

((~~2. Except as provided for in Section 9.03.F of this Regulation, only an AHERA building inspector may determine, by performing an asbestos survey, that a suspect asbestos-containing material does not contain asbestos. Per the sampling procedures detailed in EPA regulations 40 CFR Part 763.86, the required number of bulk asbestos samples must be collected and analyzed pursuant to Section 9.02.D of this Regulation to determine that material does not contain asbestos.~~

~~3. Bulk samples must be analyzed for asbestos pursuant to Section 9.02.D of this Regulation by laboratories accredited by the National Voluntary Laboratory Accreditation Program (NVLAP).~~))

C. Asbestos Survey Report.

These requirements apply to asbestos surveys, regardless of when they were performed. Except where additional information is required pursuant to EPA Regulation 40 CFR Part 763.85, asbestos surveys shall contain, at a minimum, all of the following information:

1. General Information.

a. Date that the inspection was performed;

b. AHERA Building Inspector signature, certification number, date certification expires, and name and address of entity providing AHERA Building Inspector certification;

c. Site address(es)/location(s) where the inspection was performed;

d. Description of the structure(s)/area(s) inspected (e.g., use, approximate age and approximate outside dimensions);

e. The purpose of the inspection (e.g., pre-demolition asbestos survey, renovation of 2nd floor, removal of acoustical ceiling texturing due to water damage, etc.), if known;

f. Detailed description of any limitations of the asbestos survey (e.g., inaccessible areas not inspected, survey limited to renovation area, etc.);

g. Identify and describe all homogeneous areas of suspect asbestos-containing materials ((~~and their locations~~)), except where limitations of the asbestos survey identified in Section 9.03.C.1.f (paragraph above) prevented such identification and include whether each homogeneous material is surfacing material, thermal system insulation, or miscellaneous material;

h. Identify materials presumed to be asbestos-containing material;

i. Exact location where each bulk asbestos sample was taken (e.g., schematic and/or other detailed description suffi-

cient for any person to match the material(s) sampled and tested to the material(s) on site);

j. Complete copy of the laboratory report for bulk asbestos samples analyzed, which includes all of the following:

1) Laboratory name, address and NVLAP certification number;

2) Bulk sample numbers;

3) Bulk sample descriptions;

4) Bulk sample results showing asbestos content; and

5) Name of the person at the laboratory that performed the analysis.

2. Information Regarding Asbestos-Containing Materials (including those presumed to contain asbestos).

a. Describe the color of each asbestos-containing material;

b. Identify the location of each asbestos-containing material within a structure, on a structure, from a structure, or otherwise associated with the project (e.g.((,)) schematic and/or other detailed description); ((and))

c. Provide the approximate quantity of each asbestos-containing material (generally in square feet or linear feet)((.)); and

d. Describe the condition of each asbestos-containing material (e.g. good, damaged). If the asbestos-containing material is damaged, describe the general extent and type of damage (e.g., flaking, blistering, crumbling, water damage, fire damage).

D. Asbestos Survey Posting.

Except as provided for in Section 9.03.F of this Regulation, a complete copy of an asbestos survey ((shall) must be posted by the property owner or the owner's agent in a readily accessible and visible area ((at the work site)) at all times for inspection by SRCAA and all persons at the work site. This applies even when the asbestos survey performed by ((If)) an AHERA Building Inspector ((determines)) states there are no ((suspect)) asbestos-containing materials in the work area((, this determination shall be posted by the property owner or the owner's agent in a readily accessible and visible area at the work site for all persons at the work site)). During demolition, if it is not practical to post the asbestos survey, it must be readily accessible and made readily available for inspection by SRCAA and all persons at the demolition site.

E. Asbestos Survey Retention.

The property owner, owner's agent, and the AHERA building inspector that performed the asbestos survey (when the asbestos survey has been performed by an AHERA building inspector), shall retain a complete copy of the asbestos survey for at least 24 months from the date the inspection was performed and provide a copy to the Agency upon request.

F. Exceptions.

1. Owner-Occupied, Single-Family Residence Renovation Performed by the Owner-Occupant.

For renovation of an owner-occupied, single-family residence performed by the owner-occupant, an asbestos survey is not required. An owner-occupant's assessment for the presence of asbestos-containing material prior to renovation of an owner-occupied, single-family residence is adequate. A written report is not required.

2. Presuming Suspect Asbestos-Containing Materials are Asbestos-Containing Materials.

It is not required that an AHERA building inspector evaluate (e.g.((,)) sample and test) any material presumed to be asbestos-containing material. If material is presumed to be asbestos-containing material, this determination shall be posted by the property owner or the owner's agent in a readily accessible and visible area at the work site for all persons at the work site. The determination shall include a description, approximate quantity, and location of presumed asbestos-containing material within a structure, on a structure, from a structure, or otherwise associated with the project. The property owner, owner's agent, and the person that determined that material would be presumed to be asbestos-containing material, shall retain a complete copy of the written determination for at least 24 months from the date it was made and shall provide a copy to the Agency upon request. Except for Section 9.03.A-E, all other requirements of this Regulation remain in effect.

3. Alternate Asbestos Survey.

A written alternate asbestos survey method shall be prepared and used on occasions when conventional sampling methods required in EPA regulations 40 CFR 763.86 cannot be exclusively performed (all other asbestos survey requirements in Section 9.03 of this Regulation apply). For example, conventional sampling methods may not be possible on fire damaged buildings or portions thereof((,)) (e.g. when materials are not intact or homogeneous areas are not identifiable). Conventional sampling methods shall not be used for rubble or debris piles, and ash or soil unless approved otherwise in writing by the Agency ((, because they are not structures with intact materials and identifiable homogeneous areas)). If conventional sampling methods cannot exclusively be used and material is not presumed to be asbestos-containing material, ((A)) alternate asbestos survey methodology ((may)) must be used alone or, when possible, in combination with conventional survey methodology. An alternate asbestos survey methodology typically includes random sampling according to a grid pattern (e.g.((,)) random composite bulk samples at incremental 1' depths from 10' x 10' squares of a debris pile), but is not limited to such. An illustration of how the principles of such sampling techniques are applied can be found in the EPA publication, *Preparation of Soil Sampling Protocols: Sampling Techniques & Strategies*, EPA/600/R-92/128, July 1992.

4. Demolition by Fire Fighting Instruction Fires.

Pursuant to RCW 52.12.150(6), asbestos surveys need not be performed by an AHERA Building Inspector. However, pursuant to Section 9.04.A.((6)) 7.f of this Regulation, the project fee referenced in Section 10.09 and specified in the fee schedule is waived for any demolition performed in accordance with RCW 52.12.150(6), where the good faith inspection referred to in RCW 52.12.150(6) is an asbestos survey performed by an AHERA Building Inspector, as required in Section 9.03.A-E of this Regulation.

5. Underground Storage Tanks.

An asbestos survey is not required prior to renovation or demolition of an underground storage tank. However, if suspect asbestos-containing material is identified during the renovation or demolition of an underground storage tank, work

shall cease until it is determined pursuant to Section 9.03((~~, B and C~~)) of this Regulation whether or not the suspect asbestos-containing material is asbestos-containing material. All other requirements of this Regulation remain in effect.

6. Owner-Occupied, Single-Family Residence Asphalt Shingle Roof

An asbestos survey is not required for renovation (e.g. removal) of an asphalt shingle roof at an owner-occupied, single-family residence. An owner-occupant's assessment for the presence of asbestos-containing material prior to renovation of an asphalt shingle roof at an owner-occupied, single-family residence is adequate. A written report is not required.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

SECTION 9.04 NOTIFICATION (PERMIT) REQUIREMENTS

A. General Requirements.

Except as provided for in Section 9.04.A.((~~6.c~~))7, it shall be unlawful for any person to cause or allow any work on an asbestos project or demolition unless a complete notification, including the required fee and any additional information requested by the Control Officer or his/her authorized representative, has been submitted to the Agency, in accordance with the notification waiting period requirements in Article X, Section 10.09 of this Regulation. Unless otherwise approved or required by SRCAA, the notification must be submitted by the property owner or owner's agent on approved forms through the Agency's website or submitted at the Agency's place of business in person or via U.S. mail. Notifications will not be accepted if the earliest project start date is greater than 365 days from the date of submittal.

1. When the Notification Waiting Period Begins.

The notification waiting period shall begin on the workday a complete notification is received by the Agency and shall end after the notification waiting period in Section 10.09 has passed (e.g., The notification waiting period for a notification submitted at the Agency's place of business after 4:30 p.m. on a Friday shall not begin until the following Monday, provided Monday is not a holiday observed by the Agency. A 10-day notification period means work on an asbestos project or demolition can begin on day 11.). A notification is considered complete when all information requested on the notification, including the required fee and any additional information requested by the Control Officer or his/her authorized representative, is received by the Agency. The notification waiting period shall not begin for incomplete notifications (e.g., unpaid fees, notifications where the asbestos project start date and/or completion date and/or demolition start date is listed as "To Be Determined", when types and quantities of asbestos to be removed are unknown, etc.).

2. Project Duration.

The duration of an asbestos project shall be commensurate with the amount of work involved. The duration of the project may take into account applicable scheduling limitations (e.g.((~~,~~)) asbestos removal that needs to be done in phases, based on scheduling limitations determined by the property owner) ((~~provided scheduling limitations can be provided in writing to the Control Officer or his/her authorized representative upon request~~)). The daily asbestos project work schedule must be provided by the owner or owner's agent to the Agency upon request.

3. Multiple Asbestos Projects or Demolitions.

Notification for 5 or fewer structures may be filed by a property owner or owner's agent on one form if all the following criteria are met:

a. The notification applies only to asbestos projects or demolitions on contiguous real properties having the same owner or real properties with the same owner separated only by a public right-of-way (e.g.((~~,~~)) alley or roadway).

b. The work will be performed by the same abatement and/or demolition contractor.

c. The notification includes the specific site address for each structure. Where a specific site address isn't available for each structure (e.g.((~~,~~)) at a large commercial ((~~facility~~)) site with multiple structures), provide a detailed description/location for each structure.

d. The notification includes the amount and type of asbestos-containing material associated with each structure and indicates which structures will be demolished.

4. Notification Expiration.

Notifications are valid for no more than 365 days from the earliest original notification start date. A new notification shall be submitted to the Agency for work to be performed beginning or continuing more than 365 days from the earliest original notification start date and shall be accompanied by the appropriate nonrefundable fee as ((~~set forth~~)) referenced in Section 10.09 of this Regulation and as specified in the fee schedule. SRCAA may revoke a notification for cause (e.g. providing any false material statement, representation, or certification). Reason(s) for revocation shall be provided to the owner or owner's agent. If a notification is revoked, a new notification shall be submitted with the appropriate nonrefundable fee pursuant to this Regulation and SRCAA's fee schedule.

5. Notification Posting ((~~Record Keeping~~)).

((~~a.~~)) A copy or printout of the notification((~~,~~)) and all amendments to the notification((~~, and the complete asbestos survey shall be made available for inspection~~ must be posted by the property owner or the owner's agent in a readily accessible and visible area at all times for inspection by SRCAA and all persons at the asbestos project or demolition site. During demolition, if it is not practical to post the asbestos survey, it must be readily accessible and made readily available for inspection by SRCAA and all persons at the demolition site.

6. Notification Retention

((~~b. The property owner and owner's agent shall retain a copy of all asbestos notification records for at least 2 years and make them available to the Agency upon request.~~)) The property owner and owner's agent (including the person that filed the notification), shall retain a complete copy of all notification records for at least 24 months from the date the notification was filed with the Agency and provide a copy to the Agency upon request.

((~~6~~))7. Notification Exceptions.

a. Asbestos Project Thresholds.

Notification is not required for asbestos projects involving less than 10 linear feet or 48 square feet (per structure, per

calendar year) of any asbestos-containing material. Owners and/or owner's agents must file notification once the 10 linear feet or 48 square feet has been reached on any asbestos project or multiple asbestos project (per structure, per calendar year).

b. Nonfriable Asbestos-Containing Materials: Caulking, Window-Glazing, Roofing.

Except for nonfriable roofing removed in accordance with Section 9.09.B (Leaving Nonfriable Asbestos-Containing Roofing Material in Place During Demolition) or Section 9.10 (Exception for Hazardous Conditions), ((~~N~~))notification is not required for removal and disposal of the following nonfriable asbestos-containing materials: caulking, window-glazing, or roofing (roofing used on roofs versus other applications). All other asbestos project and demolition requirements remain in effect except as provided by Article IX.

c. Owner-Occupied, Single-Family Residences.

For an asbestos project involving an owner-occupied, single-family residence performed by someone other than the resident owner (e.g.((~~,~~)) an asbestos removal contractor), it shall be the responsibility of the person performing the asbestos project to submit a complete notification, including the required fee and any additional information requested by the Control Officer or his/her authorized representative, to the Agency, in accordance with the notification waiting period requirements in Article X, Section 10.09 of this Regulation. The notification must be submitted by the owner's agent on approved forms. All other asbestos project and demolition requirements remain in effect except as provided by Article IX.

d. Underground Storage Tanks.

Notification is not required for demolition of underground storage tanks with no asbestos. All other asbestos project and demolition requirements remain in effect except as provided by Article IX.

e. Demolition of Structures With a Projected Roof Area ≤ 120 Square Feet.

Notification is not required for demolition of structures with a projected roof area less than or equal to 120 square feet, unless asbestos-containing material is present. If asbestos-containing material is present, asbestos project notification requirements apply. All other requirements remain in effect except as provided by Article IX.

f. Demolition by Fire Fighting Instruction Fires.

The notification fee in ((~~Section 10.09~~)) the fee schedule is waived for any demolition (when the notification project type is for asbestos removal and demolition or the notification project type is demolition with no asbestos removal) performed in accordance with RCW 52.12.150(6), where the good faith inspection referred to in RCW 52.12.150(6) is an asbestos survey performed by an AHERA Building Inspector, as required in Section 9.03.A-E of this Regulation.

g. Abandoned Asbestos-Containing Material.

The Control Officer may waive part or all of the notification waiting period and project fee, by written authorization, for removal and disposal of abandoned (without the knowledge or consent of the property owner) asbestos-containing materials and for demolition of abandoned structures. All other requirements remain in effect.

h. Emergencies.

The advance notification period may be waived pursuant to Section 10.09.A if an asbestos project or demolition must be conducted immediately because of any of the following:

1) There was a sudden, unexpected event that resulted in a public health or safety hazard;

2) The project must proceed immediately to protect equipment, ensure continuous vital utilities, or minimize property damage;

3) Asbestos-containing materials were encountered that were not identified during the asbestos survey; or

4) The project must proceed to avoid imposing an unreasonable financial burden.

i. State of Emergency.

If a state of emergency is declared by an authorized local, state, or federal governmental official due to a storm, flooding, or other disaster, the Control Officer may temporarily waive part or all of the project fee(s) by written authorization. The written authorization shall reference the applicable state of emergency, what fee(s) will be waived, to what extent((~~d~~)) the fee(s) will be waived, and the effective date(s) of the fee(s) waiver.

j. Annual Notification.

A property owner or owner's agent may file one or more annual notifications if all of the following conditions are met:

1) If more than one annual notification is filed for the same real property, there must not be duplication of structures listed on the annual notifications.

2) The total amount of asbestos-containing material for all asbestos projects performed under an annual notification is less than or equal to 259 linear feet and less than or equal to 159 square feet per structure, per calendar year. If any quantity of asbestos-containing material is removed from a structure which is below notification thresholds of 10 linear feet and/or 48 square feet per structure per calendar year, and an annual notification is filed after the removal occurred, the quantity of asbestos-containing material removed from each structure must be applied towards the annual notification removal limits for each structure.

3) The annual notification is valid for one calendar year.

4) The annual notification is exempt from the requirements in Sections 9.04.A.2, 9.04.A.3.b, 9.04.A.3.d, and 9.04.A.4. All other requirements apply.

5) Quarterly reporting forms approved by SRCAA shall be completed and received by SRCAA for the first calendar quarter by April 15, for the second calendar quarter by July 15, for the third calendar quarter by October 15, and for the fourth calendar quarter by January 15. Quarterly reports shall be filed with SRCAA even when no asbestos-containing material is removed for the respective reporting period.

B. Amendments.

((~~1.~~)) Mandatory Amendments.

((–)) Amendments must be submitted by the person or party that originally submitted the notification unless that person or party explicitly names another person or party that is authorized to file an amendment. An amendment shall be submitted to the Agency for any of the following changes in notification, must be submitted in accordance with Section 9.04.A and the advance notification requirements in Section 10.09 of this Regulation, and if applicable, shall be accompa-

nied by the appropriate nonrefundable fee as set forth in ((~~Section 10.09 of this Regulation~~)) the fee schedule:

1. ((~~a.~~)) Project Type.

Changes in the project type (e.g.((~~,~~)) from asbestos removal only to asbestos removal and demolition) ((~~or cancellation of a project filed under a notification~~)).

2. ((~~b.~~)) Job Size.

Increases in the job size category, which increase the fee or changes the advance notification period. For an amendment where the project type or job size category is associated with a higher fee, a fee equal to the difference between the fee associated with the most recently submitted notification and the fee associated with the increased project type or job size category shall be submitted. When there is an increase in the job size category which increases the fee or changes the advance notification period, the additional quantities of asbestos-containing material must be itemized on the amendment form. If the job size increases the 3-day waiting period to a 10-day waiting period, the 10-day waiting period starts from the original notification filing date. If the original notification was filed as an emergency and there is an increase in the job size category which increases the notification fee category, the emergency fee applies to the new fee category.

3. ((~~c.~~)) Type of Asbestos.

Changes in the type or new types of asbestos-containing material that will be removed. All types (except as provided for in Section 9.04.A.7.b) and quantities of asbestos-containing material must be itemized on the amendment form.

4. ((~~d.~~)) Start/End Dates.

Changes in the asbestos project date (i.e. asbestos removal start date, asbestos removal end date or earliest demolition start date). This includes((~~ing~~)) placing a project "on hold" ((~~or "off hold"~~)) (e.g.((~~,~~)) an asbestos project is temporarily delayed and a new ((~~start~~)) project date has not been determined). ((~~confirmed) or canceling a notification altogether.~~)) Placing a project "on hold" is limited to asbestos projects where the remaining types and quantities of asbestos-containing material to be removed are known. When placing a project "on hold", the remaining types and quantities of asbestos-containing material to be removed from each structure shall be itemized on the amendment form. If an asbestos project date is placed "on hold", an amendment taking it "off hold" must be filed prior to work on the asbestos project resuming.

((~~e. Completion Date.~~

~~Changes in the asbestos project completion date including placing a project "on hold" or "off hold" (e.g., an asbestos project is temporarily delayed and a new end date has not been confirmed~~)).

5. Completion Date.

Except as provided below, in the case of additional work to be performed after the last completion date on record, a new notification shall be submitted to the Agency and shall be accompanied by the appropriate nonrefundable fee as set forth in the fee schedule. Where the notification project type indicates asbestos removal only, the last completion date on record refers to the last asbestos removal completion date on record. Where the notification project type indicates asbestos removal and demolition or demolition with no asbestos removal, the last completion date on record is 365 days from the earliest original notification start date.

a. Completion Date Extension.

Where the notification project type indicates asbestos removal only or asbestos removal and demolition, the last asbestos removal completion date on record has already passed, when an asbestos survey was performed that was designed to address the full scope of the renovation or demolition being performed, and when asbestos-containing materials are discovered unexpectedly prior to or during renovation or demolition and those materials were not identified in an asbestos survey, the owner or owner's agent may request that SRCAA accept an amendment under this section for removal of additional asbestos-containing material. In making the request, the owner or owner's agent shall submit a copy of the asbestos survey to SRCAA. If SRCAA does not approve an amendment under this section, a new notification must be submitted pursuant to Article IX and Section 10.09 for removal of additional asbestos-containing material.

6. Adding Structures.

Adding one or more structures to a previously submitted notification.

a. Amendments cannot be used to add structures to a previously submitted notification unless one or more of the following applies:

1) The structure(s) meet(s) the definition of an owner-occupied, single-family residence and the last completion date on record has not passed; or

2) The structure(s) is/are added prior to the earliest start date listed on the original notification.

b. If the addition of one or more structures will increase the original advance notification waiting period (e.g. 3 day to 10 day), a new notification is required.

c. The multiple asbestos project and demolition requirements in Section 9.04.A.3 and other applicable requirements apply.

((~~2. Opportunity for Amendment.~~

~~a. Start Date on Record.~~

~~An amendment must be submitted on or before the most current asbestos removal start date on record in order to change the asbestos removal start date or place a project "on hold".~~

~~b. Last Completion Date on Record.~~

~~In no case shall an amendment be accepted by the Agency if it is filed after the last completion date on record. Where the notification project type indicates asbestos removal only, the last completion date on record refers to the last asbestos removal completion date on record. Where the notification project type indicates asbestos removal and demolition or demolition with no asbestos removal, the last completion date on record is 365 days from the earliest original notification start date.~~

~~1) In the case of additional work to be performed after the last completion date on record, a new notification shall be submitted to the Agency and shall be accompanied by the appropriate nonrefundable fee as set forth in Section 10.09 of Article X of this Regulation.~~

~~2) Where the notification project type indicates asbestos removal and demolition, the last asbestos removal completion date on record has already passed, and when asbestos-~~

~~containing materials are encountered prior to or during demolition that were not identified in the asbestos survey, SRCAA may accept an amendment for additional asbestos removal, provided the additional asbestos removal is complete within 365 days from the earliest original notification start date.~~

~~e. Canceled Notification.~~

~~Once a property owner or owner's agent cancels a notification, it shall be unlawful for any person to cause or allow any work on an asbestos project or demolition unless a new, complete notification, including the required fee and any additional information requested by the Control Officer, has been submitted to the Agency on approved forms through the Agency's website or in person at the Agency's place of business by the property owner or owner's agent, in accordance with the advance notification period requirements contained in Article X, Section 9.04.A and 10.09 of this Regulation).~~

~~d. Adding Structures.~~

~~Amendments may not be used to add structures to a previously submitted notification if the structure(s) meet(s) the definition of a facility in Section 9.02.~~))

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The unnecessary underscoring 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.

SECTION 9.05 ASBESTOS DISTURBANCE ((~~REMOVAL REQUIREMENTS~~))

((~~A. Removal of Asbestos.~~

A. Removal to Prevent Disturbance.

((~~1.~~)) Except as provided in Sections 9.05.E and 9.0((~~8~~))9-9.10 ((~~.B-C~~)) of this Regulation, it shall be unlawful for any person to cause or allow any renovation, demolition, or other action or inaction that may:

1. ((~~a.~~)) Disturb asbestos-containing material without first removing all asbestos-containing material in accordance with the requirements of this Regulation; or

2. ((~~b.~~)) Damage a structure so as to preclude access to asbestos-containing material for future removal, without first removing all asbestos-containing material in accordance with the requirements of this Regulation.

B. Conditions that will Likely Result in Disturbance.

((~~2.~~)) Except as provided in Sections 9.05.E and 9.0((~~8~~))9-9.10 ((~~.A-C~~)) of this Regulation, it shall be unlawful for any person to create or allow a condition, involving an existing structure or component, that will likely result in the disturbance of asbestos-containing material (e.g., not removing all asbestos-containing material in a structure scheduled for demolition; not completely removing asbestos-containing material identified for removal by the last asbestos removal completion date on record; leaving asbestos-containing material in a state that makes it more susceptible to being disturbed; asbestos-containing material that is peeling, delaminating, crumbling, blistering, or other similar condition; etc.).

C. Reuse.

((~~3.~~)) Asbestos-containing material in good condition (as determined in Section 9.03.C.2.d when an asbestos survey is performed) ((~~need not be removed from a component if the component is~~)) may be removed for reuse, stored for reuse, or transported for reuse provided it is not disturbed or likely to be disturbed ((~~without disturbing or damaging the asbestos-containing material~~)). Asbestos-containing material that is damaged or likely to be disturbed shall not be removed for reuse, stored for reuse or transported for reused. Asbestos-containing material which is stored or transported for reuse must be kept in a secure location and clearly labeled with asbestos warning signs until reuse occurs. If the asbestos-containing material will not be reused or is likely to be disturbed, it must be handled and disposed of in accordance with this Regulation.

D. If Disturbance Occurs.

((~~4.~~)) Suspect asbestos-containing material that has been disturbed must be removed as soon as possible and disposed of in accordance with this Regulation unless an asbestos survey, performed in accordance with Section 9.03 of this Regulation, demonstrates that suspect asbestos-containing materials are not asbestos-containing materials.

E. Vermiculite.

Except as provided in Sections 9.09.A and 9.10, it shall be unlawful for any person to cause or allow any renovation, demolition, or other action or inaction that may disturb loose vermiculite containing one percent or less asbestos, including damaging a structure so as to preclude access for future removal, without first removing it to the extent practicable in accordance with Section 9.07 and other applicable requirements of this Regulation. Furthermore, it shall be unlawful for any person to create or allow a condition, involving an existing structure or component that will likely result in the disturbance of loose vermiculite containing one percent or less asbestos (e.g. not removing it to the extent practical in a structure scheduled for demolition; not removing visible vermiculite to the extent practical by the last asbestos removal completion date on record; leaving loose vermiculite containing one percent or less asbestos in a state that makes it more susceptible to being disturbed).

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

SECTION 9.06 PROCEDURES FOR ASBESTOS PROJECTS

A. Training Requirements.

It shall be unlawful for any person to cause or allow any work on an asbestos project unless it is performed by persons trained and certified in accordance with the standards established by the Washington State Department of Labor & Industries, the federal Occupational Safety & Health Administration, or the United States Environmental Protection Agency (whichever agency has jurisdiction) and whose certification is current. This certification requirement does not apply to asbestos projects conducted in an owner-occupied, single-family residence performed by the resident owner of the dwelling.

B. Standard Asbestos Project Work Practices.

Standard asbestos project work practices require manual removal methods unless otherwise approved by SRCAA. Standard asbestos work practices require removal of asbestos-containing material using all procedures described in Sec-

tion 9.06.B.1-6. Except as provided in Sections 9.07-9.10 ((9.08.A-C)) of this Regulation, it shall be unlawful for any person to cause or allow the removal or disturbance of asbestos-containing material unless all the following requirements are met:

1. Controlled Area.

The asbestos project shall be conducted and maintained in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area shall be restricted to authorized personnel only, including occasions when asbestos abatement is not actively occurring (e.g.((,)) when workers are on break or off-site).

2. Negative Pressure Enclosure.

If a negative pressure enclosure is employed it shall be equipped with transparent viewing ports, if feasible, and shall be maintained in good working order.

3. Wetting Asbestos-Containing Material Prior to and During Removal.

a. Absorbent asbestos-containing materials, such as surfacing material and thermal system insulation, shall be saturated with a liquid wetting agent prior to removal. Wetting shall continue until all the material is permeated with the wetting agent. Any unsaturated absorbent asbestos-containing material exposed during removal shall be immediately saturated with a liquid wetting agent and kept wet until sealed in leak-tight containers.

b. Nonabsorbent asbestos-containing materials, such as cement asbestos board or vinyl asbestos tile, shall be continuously coated with a liquid wetting agent on any exposed surface prior to and during removal. Any dry surfaces of nonabsorbent asbestos-containing material exposed during removal shall be immediately coated with a liquid wetting agent and kept wet until sealed in leak-tight containers.

c. Metal components (such as valves, fire doors, and reactor vessels) that have internal asbestos-containing material do not require wetting of the asbestos-containing material if all access points to the asbestos-containing materials are welded shut or the component has mechanical seals, which cannot be removed by hand, that separate the asbestos-containing material from the environment.

4. Handling.

Except for surfacing material being removed inside a negative pressure enclosure, asbestos-containing material that is being removed, has been removed, or may have fallen off components during an asbestos project shall be carefully lowered to the ground or the floor, not dropped, thrown, slid, or otherwise damaged.

5. Asbestos-Containing Waste Material.

a. All absorbent, asbestos-containing waste material shall be kept saturated with a liquid wetting agent until sealed in leak-tight containers. All nonabsorbent, asbestos-containing waste material shall be kept coated with a liquid wetting agent until sealed in leak-tight containers.

b. All asbestos-containing waste material resulting from an asbestos project shall be sealed in leak-tight containers as soon as possible after removal, but no later than the end of each work shift.

c. The exterior of each leak-tight container shall be free of all asbestos residue and shall be permanently labeled with an asbestos warning sign as specified by the Washington State Department of Labor and Industries or the federal Occupational Safety and Health Administration.

d. Immediately after sealing, each leak-tight container shall be permanently marked with the date the material was collected for disposal, the name of the waste generator, and the address at which the waste was generated. This marking must be made at the site where the waste was generated and must be readable without opening the container.

e. Leak-tight containers shall not be dropped, thrown, slid, or otherwise damaged.

f. Asbestos-containing waste material shall be stored in a controlled area until transported to, and disposed of at, a waste disposal site approved to accept asbestos-containing waste material.

6. Visible Emissions

No visible emissions shall result from an asbestos project.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

SECTION 9.07 PROCEDURES FOR LOOSE VERMICULITE CONTAINING ONE PERCENT OR LESS ASBESTOS

Except as provided in Sections 9.09.A and 9.10, all of the following asbestos procedures shall be employed for removal or demolition of loose vermiculite containing one percent or less asbestos:

A. Removal

1. The asbestos project shall be conducted and maintained in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area shall be restricted to authorized personnel only, including occasions when asbestos abatement is not actively occurring (e.g. when workers are on break or off-site).

2. Vermiculite shall be misted or wetted to the extent practicable with a liquid wetting agent prior to and during removal.

3. Vermiculite shall be removed using manual methods or using vacuum systems with HEPA filtered exhaust systems designed for the vacuum system on which it is used. The HEPA filtered exhaust system shall be operated and maintained according to manufacturer specifications.

4. Following vermiculite removal, the work space shall be treated with a post abatement encapsulant (e.g., lock-down encapsulant, penetrating encapsulant).

B. Handling & Disposal

1. After being removed, vermiculite shall immediately be transferred to a leak-tight container.

2. The exterior of each leak-tight container shall be free of all vermiculite residue and shall be permanently labeled with an asbestos warning sign as specified by the Washington State Department of Labor and Industries or the federal Occupational Safety and Health Administration.

3. Immediately after sealing, each leak-tight container shall be permanently marked with the date the material was collected for disposal, the name of the waste generator, and the address at which the waste was generated. This marking must be made at the site where the waste was generated and must be readable without opening the container.

4. Leak-tight containers shall not be dropped, thrown, slid, or otherwise damaged.

5. Asbestos-containing waste material shall be stored in a controlled area until transported to, and disposed of at, a waste disposal site approved to accept asbestos-containing waste material and in accordance with Section 9.11 of this Regulation.

C. Except as provided for in Section 9.07.A.2 and 9.09.A-9.10, no visible emissions shall result from an asbestos project.

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

SECTION 9.0((~~7~~))8 PROCEDURES FOR NONFRIABLE ASBESTOS-CONTAINING ROOFING MATERIAL

((~~A. Method of Removal for Nonfriable Asbestos-Containing Roofing Material.~~))

All of the following asbestos removal methods shall be employed for nonfriable asbestos-containing roofing material as defined in Section 9.02.S of this Regulation:

A. ((~~1.~~)) The nonfriable asbestos-containing roofing material shall be removed using methods, such as spud bar and knife, which do not render the material friable. Removal methods such as sanding, grinding, abrading, or sawing shall not be employed under this Section.

B. ((~~2.~~)) After being removed, nonfriable asbestos-containing roofing material shall be carefully lowered to the ground or the floor, not dropped, thrown, or otherwise damaged and transferred to a disposal container as soon as possible after removal. In no case shall the transfer occur later than the end of each work shift.

C. ((~~3.~~)) Each disposal container shall have a sign identifying the material as nonfriable asbestos-containing roofing material and shall be transported to, and disposed of at, an approved waste disposal site in compliance with Section 9.11 and applicable local, state, and federal regulations.

D. ((~~4. Appropriate dust control methods as provided in Article VI, Section 6.05 of this Regulation shall be used to control fugitive dust emissions~~)) No visible emissions shall result from an asbestos project.

SECTION 9.0((~~8~~))9 ALTERNATE MEANS OF COMPLIANCE

A. Alternate Asbestos Project Work Practices for Removing Asbestos-Containing Material Prior to Renovation or Demolition.

Unless otherwise approved by SRCAA in writing, alternate means of compliance must be used ((~~W~~))where standard asbestos project work practices in Section 9.06.B cannot be utilized to remove asbestos-containing material (financial considerations aside) prior to renovation or demolition((~~,~~)); when asbestos-containing material has been disturbed or is otherwise no longer intact (e.g., when demolition has already occurred or a similar situation exists, ((~~(~~))typically leaving a pile/area of debris, rubble, ash, ((~~and/~~)) or soil)((~~,~~)); or when mechanical methods are used for removal ((~~an alternate asbestos removal method may be employed provided it complies~~)). Projects performed under this section must be performed under the alternate asbestos project work practice notification category and must comply with all of the following:

1. Qualifications of Person(s) Preparing an Alternate Work Plan (AWP).

An AHERA Project Designer ((~~and a Certified Industrial Hygienist (CIH) or an AHERA Project Designer and a Licensed Professional Engineer (PE)~~)) must evaluate the work area, the type and quantity (known or estimated) of asbestos-containing material, the projected work practices, and the engineering controls and develop an AWP that ensures the planned control methods will be as effective as the work practices in Section 9.06.B of this Regulation.

2. AWP Contents.

The AWP must contain all of the following information:

a. Reason(s) why standard work practices cannot be utilized;

b. Date(s) the work area was evaluated by the person(s) that prepared the AWP;

c. Site address(es)/location(s) where the inspection was performed;

d. The purpose of the evaluation (e.g., asbestos removal from an electrical structure or component where standard wet methods cannot be utilized, removal and disposal of a debris pile resulting from a fire-damaged structure, etc.);

e. If an asbestos survey was performed, incorporate it by reference;

f. All procedures that will be followed for controlling asbestos emissions during the asbestos project;

g. Procedures that will be followed for the final inspection of the property to ensure that asbestos-containing material has been removed and disposed of in accordance with applicable regulations;

h. A statement that the AWP will be as effective as the work practices in Section 9.06.B;

i. Signature(s) of the person(s) that prepared the AWP; and

j. Certification(s) and/or license number(s), and date(s) that certification(s) and/or license(s) expire(s), for the person(s) that prepared the AWP.

3. Asbestos Survey.

If an asbestos survey is not performed pursuant to Section 9.03 of this Regulation, it must be presumed that the asbestos project involves friable and nonfriable asbestos-containing material.

4. AWP Procedures.

The AWP must identify in detail all procedures that will be followed for controlling asbestos emissions during the asbestos project (e.g., during asbestos removal, when workers are off-site, etc.). All procedures and requirements in the AWP must be followed. Unless alternate procedures are specified in the AWP by an AHERA Project Designer ((~~and a Certified Industrial Hygienist or an AHERA Project Designer and a Licensed Professional Engineer~~)), the AWP shall include all of the ((~~following~~)) requirements in Section 9.0((~~8~~))9.A.4.a-f, below. ((~~of this Regulation:~~))

a. Controlled Area.

The asbestos project shall be conducted in a controlled area, clearly marked by barriers and asbestos warning signs. Access to the controlled area shall be restricted to authorized personnel only. The controlled area shall protect persons out-

side the controlled area from potential exposure to airborne asbestos.

b. Wetting.

All materials and debris shall be handled in a wet condition.

1) Absorbent materials shall be saturated with a liquid wetting agent prior to removal. Wetting shall continue until all the material is permeated with the wetting agent. Any unsaturated surfaces exposed during removal shall be wetted immediately.

2) Nonabsorbent materials shall be continuously coated with a liquid wetting agent on any exposed surface prior to and during the removal. They shall be wetted after removal, as necessary, to assure they are wet when sealed in leak-tight containers. Any dry surfaces exposed during removal shall be wetted immediately.

c. Asbestos-Containing Waste Materials.

1) All asbestos-containing waste material and/or asbestos contaminated waste material shall be kept wet and shall be sealed in leak-tight containers while still wet, as soon as possible after removal but no later than the end of each work shift.

2) The exterior of each leak-tight container shall be free of all asbestos residue and shall be permanently labeled with an asbestos warning sign as specified by the Washington State Department of Labor and Industries or the federal Occupational Safety and Health Administration.

3) Immediately after sealing, each leak-tight container shall be permanently marked with the date the material was collected for disposal, the name of the waste generator, and the address at which the waste was generated. This marking must be readable without opening the container.

4) Leak-tight containers shall be kept leak-tight.

5) The asbestos-containing waste material shall be stored in a controlled area until transported to an approved waste disposal site.

d. Air Monitoring.

Procedures that shall be followed for air monitoring at the outside perimeter of the controlled area, both upwind and downwind, to ensure that the asbestos fiber concentrations do not exceed a net difference (between concurrent upwind and downwind monitoring results) of 0.01 fibers per cubic centimeter (f/cc) as determined by the NIOSH Manual of Analytical Methods, Method 7400 (asbestos and other fibers by PCM).

1) The procedures shall require that any air sampling cassette(s) that become(s) overloaded with dust be immediately replaced. Work shall stop until an AHERA Project Designer ((~~and a Certified Industrial Hygienist or an AHERA Project Designer and a Licensed Professional Engineer~~)) has re-evaluated the engineering controls for dust control, revised the AWP as necessary, and the owner or owner's agent implements all revisions to the AWP.

2) The Agency shall immediately be notified by the owner or owner's agent if the airborne fiber concentrations exceed a net difference of 0.01 f/cc and work shall stop until an AHERA Project Designer ((~~and a Certified Industrial Hygienist or an AHERA Project Designer and a Licensed Professional Engineer~~)) has re-evaluated the engineering controls, revised the AWP as necessary, and the owner or owner's agent implements all revisions to the AWP.

e. Competent Person.

1) A competent person shall be present for the duration of the asbestos project (includes demolition) and shall observe work activities at the site.

2) The competent person shall stop work at the site to ensure that friable asbestos-containing material found in the debris, which can readily be separated, is removed from the main waste stream and is placed and maintained in leak-tight containers for disposal.

3) The competent person shall stop work if AWP procedures are not being followed and shall ensure that work does not resume until procedures in the AWP are followed.

f. Separation of Materials.

If the project involves separation of clean(ed) materials from debris piles (e.g., rubble, ash, soil, etc.) that contain or are contaminated with asbestos-containing materials, the material separation procedures shall be included in the AWP. In addition to these procedures, the following requirements apply:

1) The AWP shall identify what materials will be separated from the asbestos-containing material waste stream and shall describe the procedures that will be used for separating and cleaning the materials. All materials removed from the asbestos-containing waste material stream shall be free of asbestos-containing material.

2) A competent person shall ensure that materials being diverted from the asbestos-containing waste material stream are free of asbestos-containing material.

5. Visible Emissions.

No visible emissions shall result from an asbestos project.

6. Record Keeping.

a. The AWP shall be kept at the work site for the duration of the project and made available to the Agency upon request. The property owner or owner's agent and AHERA Project Designer that prepared the AWP shall retain a complete copy of the AWP for at least 24 months from the date it was prepared and make it available to the Agency upon request.

b. Complete copies of other asbestos-related test plans and reports (e.g., testing soil for asbestos, air monitoring for asbestos, etc.) associated with the project shall also be retained by the property owner or owner's agent for at least 24 months from the date it was performed and made available to the Agency upon request. The person(s) preparing and performing such tests shall also retain a complete copy of these records for at least 24 months from the date it was prepared and make it available to the Agency upon request.

7. Other Requirements.

All applicable local, state, and federal regulations must be complied with.

B. Leaving Nonfriable Asbestos-Containing Roofing Material in Place During Demolition.

Nonfriable asbestos-containing roofing material as defined in Section 9.02.S of this Regulation may be left in place during demolition, except for demolition by burning, if it remains nonfriable during all demolition activities (including handling and disposal) and all of the following are met:

1. A signed and dated written determination was made by an AHERA Project Designer that includes all of the following:

a. A summary of the evaluation performed within the past 12 months, including a description of the type and current condition of asbestos-containing roofing materials;

b. A summary of the work practices and engineering controls that will be used;

c. A determination that nonfriable asbestos-containing roofing material will remain nonfriable during all demolition activities and subsequent disposal of the debris; and

d. The property owner or owner's agent and the AHERA Project Designer that performed the determination shall retain a complete copy of the determination for at least 24 months from the date it was performed and make it available to the Agency upon request.

2. Appropriate dust control methods as provided in Article VI, Section 6.05 of this Regulation shall be used to control fugitive dust emissions.

3. Each disposal container shall have a sign identifying the material as nonfriable asbestos-containing roofing material and shall be transported to, and disposed of at, an approved waste disposal site in compliance with Section 9.11 and applicable local, state, and federal regulations.

((~~C. Exception for Hazardous Conditions (Leaving Friable and/or Nonfriable Asbestos-Containing Material in Place During Demolition)~~)).

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

SECTION 9.10 EXCEPTION FOR HAZARDOUS CONDITIONS

When the exception for hazardous conditions is being utilized, all of the following apply:

A. Friable and nonfriable asbestos-containing material need not be removed prior to demolition, if it is not accessible (e.g.((~~,~~)) asbestos cannot be removed prior to demolition) because of hazardous conditions such as structures or buildings that are structurally unsound, structures or buildings that are in danger of imminent collapse, or other conditions that are immediately dangerous to life and health. ((~~At a minimum, the owner and owner's agent must comply with all of the following:~~

B. An authorized government official or a licensed structural engineer must determine in writing that a hazard exists, which makes removal of asbestos-containing material dangerous to life or health. The determination must be retained for at least 24 months from the date it was prepared and made available to SRCAA by the property owner or owner's agent upon request.

~~1. Qualifications of Person(s) Preparing an Alternate Work Plan (AWP).~~))

C. An AHERA Project Designer ((~~and a Certified Industrial Hygienist or an AHERA Project Designer and a Licensed Professional Engineer~~)) must evaluate the work area, the type and quantity (known or estimated) of asbestos-containing material, the projected work practices, and the engineering controls and develop an ((~~Alternative Work Plan (~~))AWP((~~)~~)) that ensures the planned control methods will be protective of public health. The AWP must contain all of the following information:

((~~2. Determination of a Hazardous Condition.~~

~~An authorized government official or a licensed structural engineer must determine in writing that a hazard exists, which makes removal of asbestos-containing material dangerous to life or health.~~

~~3. AWP Contents.~~

~~The AWP must contain all of the following information~~))

1. ((~~a.~~)) Date(s) the work area was evaluated by the person(s) that prepared the AWP;

2. ((~~b.~~)) Site address(es)/location(s) where the inspection was performed;

3. ((~~c.~~)) A copy of the hazardous conditions determination from a government official or licensed structural engineer;

4. ((~~d.~~)) If an asbestos survey was performed, include a copy or incorporate it by reference;

5. ((~~e.~~)) All procedures that will be followed for controlling asbestos emissions during the asbestos project;

6. ((~~f.~~)) A statement that the AWP will be protective of public health;

7. ((~~g.~~)) Signature(s) of the person(s) that prepared the AWP; and

8. ((~~h.~~)) Certification(s) and/or license number(s), and date(s) that certification(s) and/or license(s) expire(s), for the person(s) that prepared the AWP.

D. ((~~4.~~)) AWP Procedures.

((~~–~~)) The requirements of Section 9.0((~~8~~))9.A.3-7 of this Regulation and all other applicable requirements, including those specified in the AWP, shall be complied with.

Reviser's note: The typographical errors in the above material occurred in the copy filed by the Spokane Regional Clean Air Agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

SECTION 9.((~~09~~))11 DISPOSAL OF ASBESTOS-CONTAINING WASTE MATERIAL

A. Disposal Within 10 Days of Removal.

Except as provided in Section 9.((~~09~~))11.C (Temporary Storage Site) of this Regulation, it shall be unlawful for any person to cause or allow the disposal of asbestos-containing waste material unless it is deposited within 10 calendar days of removal at a waste disposal site authorized to accept such waste.

B. Waste Tracking Requirements.

It shall be unlawful for any person to cause or allow the disposal of asbestos-containing waste material unless all of the following requirements are met:

1. Maintain waste shipment records, beginning prior to transport, using a separate form for each waste generator that includes all of the following information:

a. The name, address, and telephone number of the waste generator.

b. The approximate quantity in cubic meters or cubic yards.

c. The name and telephone number of the disposal site operator.

d. The name and physical site location of the disposal site.

e. The date transported.

f. The name, address, and telephone number of the transporter.

g. Accurate detailed description of the type of asbestos-containing waste material being disposed of.

((~~g~~)) h. A certification that the contents of the consignment are fully and accurately described by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition to transport by highway according to applicable waste transport regulations.

2. Provide a copy of the waste shipment record to the disposal site owner or operator at the same time the asbestos-containing waste material is delivered. If requested by the disposal site operator, a copy of the ((~~Alternate Work Plan~~)) AWP or written determination as specified pursuant to Sections 9.0((~~8~~))9-9.10((~~.A-C~~)) of this Regulation shall also be provided to the disposal site owner or operator at the same time the asbestos-containing waste material is delivered.

3. If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 35 calendar days of the date the waste was accepted by the initial transporter, contact the transporter and/or the owner or operator of the disposal site to determine the status of the waste shipment.

4. If a copy of the waste shipment record, signed by the owner or operator of the disposal site, is not received by the waste generator within 45 calendar days of the date the waste was accepted by the initial transporter, report in writing to the Control Officer. Include in the report, a copy of the waste shipment record and cover letter signed by the waste generator, explaining the efforts taken to locate the asbestos waste shipment and the results of those efforts.

5. Retain a copy of all waste shipment records for at least 24 months from the date it was generated, including a copy of the waste shipment record signed by the owner or operator of the designated waste disposal site. A copy of asbestos project notifications and corresponding waste shipment records shall be provided to the Agency upon request.

C. Temporary Storage Site.

A person may establish a ((~~facility~~)) temporary storage site for the purpose of collecting and temporarily storing asbestos-containing waste material if ((~~the facility~~)) it is approved by the Control Officer and all of the following conditions are met:

1. A complete application for Temporary Storage of asbestos containing waste material is submitted to and approved by the Agency.

2. The application must be accompanied by a nonrefundable fee as set in the fee schedule.

3. Accumulated asbestos-containing waste material shall be kept in a controlled storage area posted with asbestos warning signs and accessible only to authorized persons, including Agency representatives and persons authorized by WISHA.

4. All asbestos-containing waste material shall be stored in leak-tight containers which are maintained in leak-tight condition.

5. The storage area must be locked except during transfer of asbestos-containing waste material.

6. Storage, transportation, disposal, and return of the waste shipment record to the waste generator shall not exceed 90 calendar days.

7. Asbestos-Containing Waste Material Temporary Storage Permits approved by the Agency are valid for one calendar year unless a different time frame is specified in the permit.

D. Disposal of Asbestos Cement Pipe.

Asbestos cement pipe used on public right-of-ways, public easements, and places receiving the prior written approval of the Control Officer may be buried in place if the pipe is left intact (e.g., not moved, broken or disturbed) and covered with at least 3 feet or more of non-asbestos fill material. All asbestos cement pipe fragments that are 1 linear foot or less and other asbestos-containing waste material shall be disposed of at a waste disposal site authorized to accept such waste. Pipe bursting asbestos cement pipe or other asbestos-containing material is prohibited.

SECTION 9.1((~~0~~))2 COMPLIANCE WITH OTHER RULES

Other government agencies have adopted rules that may apply to asbestos regulated under these rules including, but not limited to, the U.S Environmental Protection Agency, the U.S. Occupational Safety and Health Administration, and the Washington State Department of Labor and Industries. Nothing in the Agency's rules shall be construed as excusing any person from complying with any other applicable local, state, or federal requirement.

AMENDATORY SECTION

The following section of Spokane Regional Clean Air Agency, Regulation I is amended:

Section 10.09 - Asbestos Project And Demolition Notification Waiting Period And Fees

SECTION 10.09 ASBESTOS PROJECT AND DEMOLITION NOTIFICATION WAITING PERIOD AND FEES

A. Written notification, as required in Article IX, Section 9.04, shall be in accordance with the waiting period in the tables that follow and shall be accompanied by the appropriate nonrefundable fee, as specified in the fee schedule.

Owner-occupied, single-family residence	**Waiting Period**
> 0 ln ft and/or > 0 sq ft asbestos performed by residing owner	Notification Not Required
< 10 ln ft and/or < 48 sq ft asbestos not performed by residing owner	Notification Not Required
≥ 10 ln ft and/or ≥ 48 sq ft asbestos not performed by residing owner	Prior Notice
All Demolition	3 Days

Not owner-occupied, single-family residence	Waiting Period
< 10 ln ft and/or < 48 sq ft asbestos, but asbestos removal threshold of ≥ 10 ln ft and/or ≥ 48 sq ft has not been exceeded for structure in calendar year and project WILL NOT exceed threshold of ≥ 10 ln ft and/or ≥ 48 sq ft asbestos removal from structure in calendar year	Notification Not Required
Project consists of < 10 ln ft and/or < 48 sq ft of asbestos removal, but ≥ 10 ln ft and/or ≥ 48 sq ft asbestos has already been removed from structure in calendar year or project WILL exceed threshold of ≥ 10 ln ft and/or ≥ 48 sq ft asbestos removal from structure in calendar year	Prior Notice
10-259 ln ft and/or 48-159 sq ft asbestos	3 Days
260-999 ln ft and/or 160-4,999 sq ft asbestos	10 Days
≥ 1,000 ln ft and/or ≥ 5,000 sq ft asbestos	10 Days
All Demolition	10 Days

Additional categories	Waiting Period	Reference
Emergency	Prior Notice*	Sect. 9.04.A.((6))7.h.
Annual Notification (≤ 259 ln ft and/or ≤ 159 sq ft)	Prior Notice	Sect. 9.04.A. ((6))7.j
Amendment	Prior Notice	Section 9.04.B.
Alternate Asbestos Project Work Practices	10 days	Section 9.0((8))9.A.
Demolition with Non-friable Asbestos Roofing	10 days	Section 9.0((8))9.B.
Exception for Hazardous Conditions	10 days	Section 9.10((08.C.))

* If prior notice isn't possible because of life endangerment or other serious consequences, the Agency may accept, at its discretion, a completed emergency notification if it is filed no later than the first regular Agency work day after the asbestos project and/or demolition commenced.

B. The Board shall periodically review the fee schedule for notifications submitted pursuant to Section 9.04 and determine if the total projected fee revenue to be collected pursuant to this Section is sufficient to fully recover program costs. Any proposed fee revisions shall include opportunity for public review and comment. Accordingly, the Agency shall account for program costs. If the Board determines that the total projected fee revenue is either significantly excessive or deficient for this purpose, then the Board may amend the fee schedule to more accurately recover program costs.

Reviser's note: The unnecessary underscoring 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.

WSR 13-23-098
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)

[Filed November 20, 2013, 9:23 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-15-124.

Title of Rule and Other Identifying Information: The department is amending the following sections in chapter 388-97 WAC, Nursing homes: WAC 388-97-0001 Definitions, 388-97-0300 Notice of rights and services, 388-97-0460 Grievance rights, 388-97-0520 Access and visitation rights, 388-97-1640 Required notification and reporting, 388-97-1840 Retaliation or discrimination prohibited, 388-97-4480 Criteria for imposing optional remedies, and other related rules as appropriate.

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 January 7, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 8, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on January 7, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by December 18, 2013, 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: The department is amending these rules to comply with, and be consistent with, two newly-passed state laws - SB [SSB] 5077 Gender-neutral terms and SB 5510 Vulnerable adults—Abuse.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: Chapters 18.51 and 74.42 RCW.

Statute Being Implemented: Chapters 18.51 and 74.42 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: Sandy Robertson, P.O. Box 45600, Olympia, WA 98513, (360) 725-3204; Implementation: Irene Owens, P.O. Box 45600, Olympia, WA 98513, (360) 725-2489; and Enforce-

ment: Lori Melchiori, P.O. Box 45600, Olympia, WA 98513, (360) 725-2404.

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 federal statutes or regulations.

November 14, 2013
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-04-093, filed 2/6/13, effective 3/9/13)

WAC 388-97-0001 Definitions. "Abandonment" means action or inaction by an individual or entity with a duty of care for a vulnerable adult that leaves the vulnerable individual without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult. 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. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(1) **"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 resident from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(2) **"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 restraints including chemical restraints, unless the restraint is consistent with licensing requirements.

(3) **"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 a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual.

(4) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a resident causing the resident to act in a way that is inconsistent with relevant past behavior, or causing the resident to perform services for the benefit of another.

"Administrative hearing" is a formal hearing proceeding before a state administrative law judge that gives:

(1) A licensee an opportunity to be heard in disputes about licensing actions, including the imposition of remedies, taken by the department; or

(2) An individual an opportunity to appeal a finding of abandonment, abuse, neglect, financial exploitation of a resident, or misappropriation of a resident's funds.

"Administrative law judge (ALJ)" means an impartial decision-maker who presides over an administrative hearing. ALJs are employed by the office of administrative hearings (OAH), which is a separate state agency. ALJs are not DSHS employees or DSHS representatives.

"Administrator" means a nursing home administrator, licensed under chapter 18.52 RCW, who must be in active administrative charge of the nursing home, as that term is defined in the board of nursing home administrator's regulations.

"Advanced registered nurse practitioner (ARNP)" means an individual who is licensed to practice as an advanced registered nurse practitioner under chapter 18.79 RCW.

"Applicant" means an individual, partnership, corporation, or other legal entity seeking a license to operate a nursing home.

"ASHRAE" means the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc.

"Attending physician" means the doctor responsible for a particular individual's total medical care.

"Berm" means a bank of earth piled against a wall.

"Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and is not required to treat the resident's medical symptoms.

"Civil adjudication proceeding" means judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44, or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

"Civil fine" is a civil monetary penalty assessed against a nursing home as authorized by chapters 18.51 and 74.42 RCW. There are two types of civil fines, "per day" and "per instance."

(1) **"Per day fine"** means a fine imposed for each day that a nursing home is out of compliance with a specific requirement. Per day fines are assessed in accordance with WAC 388-97-4580(1); and

(2) **"Per instance fine"** means a fine imposed for the occurrence of a deficiency.

"Condition on a license" means that the department has imposed certain requirements on a license and the licensee

cannot operate the nursing home unless the requirements are observed.

"Deficiency" is a nursing home's failed practice, action or inaction that violates any or all of the following:

(1) Requirements of chapters 18.51 or 74.42 RCW, or the requirements of this chapter; and

(2) In the case of a medicare and medicaid contractor, participation requirements under Title XVIII and XIX of the Social Security Act and federal medicare and medicaid regulations.

"Deficiency citation" or **"cited deficiency"** means written documentation by the department that describes a nursing home's deficiency(ies); the requirement that the deficiency(ies) violates; and the reasons for the determination of noncompliance.

"Deficient facility practice" or **"failed facility practice"** means the nursing home action(s), error(s), or lack of action(s) that provide the basis for the deficiency.

"Dementia care" means a therapeutic modality or modalities designed specifically for the care of persons with dementia.

"Denial of payment for new admissions" is an action imposed on a nursing home (facility) by the department that prohibits payment for new medicaid admissions to the nursing home after a specified date. Nursing homes certified to provide medicare and medicaid services may also be subjected to a denial of payment for new admissions by the federal Centers for Medicare and Medicaid Services.

"Department" means the state department of social and health services (DSHS).

"Department on-site monitoring" means an optional remedy of on-site visits to a nursing home by department staff according to department guidelines for the purpose of monitoring resident care or services or both.

"Dietitian" means a qualified dietitian. A qualified dietitian is one who is registered by the American Dietetic Association or certified by the state of Washington.

"Disclosure statement" means a signed statement by an individual in accordance with the requirements under RCW 43.43.834. The statement should include a disclosure of whether or not the individual has been convicted of certain crimes or has been found by any court, state licensing board, disciplinary board, or protection proceeding to have neglected, sexually abused, financially exploited, or physically abused any minor or adult individual.

"Drug" means a substance:

(1) Recognized as a drug in the official *United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, Official National Formulary*, or any supplement to any of them; or

(2) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.

"Drug facility" means a room or area designed and equipped for drug storage and the preparation of drugs for administration.

"Emergency closure" is an order by the department to immediately close a nursing home.

"Emergency transfer" means immediate transfer of residents from a nursing home to safe settings.

"Entity" means any type of firm, partnership, corporation, company, association, or joint stock association.

"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 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).

"Habilitative services" means the planned interventions and procedures which constitute a continuing and comprehensive effort to teach an individual previously undeveloped skills.

"Highest practicable physical, mental, and psychosocial well-being" means providing each resident with the necessary individualized care and services to assist the resident to achieve or maintain the highest possible health, functional and independence level in accordance with the resident's comprehensive assessment and plan of care. Care and services provided by the nursing home must be consistent with all requirements in this chapter, chapters 74.42 and 18.51 RCW, and the resident's informed choices. For medicaid and medicare residents, care and services must also be consistent with Title XVIII and XIX of the Social Security Act and federal medicare and medicaid regulations.

"Informal department review" is a dispute resolution process that provides an opportunity for the licensee or administrator to informally present information to a department representative about disputed, cited deficiencies. Refer to WAC 388-97-4420.

"Inspection" or **"survey"** means the process by which department staff evaluates the nursing home licensee's compliance with applicable statutes and regulations.

"Intermediate care facility for individuals with intellectual disabilities (ICF/IID)" means an institution certified under chapter 42 C.F.R., Part 483, Subpart I, and licensed under chapter 18.51 RCW.

"License revocation" is an action taken by the department to cancel a nursing home license in accordance with RCW 18.51.060 and WAC 388-97-4220.

"License suspension" is an action taken by the department to temporarily revoke a nursing home license in accordance with RCW 18.51.060 and this chapter.

"Licensee" means an individual, partnership, corporation, or other legal entity licensed to operate a nursing home.

"Licensed practical nurse" means an individual licensed to practice as a licensed practical nurse under chapter 18.79 RCW;

"Mandated reporter" as used in this chapter means any employee of a nursing home, any health care provider subject to chapter 18.130 RCW, the Uniform Disciplinary Act, and any licensee or operator of a nursing home. Under RCW 74.34.020, mandated reporters also include any employee of the department of social and health services, law enforcement officers, social workers, professional school personnel, individual providers, employees and licensees of assisted living facility, adult family homes, soldiers' homes, residential habilitation centers, or any other facility licensed by the department, employees of social service, welfare, mental health, adult day health, adult day care, home health, home

care, or hospice agencies, county coroners or medical examiners, or Christian Science practitioners.

"Misappropriation of resident property" means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money.

"NFPA" means National Fire Protection Association, Inc.

"Neglect":

(1) In a nursing home licensed under chapter 18.51 RCW, neglect means ((~~that an individual or entity with a duty of care for nursing home residents has:~~

~~(a) By a pattern of conduct or inaction, failed to provide goods and services to maintain physical or mental health or to avoid or prevent physical or mental harm or pain to a resident; or~~))

~~(b) By an act or omission, demonstrated a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the resident's health, welfare, or safety.~~))

(a) 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

(b) An act or omission by a person or entity with a duty of care 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.

(2) In a skilled nursing facility or nursing facility, neglect also means a failure to provide a resident with the goods and services necessary to avoid physical harm, mental anguish, or mental illness.

"Noncompliance" means a state of being out of compliance with state and/or federal requirements for nursing homes/facilities.

"Nursing assistant" means a nursing assistant as defined under RCW 18.88A.020 or successor laws.

"Nursing facility (NF)" or **"medicaid-certified nursing facility"** means a nursing home, or any portion of a hospital, veterans' home, or residential habilitation center, that is certified to provide nursing services to medicaid recipients under Section 1919(a) of the federal Social Security Act. All beds in a nursing facility are certified to provide medicaid services, even though one or more of the beds are also certified to provide medicare skilled nursing facility services.

"Nursing home" means any facility licensed to operate under chapter 18.51 RCW.

"Officer" means an individual serving as an officer of a corporation.

"Owner of five percent or more of the assets of a nursing home" means:

(1) The individual, and if applicable, the individual's spouse, who operates, or is applying to operate, the nursing home as a sole proprietorship;

(2) In the case of a corporation, the owner of at least five percent of the shares or capital stock of the corporation; or

(3) In the case of other types of business entities, the owner of a beneficial interest in at least five percent of the capital assets of an entity.

"Partner" means an individual in a partnership owning or operating a nursing home.

"Person" means any individual, firm, partnership, corporation, company, association or joint stock association.

"Pharmacist" means an individual licensed by the Washington state board of pharmacy under chapter 18.64 RCW.

"Pharmacy" means a place licensed under chapter 18.64 RCW where the practice of pharmacy is conducted.

"Physical restraint" means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, and which restricts freedom of movement or access to the resident's body.

"Physician's assistant (PA)" means a physician's assistant as defined under chapter 18.57A or 18.71A RCW or successor laws.

"Plan of correction" is a nursing home's written response to cited deficiencies that explains how it will correct the deficiencies and how it will prevent their reoccurrence.

"Reasonable accommodation" and **"reasonably accommodate"** has the meaning given in federal and state antidiscrimination laws and regulations. For the purpose of this chapter:

(1) Reasonable accommodation means that the nursing home must:

(a) Not impose admission criteria that excludes individuals unless the criteria is necessary for the provision of nursing home services;

(b) Make reasonable modification to its policies, practices or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the nursing home; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

"Receivership" is established by a court action and results in the removal of a nursing home's current licensee and the appointment of a substitute licensee to temporarily operate the nursing home.

"Recurring deficiency" means a deficiency that was cited by the department, corrected by the nursing home, and then cited again within fifteen months of the initial deficiency citation.

"Registered nurse" means an individual licensed to practice as a registered nurse under chapter 18.79 RCW.

"Rehabilitative services" means the planned interventions and procedures which constitute a continuing and comprehensive effort to restore an individual to the individual's

former functional and environmental status, or alternatively, to maintain or maximize remaining function.

"Resident" generally means an individual residing in a nursing home. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law. The term resident excludes outpatients and individuals receiving adult day or night care, or respite care.

"Resident care unit" means a functionally separate unit including resident rooms, toilets, bathing facilities, and basic service facilities.

"Respiratory isolation" is a technique or techniques instituted to prevent the transmission of pathogenic organisms by means of droplets and droplet nuclei coughed, sneezed, or breathed into the environment.

"Siphon jet clinic service sink" means a plumbing fixture of adequate size and proper design for waste disposal with siphon jet or similar action sufficient to flush solid matter of at least two and one-eighth inches in diameter.

"Skilled nursing facility (SNF)" or **"medicare-certified skilled nursing facility"** means a nursing home, a portion of a nursing home, or a long-term care wing or unit of a hospital that has been certified to provide nursing services to medicare recipients under Section 1819(a) of the federal Social Security Act.

"Social/therapeutic leave" means leave which is for the resident's social, emotional, or psychological well-being; it does not include medical leave.

"Staff work station" means a location at which nursing and other staff perform charting and related activities throughout the day.

"Stop placement" or **"stop placement order"** is an action taken by the department prohibiting nursing home admissions, readmissions, and transfers of patients into the nursing home from the outside.

"Substantial compliance" means the nursing home has no deficiencies higher than severity level 1 as described in WAC 388-97-4500, or for medicaid certified facility, no deficiencies higher than a scope and severity "C."

"Surrogate decision maker" means a resident representative or representatives as outlined in WAC 388-97-0240, and as authorized by RCW 7.70.065.

"Survey" means the same as **"inspection"** as defined in this section.

"Temporary manager" means an individual or entity appointed by the department to oversee the operation of the nursing home to ensure the health and safety of its residents, pending correction of deficiencies or closure of the facility.

"Termination" means an action taken by:

(1) The department, or the nursing home, to cancel a nursing home's medicaid certification and contract; or

(2) The department of health and human services Centers for Medicare and Medicaid Services, or the nursing home, to cancel a nursing home's provider agreement to provide services to medicaid or medicare recipients, or both.

"Toilet room" means a room containing at least one toilet fixture.

"Uncorrected deficiency" is a deficiency that has been cited by the department and that is not corrected by the licensee by the time the department does a revisit.

"Violation" means the same as **"deficiency"** as defined in this section.

"Volunteer" means an individual who is a regularly scheduled individual not receiving payment for services and having unsupervised access to a nursing home resident.

"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, including any assisted living 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; or

(7) With a functional disability who lives in his or her own home, who is directing and supervising a paid personal aide to perform a health care task as authorized by RCW 74.39.050.

"Whistle blower" means a resident, employee of a nursing home, or any person licensed under Title 18 RCW, who in good faith reports alleged abandonment, abuse, financial exploitation, or neglect to the department, the department of health or to a law enforcement agency.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-0300 Notice of rights and services. (1) The nursing home must provide the resident, before admission, or at the time of admission in the case of an emergency, and as changes occur during the resident's stay, both orally and in writing and in language and words that the resident understands, with the following information:

(a) All rules and regulations governing resident conduct, resident's rights and responsibilities during the stay in the nursing home;

(b) Advanced directives, and of any nursing home policy or practice that might conflict with the resident's advance directive if made;

(c) Advance notice of transfer requirements, consistent with RCW 70.129.110;

(d) Advance notice of deposits and refunds, consistent with RCW 70.129.150; and

(e) Items, services and activities available in the nursing home and of charges for those services, including any charges for services not covered under medicare or medicaid or by the home's per diem rate.

(2) The resident has the right:

(a) Upon an oral or written request, to access all records pertaining to the resident including clinical records within twenty-four hours; and

(b) After receipt of his or her records for inspection, to purchase at a cost not to exceed twenty-five cents a page,

photocopies of the records or any portions of them upon request and two working days advance notice to the nursing home. For the purposes of this chapter, **"working days"** means Monday through Friday, except for legal holidays.

(3) The resident has the right to:

(a) Be fully informed in words and language that he or she can understand of his or her total health status, including, but not limited to, his or her medical condition;

(b) Accept or refuse treatment; and

(c) Refuse to participate in experimental research.

(4) The nursing home must inform each resident:

(a) Who is entitled to medicaid benefits, in writing, prior to the time of admission to the nursing facility or, when the resident becomes eligible for medicaid of the items, services and activities:

(i) That are included in nursing facility services under the medicaid state plan and for which the resident may not be charged; and

(ii) That the nursing home offers and for which the resident may be charged, and the amount of charges for those services.

(b) That deposits, admission fees and prepayment of charges cannot be solicited or accepted from medicare or medicaid eligible residents; and

(c) That minimum stay requirements cannot be imposed on medicare or medicaid eligible residents.

(5) The nursing home must, except for emergencies, inform each resident in writing, thirty days in advance before changes are made to the availability or charges for items, services or activities specified in section (4)(a)(i) and (ii), or before changes to the nursing home rules.

(6) The private pay resident has the right to the following, regarding fee disclosure-deposits:

(a) Prior to admission, a nursing home that requires payment of an admission fee, deposit, or a minimum stay fee, by or on behalf of an individual seeking admission to the nursing home, must provide the individual:

(i) Full disclosure in writing in a language the potential resident or his or her representative understands:

(A) Of the nursing home's schedule of charges for items, services, and activities provided by the nursing home; and

(B) Of what portion of the deposits, admissions fees, prepaid charges or minimum stay fee will be refunded to the resident if the resident leaves the nursing home.

(ii) The amount of any admission fees, deposits, or minimum stay fees.

(iii) If the nursing home does not provide these disclosures, the nursing home must not keep deposits, admission fees, prepaid charges or minimum stay fees.

(b) If a resident dies or is hospitalized or is transferred and does not return to the nursing home, the nursing home:

(i) Must refund any deposit or charges already paid, less the home's per diem rate, for the days the resident actually resided or reserved or retained a bed in the nursing home, regardless of any minimum stay or discharge notice requirements; except that

(ii) The nursing home may retain an additional amount to cover its reasonable, actual expenses incurred as a result of a private pay resident's move, not to exceed five days per diem charges, unless the resident has given advance notice in compliance with the admission agreement.

(c) The nursing home must refund any and all refunds due the resident within thirty days from the resident's date of discharge from the nursing home; and

(d) Where the nursing home requires the execution of an admission contract by or on behalf of an individual seeking admission to the nursing home, the terms of the contract must be consistent with the requirements of this section.

(7) The nursing home must furnish a written description of legal rights which includes:

(a) A description of the manner of protecting personal funds, under WAC 388-97-0340;

(b) In the case of a nursing facility only, a description of the requirements and procedures for establishing eligibility for medicaid, including the right to request an assessment which determines the extent of a couple's nonexempt resources at the time of institutionalization and attributes to the community spouse an equitable share of resources which cannot be considered available for payment toward the cost of the institutionalized spouse's medical care in his or her process of spending down to medicaid eligibility levels;

(c) A posting of names, addresses, and telephone numbers of all relevant state client advocacy groups such as the state survey and certification agency, the state licensure office, the state ((~~ombudsman~~)) ombuds program, the protection and advocacy network, and the medicaid fraud control unit; and

(d) A statement that the resident may file a complaint with the state survey and certification agency concerning resident abandonment, abuse, neglect, financial exploitation, and misappropriation of resident property in the nursing home.

(8) The nursing home must:

(a) Inform each resident of the name, and specialty of the physician responsible for his or her care; and

(b) Provide a way for each resident to contact his or her physician.

(9) The skilled nursing facility and nursing facility must prominently display in the facility written information, and provide to residents and individuals applying for admission oral and written information, about how to apply for and use medicare and medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

(10) The written information provided by the nursing home pursuant to this section, and the terms of any admission contract executed between the nursing home and an individual seeking admission to the nursing home, must be consistent with the requirements of chapters 74.42 and 18.51 RCW and, in addition, for facilities certified under medicare or medicaid, with the applicable federal requirements.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-0460 Grievance rights. A resident has the right to:

(1) Voice grievances without discrimination or reprisal. Grievances include those with respect to treatment which has been furnished as well as that which has not been furnished.

(2) Prompt efforts by the nursing home to resolve voiced grievances, including those with respect to the behavior of other residents.

(3) File a complaint, contact, or provide information to the department, the long-term care ((~~ombudsman~~)) ombuds, the attorney general's office, and law enforcement agencies without interference, discrimination, or reprisal. All forms of retaliatory treatment are prohibited, including those listed in chapter 74.39A RCW.

(4) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-0520 Access and visitation rights. (1) The resident has the right and the nursing home must provide immediate access to any resident by the following:

(a) For medicare and medicaid residents any representative of the U.S. department of health and human services (DHHS);

(b) Any representative of the state;

(c) The resident's personal physician;

(d) Any representative of the state long term care ((~~ombudsman~~)) ombuds program (established under section 307 (a)(12) of the Older American's Act of 1965);

(e) Any representative of the Washington protection and advocacy system, or any other agency (established under part c of the Developmental Disabilities Assistance and Bill of Rights Act);

(f) Any representative of the Washington protection and advocacy system, or any agency (established under the Protection and Advocacy for Mentally Ill Individuals Act);

(g) Subject to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and

(h) Subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident.

(2) The nursing home must provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(3) The nursing home must allow representatives of the state ((~~ombudsman~~)) ombuds, described in subsection (1)(d) of this section, to examine a resident's clinical records with the permission of the resident or the resident's surrogate decision maker, and consistent with state law. The ((~~ombudsman~~)) ombuds may also, under federal and state law, access resident's records when the resident is incapacitated and has no surrogate decision maker, and may access records over the objection of a surrogate decision maker if access is authorized by the state ((~~ombudsman~~)) ombuds pursuant to 42 U.S.C. § 3058g(b) and RCW 43.190.065.

AMENDATORY SECTION (Amending WSR 13-04-093, filed 2/6/13, effective 3/9/13)

WAC 388-97-1640 Required notification and reporting. (1) The nursing home must immediately notify the department's aging and disability services administration of:

(a) Any allegations of resident abandonment, abuse, or neglect, including substantial injuries of an unknown source, financial exploitation and misappropriation of a resident's property;

(b) Any unusual event, having an actual or potential negative impact on residents, requiring the actual or potential implementation of the nursing home's disaster plan. These unusual events include but are not limited to those listed under WAC 388-97-1740 (1)(a) through (k), and could include the evacuation of all or part of the residents to another area of the nursing home or to another address; and

(c) Circumstances which threaten the nursing home's ability to ensure continuation of services to residents.

(2) Mandated reporters must notify the department and law enforcement as directed in WAC 388-97-0640, and according to department established nursing home guidelines.

(3) The nursing home must notify the department's aging and disability services administration of:

(a) Physical plant changes, including but not limited to:

(i) New construction;

(ii) Proposed resident area or room use change;

(iii) Resident room number changes; and

(iv) Proposed bed banking.

(b) Mechanical failure of equipment important to the everyday functioning of the nursing home, which cannot be repaired within a reasonable time frame, such as an elevator; and

(c) An actual or proposed change of ownership (CHOW).

(4) The nursing home must notify, in writing, the department's aging and disability services administration and each resident, of a loss of, or change in, the nursing home's administrator or director of nursing services at the time the loss or change occurs.

(5) The nursing home licensee must notify the department's aging and disability services administration in writing of any change in the name of the licensee, or of the nursing home, at the time the change occurs.

(6) If a licensee operates in a building it does not own, the licensee must immediately notify the department of the occurrence of any event of default under the terms of the lease, or if it receives verbal or written notice that the lease agreement will be terminated, or that the lease agreement will not be renewed.

(7) The nursing home must report any case or suspected case of a reportable disease to the appropriate department of health officer and must also notify the appropriate department(s) of other health and safety issues, according to state and local laws.

(8) In the event of a nursing home's voluntary closure, the nursing home must:

(a) Notify all residents and resident representatives, the department's designated aging and disability services administration office, the state long-term ((~~ombudsman~~)) ombuds,

and, if the facility is medicare-certified, the Centers for Medicare and Medicaid Services;

(b) Send the written notification at least sixty days before closure;

(c) Ensure that the relocation of residents and any required notice to the Centers for Medicare and Medicaid Services and the public is done in accordance with WAC 388-97-4320.

(9) The nursing home licensee must provide written notice of its intention to voluntarily terminate its medicare or medicaid contract, to:

(a) The department's designated aging and disability services administration office;

(b) The Washington health care authority;

(c) The Centers for Medicare and Medicaid Services;

(d) All residents and, when appropriate, resident representatives; and

(e) The public.

(10) The written notice required in subsection (9) must be provided, at least sixty days before contract termination, except notice to Centers for Medicare and Medicaid Services and the public must be provided in accordance with the requirements of 42 C.F.R. 489.52.

(11) If a nursing home voluntarily withdraws from participation in the medicaid program, but continues to provide nursing facility services, the nursing home will be subject to 42 U.S.C. 1396r (c)(2)(F), which prohibits the discharge of medicaid residents who are residing in the facility before the effective date of the withdrawal.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1840 Retaliation or discrimination prohibited. (1) The licensee or the nursing home must not discriminate or retaliate in any manner against a resident or employee in its nursing home who has initiated or participated in any action or proceeding authorized under nursing home licensing law. Examples of such participation include, but are not limited to the following:

(a) The resident, or someone acting on behalf of the resident, or the employee:

(i) Made a complaint, including a whistle blower complaint, to the department, the department of health, the long-term care ((~~ombudsman~~)) ombuds, attorney general's office, the courts or law enforcement;

(ii) Provided information to the department, the department of health, the long-term care ((~~ombudsman~~)) ombuds, attorney general's office, the courts or law enforcement; or

(iii) Testified in a proceeding related to the nursing home or its staff.

(2) For purposes of this chapter, **"retaliation"** or **"discrimination"** against a resident means an act including, but not limited to:

(a) Verbal or physical harassment or abuse;

(b) Any attempt to expel the resident from the facility;

(c) Nonmedically indicated social, dietary, or mobility restriction(s);

(d) Lessening of the level of care when not medically appropriate;

(e) Nonvoluntary relocation within a nursing home without appropriate medical, psychosocial, or nursing justification;

(f) Neglect or negligent treatment;

(g) Withholding privileges;

(h) Monitoring resident's phone, mail or visits without resident's permission;

(i) Withholding or threatening to withhold food or treatment unless authorized by terminally ill resident or the resident's representative;

(j) Persistently delaying responses to resident's request for services of assistance; or

(k) Infringement on a resident's rights described in chapter 74.42 RCW, RCW 74.39A.060(7), WAC 388-97-0180, and also, for medicaid and medicare certified nursing facilities, in federal laws and regulations.

(3) For purposes of this chapter, **"retaliation"** or **"discrimination"** against an employee means an act including, but not limited to:

(a) Harassment;

(b) Unwarranted firing;

(c) Unwarranted demotion;

(d) Unjustified disciplinary action;

(e) Denial of adequate staff to perform duties;

(f) Frequent staff changes;

(g) Frequent and undesirable office changes;

(h) Refusal to assign meaningful work;

(i) Unwarranted and unsubstantiated report of misconduct under Title 18 RCW;

(j) Unsubstantiated letters of reprimand;

(k) Unsubstantiated unsatisfactory performance evaluations;

(l) Denial of employment;

(m) A supervisor or superior encouraging coworkers to behave in a hostile manner toward the whistle blower; or

(n) Workplace reprisal or retaliatory action as defined in RCW 74.34.180 (3)(b).

(4) For purposes of this chapter, a **"whistle blower"** is defined in WAC 388-97-0001.

(5) If, within one year of the complaint by or on behalf of a resident, the resident is involuntarily discharged from the nursing home, or is subjected to any type of discriminatory treatment, there will be a presumption that the action was in retaliation for the filing of the complaint. Under these circumstances, the nursing home will have the burden of establishing that the action was not retaliatory, in accordance with RCW 18.51.220 and 74.34.180(2).

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-4480 Criteria for imposing optional remedies. (1) The criteria set forth in this section implement the requirements under RCW 18.51.060(8). The criteria do not replace the standards for imposition of mandatory remedies under RCW 18.51.060 (3) and (5), or for the imposition of mandatory remedies in accordance with WAC 388-97-4460 (1), (2) and (3).

(2) The department must consider the imposition of one or more optional remedy(ies) when the nursing home has:

(a) A history of being unable to sustain compliance;

(b) One or more deficiencies on one inspection at severity level 2 or higher as described in WAC 388-97-4500;

(c) Been unable to provide an acceptable plan of correction after receiving assistance from the department about necessary revisions;

(d) One or more deficiencies cited under general administration and/or nursing services;

(e) One or more deficiencies related to retaliation against a resident or an employee for whistle blower activity under RCW 18.51.220, 74.34.180 or 74.39A.060 and WAC 388-97-1820;

(f) One or more deficiencies related to discrimination against a medicare or medicaid client under RCW 74.42.055, and Titles XVIII and XIX of the Social Security Act and medicare and medicaid regulations; or

(g) Willfully interfered with the performance of official duties by a long-term care ((~~ombudsman~~)) ombuds.

(3) The department, in its sole discretion, may consider other relevant factors when determining what optional remedy or remedies to impose in particular circumstances.

(4) When the department imposes an optional remedy or remedies, the department will select more severe penalties for nursing homes that have deficiency(ies) that are:

(a) Uncorrected upon revisit;

(b) Recurring (repeated);

(c) Pervasive; or

(d) Present a threat to the health, safety, or welfare of the residents.

(5) The department will consider the severity and scope of cited deficiencies in accordance with WAC 388-97-4500 when selecting optional remedy(ies). Such consideration will not limit the department's discretion to impose a remedy for a deficiency at a low level severity and scope.

WSR 13-23-102
PROPOSED RULES
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
(Children's Administration)

[Filed November 20, 2013, 9:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-16-005.

Title of Rule and Other Identifying Information: WAC for extended foster care: Repealing WAC 388-25-0518, 388-25-0520, 388-25-0522, 388-25-0524, 388-25-0526 and 388-25-0538; and amending WAC 388-25-0110, 388-148-0010, 388-25-0502, 388-25-0504, 388-25-0506, 388-25-0508, 388-25-0510, 388-25-0516, 388-25-0528, 388-25-0530, 388-25-0532, 388-25-0534, 388-25-0536, 388-25-0540, 388-25-0544, 388-25-0546, and 388-25-0548.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html), on January 7, 2014, at 10:00 a.m.

Date of Intended Adoption: Not earlier than January 8, 2014.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on January 7, 2014.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by December 22, 2013, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is creating WAC to support E2SSB 5405 Extended foster care services. E2SSB 5405 authorizes children's administration to additionally provide extended foster care services to youth age eighteen up to twenty-one years who are eligible to receive foster care services authorized under RCW 74.13.031 and participating in a program or activity designed to promote employment or remove barriers to employment. Youth whose dependency has been dismissed may enter a voluntary placement agreement (VPA) one time. A youth must agree to the entry of a dependency order within one hundred eighty days of the date the youth was placed in foster care through the VPA to continue to receive services.

Reasons Supporting Proposal: E2SSB 5405 Extended foster care services enables Washington state to access a federal match of funds under 2008 federal legislation "Fostering Connections to Success and Increasing Adoptions Act." The act provides an option permitting states to use Title IV-E foster care funds for youth who wish to pursue secondary or post-secondary education programs from age eighteen up to twenty-one years old. E2SSB 5405 authorizes extended foster care services for youth ages eighteen to twenty-one years to complete a postsecondary academic or postsecondary vocational education program and expands the services to eligible youth participating in an employment related program.

Statutory Authority for Adoption: RCW 13.34.145, 13.34.267, 74.13.031, 43.88C.010, 74.13.107, 43.131.416, 13.34.030.

Statute Being Implemented: RCW 74.13.031.

Rule is necessary because of federal law, [no further information supplied by agency].

Name of Proponent: Department of social and health services, children's administration, governmental.

Name of Agency Personnel Responsible for Drafting: Deanna Bedell, Children's Administration, (360) 902-0863; Implementation and Enforcement: Christine Kerns, Children's Administration, (360) 902-0250.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not required. These rules are dictated by Washington state statute.

A cost-benefit analysis is not required under RCW 34.05.328. Not required. These rules are dictated by Washington state statute.

November 14, 2013
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0110 What is the effective date for termination of foster care payments? (1) The department ends payment on the day before the child actually leaves the foster home or facility. The department does not pay for the last day that a child is in a foster care home or facility.

(2) The department terminates family foster care payments for children in family foster care effective the date:

(a) The child no longer needs foster care; or

(b) The child no longer resides in foster care ((~~except as provided in WAC 388-25-0180~~)); ((~~or~~))

(c) The child reaches the age of eighteen((~~.~~)); or

(d) The child is no longer eligible for the extended foster care program and the dependency action is dismissed or voluntary placement agreement (VPA) is revoked. To be eligible for the extended foster care program a child, age eighteen must be:

(i) ((~~If the child continues to attend, but has not finished, high school or an equivalent educational program at the age of eighteen and has a need for continued family foster care services, the department may continue payments until the date the child completes the high school program or equivalent educational or vocational program. The department must not extend payments for a youth in care beyond age twenty.~~)) Completing a high school diploma or high school equivalency certificate;

(ii) ((~~If the child has applied and demonstrates he or she intends to timely enroll, or is enrolled and participating in a post-secondary education program, or a post-secondary vocational program at the age of eighteen and has a need for continued family foster care services, the department may continue payments until the date the child reaches his or her twenty-first birthday or is no longer enrolled in and participating in a post-secondary program, whichever is earlier~~)) Completing a post-secondary academic or vocational program;

(iii) Participating in a program or activity designed to promote employment or remove barriers to employment.

(3) The department must terminate foster care payments for children in the behavior rehabilitative services program effective the date:

(a) The child no longer needs rehabilitative services; or

(b) The child is no longer served through contracted rehabilitative services program except as provided in WAC 388-25-0030; or

(c) The child reaches the age of eighteen and continues to attend, but has not finished, high school or an equivalent educational program and has a need for continued rehabilitative treatment services, the department may continue payments until the date the youth completes the high school program or equivalent educational or vocational program. The department must not extend payments for a youth in care beyond age twenty.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0502 What is the purpose of the extended foster care program? The extended foster care program provides an opportunity for young adults in foster care at age eighteen to voluntarily agree to continue receiving foster care services, including placement services, while the youth completes a secondary or post-secondary academic or vocational program, or participates in a program or activity designed to promote employment or remove barriers to employment.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0504 What is extended foster care? Extended foster care is a program offered to young adults, age eighteen up to twenty-one, who turn eighteen while in foster care, to enable them to ((~~complete~~)):

(1) Complete a high school diploma or ((~~general~~)) high school equivalency ((~~diploma~~)) certificate;

(2) Complete a post-secondary academic or vocational ((~~education~~)) program;

(3) Participate in a program or activity designed to promote employment or remove barriers to employment.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0506 Who is eligible for extended foster care? To be eligible for the extended foster care program a youth, on his or her eighteenth birthday, must:

(1) Be dependent under chapter 13.34 RCW((~~;~~ ~~(2)~~)) be placed in foster care (as defined in WAC 388-25-0508) by children's administration, and:

(a) Be enrolled (as described in WAC 388-25-0512) in a high school or secondary education equivalency program; or

(b) Be enrolled (as described in WAC 388-25-0512) in a post-secondary academic or vocational education program; or

(c) Have applied for and can demonstrate intent to timely enroll in a post-secondary academic or vocational education program (as described in WAC 388-25-0514); or

(d) Be participating in a program or activity designed to promote employment or remove barriers to employment.

(2) Have had their dependency dismissed on their eighteenth birthday as the youth did not meet any of the criteria found in WAC 388-25-0506 (1)(a) through (d) or did not agree to participate in the program and the youth is requesting to participate in the extended foster care program prior to reaching the age of nineteen. Youth must meet one of the criteria (1)(a) through (d) when requesting to participate in the extended foster care program.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0508 When is a youth considered to be "in foster care"? For the purpose of determining initial eligibility for the extended foster care program, a youth is in foster care if the youth is under children's administration (CA) placement and care authority, is placed by CA in out of home care, in relative care, licensed foster home, licensed group care, or other suitable person placement. ((~~Provided~~)) A youth is considered to be in foster care:

(1) ((~~A~~)) If the youth ((~~who~~)) is temporarily away from a foster care placement in:

(a) A hospital;

(b) A drug/alcohol treatment facility;

(c) A mental health treatment facility; or

(d) A county detention center for less than thirty days ((~~in a county detention center is considered to be in foster care~~)).

(2) ((~~A~~)) If the youth ((~~who~~)) is temporarily away from his or her foster care placement without permission of the case worker or care giver, but who is expected to return to foster care within twenty days, is considered to be in foster care for purposes of determining initial eligibility.

(3) ((~~A~~)) If the youth ((~~who~~)) is committed to juvenile justice and rehabilitation administration custody and ((~~who~~)) resides in a foster home, group home, or community facility, as defined in RCW 74.15.020 (1)(a).

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0510 When is a youth not "in foster care"? For the purposes of determining initial eligibility for the extended foster care program, a youth is not in foster care if the youth is:

(1) Placed with a parent;

(2) In a dependency guardianship or chapter 13.36 RCW;

(3) Committed to and residing in a juvenile justice and rehabilitation administration (((~~JRA~~))) institution (as defined in RCW 13.30.020(12)) or to the department of corrections; or

(4) Absent from his/her foster care placement without permission of the case worker or care giver for more than twenty consecutive days.

NEW SECTION

WAC 388-25-0515 How does a youth demonstrate participation in a program or activity designed to promote employment or remove barriers to employment? (1) Actively participate in a state, federal, tribal or community program that addresses any barriers to employment that the youth may have and/or prepares or trains individuals for employment; or

(2) Involved in a self-directed program that will remove any barriers to employment and will prepare a youth for employment; or

(3) Working less than eighty (80) hours a month.

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

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0516 What if an eligible youth does not want to participate in the extended foster care program ((~~at age eighteen~~))? ((~~Youth may elect to participate in the extended foster care program beginning on their eighteenth birthday. The law recognizes an eligible youth may need time beyond the eighteenth birthday to consider if they want continued foster care services. It provides a six-month grace period or a time for "trial independence", from date of youth's eighteenth birthday, to give the youth an opportunity to change their mind~~)) Participation in extended foster care is voluntary. A youth who does not agree to participate in extended foster may request the court to dismiss the dependency.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0528 How does a youth agree to participate in extended foster care program? (1) An eligible dependent youth can agree to participate by:

(((~~1~~))) (a) Signing an extended foster care agreement; or

(((~~2~~))) (b) For developmentally ((~~delayed~~)) disabled youth, remaining in the foster care placement and continuing in an appropriate educational program.

(2) An eligible nondependent youth can agree to participate by:

(a) Signing a voluntary placement agreement (VPA) before reaching age nineteen; or

(b) Establishing a nonminor dependency before reaching age nineteen.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0530 Where do youth obtain information about how to participate in the program? (1) The department must provide dependent youth between the age of seventeen and seventeen and a half:

(a) Written documentation explaining the availability of extended foster care services.

(b) Detailed instructions on how to access such services after he or she reached age eighteen.

(2) Youth can contact:

(((~~1~~))) (a) Youth's attorney/CASA/GAL.

(((~~2~~))) (b) Youth's ((~~social~~)) worker.

(((~~3~~))) (c) Local children's administration office.

(((~~4~~))) (d) www.independence.wa.gov.

(((~~5~~))) (e) 1-866-END-HARM.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0532 Can ((~~a youth participating in the extended foster care program to complete a secondary education or equivalency program continue to receive extended foster care services to participate in a post-secondary education program~~)) an extended foster care participant continue in extended foster care under a different eligibility category? Yes((~~, if at the time the secondary program is completed, the youth is enrolled in, or has applied to, and can demonstrate they intend to timely enroll in, a post-secondary academic or vocational program~~)). A youth may transition among the eligibility categories while under the same voluntary placement agreement or dependency order, so long as the youth remains eligible during the transition.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0534 ((~~Is there a trial independence period for a youth who completes his or her secondary education program while participating in extended foster care and before the youth enters a post-secondary program~~)) If an extended foster care participant loses his or her eligibility before he or she turns nineteen, can he or she reapply for extended foster care? ((~~No, if a youth completes a secondary education program while in extended foster care, the dependency will be dismissed and foster care services will end, unless the youth has enrolled in, or applied to and can demonstrate an intent to timely enroll in, a post-secondary academic or vocational program~~)) Yes. If a youth was receiving extended foster care services and lost eligibility, he or she may reapply as long as:

(1) The youth has not turned nineteen; and

(2) The youth meets one of the conditions for eligibility in WAC 388-148-2506; and

(3) The youth has not entered into a prior voluntary placement agreement with the department for the purposes of participating in the extended foster care program.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0536 What are CA's responsibilities to a youth who is participating in extended foster care? Children's ((~~a~~)) Administration (CA) is required to have placement and care authority over the youth and to provide foster care services, including transition planning and independent living services, medical assistance through medicaid, and case management. Case management includes findings or approving a foster care placement for the youth, convening family meetings, developing, revising, and monitoring implementation of any case plan or individual service and safety plan, coordinating and monitoring services needed by the youth, caseworker visits, and court-related duties, including preparing court reports, attending judicial hearings and permanency hearings, and ensuring that the youth is progressing toward independence within state and federal mandates. CA has responsibility to inform the court of the status of the child (including health, safety, welfare, education status and continuing eligibility for extended foster care program). The department's placement and care authority over a youth receiving extended foster care services is solely for the purpose of providing services and does not create a legal responsibility for the actions of the youth receiving extended foster care services.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0540 How does CA determine a youth's continuing eligibility for extended foster care program? At least every six months, children's administration will determine if youth continues to:

(1) Agree to participate in the extended foster care program.

(2) Be enrolled in an education program, vocational program, or participating in a program or activity designed to promote employment or remove barriers to employment, or is transitioning from one status to another.

(3) Continue to reside in approved placement.

(4) Comply with youth's responsibilities in WAC 388-25-0546.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0544 What are the youth's rights in the extended foster care program? Youth have a right to:

(1) An approved foster care placement.

(2) Foster care services including medical assistance through medicaid.

(3) Participate in the court process as a party to the case.

(4) Have an attorney appointed for them upon filing a notice of intent to file a petition for dependency and in dependency proceedings.

(5) End their participation in the program at any time.

(6) Referrals to community resources as appropriate.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0546 What must the youth do to remain in the extended foster care program? Unless otherwise authorized by court order the youth must:

(1) Agree to participate in the program as expressed in the written extended foster care agreement;

(2) Maintain standard of eligibility as set by the youth's academic program or employment related program;

(3) Participate in the case plan, including monthly health and safety visits;

(4) Acknowledge that children's administration (CA) has responsibility for the youth's care and placement by authorizing CA to have access to records related to court-ordered medical, mental health, drug/alcohol treatment services, educational records needed to determine continuing eligibility for the program, and for additional necessary services; and

(5) Remain in the approved foster care placement and follow placement rules. This means the youth will:

(a) Stay in placement identified by CA or approved by the court;

(b) Obtain approval from case worker and notify caregiver for extended absence from the placement of more than three days; and

(c) Comply with court orders and any specific rules developed in collaboration by the youth, caregiver and social worker.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-25-0548 When is a youth no longer eligible for the extended foster care program? A youth is no longer eligible for the extended foster care program and the department will ask the court to dismiss the dependency when the youth:

(1) Graduates from high school or equivalency program, and has not enrolled in, or applied for and demonstrated an intent to timely enroll in a post-secondary academic or vocational program;

(2) Graduates from a post-secondary education or vocational program;

(3) Reaches their twenty-first birthday;

(4) Is no longer participating or enrolled in high school, equivalency program, post-secondary or vocational program, program promoting employment or removing barriers to employment;

(5) No longer agrees to participate in foster care services;

(6) Fails or refuses to comply with youth responsibilities outlined in WAC 388-25-0546; or

(7) Is incarcerated in an adult detention facility on a criminal conviction.

AMENDATORY SECTION (Amending WSR 13-08-017, filed 3/25/13, effective 4/25/13)

WAC 388-148-0010 What definitions do I need to know to understand this chapter? The following definitions are for the purpose of this chapter and are important to understand these rules:

"Abuse or neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or mistreatment of a child where the child's health, welfare and safety are harmed.

"Agency" is defined in RCW 74.15.020(1).

"Assessment" means the appraisal or evaluation of a child's physical, mental, social and/or emotional condition.

"Capacity" means the maximum number of children that a home or facility is licensed to care for at a given time.

"Care provider" means any licensed or certified person or organization or staff member of a licensed organization that provides twenty-four-hour care for children.

"Case manager" means the private agency employee who coordinates the planning efforts of all the persons working on behalf of a child. Case managers are responsible for implementing the child's case plan, assisting in achieving those goals, and assisting with day-to-day problem solving.

"Certification" means:

(1) Department approval of a person, home, or facility that does not legally need to be licensed, but wishes to have evidence that it meets the minimum licensing requirements; or

(2) Department licensing of a child-placing agency to certify that a foster home meets licensing requirements.

"Children" or **"youth,"** for this chapter, means individuals who are:

(1) Under eighteen years old, including expectant mothers under eighteen years old; or

(2) Up to twenty-one years of age and pursuing a high school, equivalent course of study (GED), or vocational program or post-secondary academic or post-secondary vocational program, or program promoting employment or removing barriers to employment;

(3) Up to twenty-one years of age with developmental disabilities; or

(4) Up to twenty-one years of age if under the custody of the Washington state juvenile rehabilitation administration.

"Child-placing agency" means an agency licensed to place children for temporary care, continued care or adoption.

"Crisis residential center (CRC)" means an agency under contract with DSHS that provides temporary, protective care to children in a foster home, regular (semi-secure) or secure group setting.

"Compliance agreement" means a written licensing improvement plan to address deficiencies in specific skills, abilities or other issues of a fully licensed home or facility in order to maintain and/or increase the safety and well-being of children in their care.

"DCFS" means the division of children and family services.

"DDD" means division of developmental disabilities.

"Department" means the department of social and health services (DSHS).

"Developmental disability" is a disability as defined in RCW 71A.10.020.

"DLR" means the division of licensed resources.

"Firearms" means guns or weapons, including but not limited to the following: BB guns, pellet guns, air rifles, stun guns, antique guns, bows and arrows, handguns, rifles, and shotguns.

"Foster-adopt" means placement of a child with a foster parent(s) who intends to adopt the child, if possible.

"Foster home or foster family home" means person(s) licensed to regularly provide care on a twenty-four-hour basis to one or more children in the person's home.

"Full licensure" means an entity meets the requirements established by the state for licensing or approved as meeting state minimum licensing requirements.

"Group care facility for children" means a location maintained and operated for a group of children on a twenty-four-hour basis.

"Group receiving center" or **"GRC"** means a facility providing the basic needs of food, shelter, and supervision for more than six children placed by the department, generally for thirty or fewer days. A group receiving center is considered a group care program and must comply with the group care facility licensing requirements.

"Hearing" means the administrative review process.

"I" refers to anyone who operates or owns a foster home, staffed residential home, and group facilities, including group homes, child-placing agencies, maternity homes, day treatment centers, and crisis residential centers.

"Infant" means a child under one year of age.

"License" means a permit issued by the department affirming that a home or facility meets the minimum licensing requirements.

"Licensor" means:

(1) A division of licensed resources (DLR) employee at DSHS who:

(a) Approves licenses or certifications for foster homes, group facilities, and child-placing agencies; and

(b) Monitors homes and facilities to ensure that they continue to meet minimum health and safety requirements.

(2) An employee of a child-placing agency who:

(a) Attests that foster homes supervised by the child-placing agency meets licensing requirements; and

(b) Monitors those foster homes to ensure they continue to meet the minimum licensing standards.

"Maternity service" as defined in RCW 74.15.020.

"Medically fragile" means the condition of a child who has a chronic illness or severe medical disabilities requiring regular nursing visits, extraordinary medical monitoring, or on-going (other than routine) physician's care.

"Missing child" means:

(1) Any child up to eighteen years of age for whom Children's Administration (CA) has custody and control (not including children in dependency guardianship) and:

(a) The child's whereabouts are unknown; and/or

(b) The child has left care without the permission of the child's caregiver or CA.

(2) Children who are missing are categorized under one of the following definitions:

(a) **"Taken from placement"** means that a child's whereabouts are unknown, and it is believed that the child is being or has been concealed, detained or removed by another person from a court-ordered placement and the removal, concealment or detainment is in violation of the court order;

(b) **"Absence not authorized, whereabouts unknown"** means the child is not believed to have been taken from placement, did not have permission to leave the placement, and there has been no contact with the child and the whereabouts of the child is unknown; or

(c) **"Absence not authorized, whereabouts known"** means that a child has left his or her placement without permission and the social worker has some contact with the child or may periodically have information as to the whereabouts of the child.

"Multidisciplinary teams (MDT)" means groups formed to assist children who are considered at-risk youth or children in need of services, and their parents.

"Nonambulatory" means not able to walk or traverse a normal path to safety without the physical assistance of another individual.

"Nonminor dependent" means any individual age eighteen to twenty-one years who is participating in extended foster care services authorized under RCW 74.13.031.

"Out-of-home placement" means a child's placement in a home or facility other than the child's parent, guardian, or legal custodian.

"Premises" means a facility's buildings and adjoining grounds that are managed by a person or agency in charge.

"Probationary license" means a license issued as part of a disciplinary action to an individual or agency that has previously been issued a full license but is out of compliance with minimum licensing requirements and has entered into an agreement aimed at correcting deficiencies to minimum licensing requirements.

"Psychotropic medication" means a type of medicine that is prescribed to affect or alter thought processes, mood, sleep, or behavior. These include anti-psychotic, antidepressants and anti-anxiety medications.

"Relative" means a person who is related to the child as defined in RCW 74.15.020 (4)(a)(i), (ii), (iii), and (iv) only.

"Respite" means brief, temporary relief care provided to a child and his or her parents, legal guardians, or foster parents with the respite provider fulfilling some or all of the functions of the care-taking responsibilities of the parent, legal guardian, or foster parent.

"Secure facilities" means a crisis residential center that has locking doors and windows, or secured perimeters intended to prevent children from leaving without permission.

"Service plan" means a description of the services to be provided or performed and who has responsibility to provide or perform the activities for a child or child's family.

"Severe developmental disabilities" means significant disabling, physical and/or mental condition(s) that cause a child to need external support for self-direction, self-support and social participation.

"Social service staff" means a clinician, program manager, case manager, consultant, or other staff person who is an employee of the agency or hired to develop and implement the child's individual service and treatment plans.

"Staffed residential home" means a licensed home providing twenty-four-hour care for six or fewer children or expectant mothers. The home may employ staff to care for children or expectant mothers. It may or may not be a family residence.

"Standard precautions" is a term relating to procedures designed to prevent transmission of bloodborne pathogens in health care and other settings. Under standard precautions, blood or other potentially infectious materials of all people should always be considered potentially infectious for HIV and other pathogens. Individuals should take appropriate precautions using personal protective equipment like gloves to prevent contact with blood or other bodily fluids.

"Supervised independent living" includes, but is not limited to, apartment living, room and board arrangements, college or university dormitories, and shared roommate settings, which must be approved by the children's administration or the court.

"Voluntary placement agreement" means, for the purposes of extended foster care services, a written voluntary agreement between a nonminor dependent who agrees to submit to the care and authority of the department for the purpose of participating in the extended foster care program.

"Washington state patrol fire protection bureau" or **"WSP/FPB"** means the state fire marshal.

"We" or **"our"** refers to the department of social and health services, including DLR licensors and DCFS social workers.

"You" refers to anyone who operates a foster home, staffed residential home, and group facilities, including group homes, maternity programs, day treatment programs, crisis residential centers, group receiving centers, and child-placing agencies.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-25-0518	What is the trial independence or grace period?

WAC 388-25-0520	Does an eligible youth who elects to participate in extended foster care on his or her eighteenth birthday receive a trial independence period?
WAC 388-25-0522	When does the six-month trial independence period end?
WAC 388-25-0524	If a youth does not remain enrolled in school during the trial independence period may the youth still elect to participate in the program?
WAC 388-25-0526	Does a youth have to agree to participate in extended foster care program?
WAC 388-25-0538	What is the CA's responsibility for the youth during the six-month trial independence period?

WSR 13-24-001
PROPOSED RULES
DEPARTMENT OF FINANCIAL INSTITUTIONS
(Division of Credit Unions)

[Filed November 20, 2013, 12:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-16-072.

Title of Rule and Other Identifying Information: Credit Union Act, chapter 31.12 RCW. Propose and adopt rules to implement chapter 34, Laws of 2013 (SB 5302), regarding compensation paid to credit union directors and supervisory committee members. Chapter 208-444 WAC or new chapter will be created under Title 208 WAC.

Hearing Location(s): Department of Financial Institutions, 150 Israel Road S.W., Olympia, WA 98501, on January 7, 2014, at 1:30 p.m. - 3:30 p.m.

Date of Intended Adoption: January 22, 2014.

Submit Written Comments to: Linda Jekel, 150 Israel Road S.W., P.O. Box 41200, Olympia, WA 98504-1200, e-mail linda.jekel@dfi.wa.gov, fax (877) 330-6870, by January 10, 2014.

Assistance for Persons with Disabilities: Contact Linda Jekel by January 10, 2014, TTY (360) 664-8126 or (360) 902-8786.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of financial institutions (DFI) wants to adopt rules to implement SB 5302 (chapter 34, Laws of 2013), addressing credit union corporate governance. These new rules will address compensation paid to credit union directors and supervisory committee members.

Reasons Supporting Proposal: Specific information provided in the rules is necessary to guide the regulated industry in complying with the laws. These rules are proposed in compliance with OFM Guidance 3(a).

Statutory Authority for Adoption: RCW 31.12.516 and 31.12.365 (as passed legislature in 2013, section 6, chapter 34, Laws of 2013).

Statute Being Implemented: Chapter 31.12 RCW.

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

Name of Proponent: DFI, division of credit unions, governmental.

Name of Agency Personnel Responsible for Drafting: Catherine Mele-Hetter, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-0515; Implementation and Enforcement: Linda Jekel, 150 Israel Road S.W., Olympia, WA 98501, (360) 902-8778.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule amendments will not impose more than minor costs on the businesses impacted by the proposed rules.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable to the proposed rules.

November 20, 2013
Linda Jekel, Director
Division of Credit Unions

NEW SECTION

WAC 208-444-060 Reasonable compensation. (1) **Authority to compensate directors and supervisory committee members.** Subject to the provisions of this section, a credit union may pay compensation to its directors and supervisory committee members for their service as directors and supervisory committee members that is reasonable in accordance with subsection (4) of this section.

(2) **"Compensation."**

(a) As used in this section, "compensation" means anything of value that is both:

(i) Given to a director or supervisory committee member in exchange for services performed as a director or supervisory committee member; and

(ii) Required to be reported to the Internal Revenue Service as income.

(b) For purposes of this section, the term "compensation" excludes:

(i) Any advancement to or reimbursement to a director or supervisory committee member, or direct disbursement to a third party of reasonable expenses associated with credit union business-related travel of a director or supervisory committee member;

(ii) Payment of reasonable expenses associated with credit union business-related travel for one guest per director or supervisory committee member;

(iii) Payment for insurance coverage of a director or supervisory committee member, available to employees generally;

(iv) Payment of indemnification to a director or supervisory committee member and liability insurance coverage for directors and supervisory committee members; and

(v) Gifts to a director or supervisory committee member of minimal value.

(3) **Controls review.** A credit union shall implement and maintain appropriate controls to ensure that compensation is

reasonable and that such compensation does not lead to material financial loss to the credit union. Such controls shall include, without limitation, the following:

(a) Prior to its initial determination to pay compensation to directors or supervisory committee members, or to increase any such payments, a credit union's board of directors shall in good faith review all policies related to compensation, and shall review the amount of compensation provided to the directors and supervisory committee members.

(b) The review set forth in (a) of this subsection must:

(i) Contain a written determination that compensation paid to the directors and supervisory committee members is reasonable, including a discussion of the factors considered in making such determination; and

(ii) Be included as part of the minutes of the meeting at which matters relating to compensation were deliberated and voted upon by the credit union's board of directors.

(4) **When compensation is reasonable.** Compensation is reasonable if it meets all of the following criteria:

(a) It is proportional to the services provided by the director or supervisory committee member;

(b) It is reasonable considering the financial condition of the credit union; and

(c) It is comparable to compensation paid by comparable organizations of a similar size, location, and operational complexity.

(5) **Disclosure to credit union membership.**

(a) A credit union shall annually disclose to credit union members prior to its annual membership meeting the compensation provided to directors and supervisory committee members in the prior calendar year and as scheduled for the current calendar year.

(b) The disclosure to a credit union's members:

(i) Shall be in writing and conspicuously set apart from other information provided to members;

(ii) Shall include the names of all the directors and supervisory committee members receiving compensation and the amount of compensation paid to each in the prior calendar year;

(iii) Shall include the schedule for compensation to be paid to directors and supervisory committee members in the current calendar year; and

(iv) Shall be included in the notice of the annual meeting of the members, a separate mailing to members, a periodic statement of account to members, a periodic publication of the credit union to members, posted electronically on a credit union's web site, or through some other e-mail publication to members.

(6) **Notice to director.**

(a) A credit union shall provide written notice to the director of credit unions of its intent to adopt a policy to compensate directors or supervisory committee members at least sixty days before adopting such policy.

(b) In providing notice to the director of credit unions, a credit union shall provide any additional information as required by the director of credit unions.

(7) **Enforcement authority of director, prohibition.**

(a) The director may prohibit or otherwise limit or restrict the payment of compensation to directors or supervisory committee members if, in the opinion of the director, the payment of compensation has or is likely to have a materially adverse effect on the credit union.

(b) The director may also prohibit or limit compensation if a credit union fails to comply with this rule.

WSR 13-24-015
PROPOSED RULES
WESTERN WASHINGTON UNIVERSITY

[Filed November 21, 2013, 2:41 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-01-039.

Title of Rule and Other Identifying Information: WAC 516-26-040 Right to copy education records.

Hearing Location(s): Western Washington University, Board Room, Old Main 340, 516 High Street, Bellingham, WA 98225, on January 22, 2014, at 3:30 p.m.

Date of Intended Adoption: February 7, 2014.

Submit Written Comments to: Suzanne Baker, Rules Coordinator, 516 High Street, Old Main 330F, Bellingham, WA 98225-9015, e-mail Suzanne.Baker@wwu.edu, fax (360) 650-6197 by January 22, 2014.

Assistance for Persons with Disabilities: Contact Suzanne Baker by January 21, 2014, (360) 650-3117.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendments are needed to WAC 516-26-040 Right to copy education records, to clarify that the university may refuse to provide copies of education records, including transcripts, in certain circumstances, including when a student has outstanding financial obligations to the university, securing the integrity of exams, and when disciplinary action is pending. Other housekeeping items as necessary.

Statutory Authority for Adoption: RCW 28B.35.120 (12).

Statute Being Implemented: 20 U.S.C. 1232g.

Rule is necessary because of federal law, 20 U.S.C. 1232g.

Name of Proponent: Western Washington University, governmental.

Name of Agency Personnel Responsible for Drafting: Marcia Merth, Student Records Coordinator, 516 High Street, Bellingham, WA, (360) 650-3427; Implementation: David Brunnemer, Registrar, 516 High Street, Bellingham, WA, (360) 650-7732; and Enforcement: Eileen Coughlin, Vice-president for Enrollment and Student Services, 516 High Street, Bellingham, WA, (360) 650-2834.

No small business economic impact statement has been prepared under chapter 19.85 RCW. WAC 516-26-040 does not impose a disproportionate impact on small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The amendment to WAC 516-26-040 is not considered significant legislative rule by Western Washington University.

November 21, 2013
Suzanne M. Baker
Rules Coordinator

AMENDATORY SECTION (Amending WSR 94-17-059, filed 8/12/94, effective 9/12/94)

WAC 516-26-040 Right to copy education records. (1) The records coordinator shall, at the request of a student, provide the student with copies of the student's education records. The fees for providing such copies shall not exceed the actual copying cost to the university ((~~of providing the copies~~)). Official transcripts may be ordered from the registrar's office. Transcript ordering methods and fees may be found on the registrar's web site at: http://www.wwu.edu/depts/registrar/transcripts.shtml.

(2) The records coordinator will not provide official copies of transcripts from other educational institutions, such as high school or other college and university transcripts((~~, will not be provided to students by the university~~)).

(3) The university may refuse to provide copies of education records, including transcripts, in the following circumstances:

(a) If the record is a secure exam as determined by the department that maintains the exam, so that the integrity of such exam is protected;

(b) If the student has outstanding debts or other financial obligations owed to the university, so that the university may facilitate collection of such debts; and

(c) If disciplinary action is pending or sanctions are not completed.

WSR 13-24-064
PROPOSED RULES
SECRETARY OF STATE

[Filed November 26, 2013, 4:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-12-068.

Title of Rule and Other Identifying Information: Elections.

Hearing Location(s): Elections Division Building, Office of the Secretary of State, 520 Union Avenue S.E., Olympia, WA, on January 7, 2014, at 1:00 p.m.

Date of Intended Adoption: January 8, 2014.

Submit Written Comments to: Katie Blinn, P.O. Box 40220, Olympia, WA 98504-0220, e-mail katie.blinn@sos.wa.gov, fax (360) 586-5629, by January 7, 2014.

Assistance for Persons with Disabilities: Contact Katie Blinn by January 6, 2014.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rule changes update WACs to reflect changes passed by the 2013 legislature, and provide other updates.

Reasons Supporting Proposal: The rule changes update WACs to reflect changes passed by the 2013 legislature, and allow the WACs to be consistent with federal law.

Statutory Authority for Adoption: RCW 29A.04.611.

Statute Being Implemented: RCW 29A.04.086, 29A.04.255, 29A.04.611, 29A.08.230, 29A.12.120, 29A.24.101, 29A.36.161, 29A.40.070, 29A.40.110, 29A.40.160, 29A.52.220, 29A.60.200.

Rule is necessary because of federal law, 42 U.S.C. 15483, Sec. 303 (b)(3)(C)(i); 39 C.F.R. part 111.

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

November 26, 2013
Ken Raske
Assistant Secretary of State

AMENDATORY SECTION (Amending WSR 09-04-026, filed 1/28/09, effective 2/28/09)

WAC 434-12A-110 Exemptions. (1) The Public Records Act provides that a number of document types are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by the office of the secretary of state for inspection and copying:

RCW 5.60.060(2) (attorney-client privilege, together with attorney work product privilege).

RCW 5.60.060(5) (communications to a public officer in official confidence).

RCW 5.60.070 (communications between a mediator and a party to mediation).

RCW 19.34.240 (digital signatures).

RCW 19.34.420 (digital signatures).

RCW 29A.08.710 through ((~~29A.08.785~~)) 29A.08.775 (voter registration records).

RCW 29A.32.100 (arguments and statements for voters pamphlet).

((~~RCW 29A.60.080 (sealing of voting devices).~~))

RCW 29A.60.110 (sealing of ballot containers).

RCW 40.14.030 (exempt records accessioned into state archives).

RCW 40.24.070 (address confidentiality program).

RCW 43.07.100 (records of entities supplying information to the bureau of statistics).

5 U.S.C. § 552(a) (the federal Privacy Act).

The foregoing list is for informational purposes only and failure to list an exemption shall not affect the efficacy of any exemption. The secretary of state reserves the right to determine that a public record is exempt under the provisions of state law.

(2) The office of the secretary of state is prohibited by statute from disclosing lists of individuals for commercial purposes.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-208-060 Electronic filings. (1) In addition to those documents specified by RCW 29A.04.255, the secre-

tary 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 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 of the ballot and ballot declaration are received no later than the day before certification of the election((~~. Consistent with WAC 434-250-080, it is the first ballot and 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;

(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 RCW 29A.60.165 and WAC 434-261-050; and

(h) Requests to withdraw.

(2) If payment of a fee is required, the electronic filing is not complete until the fee is received.

(3) No initiative, referendum, recall, or other signature petitions may be filed electronically.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

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 chapter 29A.56 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~~))) (2) 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.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

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)~~)) 29A.52.355.

(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)~~)) 29A.52.355 in a single publication.

(3) Public meetings associated with the election include county canvassing board meetings.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-209-020 Definitions.

AMENDATORY SECTION (Amending WSR 12-14-074, filed 7/2/12, effective 8/2/12)

WAC 434-215-021 Declaration of candidacy—Precinct committee officer. Declarations of candidacy for the office of precinct committee officer shall be in substantially the following form:

((

Precinct Committee Officer

instructions

File this form with your county elections department.
Note: This document becomes public record once filed.

office information

member of the ○ Democratic Party ○ Republican Party

precinct representing (name / number)

personal information *as registered to vote*

first name middle last

date of birth (mm / dd / yyyy) phone number

residential address city / ZIP

ballot information

exact name I would like printed on the ballot (*only contested races will appear on the ballot*)

contact information

mailing address (*if different from residential address*) city / ZIP

email address phone number

oath

I declare that the above information is true, that I am a registered voter residing at the residential address and precinct listed above, and that I am a candidate for Precinct Committee Officer for the party and precinct identified above.

Further, I declare, under penalty of perjury, that I will support the Constitution and laws of the United States, and the Constitution and laws of the State of Washington.

sign here date here

for office use only

voter registration number date

☐ precinct verified office code

staff

))

Declaration of Candidacy

Precinct Committee Officer

instructions

File this form with your county elections department.
No filing fee is required.
Note: This document becomes public record once filed.

office information

member of the ○ Democratic Party ○ Republican Party

precinct representing (name / number)

personal information *as registered to vote*

first name | middle | last

date of birth (mm / dd / yyyy) | phone number

residential address | city / ZIP

ballot information

exact name I would like printed on the ballot (*only contested races will appear on the ballot*)

contact information

mailing address (*if different from residential address*) | city / ZIP

email address | phone number

oath

I declare that the above information is true, that I am a registered voter residing at the residential address and precinct listed above, and that I am a candidate for Precinct Committee Officer for the party and precinct identified above.

Further, I declare, under penalty of perjury, that I will support the Constitution and laws of the United States, and the Constitution and laws of the State of Washington.

sign here [ ] date here [ ]

for office use only

voter registration number | date

☐ precinct verified | office code

staff

03/2012

AMENDATORY SECTION (Amending WSR 11-05-008, filed 2/3/11, effective 3/6/11)

WAC 434-215-025 Filing fee petitions. (1) When a candidate submits a filing fee petition in lieu of his or her filing fee, as authorized by RCW 29A.24.091, voters eligible to vote on the office in the general election are eligible to sign the candidate's filing fee petition.

(2) ((~~The filing fee petition described in RCW 29A.24.101(3) does not apply. The filing fee petition must be in substantially the following form:~~

~~The warning prescribed by RCW 29A.72.140; followed by:~~

~~"We, the undersigned registered voters of [the jurisdiction of the office], hereby petition that [candidate's] name be printed on the ballot for the office of [office for which candidate is filing a declaration of candidacy]."~~

~~(3)~~)) A candidate submitting a filing fee petition in the place of a filing fee may not file the declaration of candidacy electronically.

(((~~(4)~~))) (3) A candidate submitting a filing fee petition must submit all signatures when filing the declaration of candidacy. The candidate cannot supplement the signatures at a later date.

AMENDATORY SECTION (Amending WSR 12-14-074, filed 7/2/12, effective 8/2/12)

WAC 434-215-130 Minor political party candidates and independent candidates. (1) In the election system enacted as chapter 2, Laws of 2005, there is no distinction between major party candidates, minor party candidates, or independent candidates filing for partisan congressional, state, or county office. All candidates filing for these partisan offices have the same filing and qualifying requirements. All candidates for partisan office have the option of stating on the ballot their preference for a political party, or stating no party preference. The party preference information plays no role in determining how candidates are elected to public office.

(2) ((~~The requirements in RCW 29A.20.111 through 29A.20.201 for minor political party candidates and independent candidates for partisan office to conduct nominating conventions and collect a sufficient number of signatures of registered voters do not apply to candidates filing for partisan congressional, state, or county office. The requirements in RCW 29A.20.111 through 29A.20.201 for minor political party candidates and independent candidates only apply to candidates for president and vice-president of the United States.~~)) If two or more certificates of nomination are filed purporting to nominate the same candidates for president and vice-president by two different minor political parties, or both by a party and as an independent candidate, the first valid certificate of nomination filed with the secretary of state shall be accepted and subsequent certificates must be rejected.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 434-215-150 No major party ticket.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-230-015 Ballots 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~~)) declaration 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~~)) December 31, 2014.

(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) If applicable, explain that postage is required, ((~~if applicable~~)) or exactly how much postage is required. See WAC 434-250-200 on return postage;

(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").

(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.

(7) Counties may use varying sizes and colors of ballots, 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 various types of ballots.

(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(5), and 29A.36.191.~~))

(9) Removable stubs are not considered part of the ballot.

(10) If ballots are printed with sequential numbers or other sequential identifiers, the county auditor must take steps to prevent ballots from being issued sequentially, in order to protect secrecy of the ballot.

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

WAC 434-230-025 Order of offices. Measures and offices must be listed in the following order, to the extent that they appear on a primary or election ballot:

(1) Initiatives to the people;

(2) Referendum measures;

(3) Referendum bills;

(4) Initiatives to the legislature and any alternate proposals;

(5) Proposed constitutional amendments (senate joint resolutions, then house joint resolutions);

(6) Advisory votes;

(7) Countywide ballot measures;

((~~(7)~~)) (8) President and vice-president of the United States;

((~~(8)~~)) (9) United States senator;

((~~(9)~~)) (10) United States representative;

((~~(10)~~)) (11) Governor;

((~~(11)~~)) (12) Lieutenant governor;

((~~(12)~~)) (13) Secretary of state;

((~~(13)~~)) (14) State treasurer;

((~~(14)~~)) (15) State auditor;

((~~(15)~~)) (16) Attorney general;

((~~(16)~~)) (17) Commissioner of public lands;

((~~(17)~~)) (18) Superintendent of public instruction;

((~~(18)~~)) (19) Insurance commissioner;

((~~(19)~~)) (20) State senator;

((~~(20)~~)) (21) State representative;

((~~(21)~~)) (22) County officers;

((~~(22)~~)) (23) Justices of the supreme court;

((~~(23)~~)) (24) Judges of the court of appeals;

((~~(24)~~)) (25) Judges of the superior court; and

((~~(25)~~)) (26) Judges of the district court.

For all other jurisdictions, the offices in each jurisdiction shall be grouped together and listed by position number according to county auditor procedures.

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

WAC 434-230-055 Partisan primary. In a primary for partisan congressional, state or county office conducted pursuant to chapter 2, Laws of 2005 (Initiative 872):

(1) Voters are not required to affiliate with a political party in order to vote in the primary election. For each office, voters may vote for any candidate in the race.

(2) Candidates are not required to obtain the approval of a political party in order to file a declaration of candidacy and appear on the primary or general election ballot as a candidate for partisan office. 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. A candidate's political party preference is not used to determine which candidates advance to the general election.

(3) Based on the results of the primary, the two candidates for each office who receive the most votes and who receive at least one percent of the total votes cast for that office advance to the general election. The primary election does not serve to nominate any political party's candidates, but serves to winnow the number of candidates down to a final list of two for the general election. Voters in the primary are casting votes for candidates, not choosing a political party's nominees. ((~~RCW 29A.36.191 does not apply since the predecessor statute, RCW 29A.36.190, was repealed in chapter 2, Laws of 2005.~~))

(4) Chapter 2, Laws of 2005 (Initiative 872) repealed the prior law governing party nominations. Political parties may nominate candidates by whatever mechanism they choose. The primary election plays no role in political party nominations, and political party nominations are not displayed on the ballot.

(((~~5) 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.~~)))

AMENDATORY SECTION (Amending WSR 12-14-074, filed 7/2/12, effective 8/2/12)

WAC 434-230-100 Political party precinct committee officer. (1) The election of major political party precinct committee officers is established in RCW ((~~29A.52. - (section 3, chapter 89, Laws of 2012)~~)) 29A.52.171 and RCW 29A.80.051.

(2) The election of precinct committee officer is an intra-party election; candidates compete against other candidates in the same political party.

(a) If only one candidate files for a position, that candidate is deemed elected without appearing on the ballot and the county auditor shall issue a certificate of election.

(b) If more than one candidate files for a position, the contested race must appear on the ballot at the primary and the candidate who receives the most votes is declared elected.

(c) If no candidates file during the regular filing period, the race does not appear on the ballot and the position may be filled by appointment pursuant to RCW 29A.28.071.

(d) No write-in line may be printed on the ballot for a contested race, and no write-in votes may be counted.

(3) If both major political parties have contested races on the ballot in the same precinct, 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 party appearing second. Within each party, candidates shall be listed in the order determined by lot.

(4)(a) The position of political party precinct committee officer must appear following all measures and public offices.

(b) The following explanation must be printed before the list of candidates: "For this office only: In order to vote for precinct committee officer, a partisan office, you must affirm that you are a Democrat or a Republican and may vote only for one candidate from the party you select. Your vote for a candidate affirms your affiliation with the same party as the candidate. This preference is private and will not be matched to your name or shared."

(c)(i) If all candidates are listed under one heading, the applicable party abbreviation "Dem" or "Rep" must be printed next to each candidate's name, with the first letter of the abbreviation capitalized. For example:

John Smith Dem

Jane Doe Dem

(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.

(d) One of the following statements, as applicable, must be printed directly below each candidate's name: "I affirm I am a Democrat." or "I affirm I am a Republican."

(5) A voter may vote for only one candidate, regardless of party, for precinct committee officer. If a voter votes for more than one candidate, the votes must be treated as overvotes.

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

WAC 434-230-110 President and vice-president of the United States. (1) When the race for president and vice-president appears on a general election ballot, the candidates for these offices must be paired together.

(2) The full name of the political party, rather than an abbreviation, must be provided for each pair of candidates, with a designation that these candidates are the nominees of the party. The first letter of each word in the political party name must be capitalized. For example:

Example Party Nominees

(3) If candidates are not nominees of a political party and are running as independent candidates, that description must be provided for the pair of candidates. The first letter of each word in the description must be capitalized. For example:

Independent Candidates

(4) The order that candidates appear on the ballot is based on their 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 candidates of the other political parties following according to the votes cast for their nominees for president at the last presidential election. Candidates of parties that did not have nominees in the last presidential election, and independent candidates, follow in the order of their qualification with the secretary of state~~)), as established by RCW 29A.36.161. Minor party and independent candidate nominating petitions are processed in the order in which they are submitted to the office of the secretary of state.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

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"~~)) "APPLY FIRST-CLASS POSTAGE HERE" 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 434-230-047	Nonpartisan county office.
WAC 434-230-095	When a candidate dies or is disqualified.

AMENDATORY SECTION (Amending WSR 08-15-052, filed 7/11/08, effective 8/11/08)

WAC 434-230-045 Candidate format. (1) For each office or position, the names of all candidates shall be listed together. If the office is on the primary election ballot, no candidates skip the primary and advance directly to the general election.

(2)(a) On the primary election ballot, candidates shall be listed in the order determined by lot.

(b) On the general election ballot, the candidate who received the highest number of votes in the primary shall be listed first, and the candidate who received the second highest number of votes in the primary shall be listed second. If the two candidates who received the most votes in the primary received exactly the same number of votes, the order in which their names are listed on the general election ballot shall be determined by lot.

(c) The political party that each candidate prefers is irrelevant to the order in which the candidates appear on the ballot.

(3) Candidate names shall be printed in a type style and point size that can be read easily. If a candidate's name exceeds the space provided, the election official shall take whatever steps necessary to place the name on the ballot in a manner which is readable. These steps may include, but are not limited to, printing a smaller point size or different type style.

(4) For partisan office:

(a) If the candidate stated his or her preference for a political party on the declaration of candidacy, that preference shall be printed below the candidate's name, with parentheses and the first letter of each word capitalized, as shown in the following example:

John Smith

(Prefers Example Party)

(b) If the candidate did not state his or her preference for a political party, that information shall be printed below the candidate's name, with parentheses and the first letter of each word capitalized, as shown in the following example:

John Smith

(States No Party Preference)

(c) The party preference line for each candidate may be in smaller point size or indented.

(d) The same party preference information shall be printed on both primary and general election ballots.

(5) If the office is nonpartisan, only the candidate's name shall appear. Neither "nonpartisan" nor "NP" shall be printed with each candidate's name.

(6) The law does not allow nominations or endorsements by interest groups, political action committees, political parties, labor unions, editorial boards, or other private organizations to be printed on the ballot.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-235-020 Voter registration. (1) A 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) A ballot with a valid signature on the ballot declaration.

(2) Pursuant to RCW 29A.40.010 and 29A.40.091, a service or overseas voter does not have to be registered in order to request a ballot. Consequently, a service or overseas voter who is not already registered in Washington may request a ballot and ((~~be registered~~)) register after the registration deadlines of RCW 29A.08.140 have passed. A service or overseas voter who is already registered to vote in Washington may not transfer or update a registration after the deadlines in 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 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.

(i) 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 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. 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.

(ii) After the election or primary, the county auditor must place the voter on inactive status and send the voter a confirmation notice to obtain the voter's correct residential address.

(d) A service or overseas voter ((~~who registers to vote by signing the ballot declaration~~)) is not required to provide a driver's license number, Social Security number or other form of identification as required ((~~in~~)) by RCW 29A.08.107.

(3) The county auditor must offer a service or overseas voter the option of receiving blank ballots by e-mail or postal mail. This requirement is satisfied if the service or overseas voter registers on an application that offers electronic ballot delivery as an option, or if the voter expresses a preference when registering, 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 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-235-040 Processing 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 ballot declaration associated with the voter's signature determines the validity of the ballot. The signature on the ballot declaration must be dated no later than election day.

(3) Voted ballots returned by fax or e-mail must be received no later than 8:00 p.m. on election day. ((~~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 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.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-235-030 Voting. (1) A service or overseas voter may request or return 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) The county auditor must issue 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.

(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, in a format that the voter can keep after the voted ballot has been returned.

(4) If the county auditor is unable to issue a ballot due to insufficient information, the county auditor must attempt to contact the voter, consistent with WAC 434-235-020, to clarify the request. If the county auditor is unable to obtain sufficient information, other than residential address, to issue the ballot, the county auditor must attempt to notify the voter of the reason that the ballot was not issued.

(5) Pursuant to RCW 29A.40.091, return envelopes must be printed to indicate that they may be returned postage-free.

NEW SECTION

WAC 434-250-037 Mail ballot certification. Pursuant to RCW 29A.40.070, fifteen days before each primary or election, the county auditor shall certify to the secretary of state:

(1) That ballots were mailed or issued to service and overseas voters at least forty-five or thirty days before election day, whichever deadline is applicable. For elections that include a federal office, the certification must include the number of ballots mailed or issued to service and overseas voters;

(2) That ballots were mailed or issued to regular voters at least eighteen days before election day;

(3) That ballots issued via electronic ballot delivery systems were proofed and checked for accuracy prior to the mailing deadline for service and overseas ballots; and

(4) If any ballots were not mailed or issued by the applicable deadlines, the reason for the delay and steps taken to remedy the delay.

AMENDATORY SECTION (Amending WSR 12-14-074, filed 7/2/12, effective 8/2/12)

WAC 434-250-100 Ballot deposit sites. (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 until 8:00 p.m. Staffed deposit sites may be open 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 and 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) 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~~)) either be transported to the county auditor's office or another designated location by at least two authorized people, or placed into a secured transport carrier for transport to the county auditor's office or other 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; however, any voter who is in line at 8:00 p.m. must be allowed to vote and deposit his or her ballot. If a ballot is returned after the ballot box is emptied or secured at 8:00 p.m. on election day, the ballot must be referred to the canvassing board.

(3) Within twenty-five feet of a ballot deposit site that is not located within a voting center, no person may electioneer, circulate campaign material, solicit petition signatures, or interfere with or impede the voting process. Whenever it is necessary to maintain order around a ballot deposit site, the county auditor may contact a law enforcement agency for assistance.

AMENDATORY SECTION (Amending WSR 12-14-074, filed 7/2/12, effective 8/2/12)

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) Have electronic or telephonic access to the voter registration system, consistent with WAC 434-250-095, if the voting center offers voting on a direct recording electronic voting device. The ((~~voter must either:~~

~~(i)~~)) county auditor shall require the voter to print and sign the ballot declaration provided in WAC 434-230-015. Ballot declaration signatures may not be maintained in the order in which they were signed. Before the voter may vote on a direct recording electronic voting device, the county auditor must either:

(i) Verify the signature on the ballot declaration against the signature in the voter registration record; or

(ii) Require the voter to provide photo identification, consistent with RCW 29A.40.160; ((~~or~~

~~(ii) Sign the ballot declaration required by WAC 434-230-015, and the signature on the declaration must be verified against the signature in the voter registration record before the voter may vote on a direct recording electronic voting device;~~))

(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; however, any voter who is in a voting center or in line at a voting center at 8:00 p.m. must be allowed to vote and deposit his or her ballot. 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 12-14-074, filed 7/2/12, effective 8/2/12)

WAC 434-250-110 Processing ballots. (1) "Initial processing" means all steps taken to prepare ballots for tabulation. Initial processing includes, but is not limited to:

(a) Verification of the signature and postmark on the ballot declaration;

(b) Removal of the security envelope from the return envelope;

(c) Removal of the ballot from the security envelope;

(d) Manual inspection for damage, write-in votes, and incorrect or incomplete marks;

(e) Duplication of damaged and write-in ballots;

(f) Scanning and resolution of ballots on a digital scan voting system; and

(g) Other preparation of ballots for final processing.

(2) "Final processing" means the reading of ballots by an optical scan voting 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 processing shall begin, and shall request that each major political party appoint official observers to observe the processing and tabulation of 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 ballots.

(5) Initial processing of voted ballots, which may include scanning and resolving ballots on a digital scan voting system, may begin as soon as voted ballots are received. All 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.

(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 follows a security plan that has been submitted ((~~an~~)) by the county auditor and approved ((~~security plan to~~)) by the secretary of state ((~~that~~)) to prevent((~~s~~)) tabulation until after 8:00 p.m. on the day of the election.

(7) Tabulation may begin after 8:00 p.m. on the day of the election.

(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 12-14-074, filed 7/2/12, effective 8/2/12)

WAC 434-250-120 Verification of the signature and return date. (1) A mail ballot shall be counted if:

(a) The ballot declaration is signed with a valid signature;

(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

(c)(i) The envelope is postmarked not later than the day 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~~)) is received by fax or e-mail ((~~is received~~)) no later than 8:00 p.m. on election day. If the ballot is from a voter who is neither a service nor overseas voter, a hard copy of the ballot and ballot declaration must also be received no later than the day before certification of the election.

(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 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 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 ballot declaration may not be rejected merely because the signature is not dated, unless the date is necessary to validate the timeliness of the ballot. The signature on a 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)(a) For ballots returned by fax or e-mail, the county auditor must apply procedures to protect the secrecy of the ballot. If returned by e-mail, the county auditor must print the e-mail and attachments; the printed e-mail and signed declaration page must be processed and retained like other ballot declarations, and the printed ballot must be processed and retained like other ballots. The electronic versions of the e-mail, ballot declaration, and ballot are exempt from public disclosure in order to maintain secrecy of the ballot. Voted ballots returned by e-mail may be returned with multiple attachments or as multiple e-mails.

(b) If the ballot is from a voter who is neither a service nor overseas voter, the voter must also return a hard copy of the ballot and ballot declaration no later than the day before certification.

(i) Consistent with WAC 434-250-080, the first valid ballot and declaration received is counted; subsequently received versions are not counted.

(ii) In order to maintain secrecy of the ballot, the hard copy ballot may not be compared to the ballot received electronically.

(iii) Voted ballots returned electronically no later than 8:00 p.m. on election day are timely even if the hard copy subsequently returned contains a postmark after election day.

(c) Ballots returned electronically with a missing or mismatched signature are processed as established in RCW 29A.60.165 and WAC 434-261-050.

(5) 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.

NEW SECTION

WAC 434-250-200 Return postage. The Mailing Standards of the United States Postal Service, Domestic Mail Manual, requires each county auditor to include on the ballot, ballot instructions, mailing instructions or return envelope, and the specific amount of first-class postage necessary to return the ballot by mail. This is not required:

(1) For ballots issued to service and overseas voters;

(2) For ballots returned using the business reply mail service;

(3) For ballots returned with postage prepaid by stamps, meter, or permit reply mail; or

(4) If the county auditor has an account with the post office guaranteeing payment of return postage due.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-250-320 Locations to deposit ballots. A county auditor must provide at least two locations to deposit ballots beginning eighteen days prior to election day and ending at 8:00 p.m. on election day. These locations may be either a ballot deposit site, as defined in WAC 434-250-100, or a voting center, as defined in WAC 434-250-105. 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.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-250-095 Direct recording electronic voting devices. (1) ((~~If a voter 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.~~

~~In order to prevent multiple voting, the voter must be immediately credited or otherwise flagged as having voted. If a voted mail ballot is subsequently returned after a ballot is cast on the direct recording electronic voting device, the 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.

(2) Before a direct recording electronic voting device may be used by a voter, an election officer must 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. In order to prevent multiple voting, the voter must be immediately credited or otherwise flagged as having voted. If the county auditor is unable to confirm whether the voter has already returned a voted ballot, the voter may not vote on a direct recording electronic voting device. If a voted mail ballot is subsequently returned after a ballot is cast on the direct recording electronic voting device, the mail ballot must not be counted.

(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 09-18-098, filed 9/1/09, effective 10/2/09)

WAC 434-261-086 Statewide standards on what is a vote. (1) Pursuant to 42 U.S.C. § 15481(a)(6) and *Bush v. Gore*, 531 U.S. 98 (2000), the following standards determine whether irregular marks on a ballot constitute a valid vote that may be counted.

(a) Target area. Any marks made in the target area shall be counted as valid votes, with the exceptions below. Any marks made outside of the target area shall be valid only if they ((~~fulfill the consistent pattern requirements~~)) form a pattern of similar marks as outlined in (b) of this subsection, or qualify as written instructions in (e) of this subsection. Marks that trace or outline the target area are not valid votes unless they ((~~fulfill the consistent pattern requirements~~)) form a pattern of similar marks as outlined in (b) of this subsection. The following marks in the target area are exceptions that are not valid votes:

(i) Obvious stray marks((~~.~~));

(ii) Hesitation marks((~~.~~));

(iii) Parts of written notes((~~.~~)); and

(iv) Corrected votes, as described in (c) and (e) of this subsection.

(b) ((~~Consistent~~)) Pattern of similar marks. Marks made outside of the target area shall ((~~only~~)) be counted as valid votes ((~~if~~)) as long as those marks form a ((~~consistent~~)) pattern of similar marks ((~~is used throughout the whole ballot. This means that~~)). All races and issues for which the voter has indicated a choice outside the target area must have ((~~the same~~)) a similar mark.

(i) Marks made outside of the target area may be counted as valid votes even if one pattern of similar marks is used on one page of the ballot and another pattern of similar marks is used on another page of the ballot.

(ii) Marks made outside of the target area shall be counted as valid votes if one pattern of similar marks is used for measures and another pattern of similar marks is used for candidate races.

(iii) If some marks are in the target area and some are not, but the same *type* of mark is used ((~~in a consistent pattern throughout the whole ballot~~)), all such marks shall be counted as valid votes.

(iv) If the marks strike through candidate names or ballot measure responses in a ((~~consistent~~)) pattern of similar marks throughout the ((~~whole~~)) ballot, all such marks shall be counted as valid votes.

(v) A mark outside the target area on a ballot that contains only one race or measure is not required to form a pattern.

(c) Corrected votes.

(i) If the voter has followed the instructions for correcting a vote, the stricken vote shall not be counted.

(ii) If a second choice is marked, it shall be counted as a valid vote. If a second choice is not marked, the race shall be considered undervoted.

(iii) If the voter has marked two target areas and placed an 'X' or slash over one of the marked areas, the choice without the 'X' or slash shall be counted as a valid vote.

(d) Not a correction. If the voter has both marked a choice correctly and placed an 'X' in the same target area, but has not marked a second target, it shall be counted as a valid vote. Changes made by the voter to wording printed on the ballot will not invalidate votes cast for that race or measure.

(e) Written instructions. If the voter has attempted to vote or correct a vote ((~~and provides~~)) by providing written instruction regarding his or her intent, it shall be counted as the voter instructed. Written instructions can include((~~s~~)) words, circles, lines, or arrows.

(f) Identifying marks. Marks identifying the voter, such as initials, signatures, or addresses do not disqualify a ballot.

(g) Overvotes. Races or issues that have more target areas marked than are allowed are overvotes. No votes for that race or issue shall be counted. An exception is write-in votes for a candidate already printed on the ballot, as provided in (i) of this subsection.

(h) Write-in: Blank target area. If a name is written on a write-in line, it shall be counted as a valid write-in vote regardless of whether the corresponding target area is marked.

(i) Write-in: Already on the ballot. If the name of a candidate who is already printed on the ballot is written in, that vote shall not be tallied as an overvote, but shall be counted as a valid vote for the printed candidate. This applies even if both target areas are marked or no target areas are marked.

(j) Write-in: Name variations. If a write-in vote is cast for a *declared* write-in candidate using a commonly recognizable nickname or spelling variation, it shall be counted as a valid vote for that candidate.

(k) Write-in: Blank line. If the write-in target area is marked, but no name is written on the line, it shall not be counted as a valid vote, even though it may be tallied as a write-in vote by the tabulation system.

(l) Write-in: Blank line and candidate. If a candidate's target area is marked, *and* the write-in target area is marked but no name is written on the line, it shall not be tallied as an overvote, but shall be counted as a valid vote for the printed candidate.

(m) Write-in: Name combinations. If a write-in vote is cast for a candidate with a combination of names already on the ballot, it shall NOT be counted as a vote for either printed candidate, but rather shall be counted as a valid vote for the name as written.

(n) Write-in: Overvotes. If a candidate's target area is marked and something other than that candidate's name is written in the write-in response area, it shall be counted as an overvote and not a valid vote for any candidate. This applies whether or not the target area for the write-in is marked.

(o) Write-in: Not eligible. A write-in vote for a race not appearing on the voter's ballot shall not be counted.

Exception: If a provisional ballot has been cast and the voter has written in an office or measure that is not on the ballot, that vote shall be counted if it is determined, based on the voter's registration, that he or she is eligible to vote for that office or measure.

(p) Write-in: Vote in the wrong place. A write-in vote for a race appearing elsewhere on the ballot shall be counted as a valid vote, as long as all other requirements are fulfilled and the office, position number and political party, if applicable, are clearly indicated.

(q) Messy marks. When otherwise valid votes marked ((~~for a candidate~~)) in a target area partially extend into the response area ((~~of another candidate~~)), it shall be counted as a vote if most of the mark is in the ((~~proper~~)) target area and intent can easily be discerned.

(r) Pattern of partisan voting. Voter intent in any single contest shall not be determined based on a pattern of partisan voting on the ballot.

Exception: On a federal write-in absentee ballot (FWAB) in which the voter has not written in a candidate's name but has written in the name of a political party, the written instructions may be counted as a vote if the canvassing board can discern that a candidate's party preference is consistent with the voter's instructions. The canvassing board shall not count the instructions as a vote if no candidate's party preference is consistent with the voter's instructions, or if multiple candidates' party preferences are consistent with the voters' instructions.

(s) Anything else. Voter intent on questionable marks not covered by the rules in this manual must be determined by county canvassing boards according to all applicable laws of the state of Washington and the canvassing board manual. Where more than one rule may apply, the county canvassing board has authority to determine which rule is most appropriate.

(2) The secretary of state shall publish an illustrated version of these standards in each optical scan and digital scan voting system used in the state. The secretary of state shall distribute the illustrated version to each county canvassing board and post it on the web site.

(3) The secretary of state shall periodically review and update the manual as necessary, and seek input from county canvassing boards and other interested parties to ensure that the standards remain current and comprehensive.

AMENDATORY SECTION (Amending WSR 05-17-145, filed 8/19/05, effective 9/19/05)

WAC 434-261-100 Ballot duplication procedures. (1) Written procedures shall be established detailing the situations in which ballots may be duplicated. These procedures shall be included as a part of the county canvassing board manual.

(2) If a county uses an automated duplication program, only votes appearing in a human-readable form on the original ballot may be duplicated onto a machine-readable ballot. The human-readable votes on the original ballot must be compared to the votes printed on the duplicated ballot to ensure that the votes are duplicated accurately. If a human-readable version of any races or ballot pages of the original

ballot are not returned or available, votes in those races may not be duplicated or counted.

NEW SECTION

WAC 434-261-108 Random check of ballot counting equipment. If a random check of up to six batches of ballots is conducted pursuant to RCW 29A.60.170 in a county that uses optical scan voting equipment, each batch must be tabulated on a different scanner. If there are more scanners used in the election than batches to be checked, then the scanners must be selected at random.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-262-020 Preliminary abstract of votes. (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. The preliminary abstract of votes must list separately for each precinct:

(a) ((~~Votes cast by mail ballot;~~)) Number of registered voters;

(b) Number of ballots cast;

(c) Votes cast for and against each measure((~~s~~));

(((~~c~~))) (d) Votes cast for each candidate((~~s~~)); ((~~and~~ (~~d~~))) (e) Total number of write-in votes in each race; and

(f) Total number of overvotes and undervotes in each race.

(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 11-24-064, filed 12/6/11, effective 1/6/12)

WAC 434-262-031 Rejection of ballots or parts of ballots. (1) The disposition of provisional ballots is governed by WAC 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~~)) together:

(i) If the two ballots are returned with only one valid signature on the ballot declaration, ((~~unless both ballots are voted identically, in which case one ballot will~~)) the races and measures voted the same on both ballots may be counted once.

(ii) If ((~~there are~~)) the two ballots are returned with two valid signatures on the ballot declaration, both ballots ((~~must~~)) may be counted in their entirety;

(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.

AMENDATORY SECTION (Amending WSR 12-14-074, filed 7/2/12, effective 8/2/12)

WAC 434-262-070 Official county canvass report. (1) 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:

(a) States that the abstract is a full, true, and correct representation of the votes cast for the issues and offices listed thereon;

(b) Provides the total number of registered voters and votes cast in the county;

(c) Contains the oath required by RCW 29A.60.200, signed by ((~~all members of the board or their designees~~)) the county auditor and attested to by the chair or designee who administered the oath; and

(d) Shall have a space where the official seal of the county shall be attached.

(2) The official county canvass report shall include:

(a) The certification;

(b) The auditor's abstract of votes as described in WAC 434-262-030;

(c) The reconciliation report required by RCW 29A.60.235, which must include documentation that the number of ballots counted plus the number of ballots rejected is equal to the number of ballots received, and any additional information necessary to explain variances; and

(d) If applicable, a written narrative of errors and discrepancies discovered and corrected.

(3) The certification shall be signed by all members of the county canvassing board or their designees. If one member of the canvassing board cannot be present, and a designee for that member is unavailable, the certification shall be signed by a quorum of the board.

(4) The official county canvass report is the cumulative report referenced in RCW 29A.60.230. 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. The vote totals contained therein shall constitute the official returns of that election.

AMENDATORY SECTION (Amending WSR 12-14-074, filed 7/2/12, effective 8/2/12)

WAC 434-324-026 Voter registration form.

((

instructions

You must be a United States citizen to register to vote.

how to register to vote or update a registration

Please print all information clearly using black or blue pen.

Mail or deliver this form to your County Elections Office. Addresses are on the reverse side.

for more information

online www.vote.wa.gov

call 1–800–448–4881

visit your County Elections Office

This registration will be in effect for the next election if postmarked or delivered no later than the Monday four weeks before Election Day.

If you miss this deadline, please contact your County Elections Office.

You will receive your ballot by mail. Contact your County Elections Office for in-person voting options.

If you knowingly provide false information on this voter registration form or knowingly make a false declaration about your qualifications for voter registration you will have committed a class C felony that is punishable by imprisonment for up to 5 years, a fine of up to $10,000, or both.

Your name, address, gender and date of birth are public information.

12/2011

Washington State Voter Registration Form

register online at www.myvote.wa.gov

qualifications

if you mark no to either of these questions, do not complete this form

○ yes ○ no I am a citizen of the United States of America.

○ yes ○ no I will be at least 18 years old by the next election.

personal information

last name first middle

date of birth (mm / dd / yyyy) ○ male ○ female

residential address (in Washington)

city ZIP

mailing address (if different than residential address)

city state / ZIP

email address (optional) phone number (optional)

○ I am in the Armed Forces (includes National Guard and Reserves).

○ I am a U.S. citizen living outside the U.S.

Washington driver license / state ID #

if you do not have a Washington driver license or state ID card, provide the last four digits of your Social Security number

x x x - x x -

declaration

I declare that the facts on this voter registration form are true. I am a citizen of the United States, I am not presently denied the right to vote as a result of being convicted of a felony, I will have lived in Washington at this address for 30 days immediately before the next election at which I vote, and I will be at least 18 years old when I vote.

sign here date here

former registration

if you are already registered and are changing your name or address, fill out this section (this information will be used to update your registration)

former last name first middle

former residential address city state / ZIP

))

Instructions

Use this form to register to vote or to update an existing registration.

Print all information clearly using black or blue pen.

Mail or deliver this completed form to your county elections department. Addresses are on the next page.

Deadline
This registration will be in effect for the next election if postmarked or delivered no later than the Monday four weeks before Election Day.

If you miss this deadline, contact your county elections department.

Voting
You will receive your ballot in the mail. Contact your county elections department if you wish to vote in person.

Notice
If you knowingly provide false information on this voter registration form or knowingly make a false declaration about your qualifications for voter registration you will have committed a class C felony that is punishable by imprisonment for up to 5 years, a fine of up to $10,000, or both.

Public disclosure
Your name, address, gender and date of birth are public information.

For more information

web www.vote.wa.gov

call 1-800-448-4881

visit your county elections department

Washington State Voter Registration Form

Register online at www.myvote.wa.gov

1 Personal information

last name first middle

date of birth (mm / dd / yyyy) ○ male ○ female

residential address (in Washington) apt #

city ZIP

mailing address (if different than residential address)

city state / ZIP

phone number (optional) email address (optional)

2 Qualifications

If you mark no to either of these questions, do not complete this form

○ yes ○ no I am a citizen of the United States of America.

○ yes ○ no I will be at least 18 years old by the next election.

3 Military / overseas status

○ I am in the Armed Forces (includes National Guard and Reserves; and military spouses or dependents away from home because of service).

○ I live outside the U.S.

4 Identification — Washington driver license / ID number

If you do not have a Washington driver license or ID, provide the last four digits of your Social Security number x x x - x x - | | | | |

5 Former registration

If you are already registered and are changing your name or address, fill out this section (this information will be used to update your registration)

former last name first middle

former residential address city state / ZIP

6 Declaration

I declare that the facts on this voter registration form are true. I am a citizen of the United States, I will have lived at this address in Washington for at least thirty days immediately before the next election at which I vote, I will be at least 18 years old when I vote, I am not disqualified from voting due to a court order, and I am not under Department of Corrections supervision for a Washington felony conviction.

sign here date here

NEW SECTION

WAC 434-324-028 Illegible or missing postmarks. (1) Consistent with RCW 29A.08.020, if the postmark on a voter registration application submitted by mail is illegible or missing, the date of receipt by the elections office is considered the date of application. If an application is received by the elections official by the close of business on the fifth day after the cutoff date for voter registration, the application is considered to have arrived by the voter registration deadline.

(2) Postage that contains a date, such as metered postage or a dated stamp, is not a postmark. If an application has dated postage and no postmark, it is an application missing a postmark.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

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 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 his or her driver's license number, state identification card number or the last four digits of his or her Social Security number, or a copy of one of the following forms of identification, either before or when ((~~they~~)) he or she votes:

(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~~))) (ii) A valid enrollment card of a federally recognized tribe in Washington;

(((~~v~~))) (iii) A current utility bill, or a current bank statement;

(((~~vi~~))) (iv) A current government check;

(((~~vii~~))) (v) A current paycheck; or

(((~~viii~~))) (vi) 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 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 10-14-091, filed 7/6/10, effective 8/6/10)

WAC 434-324-076 Voter registration updates. (1) The county auditor may request additional identifying information before processing a voter registration update submitted on behalf of a family or household member.

(2) If a voter submits a registration transfer to a new county by the statutory deadline, but the voter's previous county issues the voter a ballot before the transfer is processed and the voter votes the ballot issued by the previous county, the previous county must treat the voted ballot as if it is a provisional ballot and forward it to the voter's new county. The previous county does not need to forward the ballot if none of the races or issues on the voted ballot from the previous county is on a ballot in the voter's new county. If any races or issues on the ballot from the old county are applicable to the voter's residential address in the new county, the votes on those races and issues should only be counted by the new county if the voter does not vote and return a ballot issued by the new county.

AMENDATORY SECTION (Amending WSR 05-24-039, filed 11/30/05, effective 12/31/05)

WAC 434-324-111 Voluntary cancellation of voter registration. A voter may cancel his or her own voter registration by submitting a signed written notification to the auditor for the county in which he or she is registered to vote. Prior to cancellation of such a registration record, the auditor must ensure the signature on the notification matches the signature in the voter registration file by utilizing criteria outlined in WAC 434-379-020. A county auditor may not process a voluntary cancellation between the deadline in RCW 29A.08.140 for updating a registration and certification of the primary or election.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

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~~)) that allow a registered voter to challenge the registration of another voter pursuant to RCW 29A.08.810 through 29A.08.850. The secretary of state must make the form available on its web site.

((**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:

Name Registered Address

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 database to determine if the voter is registered at any other address in the state.

List the evidence for the challenge:

Signature of Challenger Date and Place Signed

Address City, State, Zip

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.

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.))

AMENDATORY SECTION (Amending WSR 05-24-039, filed 11/30/05, effective 12/31/05)

WAC 434-324-118 Data auditing of county voter election management system with the official statewide voter registration data base. Each auditor must perform data audits of its county election management system to ensure all of its data matches data in the official statewide voter registration data base. The data audits must be performed on a periodic basis and must be performed within a reasonable amount of time prior to an election.

During data auditing, the auditor must transfer voter registration records from the county election management system to the official statewide voter registration data base for verification of voter information and voter status. The official statewide voter registration data base must update the voter information and verify that the voter status provided by the county election management system matches the voter status in the official statewide voter registration data base. Upon completion of this verification process, the voter's registration status is either:

(1) Confirmed, and the county is authorized to issue a ballot to the voter; or

(2) Denied because the official statewide voter registration data base indicates the voter's registration record is in pending or canceled status. The auditor must update the county election management system with the appropriate voter status, or investigate the discrepancy. The voter is not authorized to vote.

((~~In addition, the county election management system must update the statewide voter registration data base with the appropriate voter information.~~))

AMENDATORY SECTION (Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

WAC 434-335-270 Definition of official logic and accuracy test. As used in this chapter, "official logic and accuracy test" means the test performed in accordance with RCW 29A.12.130 ((~~for all voting systems used~~)).

NEW SECTION

WAC 434-335-275 Pretest. The county auditor must pretest all programming and tabulation equipment to be used in the primary or election prior to the official logic and accuracy test.

AMENDATORY SECTION (Amending WSR 05-18-022, filed 8/29/05, effective 9/29/05)

WAC 434-335-280 Logic and accuracy test conduct. The county must provide adequate personnel to properly operate the ballot ((~~counting equipment~~)) tabulation system. Whenever possible, the ((~~equipment should~~)) system shall be operated during the test by the same person or persons who will be responsible for ((~~the ballot count~~)) operating the system on election day. ((~~If any error in programming or mechanical function is detected, the cause must be determined and corrected, and an errorless test completed before the primary or election.~~)) The official logic and accuracy test shall be conducted as follows:

(1) Every ballot tabulator and scanner to be used in the primary or election shall be tested. Digital scan test decks shall be scanned during the official logic and accuracy test.

(2) Undervotes recorded by a digital scan system shall be auto-resolved. Some undervotes may be manually resolved to demonstrate the process.

(3) Optical scan tabulators shall be set to out-stack blank ballots, overvotes, and write-in votes.

(4) A printout of the test results shall be produced and compared to the expected test results. If the test results do not match the expected test results, the reason for the discrepancy must be satisfactorily determined and corrections made, if necessary.

(5) The upload of results to the secretary of state's office shall be tested and verified.

AMENDATORY SECTION (Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

WAC 434-335-300 Logic and accuracy testing of ((~~voting~~)) vote tabulation systems ((~~and equipment~~)). ((~~(1)~~)) At least three days before each state primary or general election, the office of the secretary of state ((~~must~~)) shall observe the official logic and accuracy test of the ((~~programming of the vote tabulating system to be used at that primary or election~~)) vote tabulation system prepared by the county auditor. The test must verify that the system will correctly count the votes cast for all candidates and all measures appearing on the ballot. ((~~The test must also verify that the machines are functioning to specifications.~~

~~(2) County auditors must conduct the test in the same manner as subsection (1) of this section for special elections not held in conjunction with a state primary or general election. The secretary of state is not represented at the tests for special elections.~~))

AMENDATORY SECTION (Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

WAC 434-335-310 Procedures for ((~~conduct of primary or general election~~)) conducting an emergency logic and accuracy test. If the official logic and accuracy test cannot be completed at the scheduled time and place, an emergency test must be scheduled by the county auditor. The emergency test must be conducted and properly completed prior to ((~~the~~)) processing ((~~of~~)) any official ballots through the ((~~tabulating~~)) vote tabulation system. If ((~~no~~)) a representative of the office of the secretary of state is ((~~able~~)) unable to attend the emergency test, the county auditor and another member of the county canvassing board or their designated representative must observe the test and certify the results. Observers and notification must be provided pursuant to WAC 434-335-290 and 434-335-320.

AMENDATORY SECTION (Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

WAC 434-335-320 Scheduling the logic and accuracy test ((~~scheduling and preparation~~)) —State primary and

general election. ((~~Prior to each state primary and general election, the office of the secretary of state must prepare a schedule of logic and accuracy tests.~~)) The office of the secretary of state must contact each county auditor at least ((~~thirty~~)) forty-five days before ((~~the~~)) a state primary or general election to schedule the official logic and accuracy test. After the test has been scheduled, the county auditor ((~~must~~)) shall notify the parties, press, public, and candidates of the date and time of the test.

NEW SECTION

WAC 434-335-323 Preparing the logic and accuracy test. (1) Each county shall prepare a matrix of the test pattern used to mark the test deck of ballots for the official logic and accuracy test. The matrix shall consist of a spreadsheet listing the number of votes cast for each candidate and responses for and against each measure in each precinct or ballot style. The matrix shall include:

(a) Ballots to be used during the election, including ballots on demand, alternative language ballots, electronically duplicated ballots, and electronically marked ballots;

(b) For every precinct or ballot style, the first response position of every race or measure marked so the total votes cast for the first candidate of a race or the first response to a measure equals the total number of precincts or ballot styles being tested;

(c) Two votes for the second response position, three votes for the third response position, four votes for the fourth response position, etc.;

(d) For each tabulator's test deck:

(i) One write-in vote;

(ii) One overvoted race; and

(iii) One blank ballot.

(e) For all responses within a race or measure, including write-ins, unique results. Additional ballots must be added to the test deck in the following circumstances:

(i) Within a race or measure, more than one response has the same results;

(ii) A candidate appears in two different races on the same ballot; and

(iii) More than one measure appears on a ballot within the same jurisdiction and each has the same response position names. For example, if two measures with "yes" and "no" response names appear for the same jurisdiction, the test results shall be unique between the two measures.

(2) A copy of the county's test matrix and a sample ballot shall be sent to the office of the secretary of state by the fourteenth day prior to the official logic and accuracy test. The office of the secretary of state shall review the provided matrix to determine if it is prepared in accordance with this section.

(3) The county auditor shall produce a test deck of ballots based on the test matrix to be used in the official logic and accuracy test.

NEW SECTION

WAC 434-335-325 Exception to logic and accuracy test pattern. A county auditor may file an exception request with the secretary of state to modify the test pattern provided in WAC 434-335-323. The county auditor must provide a description of the modification in detail, a sample test matrix, and the reasons for an exception. The exception request must be filed with the secretary of state no later than July 1st. The secretary of state must accept or reject the request in writing within thirty days. Accepted test patterns may be used in all future elections.

AMENDATORY SECTION (Amending WSR 08-05-120, filed 2/19/08, effective 3/21/08)

WAC 434-335-330 Logic and accuracy test certification. (1) The official logic and accuracy test shall be certified by the county auditor or deputy, the secretary of state representative, and any political party observers ((~~must certify that the test of voting systems that will be used in the~~)) for a state primary or general election ((~~was conducted~~)) in accordance with RCW 29A.12.130. ((~~This certification must include verification that~~)) Additionally, the county auditor must verify in writing that the version numbers for all software, firmware, and hardware of the voting system used have not changed from the certified versions. ((~~Copies of this certification must be retained by the secretary of state and the county auditor and may be posted by electronic media. All test results, test ballots, and a copy of the tabulation programming or the actual tabulation equipment must be kept in secure storage employing the use of numbered seals and logs or other security measures that will detect any inappropriate access to the materials until the day of the primary or election. These items may be sealed and stored separately.~~

~~(2) For special elections not held in conjunction with a state primary or general election, the secretary of state is not represented and does not retain a copy of the certification. The county auditor or deputy and any political party observers must certify that the test of voting systems that will be used in the special election was conducted in accordance with RCW 29A.12.130. This certification must include verification that the version numbers for all software, firmware, and hardware of the voting system used have not changed from the certified versions. Copies of this certification must be retained by the county auditor and may be posted by electronic media. All test results, test ballots, and a copy of the tabulation programming must be kept in secure storage, employing the use of numbered seals and logs or other security measures that will detect any inappropriate access to the materials until the day of the primary or election. These items may be sealed and stored separately.~~

~~(3)~~)) (2) The county auditor shall provide the secretary of state representative copies of the following documents:

(a) Test results;

(b) A zero report;

(c) Signed verification of the version numbers;

(d) Signed certification of the official logic and accuracy test;

(e) A test log of:

(i) The number of accessible voting units to be used in the primary or election; and

(ii) The electronic duplication system, if electronic duplication will be used in the primary or election; and

(f) Any other documentation requested by the secretary of state representative in advance of the official test.

(3) Copies of the certification documents must be retained by the secretary of state and the county auditor. All test results, test ballots, the signed certification, and a copy of the tabulation programming or the actual tabulation equipment must be kept in secure storage until the day of the primary or election. The secure storage must use numbered seals and logs that will detect any inappropriate access.

(4) If, for any reason, ((~~any~~)) changes are made to the ballot counting programming after the official logic and accuracy test, an emergency logic and accuracy test must be conducted pursuant to WAC 434-335-310.

NEW SECTION

WAC 434-335-335 Other primaries and elections. For a primary or election that is not a state primary or election, the county auditor must conduct the official logic and accuracy test in the same manner as though it is a state primary or election.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 434-335-430	Definition.
WAC 434-335-440	Logic and accuracy pretest—State primary and general election—Optical and digital scan systems.
WAC 434-335-445	The preparation of logic and accuracy test decks.
WAC 434-335-450	Optical and digital scan test ballot selection—State primary and general elections.

AMENDATORY SECTION (Amending WSR 12-14-074, filed 7/2/12, effective 8/2/12)

WAC 434-379-009 Processing filed petitions. (1) To allow for sufficient personnel to accept and process signed petitions, the sponsor of an initiative or referendum must make an appointment ((~~with the office of the secretary of state~~)) to file the signed petitions at least two business days in advance. Pursuant to RCW 29A.72.170, the secretary of state must reject petitions until a sufficient number that meet the minimum signature requirement are filed together. If the petitions are accepted and filed, additional petitions may be submitted until the applicable deadline established by RCW 29A.72.160. When submitting the petitions, the sponsor must also provide the text of the measure, exactly as it was printed on the circulated petitions, in electronic Microsoft Word format.

(2) Upon receipt of the petitions, the office of the secretary of state shall count the number of petitions received, and provide that total to the sponsor.

(3) A petition may not be rejected merely because it includes stray marks, scribbles, notes, or highlighting as long as the printed text on the petition is not illegible.

(4) A petition may not be rejected merely because the circulator's declaration on the back side of the petition is unsigned, or is signed with a stamp. AGO 2006 No. 13; *Washington Families Standing Together v. Secretary of State Sam Reed*, Thurston County Superior Court No. 09-2-02145-4, September 8, 2009.

(5) Once a petition is submitted to the office of the secretary of state, a person may not withdraw his or her signature from a petition. Letters submitted to the secretary of state requesting the removal of a signature from a petition must be retained by the secretary as part of the public record for the petition.

(6) Each petition must be reviewed for fraud, such as patterns of similar handwriting indicating forged signatures.

(7) Each signature line must be reviewed to invalidate:

(a) Obscenities;

(b) Lines with an out-of-state address;

(c) Text that is not a name;

(d) Duplicate names;

(e) Lines that are crossed out and not readable;

(f) Lines that include a name and address that both appear to be fictitious; or

(g) Lines that are blank or unfilled.

(8) The following characteristics of a signature line do not, by themselves, invalidate the signature:

(a) A name that is fictitious with an address that does not appear to be fictitious. Lines that include a name that appears to not be fictitious but an address that does appear to be fictitious, or vice versa;

(b) Lines that are crossed out but still readable;

(c) Lines that are missing a printed name;

(d) Lines that are missing any portion of the address;

(e) Multiple lines that have similar handwriting, as long as the signature handwriting is not similar;

(f) Lines in which the signature, printed name, or address is written in the wrong field; or

(g) Signatures, printed names, or addresses written in the margin.

(9) After each signature line has been reviewed, the remaining signatures must be counted to obtain the total number of signatures submitted. That total must be provided to the sponsor.

(10) The secretary of state must verify either a random sample of the signatures submitted using the statistical formula authorized by RCW 29A.72.230 and established in WAC 434-379-010, or all of the signatures submitted. If the measure does not qualify for the ballot based on a random sample, the secretary of state must proceed to a full check of all signatures submitted. The secretary of state must follow WAC 434-379-020 to verify signatures.

AMENDATORY SECTION (Amending WSR 05-12-116, filed 5/31/05, effective 7/1/05)

WAC 434-379-010 Random sampling procedure. In the verification of signatures on initiative and referendum

petitions, under RCW 29A.72.230, the following statistical test may be employed:

(1) Take a minimum three percent unrestricted random sample of the signatures submitted;

(2) Check each signature sampled to determine the number of valid signatures in the sample, the number of signatures in the sample which are invalid because the individual signing is not registered or the signature is improper in form, and the number of signatures which are duplicated in the sample;

(3) Calculate an allowance for the chance error of sampling by multiplying the square root of the number of invalid signatures in the sample by 1.5;

(4) Estimate the upper limit of the number of signatures in the population which are invalid by dividing the sum of the invalid signatures in the sample and the allowance for the chance error of sampling by the sampling ratio, i.e. the number of signatures sampled divided by the number of signatures submitted;

(5) Determine the maximum allowable number of pairs of signatures in the population by subtracting the sum of the number of signatures required by Article II, Section ((~~1A~~)) 1 of the Washington state Constitution and the estimate of the upper limit of the number of invalid signatures in the population from the number of signatures submitted;

(6) Determine the expected number of pairs of signatures in the sample by multiplying the square of the sampling ratio by the maximum allowable number of pairs of signatures in the population;

(7) Determine the acceptable number of pairs of signatures in the sample by subtracting 1.65 times the square root of the expected number of pairs of signatures in the sample from the expected number of pairs of signatures in the sample;

(8) If the number of pairs of signatures in the sample is greater than the acceptable number of pairs of signatures in the sample, each signature shall be canvassed to determine the exact number of valid signatures;

(9) If the number of pairs of signatures in the sample is less than the acceptable number of pairs of signatures in the sample, the petition shall be deemed to contain sufficient signatures and the serial number and ballot title shall be certified to the state legislature as provided in RCW 29A.72.230 or to the county auditors as provided in RCW 29A.72.250.

AMENDATORY SECTION (Amending WSR 11-24-064, filed 12/6/11, effective 1/6/12)

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~~)) No later than 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~~)) no later than 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~~)) no later than the date the committee submits its initial argument to the secretary of state;

(c) For arguments for or against a ballot measure((~~,~~));

(i) For an initiative to the people or referendum measure: No later than ten business days following appointment of the initial committee members;

(ii) For an initiative to the legislature, with or without an alternative, constitutional amendment or referendum bill, no later than fourteen business days following appointment of the initial committee members;

(d) Rebuttals of arguments for or against a ballot measure, ((~~by~~)) no later than 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.

AMENDATORY SECTION (Amending WSR 08-23-094, filed 11/19/08, effective 12/20/08)

WAC 434-840-005 Definitions. For the purposes of this chapter:

(1) "Address" means any physical locations where the participant resides, works, or attends school, for which the participant is requesting confidentiality.

(2) "Address confidentiality program (ACP)" means the agency employee designated by the secretary of state with responsibility for developing and administering the program that implements the provisions of chapter 40.24 RCW.

(3) "Agency" means an office, department, division, bureau, board, commission, or other statutory unit of state or local government or any functional subdivision of that agency.

(4) "Application assistant" means an employee of a state or local agency, or of a nonprofit program that provides advocacy, counseling, referral, or shelter services to victims of sexual assault, domestic violence, trafficking, or stalking

who has been designated by the respective agency, and has been accepted by the secretary of state to assist individuals with threat assessment, safety planning, determining whether the program's services can help keep the victim safe, and the completion and submission of the ACP application.

(5) "Authorization card form" means the incomplete form for an authorization card on which no identifying program participant information has been entered.

(6) "Authorized personnel" means an employee of a county auditor's office, a county recording office, the Washington state department of health, or the office of the secretary of state who has been designated by the chief executive officer of the respective agency, to process and have access to voter application, voting records, marriage applications and records pertaining to program participants.

(7) "Bona fide statutory or administrative requirement" means that without possession of an individual's actual residential address the agency is incapable of fulfilling its statutory duties and obligations.

(8) "Protected records voter" means a program participant who has applied and qualified ((~~as an ongoing absentee voter~~)) for confidential voter registration, as provided under RCW 40.24.060, WAC 434-840-100, and 434-840-310.

(9) "Record" means any information relating to the conduct or performance of a governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics.

(10) "Substitute mailing address" means the mailing address designated by the secretary of state which shall not be the program participant's residential address as documented on her or his application for program participation.

AMENDATORY SECTION (Amending WSR 08-23-094, filed 11/19/08, effective 12/20/08)

WAC 434-840-100 ((~~Acknowledgement~~)) Acknowledgment for marriage and voting record confidentiality. (1) When a program participant requests confidentiality for marriage records, both the program participant and her or his intended spouse shall sign and date a statement provided by the secretary of state, that describes access limitations on confidential marriage records.

(2) When a program participant requests confidentiality for voting records, she or he shall sign a statement provided by the secretary of state that documents the date of this request ((~~and the ongoing absentee ballot voting process to be used~~)).

(3) The authorized personnel shall receive the original copy of this signed ((~~acknowledgement~~)) acknowledgment, the address confidentiality program shall have one copy and the program participant shall have one copy.

WSR 13-24-079
PROPOSED RULES
EMPLOYMENT SECURITY DEPARTMENT
[Filed December 2, 2013, 3:33 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-20-115.

Title of Rule and Other Identifying Information: WAC 192-04-060, regarding petitions for review; WAC 192-120-035, regarding notifying claimants regarding a question about their eligibility for benefits; WAC 192-130-050 and 192-130-065, related to notices and mailing addresses for employers when a claim for benefits is filed.

Hearing Location(s): Employment Security Department, Maple Leaf Conference Room, 212 Maple Park Avenue S.E., Olympia, WA, on January 9, 2014, at 10:30 a.m.

Date of Intended Adoption: January 13, 2014.

Submit Written Comments to: Pamela Ames, P.O. Box 9046, Olympia, WA 98507-9046, e-mail pames@esd.wa.gov, fax (360) 902-0911, by January 8, 2014.

Assistance for Persons with Disabilities: Contact Kintu Nnambi by January 8, 2014, TTY (800) 833-6384 or (360) 725-9454.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The rules provide that the department may file a petition for review of a decision issued by the office of administrative hearings, in common with other interested parties to the decision. The rules also specify how notice of eligibility questions will be provided to individuals who file a claim on the internet; the rule already specifies how such notice will be provided for individuals filing by phone. They also clarify the mailing procedures for the notice to employer required by statute.

Reasons Supporting Proposal: The department is authorized to petition for review of an adverse decision issued by the office of administrative hearings. Procedures for providing claimants and employers with required notices are clarified.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Statute Being Implemented: Chapters 50.32, 50.20 RCW, RCW 50.20.150.

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

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Juanita Myers, 212 Maple Park, Olympia, (360) 902-9665; and Enforcement: Neil Gorrell, 212 Maple Park, Olympia, (360) 902-9303.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There is no disproportionate impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. The rules clarify notice procedures and permit the department to petition for review of adverse administrative decisions. They do not meet the definition of significant legislative rules under RCW 34.05.328.

December 2, 2013
Nan Thomas
Deputy Commissioner

AMENDATORY SECTION (Amending WSR 10-20-082, filed 9/29/10, effective 10/30/10)

WAC 192-04-060 Appeals—Petitions for hearing—Petitions for review—Time limitation. (1) **Appeals and petitions for hearing.** Any interested party who is aggrieved by any decision of the department set forth in WAC 192-04-050 or for which the department has provided notice of appeal or petition for hearing rights may file a written appeal or petition for hearing by mailing it or sending it by fax to the address or fax number indicated on the determination notice or other appealable document.

The appeal or petition for hearing must be filed within thirty days of the date the decision is delivered or mailed, whichever is the earlier. The appeal and/or petition for hearing shall be filed in accordance with the provisions of RCW 50.32.025.

(2) **Petitions for review.** Any interested party ((~~other than the department~~)) who is aggrieved by a decision of the office of administrative hearings, other than an order approving a withdrawal of appeal, an order approving a withdrawal of a petition for hearing, a consent order, or an interim order, may file a written petition for review in accordance with the provisions of WAC 192-04-170. The petition for review must be filed within thirty days of the date of delivery or mailing of the decision of the office of administrative hearings, whichever is the earlier. The petition for review shall be filed in accordance with the provisions of RCW 50.32.025.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 192-04-175 Advisement order.

AMENDATORY SECTION (Amending WSR 99-08-073, filed 4/5/99, effective 5/6/99)

WAC 192-120-035 How will adequate notice be provided? (1) ((~~A written notice will be mailed to your most recent address in our files; or~~

~~(2)~~)) When you file your weekly claim for benefits by telephone, you will receive a verbal notice if there is a question about your eligibility for benefits. When you file your weekly claim for benefits by internet, a statement will be printed online that there is a question about your eligibility for benefits.

(2) If you do not ((~~reply~~)) contact the department by the last working day of the week in which your claim was filed, a written notice will be mailed to ((~~you~~)) your most recent address in our files. The date by which you must reply to this written notice will be no earlier than reasonable mailing time plus five working days, starting from the date your weekly claim for benefits was filed.

AMENDATORY SECTION (Amending WSR 98-14-068, filed 6/30/98, effective 7/31/98)

WAC 192-130-050 Notice of filing of application—RCW 50.20.150. (((~~1~~))) Whenever an individual files an initial application for unemployment benefits, or reopens a claim after subsequent employment, a notice will be mailed to the applicant's most recent employer as stated by the applicant. Any employer who receives such a notice and has information which might make the applicant ineligible for benefits shall report this information to the employment security department at the address indicated on the notice within ten days of the date the notice was mailed. If the employer does not reply within ten days, the department may allow benefits to the individual, if he or she is otherwise eligible.

(((~~(2) If an employer reports information which it claims makes an individual ineligible for benefits, the department will issue a written decision regarding the individual's eligibility and mail a copy to the employer.~~))

AMENDATORY SECTION (Amending WSR 10-11-046, filed 5/12/10, effective 6/12/10)

WAC 192-130-065 Mailing addresses for notice to employer. The department will mail notices to employers required by RCW 50.20.150 and WAC 192-130-060 as follows:

(1) The department will mail the notice to the last employer of the claimant ((~~as follows~~)) in the following order:

(a) If the employer requests that the department mail correspondence related to unemployment benefits to a specific address, the department will mail the notice to the last employer directly to that address; or

(b) If the employer has notified the department that the employer is represented for unemployment insurance purposes by an employer representative or cost control firm, the department will mail the notice to the last employer directly to that firm; or

(((~~(b)~~))) (c) If an employer has provided the department with a mailing address for tax purposes, the department will mail the notice to the last employer directly to that address; or

(((~~(c)~~))) (d) If the employer has not provided the department with a mailing address, the department will mail the notice to the last employer to the address provided by the claimant.

(2) The department will mail the notice to any base year employer who has reported wages to the department to the employer's mailing address of record provided by the employer for tax purposes.

(3) The notice to any other employer from whom the claimant has a potentially disqualifying separation (without sufficient subsequent employment to purge a separation disqualification) will be mailed ((~~to the address provided by the claimant~~)) in the order specified in subsection (1) of this section.

WSR 13-24-085

WITHDRAWL OF PROPOSED RULES

GAMBLING COMMISSION

(By the Code Reviser's Office)

[Filed December 3, 2013, 9:23 a.m.]

WAC 230-11-200, 230-11-205, 230-11-210 and 230-16-152, proposed by the gambling commission in WSR 13-11-024, appearing in issue 13-11 of the Washington State Register, which was distributed on June 5, 2013, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 13-24-086

WITHDRAWL OF PROPOSED RULES

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(By the Code Reviser's Office)

[Filed December 3, 2013, 9:23 a.m.]

WAC 388-424-0008, proposed by the department of social and health services in WSR 13-11-025, appearing in issue 13-11 of the Washington State Register, which was distributed on June 5, 2013, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 13-24-087

WITHDRAWL OF PROPOSED RULES

DEPARTMENT OF SOCIAL AND HEALTH SERVICES

(By the Code Reviser's Office)

[Filed December 3, 2013, 9:24 a.m.]

WAC 388-492-0030, proposed by the department of social and health services in WSR 13-11-043, appearing in issue 13-11 of the Washington State Register, which was distributed on June 5, 2013, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 13-24-088

WITHDRAWL OF PROPOSED RULES

FOREST PRACTICES BOARD

(By the Code Reviser's Office)

[Filed December 3, 2013, 9:24 a.m.]

WAC 222-34-040, proposed by the forest practices board in WSR 13-11-133, appearing in issue 13-11 of the Washington State Register, which was distributed on June 5, 2013, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 13-24-090

WITHDRAWL OF PROPOSED RULES

HEALTH CARE AUTHORITY

(By the Code Reviser's Office)

[Filed December 3, 2013, 9:39 a.m.]

WAC 182-500-0020, 182-500-0030, 182-503-0001, 182-503-0005, 182-503-0010, 182-503-0060, 182-503-0070, 182-503-0080, 182-503-0505, 182-503-0515, 182-503-0520, 182-503-0525, 182-503-0535, 182-503-0540, 182-503-0565, 182-504-0015, 182-504-0035, 182-504-0105, 182-504-0110, 182-504-0120, 182-504-0125, 182-505-0100, 182-505-0115, 182-505-0210, 182-505-0215, 182-505-0220, 182-505-0225, 182-505-0230, 182-505-0235, 182-505-0237, 182-505-0240, 182-505-0245, 182-505-0250, 182-505-0515, 182-518-0005, 182-518-0010, 182-518-0015, 182-518-0020, 182-518-0025 and 182-518-0030, proposed by the health care authority in WSR 13-11-141, appearing in issue 13-11 of the Washington State Register, which was distributed on June 5, 2013, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 13-24-091

WITHDRAWL OF PROPOSED RULES

OFFICE OF INSURANCE COMMISSIONER

(By the Code Reviser's Office)

[Filed December 3, 2013, 9:41 a.m.]

WAC 284-170-423 and 284-170-428, proposed by the office of insurance commissioner in WSR 13-11-149, appearing in issue 13-11 of the Washington State Register, which was distributed on June 5, 2013, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 13-24-095
PROPOSED RULES
STATE BOARD OF HEALTH
[Filed December 3, 2013, 12:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-18-080.

Title of Rule and Other Identifying Information: Chapter 246-105 WAC, Immunization of child care and school children against certain vaccine-preventable diseases, updating the chapter to reflect changes in state law and to reference the current national immunization standards from the advisory committee on immunization practices (ACIP).

Hearing Location(s): Washington State Department of Health, Point Plaza East, Room 152/153, 310 Israel Road S.E., Tumwater, WA 98501, on January 8, 2014, at 1:30 p.m.

Date of Intended Adoption: January 8, 2014.

Submit Written Comments to: Jeff Wise, Washington State Department of Health, P.O. Box 47843, Olympia, WA 98504-7843, e-mail http://www3.doh.wa.gov/policyreview/, fax (360) 236-3590, by January 2, 2014.

Assistance for Persons with Disabilities: Contact Desiree Robinson by January 2, 2014, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal aligns the rule's immunization exemption procedures required for entry into schools and child care centers with RCW 28A.210.090. Definitions and other language are updated for clarity and to ensure the rule language is consistent with the statute. The reference to national immunization standards set by ACIP is updated from the 2012 version to the 2013 version. Additional language clarifies existing requirements.

Reasons Supporting Proposal: This revision is necessary to provide clarity to existing rule requirements. It ensures consistency of the Washington state school and child care immunization requirements with (1) state statute regarding immunization exemption procedures, and (2) the most recent national immunization standards as set by the ACIP.

Statutory Authority for Adoption: RCW 28A.210.140.

Statute Being Implemented: RCW 28A.210.090.

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

Name of Proponent: Washington state board of health, governmental.

Name of Agency Personnel Responsible for Drafting: Jeff Wise, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-3483; Implementation and Enforcement: Michele Roberts, 310 Israel Road S.E., Tumwater, WA 98501, (360) 236-3568.

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

A cost-benefit analysis is 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; RCW 34.05.328 (5)(b)(iv) exempts rules that only correct typographical errors, make address or name changes or clarify the language of a rule without changing its effect; and RCW 34.05.328 (5)(b)(v) exempts rules the content of which is explicitly and specifically dictated by statute.

November 27, 2013
Michelle A. Davis
Executive Director

AMENDATORY SECTION (Amending WSR 09-02-003, filed 12/26/08, effective 1/26/09)

WAC 246-105-020 Definitions. For the purposes of this chapter, the words and phrases in this section have the following meanings unless the context clearly indicates otherwise:

(1) "Certificate of exemption (COE)" means a form that is:

(a) Approved by the department and consistent with the requirements of WAC 246-105-050(2); or

(b) An immunization form produced by the state immunization information system.

(2) "Certificate of immunization status (CIS)" means a form that is:

(a) Approved by the department and consistent with the requirements of WAC 246-105-050(1); or

(b) An immunization form produced by the state immunization information system.

(3) "Chief administrator" means:

(a) The person with the authority and responsibility for supervising the immediate operation of a school or child care center; or

(b) A person designated in writing by the statutory or corporate board of directors of the school district or school; or

(c) If (a) and (b) of this subsection do not apply, a person or persons with the authority and responsibility for supervising the general operation of the school district or school.

(4) "Child" means any person regardless of age admitted to:

(a) Any public school district; or

(b) Any private school or private institution subject to approval by the state board of education or described in RCW 28A.305.130 and 28A.195.010 through 28A.195.060; or

(c) Any child care center.

(5) "Child care center" means any ((~~licensed~~)) facility or center licensed by the department of early learning under chapter 43.215 RCW that regularly provides care ((~~of~~)) for a group of thirteen or more children one month of age through twelve years of age for periods of less than twenty-four hours per day ((~~subject to licensure by the department of early learning as described in chapter 43.215 RCW~~)).

(6) "Conditional" means a type of temporary immunization status where a child is not immunized against one or more of the vaccine-preventable diseases required by this chapter for full immunization. A child in this status is allowed to attend a school or child care center provided the child makes satisfactory progress toward full immunization.

(7) "Department" means the department of health.

(8) "Exempt" or "exemption" means a type of immunization status where a child has not been immunized against one or more of the vaccine-preventable diseases required by this chapter for full immunization due to medical, religious, philosophical or personal reasons. A child in this status is allowed to attend a school or child care center only by providing the required COE form.

(9) "Full immunization" or "fully immunized" means an immunization status where a child has provided proof of acquired immunity or has been vaccinated with immunizing agents against each of the vaccine-preventable diseases listed in WAC 246-105-030 according to the national immunization guidelines described in WAC 246-105-040.

(10) "Health care practitioner" means a physician licensed under chapter 18.71 or 18.57 RCW, a naturopath licensed under chapter 18.36A RCW, a physician assistant licensed under chapter 18.71A or 18.57A RCW, or an advanced registered nurse practitioner licensed under chapter 18.79 RCW.

(11) "Health care provider" means a person licensed, certified or registered in a profession listed in RCW 18.130.040(2), if administering vaccinations is within the profession's scope of practice.

(12) "Immunizing agent" means any vaccine or other immunologic drug licensed and approved by the United States Food and Drug Administration (FDA), or meeting World Health Organization (WHO) requirements, for immunization of persons against vaccine-preventable diseases.

((~~(11)~~)) (13) "Local health officer" means the individual appointed under chapter 70.05 RCW as the health officer for the local health department, or appointed under chapter 70.08 RCW as the director of public health of a combined city-county or combined county health district.

((~~(12)~~)) (14) "National immunization guidelines" means guidelines that are:

(a) Approved by the Advisory Committee on Immunization Practices (ACIP); and

(b) Published in the *Morbidity and Mortality Weekly Report (MMWR)*; and

(c) Consistent with the terms and conditions set forth in WAC 246-105-040.

((~~(13)~~)) (15) "Parent" means, for the purposes of signature requirements in this rule:

(a) The mother, father, legal guardian, or any adult *in loco parentis* of a child ((~~seventeen~~)) less than eighteen years of age ((~~or younger~~)); or

(b) A person eighteen years of age or older; or

(c) An emancipated minor.

((~~(14)~~)) (16) "Religious membership" means membership in a religious body or church whose teachings or beliefs preclude a health care practitioner from providing medical treatment to the child.

(17) "Satisfactory progress" for purposes of conditional status or an expired temporary medical exemption means the start or continuance towards full immunization status through the receipt of missing immunizations in a manner consistent with the national immunization guidelines described in WAC 246-105-040 and within the following time frames:

(a) Any missing immunizations must be received within thirty days after the first day of attendance or after a temporary medical exemption is no longer valid, unless receipt within such time is inconsistent with the guidelines.

(b) When the immunizations are part of a series with recommended intervals between doses, each additional missing immunization must be received no later than thirty days past the recommended date of administration of the next dose as established by the guidelines.

((~~(15)~~)) (18) "School" means a facility, site, or campus for programs of education as defined in RCW 28A.210.070 to include preschool and kindergarten through grade twelve.

AMENDATORY SECTION (Amending WSR 09-02-003, filed 12/26/08, effective 1/26/09)

WAC 246-105-030 Vaccine-preventable diseases children must be protected against for full immunization. In accordance with the conditions of this chapter, a child is required to be vaccinated against, or show proof of acquired immunity for, the following vaccine-preventable diseases before attending school or a child care center:

(1) ((~~Diphtheria~~)) Chickenpox (Varicella);

(2) ((~~Tetanus~~)) Diphtheria;

(3) ((~~Pertussis (whooping cough)~~)) German Measles (Rubella);

(4) ((~~Poliomyelitis~~)) Haemophilus influenzae type B disease;

(5) ((~~Measles (rubeola)~~)) Hepatitis B;

(6) ((~~Mumps~~)) Measles (Rubeola);

(7) ((~~Rubella~~)) Mumps;

(8) ((~~Hepatitis B~~)) Pneumococcal disease;

(9) ((~~Haemophilus influenzae type B disease~~)) Polio (Poliomyelitis);

(10) ((~~Varicella~~)) Tetanus; and

(11) ((~~Effective July 1, 2009, pneumococcal~~)) Whooping Cough (Pertussis).

AMENDATORY SECTION (Amending WSR 12-17-018, filed 8/2/12, effective 9/2/12)

WAC 246-105-040 Requirements based on national immunization guidelines. The department shall develop and distribute implementation guidelines for schools and child care centers that are consistent with the national immunization guidelines described in this section and the requirements in WAC 246-105-090.

(1) Unless otherwise stated in this section, a child must be vaccinated against each vaccine-preventable disease listed in WAC 246-105-030 at ages and intervals according to the national immunization guidelines in the "*Advisory Committee on Immunization Practices (ACIP) Recommended Immunization Schedule for Persons Aged 0((-)) Through 18 Years, United States ((~~2012~~)) 2013*"; as published in the *Morbidity and Mortality Week Report* (MMWR) ((~~2012;61(05):Q1-4~~)) 2013;62(01): 2-8.

(2) In addition to the ages and intervals required by subsection (1) of this section, the following vaccine administration guidelines shall apply. Schools and child care centers may accept one of the following as proof of a child's immunization status against varicella:

(a) Documentation on the CIS form that the child received age appropriate varicella vaccine; or

(b) Diagnosis or verification of a history of varicella disease by a health care provider acting within his or her scope of practice; or

(c) Diagnosis or verification of a history of herpes zoster by a health care provider acting within his or her scope of practice; or

(d) Serologic proof of immunity against varicella; or

(e) Documentation by the parent that a child has a history of varicella. This type of proof will be accepted only for certain grade levels described in the department's implementation guidelines according to WAC 246-105-090(2).

AMENDATORY SECTION (Amending WSR 09-02-003, filed 12/26/08, effective 1/26/09)

WAC 246-105-050 Required documentation of immunization status. (1) Before a child may attend a school or child care center, a parent must provide proof of immunization status using the following ((~~types of~~)) documentation:

((~~(1)~~)) (a) A department-approved CIS form ((~~which must be~~)) signed by the parent. The CIS form must include:

((~~(a)~~)) (i) Name of child ((~~or student~~));

((~~(b)~~)) (ii) Birth date;

((~~(c)~~)) (iii) Type of vaccine(s) administered;

((~~(d)~~)) (iv) Month, day, and year of each dose of vaccine received;

((~~(e)~~)) (v) A section to indicate whether ((~~an accompanying~~)) a COE form ((~~has been provided~~)) accompanies the CIS form;

((~~(f)~~)) (vi) A section to document serologic proof of immunity ((~~which must be~~)) signed by a ((~~licensed~~)) health care provider acting within his or her scope of practice and ((~~include~~)) including a copy of a lab report; and

((~~(g)~~)) (vii) Parent signature and date.

((~~(2)~~)) (b) If applicable, a department-approved COE form signed by a parent. A COE form must include:

((~~(a)~~)) (i) Name of child ((~~or student~~));

((~~(b)~~)) (ii) Birth date;

((~~(c)~~)) (iii) A place to indicate whether the parent is claiming a medical, religious, personal, or philosophical exemption. This must include:

(A) A statement signed and dated by a health care practitioner stating that he or she has provided the parent information about the benefits and risks of immunization to the child as a condition of obtaining a medical, religious, personal, or philosophical exemption;

(B) The requirement in (b)(iii)(A) of this subsection does not apply to a parent who demonstrates a religious membership under subsection (b)(iii)(F) of this subsection;

(C) A ((~~section~~)) place to indicate ((~~a~~)) any permanent or temporary medical exemption for one or more vaccines which must be signed and dated by a ((~~licensed~~)) health care ((~~provider~~)) practitioner;

((~~(d)~~)) (D) A ((~~section~~)) place to indicate ((~~a religious~~)) any personal or philosophical exemption for one or more vaccines;

((~~(e)~~)) (E) A ((~~section~~)) place to indicate ((~~a personal or philosophical~~)) any religious exemption for one or more vaccines; and

((~~(f)~~)) (F) A place to demonstrate religious membership. This must include a statement signed and dated by the parent identifying the name of the church or religious body, affirming membership in it, and affirming that the religious beliefs or teachings of the church or religious body preclude a health care practitioner from providing medical treatment to the child;

(iv) Notice to parents that if an outbreak of vaccine-preventable disease for which the child is exempted occurs, the child may be excluded from the school or child care center for the duration of the outbreak; and

((~~(g)~~)) (v) Parent signature and date.

(2) Parents who must include a signed statement from a health care practitioner under subsection (1)(b)(iii) of this section may submit:

(a) A photocopy of the signed COE in place of the original; or

(b) Along with the COE form, a letter from the health care practitioner in place of the signed statement under subsection (1)(b)(iii) of this section. The letter must:

(i) Indicate that the health care practitioner has provided the parent information about the benefits and risks of immunization to the child;

(ii) Reference the child's name; and

(iii) Be signed and dated by the health care practitioner.

(3) If immunizations are deferred on a temporary basis for medical reasons under subsection (1)(b)(iii)(C) of this section, the child must make satisfactory progress toward full immunization once the medical exemption has expired.

AMENDATORY SECTION (Amending WSR 09-02-003, filed 12/26/08, effective 1/26/09)

WAC 246-105-060 Duties of schools and child care centers. (1) Schools and child care centers shall require:

(a) A CIS form conforming to WAC 246-105-050 (1)(a) for new enrollees registering for admission into kindergarten through grade twelve or a child care center as a requirement of admission. Information on the CIS is used to determine if a child is fully immunized, conditional or exempt.

(b) For enrollees attending under conditional status or an expired temporary medical exemption, documentation of satisfactory progress toward full immunization.

(c) For enrollees claiming exempt status, a signed COE form indicating a medical, religious, philosophical, or personal exemption conforming to WAC 246-105-050 (1)(b)(iii) or, if applicable, WAC 246-105-050(2).

((~~(i) A medical exemption is allowed when a signature of a licensed medical doctor (M.D.), a doctor of osteopathy (D.O.), doctor of naturopathy (N.D.), physician assistant (P.A.), or nurse practitioner (A.R.N.P.), acting within the scope of practice, certifies medical reasons to defer or forego one or more immunizations required for full immunization.~~

~~(ii) If immunizations are deferred on a temporary basis for medical reasons, the student must make satisfactory progress toward full immunization once the medical exemption has expired.~~))

(2) In maintaining child immunization records, schools and child care centers shall:

(a) Keep all department-approved forms described in WAC 246-105-050 for each enrolled child attending their school or child care center.

(b) Keep a list of children currently with medical, religious, philosophical, or personal exemptions. This list must be transmitted to the local health department upon request.

(c) Return the department-approved CIS or applicable COE or a legible copy of such documents to the parent if the child is withdrawn from a school or child care center or transferred from the school. A school or child care center may not withhold from the parent a child's department-approved CIS or COE for any reasons, including nonpayment of school or child care center fees.

(d) Provide access to immunization records to agents of the state or local health department of each child enrolled.

(3) In maintaining child immunization records, the chief administrator shall:

(a) Retain records for at least three years on a child who is excluded from school under this chapter. The record must include the child's name, address, and date of exclusion.

(b) Submit an immunization status report under chapter 28A.210 RCW either electronically on the internet or on a form provided by the department. The report must be submitted to the department by November 1 of each year. If a school opens after October 1, the report is due thirty days from the first day of school.

AMENDATORY SECTION (Amending WSR 09-02-003, filed 12/26/08, effective 1/26/09)

WAC 246-105-070 Duties of health care providers or organizations. ((~~Persons or organizations~~)) A health care provider administering immunizations, or the organizations he or she works for, either public or private, shall((~~:~~

~~(1)~~)) furnish each person immunized, or his or her parent, with a written record of immunization containing information required by ((~~the state board of health; and~~

~~(2) Provide immunizations and records in accordance with chapter 246-100 WAC~~)) this chapter.

WSR 13-24-096
PROPOSED RULES
DEPARTMENT OF HEALTH

[Filed December 3, 2013, 12:10 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 12-16-058.

Title of Rule and Other Identifying Information: Chapter 246-809 WAC, Licensure for mental health counselors, marriage and family therapists, and advanced social workers, and independent clinical social workers; chapter 246-811 WAC, Chemical dependency professionals and chemical dependency professionals trainees; and chapter 246-810 WAC, Counselors. Amending and adding new rules to implement the suicide assessment, treatment and management training requirements set out in RCW 43.70.442, as amended by SHB 1376 (chapter 78, Laws of 2013).

Hearing Location(s): Department of Health, Point Plaza East, Room 139, 310 Israel Road S.E., Tumwater, WA 98501, on January 15, 2014, at 9:00 a.m.

Date of Intended Adoption: January 15, 2014.

Submit Written Comments to: Betty J. Moe, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, e-mail http://www3.doh.wa.gov/policyreview/, fax (360) 236-2901, by January 15, 2014.

Assistance for Persons with Disabilities: Contact Betty Moe by January 8, 2014, TTY (800) 833-6388 or 711.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules implement ESHB 2366 (chapter 181, Laws of 2012) and SHB 1376 (chapter 78, Laws of 2013), codified as RCW 43.70.422, by creating new continuing education (CE) requirements for mental health counselors, marriage and family therapists, advanced social workers, independent clinical social workers, chemical dependency professionals, certified counselors, and certified advisers. The proposed rules establish CE requirements in suicide assessment, treatment, and management or suicide assessment, screening and referral. The proposed rules provide clarification related to the topics that must be in an approved course.

Reasons Supporting Proposal: It is the legislative intent that these rules will help lower the suicide rate in Washington by requiring mental health counselors, marriage and family therapists, advanced social workers, and independent clinical social workers to complete training in suicide assessment, treatment, and management. Chemical dependency professionals, certified counselors, and certified advisers are required to complete training in suicide assessment, screening, and referral. These requirements will be added to the credential holders continuing education, continuing competency, or recertification requirements.

Statutory Authority for Adoption: RCW 43.70.442(7).

Statute Being Implemented: RCW 43.70.442, as amended by SHB 1376.

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: Betty J. Moe, 111 Israel Road S.E., Tumwater, WA 98501, (360) 236-4912.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Betty J. Moe, Program Manager, Department of Health, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4912, fax (360) 236-4901, e-mail Betty.Moe@doh.wa.gov.

November 27, 2013
John Wiesman, DrPH, MPH
Secretary

AMENDATORY SECTION (Amending WSR 09-15-039, filed 7/8/09, effective 7/8/09)

WAC 246-809-600 ((~~Who is~~)) Professions required to have continuing education((~~?~~)). Licensed marriage and family therapists, licensed mental health counselors, and licensed social workers are required to have continuing education.

AMENDATORY SECTION (Amending WSR 04-06-010, filed 2/20/04, effective 3/22/04)

WAC 246-809-610 ((~~What courses are acceptable?~~)) Eligible continuing education activities. The continuing education (CE) program or course must: Be relevant to licensed marriage and family therapists, licensed mental health counselors and licensed social workers and must contribute to the advancement, extension and enhancement of the professional competence of the licensed marriage and family therapist, licensed mental health counselor, and((~~/or~~)) licensed social worker. Courses or workshops primarily designed to increase practice income or office efficiency are not eligible for CE credit.

(1) Acceptable CE courses (including distance learning), seminars, workshops and postgraduate institutes are those which are:

(a) Programs having a featured instructor, speaker(s) or panel approved by an industry-recognized local, state, national, international organization or institution of higher learning; or

(b) Distance learning programs, approved by an industry-recognized local, state, national or international organization or institution of higher learning. These programs must require tests of comprehension upon completion. Distance learning programs are limited to twenty-six hours per reporting period.

(2) Training programs sponsored by the agency where a counselor is employed are acceptable if:

(a) The experience can be shown to contribute to the advancement, extension and enhancement of the professional competence of the licensed marriage and family therapist, licensed mental health counselor and/or the licensed social worker; and

(b) The training programs are limited to twenty-six hours per reporting period.

(3) Other learning experience, such as serving on a panel, board or council, community service, research, peer consultation, or publishing articles for professional publications are acceptable if:

(a) The experience can be shown to contribute to the advancement, extension and enhancement of the professional competence of the licensed marriage and family therapist, licensed mental health counselor and/or the licensed social worker; and

(b) The experience is limited to six hours per reporting period.

NEW SECTION

WAC 246-809-615 Suicide training standards. (1) An approved training in suicide assessment, treatment, and management must:

(a) Be approved by an industry-recognized local, state, national, international organizations or institutions of higher learning listed in WAC 246-809-620 or an equivalent organization, educational institution or association which approves training based on observation and experience or best available practices;

(b) Cover training in suicide assessment, treatment, and management; and

(c) Be provided by a single provider and must be at least six hours in length, which may be provided in one or more sessions.

(2) A licensed marriage and family therapist, licensed mental health counselor, or licensed social worker who is a state or local government employee is exempt from the requirements of this section if he or she receives a total of at least six hours of training in suicide assessment, treatment, and management from his or her employer every six years. For purposes of this subsection, the training may be provided in one six-hour block or may be spread among shorter training sessions at the employer's discretion.

(3) A licensed marriage and family therapist, licensed mental health counselor, or licensed social worker who is an employee of a community mental health agency licensed under chapter 71.24 RCW or a chemical dependency program certified under chapter 70.96A RCW is exempt from the requirements of this section if he or she receives a total of at least six hours of training in suicide assessment, treatment, and management from his or her employer every six years. For purposes of this subsection, the training may be provided in one six-hour block or may be spread among shorter training sessions at the employer's discretion.

AMENDATORY SECTION (Amending WSR 04-06-010, filed 2/20/04, effective 3/22/04)

WAC 246-809-620 ((~~What are~~)) Industry-recognized local, state, national, international organizations or institutions of higher learning((~~?~~)). ((~~Recognized~~)) Local, state, national, and international organizations ((~~or~~)) that are industry-recognized and institutions of higher learning include, but are not limited to, the following ((~~organizations~~)):

(1) Washington Association for Marriage and Family Therapy;

(2) Washington State Society for Clinical Social Work;

(3) Washington Chapter of the National Association of Social Work;

(4) American Mental Health Counselors Association;

(5) American Association for Marriage and Family Therapy;

(6) Clinical Social Work ((~~Federation~~)) Association;

(7) National Association of Social Workers;

(8) Washington Mental Health Counselors Association;

(9) National Board for Certified Counselors;

(10) Society for Social Work Leadership in Health Care; ((~~or~~)) and

(11) Institutions of higher learning that are accredited by a national or regional accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation.

AMENDATORY SECTION (Amending WSR 04-06-010, filed 2/20/04, effective 3/22/04)

WAC 246-809-630 ((~~How many hours do I need and in what time period?~~)) Continuing education requirements. (1) A licensed marriage and family therapist((~~s~~)), licensed mental health counselor((~~s~~)) and licensed social worker((~~s~~)) must complete thirty-six hours of continuing education (CE) every two years.

(2) At least six of the thirty-six hours must be in professional ethics and law, which may include topics under RCW 18.130.180.

(3) Beginning January 1, 2014, at least once every six years a licensed marriage and family therapist, licensed mental health counselor, and licensed social worker must complete at least six hours of training in suicide assessment, treatment, and management.

(a) The first training must be completed during the first full CE reporting period after January 1, 2014, or the first full CE period after initial licensure, whichever occurs later.

(b) The hours spent completing training in suicide assessment, treatment, and management count toward the total thirty-six hours of CE.

(c) An individual applying for initial licensure as a licensed marriage and family therapist, licensed mental health counselor, or licensed social worker on or after January 1, 2014, may delay completion of the first training required for six years after initial licensure if he or she can demonstrate completion of six hours of training in suicide assessment, treatment, and management that:

(i) Was completed no more than six years prior to the application for initial licensure; and

(ii) Meets the qualifications listed in WAC 246-809-615.

AMENDATORY SECTION (Amending WSR 02-11-108, filed 5/20/02, effective 6/20/02)

WAC 246-809-640 ((~~How are~~)) Credit hours ((~~determined~~)) for preparation and presentation of a lecture or ((~~an~~)) educational course((~~?~~)). ((~~The license holder~~)) A licensed counselor who ((~~prepares and~~)) presents ((~~lectures or education that contributes to the professional competence of a licensed counselor~~)) at an eligible continuing education (CE) activity under WAC 246-809-630 may ((~~accumulate~~)) receive the same ((~~number of~~)) CE credit hours ((~~obtained for continuing education purposes by attendees as required in WAC 246-12-220~~)) as a licensee who attends the presentation. The hours for preparing and presenting a specific topic lecture or education may only be used for ((~~continuing education~~)) CE credit once during each reporting period.

AMENDATORY SECTION (Amending WSR 09-15-041, filed 7/8/09, effective 7/8/09)

WAC 246-810-027 Continuing education requirements for a certified counselor or certified adviser. (1) A certified counselor((~~s~~)) or a certified adviser((~~s~~)) must complete thirty-six credit hours of continuing education every two years ((~~as required by chapter 246-12 WAC, Part 7~~)).

(2) At least six hours of the thirty-six credit hours must be in law and professional ethics related to counseling.

(3) ((~~For those first credentialed in 2009, the first date to report the required continuing education begins with a credential holder's renewal date in 2011.~~)) Beginning January 1, 2014, at least once every six years a certified counselor or a certified adviser must complete three hours of training in suicide assessment, including screening, and referral as specified in WAC 246-810-0298.

(a) Except as provided in (b) of this subsection, the first training must be completed during the first full continuing education reporting period after January 1, 2014, or the first full continuing education period after initial licensure, whichever occurs later.

(b) An individual applying for initial certification as a certified counselor or a certified adviser on or after January 1, 2014, may delay completion of the first required training for six years after initial certification if he or she can demonstrate successful completion of a three-hour training in suicide assessment, screening, and referral that:

(i) Was completed no more than six years prior to the application for initial certification; and

(ii) Meets the requirements listed in WAC 246-810-0298(1).

(c) The hours spent completing training in suicide assessment count towards the total thirty-six hours of continuing education.

(4) Nothing in this section is intended to expand or limit the existing scope of practice of a certified counselor or a certified adviser as defined by WAC 246-810-0201 and 246-810-021.

AMENDATORY SECTION (Amending WSR 09-15-041, filed 7/8/09, effective 7/8/09)

WAC 246-810-0293 Recognized institutions of higher learning((~~, or~~)) and local, state, national, ((~~or~~)) and international organizations. ((~~The recognized institutions of higher learning, or local, state, national, or international organizations that qualify to provide continuing education for certified counselor and certified adviser include:~~)) Activities that meet the requirements of WAC 246-810-029 and are offered by the following entities are eligible for continuing education credit:

(1) Washington Association for Marriage and Family Therapy;

(2) Washington State Society for Clinical Social Work;

(3) Washington Chapter of the National Association of Social Work;

(4) American Mental Health Counselors Association;

(5) American Association for Marriage and Family Therapy;

(6) Clinical Social Work Association;

(7) National Association of Social Workers;

(8) Washington Mental Health Counselors Association;

(9) National Board for Certified Counselors;

(10) Association for Humanistic Psychology;

(11) The Association for Integrative Psychology;

(12) Society for Social Work Leadership in Health Care;

(13) Institutions of higher learning that are accredited by a national or regional accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation;

(14) Washington Professional Counselors Association;

(15) State Association and National Association for the Treatment of Sexual Abusers;

(16) National Association of Alcohol and Drug Addiction Counselors; and

(17) Other organizations recognized by the secretary and included on a list maintained by the department.

NEW SECTION

WAC 246-810-0298 Suicide assessment training standards. Approved qualifying training in suicide assessment, including screening and referral must:

(1) Be approved by the American Foundation for Suicide Prevention, the Suicide Prevention Resource Center, entities listed in WAC 246-810-0293, or an equivalent organization, educational institution or association which approves training based on observation and experiment or best available practices.

(2) Cover training in suicide assessment, including screening and referral.

(3) Be provided by a single provider and be at least three hours in length, which may be provided in one or more sessions.

(4) A certified counselor or certified adviser who is an employee of a state or local government employer is exempt from the requirements of this section if he or she receives a total of at least three hours of training in suicide assessment including screening and referral from his or her employer every six years. For purposes of this subsection, the training may be provided in one three-hour block or may be spread among shorter training sessions at the employer's discretion.

(5) A certified counselor or certified adviser who is an employee of a community mental health agency licensed under chapter 71.24 RCW or a chemical dependency program certified under chapter 70.96A RCW is exempt from the requirements of this section if he or she receives a total of at least three hours of training in suicide assessment, including screening and referral from his or her employer every six years. For purposes of this subsection, the training may be provided in one three-hour block or may be spread among shorter training sessions at the employer's discretion.

(6) A certified counselor or certified adviser that obtained training under the exemptions listed in subsections (4) and (5) of this section may obtain CE credit subject to documentation as defined in WAC 246-810-0297.

AMENDATORY SECTION (Amending WSR 09-14-111, filed 6/30/09, effective 7/1/09)

WAC 246-811-200 Continuing competency definitions. (1) "Agency sponsored training" is training provided by an agency that is not limited to people working within that agency and is a professional development activity as defined in subsection (7) of this section.

(2) "Continuing competency enhancement plan" is a plan showing the goals an individual will develop to continue proficiency as a certified chemical dependency professional. This plan will be based on core competencies of chemical dependency counseling listed in WAC 246-811-047 (2)(a) through (i) and on forms provided by the department.

(3) "Continuing education" means a program or course (including distance learning), seminar((~~s, or~~)) workshop((~~s~~)), or professional conference((~~s~~)) approved by an industry-recognized ((~~local, state, national, international~~)) organization or institution of higher learning listed in subsection (5) of this section.

(((~~(2)~~))) (4) "Distance learning" is industry-recognized education obtained to enhance proficiency in one or more of the professional development activities as defined in subsection (7) of this section, through sources such as internet course work, satellite downlink resources, telecourses, or correspondence courses.

(5) "Industry-recognized" is any local, state, national, or international organization or institution of higher learning including, but not limited to, the following:

(a) National Association of Alcoholism and Drug Abuse Counselors (NAADAC);

(b) National Association of Addiction Treatment Providers (NAATP);

(c) International Certification and Reciprocity Consortium (ICRC);

(d) Northwest Indian alcohol/drug specialist certification board;

(e) Institutions of higher learning that are accredited by a national or regional accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation; and

(f) Division of behavioral health and recovery (DBHR), department of social and health services.

(6) "In-service training" is training provided by an agency that is limited to people working within that agency and is a professional development activity as defined in subsection (7) of this section.

(7) "Professional development activities" means addiction competencies as outlined in WAC 246-811-047, including: Clinical evaluation, individual counseling, group counseling, counseling family, couples, and significant others, professional and ethical responsibilities, understanding addiction, treatment knowledge, application to practice, professional readiness, treatment planning, referral, service coordination, client, family, and community education, screening, intake, assessment, clinical reports, clinical progress notes, discharge summaries, and other client related data.

(((~~(3) **Industry-recognized** is any local, state, national, international organization, or institution of higher learning, including, but not limited to, the following organizations:~~

~~(a) National Association of Alcoholism and Drug Abuse Counselors (NAADAC);~~

~~(b) National Association of Addiction Treatment Providers (NAATP);~~

~~(c) International Certification and Reciprocity Consortium (ICRC);~~

~~(d) Northwest Indian alcohol/drug specialist certification board;~~

~~(e) Institutions of higher learning that are accredited by a national or regional accrediting body recognized by the Commission on Recognition of Postsecondary Accreditation; or~~

~~(f) Division of alcohol and substance abuse (DASA).~~

~~(4) **Distance learning** is industry recognized education obtained to enhance proficiency in one or more of the professional development activities as outlined in subsection (2) of this section, through sources such as, internet course work, satellite downlink resources, telecourses, or correspondence courses.~~

~~(5) **Agency sponsored training** is training provided by an agency that is **not** limited to people working within that agency and is a professional development activity as outlined in subsection (2) of this section.~~

~~(6) **In-service training** is training provided by an agency that is limited to people working within that agency and is a professional development activity as outlined in subsection (2) of this section.~~

~~(7) **Continuing competency enhancement plan** is a plan showing the goals the CDP will develop to continue proficiency in their profession. The plan will be based on core competencies as listed in WAC 246-811-047. The plan will be developed on forms provided by the department.~~))

AMENDATORY SECTION (Amending WSR 09-14-111, filed 6/30/09, effective 7/1/09)

WAC 246-811-240 Number of continuing education hours required. (1) A certified chemical dependency professional must complete twenty-eight hours of continuing education (CE) every two years.

(a) At least fourteen hours must be completed in one or more of the topic areas as described in WAC 246-811-030 (2)(a) through (w).

(b) At least four hours must be in professional ethics and law.

(c) The additional ten hours shall be in areas relating to the various phases of their professional career.

(d) The training in suicide assessment, including screening and referral, requirement listed in subsection (2) of this section shall count towards meeting the CE requirements.

(2) Beginning January 1, 2014, at least once every six years a certified chemical dependency professional must complete at least three hours of training in suicide assessment, including screening and referral assessment as specified in WAC 246-811-280.

(a) Except as provided in (b) of this subsection, the first training must be completed during the first full CE reporting period after January 1, 2014, or the first full CE period after initial certification, whichever occurs later.

(b) An individual applying for initial certification as a chemical dependency professional on or after January 1, 2014, may delay completion of the first required training for six years after initial certification if he or she can demonstrate completion of a three-hour training in suicide assessment, including screening and referral that:

(i) Was completed no more than six years prior to the application for initial certification; and

(ii) Meets the qualifications listed in WAC 246-811-280(1).

(3) Nothing in this section is intended to expand or limit the existing scope of practice of a certified chemical dependency professional or certified chemical dependency professional trainee credentialed under chapter 18.205 RCW.

NEW SECTION

WAC 246-811-280 Suicide assessment training standards. A qualifying training in suicide assessment, including screening and referral must:

(1) Be approved by the American Foundation for Suicide Prevention; the Suicide Prevention Resource Center; an industry-recognized organization or an institution of higher learning listed in WAC 246-811-200; or an association which approves training programs based on observation and experiment or best available practices.

(2) Be provided by a single provider and must be at least three hours in length, which may be provided in one or more sessions.

(3) A certified chemical dependency professional who is a state or local government employee is exempt from the requirements of this section if he or she receives a total of at least three hours of training in suicide assessment, including screening and referral from his or her employer every six years. For purposes of this subsection, the training may be provided in one three-hour block or may be spread among shorter training sessions at the employer's discretion.

(4) A certified chemical dependency professional who is an employee of a community mental health agency licensed under chapter 71.24 RCW or a chemical dependency program certified under chapter 70.96A RCW is exempt from the requirements of this section if he or she receives a total of at least three hours of training in suicide assessment, including screening and referral from his or her employer every six years. For purposes of this subsection, the training may be provided in one three-hour block or may be spread among shorter training sessions at the employer's discretion.

WSR 13-24-100
PROPOSED RULES
EMPLOYMENT SECURITY DEPARTMENT

[Filed December 3, 2013, 12:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-12-033.

Title of Rule and Other Identifying Information: Adopt new rule in chapter 192-100 WAC defining the term "equity and good conscience." Adopt new rule in chapter 192-330 WAC related to negotiated settlements of unemployment taxes, interest, and penalties owed by an employer. Amend WAC 192-220-030, 192-230-110 and 192-230-130, relating to waivers and negotiated settlements of unemployment benefit overpayments.

Hearing Location(s): Employment Security Department, Maple Leaf Conference Room, 212 Maple Park, Olympia, WA, on January 9, 2014, at 10:00 a.m.

Date of Intended Adoption: January 13, 2014.

Submit Written Comments to: Pamela Ames, P.O. Box 9046, Olympia, WA 98507-9046, e-mail pames@esd.wa.gov, fax (360) 902-0911, by January 8, 2014.

Assistance for Persons with Disabilities: Contact Kintu Nnambi by January 8, 2014, TTY (800) 833-6384 or (360) 725-9454.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New rules are adopted to define the term "equity and good conscience" and to describe how the term pertains to negotiated settlements between the department and employers for unemployment taxes, interest, or penalties owed by an employer. WAC 192-220-030, 192-230-110 and 192-230-130, are also amended to implement statutory changes and clarify policies related to waivers and negotiated settlements of benefit overpayments.

Reasons Supporting Proposal: The rules implement statutory changes to RCW 50.20.190 and 50.24.020 adopted by the 2013 legislature.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Statute Being Implemented: RCW 50.20.190 and 50.24.-020.

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

Name of Proponent: Employment security department, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Juanita Myers, 212 Maple Park, Olympia, (360) 902-9665; and Enforcement: Neil Gorrell, 212 Maple Park, Olympia, (360) 902-9303.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not have a disproportionate impact on small business.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Juanita Myers, Employment Security Department, P.O. Box 9046, Olympia, WA 98507-9046, phone (360) 902-9665, fax (360) 902-0911, e-mail jmyers@esd.wa.gov.

December 3, 2013
Nan Thomas
Deputy Commissioner

NEW SECTION

WAC 192-100-015 Equity and good conscience defined. (1) For the purposes of chapters 192-230 and 192-330 WAC, "equity and good conscience" means fairness as applied to a given set of circumstances.

(2) When deciding if paying the full amount owing is against equity and good conscience the department may consider, but is not limited to, the following circumstances:

(a) General health, including disability, competency, and mental or physical impairment;

(b) Education level, including literacy;

(c) Whether there is current income from work or a business;

(d) History of unemployment;

(e) Future earnings potential;

(f) Business structure, if appropriate;

(g) Marital status and number of dependents, including whether other household members are employed;

(h) The costs of collection compared to the amount of the outstanding debt. The department may consider such factors as the age and amount of the outstanding debt, whether there were previous good faith efforts to pay the debt, the tools available to enforce collections and other information relevant to ability to pay;

(i) Whether there were previous negotiated settlements or negotiated settlement attempts on a debt with the department;

(j) Factors indicating that collection of the full amount would cause undue economic, physical, or mental hardship making the debtor unable to provide for basic necessities. Unless there are unusual circumstances which would argue otherwise, the department will presume repayment would leave you unable to provide basic necessities if your total household resources in relation to household size do not exceed seventy percent of the Lower Living Standard Income Level (LLSIL) and circumstances are not expected to change within the next ninety days; and

(k) Other factors that bear a direct relationship to the ability to pay the debt. The decision to grant or deny a negotiated settlement will be based on the totality of circumstances rather than the presence of a single factor listed in this section.

AMENDATORY SECTION (Amending WSR 08-21-056, filed 10/9/08, effective 11/9/08)

WAC 192-220-030 What does equity and good conscience mean in regard to overpayment waiver decisions?—RCW 50.20.190(2). (1) "Equity and good conscience" means fairness as applied to a given set of circumstances.

(2) It will be against equity and good conscience to deny waiver when repayment of the overpayment would deprive you of income required to provide for basic necessities including food, shelter, medicine, utilities, and related expenses. Unless there are unusual circumstances which would argue against waiver, the department will presume repayment would leave you unable to provide basic necessities if your total household resources in relation to household size do not exceed seventy percent of the Lower Living Standard Income Level (LLSIL) and circumstances are not expected to change within the next ninety days.

(3) The department may also consider, but is not limited to, the following factors in determining whether waiver should be granted for reasons of equity and good conscience:

(a) Your general health, including disability, competency, and mental or physical impairment;

(b) Your education level, including literacy;

(c) Whether you are currently employed and your history of unemployment;

(d) Your future earnings potential based on your occupation, skills, and the local labor market;

(e) Your marital status and number of dependents, including whether other household members are employed;

(f) Whether an error by department staff contributed to the overpayment;

(g) ((~~Whether the employer contributed to the overpayment by providing inaccurate information or failing to respond to the department's request for information within a reasonable period of time;~~

~~(h)~~)) Whether you refused or were ineligible for other government benefits because you received unemployment benefits; and

(((~~i~~))) (h) Other factors indicating that repayment of the full amount would cause you undue economic, physical, or mental hardship.

(4) When determining whether a waiver of benefit overpayments may be granted based on equity and good conscience, the department must consider whether the employer or employer's agent failed to respond timely or adequately without good cause to the department's written request for claim information. This subsection does not apply to negotiated settlements.

(5) The decision to grant or deny waiver will be based on the totality of circumstances rather than the presence of a single factor listed in subsections (2) ((~~and~~)), (3), and (4).

AMENDATORY SECTION (Amending WSR 08-21-056, filed 10/9/08, effective 11/9/08)

WAC 192-230-110 May I negotiate with the department to repay less than the full amount of my benefit overpayment?—RCW 50.24.020. (1) Yes. State law permits the department to accept an offer in compromise for less than the full amount owed. For purposes of this chapter, an offer in compromise is referred to as a negotiated settlement.

(2) Except as provided in subsection (((~~3~~))) (4) of this section, a negotiated settlement of the overpayment for less than the full amount owed will be considered ((~~under subsection (2)(a). Settlement offers may also be made by authorized department staff.~~

~~(a) The department will consider a settlement offer when it would be against equity and good conscience to require you to repay the full amount. The department may consider, but is not limited to, the following factors in making this decision:~~

~~(i) Your general health, including disability, competency, and mental or physical impairment;~~

~~(ii) Your education level, including literacy;~~

~~(iii) Whether you are currently employed and your history of unemployment;~~

~~(iv) Your future earnings potential based on your occupation, skills, and the local labor market;~~

~~(v) Your marital status and number of dependents, including whether other household members are employed; and~~

~~(vi) Other factors indicating that collection of the full amount would cause you undue economic, physical, or mental hardship and you are unable to provide for basic necessities as described in WAC 192-220-030(2).~~

~~(b)~~)) when to require you to repay the full amount would be against equity and good conscience as defined in WAC 192-100-015.

(3) In considering settlement offers, the emphasis will be on what is financially advantageous to the department. The department will consider the costs of collection compared to the amount of the overpayment. In doing so, the department may consider such factors as the age and amount of the overpayment, the number of prior contacts with you, whether you previously made good faith efforts to pay the debt, the tools available to enforce collection, and other information relevant to your ability to repay.

(((~~c) If you previously applied for a waiver and were denied and your circumstances have significantly changed, such as catastrophic illness or loss of income, you may ask to negotiate a settlement for less than the full amount of the overpayment.~~

~~(3)~~)) (4) A negotiated settlement for less than the full amount owed will not be considered when:

(a) ((~~The overpayment is the result of a discharge for misconduct or gross misconduct (see RCW 50.20.066(5));~~

~~(b)~~)) The overpayment decision was issued by a state other than Washington; or

(((~~c~~))) (b) The overpayment is for disaster unemployment assistance benefits paid under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

(((~~4~~))) (5) The department's decision to accept or reject a settlement offer is ((~~final~~)) not subject to appeal. However, if the settlement offer is rejected, you are permitted to make another offer at a later date if circumstances change.

AMENDATORY SECTION (Amending WSR 08-21-056, filed 10/9/08, effective 11/9/08)

WAC 192-230-130 How do I make a negotiated settlement offer? (1) You may contact the department's unemployment benefits collection unit in writing or by telephone and make an offer to settle the debt for less than the full amount owing. Specify the amount you are offering to repay and be prepared to provide financial and other information in support of your offer. The department may request a credit report to verify the information you provide. The department will notify you of its decision to accept or decline your offer.

(2) Settlement offers may also be made by authorized department staff.

NEW SECTION

WAC 192-330-120 May I negotiate with the department to repay less than the full amount of my contributions, interest and penalties?—RCW 50.24.020. (1) Yes. State law permits the department to accept an offer in compromise for less than the full amount owed. For purposes of this chapter, an offer in compromise is referred to as a negotiated settlement.

(2) A negotiated settlement of contributions, interest, or penalties due and owing for less than the full amount owed will be considered when to require you to repay the full amount would be against equity and good conscience as defined in WAC 192-100-015.

(3) In considering negotiated settlement offers, the emphasis will be on what is financially advantageous to the department. The department will consider the costs of collection compared to the amount of the debt, the number of prior contacts with you, whether you previously made good faith efforts to pay the debt, the tools available to enforce collection, and other information relevant to your ability to repay.

(4) Settlement offers may also be made by authorized department staff.

(5) You may contact the department's unemployment tax collection unit in writing or by telephone and make an offer

to settle the debt for less than the full amount owing. Specify the amount you are offering to repay and be prepared to provide financial and other information in support of your offer. The department may request a credit report to verify the information you provide. The department will notify you of its decision to accept or decline your offer.

(6) The department's decision to accept or reject a negotiated settlement offer is not subject to appeal. However, if the settlement offer is rejected, you are permitted to make another offer at a later date if circumstances change.

WSR 13-24-112
PROPOSED RULES
DEPARTMENT OF REVENUE

[Filed December 4, 2013, 7:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-19-075.

Title of Rule and Other Identifying Information: WAC 458-20-178 Use tax, this rule explains who is responsible for remitting use tax, and when and how to remit it. It also explains the imposition of use tax as it applies to the use of tangible personal property within Washington when the property was not subject to retail sales tax at the time of acquisition.

Hearing Location(s): Capital Plaza Building, 4th Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA, on January 15, 2014, at 10:00 a.m.

Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Call-in option can be provided upon request.

Date of Intended Adoption: January 22, 2014.

Submit Written Comments to: Gayle Carlson, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail GayleC@dor.wa.gov.

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing revisions to WAC 458-20-178 to:

- Update and clarify information to conform with existing law;
- Add examples in subsection (2) What is use tax;
- Remove the listing of exemptions as incomplete and outdated. Other publications, including specific rules explain available exemptions. References have been included in the draft to some of these other rules; and
- Reformat to provide information in a more useful manner.

Reasons Supporting Proposal: To update the rule to provide businesses with current tax-reporting information.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: Chapter 82.12 RCW.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Gayle Carlson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1576; Implementation and Enforcement: Alan Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is not a significant legislative rule as defined by RCW 34.05.328.

December 3, 2013
Alan R. Lynn
Assistant Director

AMENDATORY SECTION (Amending WSR 87-01-050, filed 12/16/86)

WAC 458-20-178 Use tax and the use of tangible personal property. (~~(1) Nature of the tax. The use tax supplements the retail sales tax by imposing a tax of like amount upon the use within this state as a consumer of any article of tangible personal property purchased at retail or acquired by lease, gift, repossession, or bailment, or extracted, produced or manufactured by the person so using the same, where the user, donor or bailor has not paid retail sales tax under chapter 82.08 RCW with respect to the property used.~~

~~(2) In general, the use tax applies upon the use of any tangible personal property, the sale or acquisition of which has not been subjected to the Washington retail sales tax. Conversely, it does not apply upon the use of any property if the sale to the present user or to the present user's donor or bailor has been subjected to the Washington retail sales tax, and such tax has been paid thereon. Thus, these two methods of taxation stand as complements to each other in the state revenue plan, and taken together, provide a uniform tax upon the sale or use of all tangible personal property, irrespective of where it may have been purchased or how acquired.~~

~~(3) When tax liability arises. Tax liability imposed under the use tax arises at the time the property purchased, received as a gift, acquired by bailment, or extracted or produced or manufactured by the person using the same is first put to use in this state. The terms "use," "used," "using," or "put to use" include any act by which a person takes or assumes dominion or control over the article and shall include installation, storage, withdrawal from storage, or any other act preparatory to subsequent actual use or consumption within the state. Tax liability arises as to that use only which first occurs within the state and no additional liability arises with respect to any subsequent use of the same article by the same person. As to lessees of tangible personal property who have not paid the retail sales tax to their lessors, liability for use tax arises as of~~

the time rental payments fall due and is measured by the amount of such rental payments.

(4) Persons liable for the tax. The person liable for the tax is the purchaser, the extractor or manufacturer who commercially uses the articles extracted or manufactured, the bailor or donor and the bailee or donee if the tax is not paid by the bailor or donor, and the lessee (to the extent of the amount of rental payments to a lessor who has not collected the retail sales tax). A lessor who leases equipment with an operator is deemed a user and is liable for the tax on the full value of the equipment.

(5) The law provides that the term "sale at retail" means, among other things, every sale of tangible personal property to persons taxable under the classifications of public road construction, government contracting, and service and other business activities of the business and occupation tax. Hence, persons engaged in such businesses are liable for the payment of the use tax with respect to the use of materials purchased by them for the performance of those activities, when the Washington retail sales tax has not been paid on the purchase thereof, even though title to such property may be transferred to another either as personal or as real property. Persons engaged in the types of businesses referred to in this paragraph are expressly included within the statutory definition of the word "consumer." (See RCW 82.04.190.) Also liable for tax is any person who distributes or displays or causes to be distributed or displayed any article of tangible personal property, the primary purpose of which is to promote the sale of products and services except newspapers and except printed materials over which the person has taken no direct dominion and control. (See RCW 82.12.010(5).)

(6) Lessors and lessees. Any use tax liability with respect to leased tangible personal property will be that of the lessee and is limited to the amount of rental payments paid or due the lessor. However, when boats, motor vehicles, equipment and similar property are rented under conditions whereby the lessor itself supplies an operator or crew, the lessor itself is the user and the use tax is applicable to the value of the property so used.

(7) Exemptions. Persons who purchase, produce, manufacture, or acquire by lease or gift tangible personal property for their own use or consumption in this state, are liable for the payment of the use tax, except as to the following uses which are exempt under RCW 82.12.0251 through 82.12.034 of the law:

(a) The use of tangible personal property brought into the state of Washington by a nonresident thereof for use or enjoyment while temporarily within the state, unless such property is used in conducting a nontransitory business activity within the state; or

(b) The use by a nonresident of a motor vehicle or trailer which is currently registered or licensed under the laws of the state of the nonresident's residence and which is not required to be registered or licensed under the laws of this state, including motor vehicles or trailers exempt pursuant to a declaration issued by the department of licensing under RCW 46.85.060; or

(c) The use of household goods, personal effects, and private automobiles by a bona fide resident of this state or nonresident members of the armed forces who are stationed in this state pursuant to military orders, if such articles were acquired and used by such person in another state while a bona fide resident thereof and such acquisition and use occurred more than ninety days prior to the time such person entered this state.

(i) Use by a nonresident. The exemptions set forth in (a) and (b) of this subsection, do not extend to the use of articles by a person residing in this state irrespective of whether or not such person claims a legal domicile elsewhere or intends to leave this state at some future time, nor do they extend to the use of property brought into this state by a nonresident for the purpose of conducting herein a nontransitory business activity.

(ii) The term "nontransitory business activity" means and includes the business of extracting, manufacturing, selling tangible and intangible property, printing, publishing, and performing contracts for the constructing or improving of real or personal property. It does not include the business of conducting a circus or other form of amusement when the personnel and property of such business regularly moves from one state into another, nor does it include casual or incidental business done by a nonresident lawyer, doctor or accountant.

(d) The use of any article of tangible personal property purchased at retail or acquired by lease, by bailment or by gift if the sale thereof to or the use thereof by the present user or its bailor or donor has already been subjected to retail sales tax or use tax and such tax has been paid by the present user or by its bailor or donor; or in respect to the use of property acquired by bailment when tax has been paid by the bailee or any previous bailee, based on reasonable rental value as provided by RCW 82.12.060, equal to the amount of tax multiplied by the value of the article used at the time of first use, at the tax rate then applicable, or in respect to the use by a bailee of property acquired prior to June 9, 1961, by a previous bailee from the same bailor for use in the same general activity.

(e) The use of any article of tangible personal property the sale of which is specifically taxable under the public utility tax.

(f) In respect to the use of any airplane, locomotive, railroad car, or water craft used primarily in conducting interstate or foreign commerce by transporting therein or therewith property and persons for hire or used primarily in commercial deep sea fishing operations outside the territorial waters of the state, and;

(g) In respect to the use of tangible personal property which becomes a component part of any such airplane, locomotive, railroad car, or water craft, and in respect to the use by a nonresident of this state of any motor vehicle or trailer used exclusively in transporting persons or property across the boundaries of this state and in intrastate operations incidental thereto when such motor vehicle or trailer is registered and licensed in a foreign state; also in respect to the use by a nonresident of this state of any motor vehicle or trailer so registered and licensed and used within this state for a period not exceeding fifteen consecutive days when the user has furnished the department of revenue with a written statement containing the following information:

(i) Name of registered owner.

(ii) Name of the foreign state in which motor vehicle or trailer is registered.

(iii) License number.

(iv) Make and model.

(v) Purpose of use in Washington.

(vi) Date of first use in Washington.

(vii) Date last used in Washington.

(h) For reasons approved by the department of revenue, fifteen additional days may be granted consecutive to the original period of use. Application for such additional use must be made in writing in advance of the expiration of the original period of use and must set out the justification for and the reason why such additional time should be allowed.

(i) This exemption is not available to persons performing construction or service contracts in this state but is limited to casual or isolated use by a nonresident for servicing of its own facilities.

(j) For the purpose of this exemption the term "nonresident" shall include a user who has one or more places of business in this state as well as in one or more other states, but the exemption for nonresidents shall apply only to those vehicles which are most frequently dispatched, garaged, serviced, maintained, and operated from the user's place of business in another state, and;

(k) In respect to the use by the holder of a carrier permit issued by the Interstate Commerce Commission of any motor vehicle or trailer used in substantial part in the normal and ordinary course of the user's business for transporting therein persons or property for hire across the boundaries of this state if the first use of which within this state is actual use in conducting interstate or foreign commerce. Also in respect to use by subcontractors to such interstate carriers, (i.e., persons operating their own vehicles under leases with operator) and;

(l) In respect to the use of any motor vehicle or trailer while being operated under the authority of a trip permit issued by the department of motor vehicles pursuant to RCW 46.16.160 and moving upon the highways from the point of delivery in this state to a point outside this state, and;

(m) In respect to the use of tangible personal property which becomes a component part of any motor vehicle or trailer used by the holder of a carrier permit issued by the Interstate Commerce Commission authorizing transportation by motor vehicle across the boundaries of this state. Also in respect to use by subcontractors to such interstate carriers (i.e., persons operating their own vehicles under leases with operator).

(n) The use of any article of tangible personal property which the state is prohibited from taxing under the constitution of the state or under the constitution or laws of the United States;

(o) The use of motor vehicle fuel used in aircraft by the manufacturer thereof for research, development, and testing purposes, and special fuel purchased in this state upon which a refund is obtained as provided in RCW 82.38.180(2), and motor vehicle and special fuel if:

(i) The fuel is used for the purpose of public transportation and the purchaser is entitled to a refund or an exemption under RCW 82.36.275 or 82.38.080(9); or

(ii) The fuel is purchased by a private, nonprofit transportation provider certified under chapter 81.66 RCW and the purchaser is entitled to a refund or an exemption under RCW 82.36.285 or 82.38.080(8); or

(iii) The fuel is taxable under chapter 82.36 or 82.38 RCW: Provided, That the use of motor vehicle and special fuel upon which a refund of the applicable fuel tax is obtained shall not be exempt under this subsection, and the director of licensing shall deduct from the amount of such tax to be refunded the amount of use tax due and remit the same each month to the department of revenue.

(p) In respect to the use of any article of tangible personal property included within the transfer of the title to the entire operating property of a publicly or privately owned public utility, or a complete operating integral section thereof by the state or a political subdivision thereof in conducting any business defined in RCW 82.16.010 (1) through (11).

(q) The use of tangible personal property (including household goods) which has been used in conducting a farm activity, but only when that property was purchased from a farmer at an auction sale held or conducted by an auctioneer upon a farm and not otherwise.

(r) The use of tangible personal property by corporations which have been incorporated under any act of the Congress of the United States of America and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities, and to devise and carry on measures for preventing the same. (The Red Cross is the only existing organization that qualifies for this exemption.)

(s) The use of purebred livestock for breeding purposes where said animals are registered in a nationally recognized breed association, and in respect to the use of cattle and milk cows used on the farm.

(t) The use of poultry in the production for sale of poultry or poultry products.

(u) The use of fuel by the extractor or manufacturer thereof when used directly in the operation of the particular extractive operation or manufacturing plant which produced or manufactured the same.

(v) The use of motor vehicles, equipped with dual controls, which are loaned to accredited schools and used in connection with their driver training programs.

(w) The use by a bailee of any article of tangible personal property which is entirely consumed in the course of research, development, experimental and testing activities conducted by the user, provided the acquisition or use of such articles by the bailor was not subject to sales or use tax.

(x) The use by residents of this state of motor vehicles and trailers acquired outside this state and used while such persons are members of the armed services and are stationed outside this state pursuant to military orders, but this exemption does not apply to the use of motor vehicles or trailers acquired less than thirty days prior to the discharge or release from active duty of such person from the armed services. This exemption is not permitted to persons called to active duty for training periods of less than six months.

(y) The use of sand, gravel, or rock to the extent of the cost of or charges made for labor and services performed in respect to the mining, sorting, crushing, screening, washing,

hauling, and stockpiling such sand, gravel, or rock, when such sand, gravel, or rock is taken from a pit or quarry which is owned by or leased to a county or a city, and such sand, gravel, or rock is (a) either stockpiled in said pit or quarry for placement or is placed on the street, road, place or highway of the county or city by the county or city itself (i.e., by its own employees), or (b) sold by the county or city to a county or a city at actual cost for placement on a publicly owned street, road, place, or highway. This exemption shall not apply to the use of such material to the extent of the cost of or charge made for such labor and services, if the material is used for other than public road purposes or is sold otherwise than as here indicated.

(z) The use of form lumber by any person engaged in the construction, repairing, decorating or improving of new or existing buildings or other structures under, upon or above real property of or for consumers: Provided, That such lumber is used or to be used first by such person for the molding of concrete in a single such contract, project or job and is thereafter incorporated into the product of that same contract, project or job as an ingredient or component thereof.

(aa) The use of wearing apparel only as a sample for display for the purpose of effecting sales of goods represented by such sample.

(bb) The use of tangible personal property held for sale and displayed in single trade shows for a period not in excess of thirty days, the primary purpose of which is to promote the sale of products or services.

(cc) The use of pollen.

(dd) The use of the personal property of one political subdivision by another political subdivision directly or indirectly arising out of or resulting from the annexation or incorporation of any part of the territory of one political subdivision by another.

(ee) The use of prescription drugs, including the use by the state or a political subdivision or municipal corporation thereof of drugs to be dispensed to patients by prescription without charge.

(ff) The use of returnable containers for beverages and foods, including but not limited to soft drinks, milk, beer, and mixers.

(gg) The use of insulin, prosthetic devices, or orthotic devices prescribed for an individual by a chiropractor, osteopath, or physician, ostomic items, medically prescribed oxygen, and hearing aids which are prescribed or are dispensed and fitted by a licensee under chapter 18.35 RCW.

(hh) The use of food products for human consumption (see WAC 458-20-244), including the use of livestock for personal consumption as food.

(ii) The use of ferry vessels of the state of Washington or of local governmental units in the state of Washington in transporting pedestrian or vehicular traffic within and outside the territorial waters of the state. Also, the use of tangible personal property which becomes a component part of any such ferry vessel.

(jj) Alcohol that is sold in this state for use solely as fuel in motor vehicles, farm implements and machines, or implements of husbandry. This exemption expires December 31, 1986.

(kk) The use of vans used regularly as ride sharing vehicles, as defined in RCW 46.74.010(3), by not less than seven persons, including passengers and driver, if the vans are exempt under the motor vehicle excise tax for thirty-six consecutive months beginning within thirty days of application for exemption under the use tax. This exemption expires January 1, 1988.

(ll) The use of used mobile homes as defined in RCW 82.45.032 and the use of mobile homes acquired by renting or leasing for more than thirty days, except for short term transient lodging.

(mm) The use of special fuel purchased in this state upon which a refund of special fuel tax is obtained as provided in RCW 82.38.180(2), by reason of such fuel having been purchased for use by interstate commerce carriers outside this state. Also, the use of motor vehicle fuel or special fuel by private, nonprofit transportation providers who are entitled to fuel tax refund or exemption under chapter 82.36 or 82.38 RCW.

(nn) The lease of irrigation equipment if:

(i) The irrigation equipment was purchased by the lessor for the purpose of irrigating land controlled by the lessor;

(ii) The lessor has paid tax under RCW 82.08.020 or 82.12.020 in respect to irrigation equipment;

(iii) The irrigation equipment is attached to the land in whole or in part; and

(iv) The irrigation equipment is leased to the lessee as an incidental part of the lease of the underlying land to the lessee and is used solely on such land.

(oo) The use of computers, computer components, computer accessories, or computer software irrevocably donated to any public or private school or college, as defined in chapter 84.36 RCW, in this state.

(pp) The use of semen in the artificial insemination of livestock.

(qq) The use of feed by persons for the cultivating or raising for sale of fish entirely within confined rearing areas on the persons own land or on land in which the person has a present right of possession.

(rr) The use by artistic or cultural organizations of:

(i) Objects of art;

(ii) Objects of cultural value;

(iii) Objects to be used in the creation of a work of art, other than tools; or

(iv) Objects to be used in displaying art objects or presenting artistic or cultural exhibitions or performances.

(ss) The use of used floating homes as defined in RCW 82.45.032 upon which sales tax or use tax has once been paid.

(tt) The use of feed, seed, fertilizer, and spray materials by persons raising agricultural or horticultural products for sale at wholesale including the use of feed in feeding animals at public livestock markets.

(uu) The use of prepared meals or food products used in prepared meals provided to senior citizens, disabled persons, or low income persons by not-for-profit organizations organized under chapter 24.03 or 24.12 RCW.

(vv) The use of property to produce ferrosilicon for further use in the production of magnesium for sale, where such property directly reacts chemically, with ingredients of the ferrosilicon.

~~(ww) In respect to lease payments by a seller/lessee to a purchaser/lessor after April 3, 1986, under a sale/leaseback agreement covering property used by the seller/lessee primarily in the business of canning, preserving, freezing, or dehydrating fresh fruits, vegetables, and fish; nor in respect to the purchase amount paid by the lessee pursuant to an option to purchase such property at the end of the lease term: Provided, That the seller/lessee paid the retail sales tax or use tax at the time of its original acquisition of the property.~~

~~(8) In addition to the exemptions listed earlier, the use tax does not apply to the value of tangible personal property traded in on the purchase of tangible personal property of like kind used in this state. (See WAC 458-20-247.) Also, the use tax does not apply to the use of precious metal bullion or monetized bullion acquired under such conditions that the retail sales tax would not apply to such things in this state. (See WAC 458-20-248.)~~

~~(9) See WAC 458-20-24001 and 458-20-24002 for provisions for certain use tax deferrals on materials, labor, and services rendered in the construction of qualified buildings, machinery, and equipment used in new manufacturing and research/development facilities.~~

~~(10) RCW 82.08.0251 provides expressly that the exemption therein with respect to casual sales shall not be construed as exempting from the use tax the use of any article of tangible personal property acquired through a casual sale. Thus, while casual sales made by persons who are not registered with the department of revenue are exempt from the retail sales tax (for the obvious reason that the procedure for collection of that tax is impractical in those cases), the use of property acquired through such sales is not exempt from the use tax, except as provided in RCW 82.12.0251 through 82.12.034.~~

~~(11) See also WAC 458-20-106 regarding the use tax on the use of articles purchased at a casual sale.~~

~~(12) Credit. When property purchased elsewhere is brought into this state for use or consumption the use tax will apply upon the use thereof, but a credit is allowed for the amount of sales or use tax paid by the user or its bailor or donor on such property to any other state or political subdivision thereof, the District of Columbia, or any foreign country, prior to the use of the property in this state.~~

~~(13) Value of the article used. The tax is levied and collected on an amount equal to the value of the article used by the taxpayer. The term "value of the article used" is defined by the law as being the total of the consideration paid or given by the purchaser to the seller for the article used plus any additional amounts paid by the purchaser as tariff or duty with respect to the importation of the article used. In case the article used was extracted or produced or manufactured by the person using the same or was acquired by gift or was sold under conditions where the purchase price did not represent the true value thereof, the value of the article used must be determined as nearly as possible according to the retail selling price, at the place of use, of similar products of like quality, quantity and character. In case the articles used are acquired by bailment, the value of the use of the articles so used shall be in an amount representing a reasonable rental for the use of the articles so bailed, determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character. In case the articles used are acquired by lease or rental, use tax liability is measured by the amount of rental payments to a lessor who has not collected the retail sales tax.~~

~~(14) In the case of an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product, the value of the article used shall be determined by: (a) The retail selling price of such new or improved product when first offered for sale; or (b) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale. See: RCW 82.04.450, WAC 458-20-112.~~

~~(15) In the case of articles owned by a user engaged in business outside the state which are brought into the state for no more than ninety days in any period of three hundred sixty-five consecutive days and which are temporarily used for business purposes by the person in this state, the value of the article used shall be an amount representing a reasonable rental for the use of the articles, unless the person has paid tax under this chapter or chapter 82.08 RCW upon the full value of the article used.~~

~~(16) Returns and registration. Persons subject to the payment of the use tax, and who are not required to register or report under the provisions of chapters 82.04, 82.08, 82.16, or 82.28 RCW, are not required to secure a certificate of registration as provided under WAC 458-20-101. As to such persons, returns must be filed with the department of revenue on or before the fifteenth day of the month succeeding the end of the period in which the tax accrued. Forms and instructions for making returns will be furnished upon request made to the department at Olympia or to any of its branch offices.~~

~~(17) See WAC 458-20-221 for liability of certain selling agents for collection of use tax.~~)) (1) **Introduction.** This rule provides general use tax-reporting information for consumers. It discusses who is responsible for remitting use tax, and when and how to remit the tax. The rule also explains the imposition of use tax as it applies to the use of tangible personal property within this state when the acquisition of the tangible personal property was not subject to retail sales or deferred sales tax. For information on the difference between retail sales tax and deferred sales tax, see Excise Tax Advisory (ETA) 3097 "Deferred Sales Tax" on the department's internet site at dor.wa.gov.

(a) **Examples.** Examples found in this rule identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(b) **Additional information available.** For information on use tax exemptions please refer to chapter 82.12 RCW, and the department of revenue's internet site. When appropriate, this rule refers the reader to applicable statutes and rules. In addition, the reader may wish to refer to the following:

(i) WAC 458-20-145, Local sales and use tax, provides information on sourcing local sales and use taxes.

(ii) WAC 458-20-15503, Digital products, provides information on sales and use tax liability on digital products such as: Digital goods, including digital audio works, digital audio-visual works, and digital books; digital automated ser-

vices; digital codes used to obtain digital goods or digital automated services; and remote-access software.

(iii) WAC 458-20-169, Nonprofit organizations, provides information on a use tax exemption for donated items to a nonprofit charitable organization.

(iv) WAC 458-20-17803, Use tax on promotional material, provides information about the use tax reporting responsibilities of persons who distribute or cause the distribution of promotional material, except newspapers, the primary purpose of which is to promote the sale of products or services in Washington.

(v) WAC 458-20-190, Sales to and by the United States—Doing business on federal reservations—Sales to foreign governments, provides tax reporting information for businesses doing business with the United States.

(vi) WAC 458-20-192, Indians—Indian country, provides information on use tax pertaining to Indians and Indian tribes and use tax pertaining to non-Indians in Indian country.

(vii) WAC 458-20-257, Warranties and service contracts, provides information on tax responsibilities of persons selling or performing services covered by warranties, service contracts, and mixed agreements for tangible personal property.

(2) **What is use tax.** Use tax complements the retail sales tax, and in most cases mirrors the retail sales tax. Articles of tangible personal property used or certain services purchased in Washington are subject to use tax when the state's retail sales tax has not been paid, or where an exemption is not available. Tangible personal property or services used or purchased by the user in any manner are taxable including, but not limited to:

• Purchases directly from out-of-state sellers;

• Purchases through the internet, telemarketing, mail order; or

• Acquisitions at casual or isolated sales.

(a) **Example 1.** ABC Company (ABC) orders office supplies from out-of-state suppliers and also through catalogs. In addition, ABC pays annual subscriptions for magazines for their own use. Use tax is due on all taxable items ordered unless the vendor has collected retail sales tax. Use tax is also due on the amount of the annual subscriptions.

(b) **Example 2.** The Neighborhood Coffee Store (Coffee Store) leases various coffee bean preparation machines from a vendor located in Oregon. The vendor does not charge Coffee Store retail sales tax on their monthly lease payments. Coffee Store owes use tax on their lease payments. See WAC 458-20-211, Leases or rentals of tangible personal property, bailments.

(c) **Example 3.** Mary is a music instructor that teaches adults how to play the piano. Mary does not charge her students retail sales tax on the costs of the weekly piano lessons. Use tax is not due on the lessons either, as the lessons are not a retail sales taxable service. See WAC 458-20-224, Service and other business activities. If Mary sells her students any supplies or equipment, Mary should collect the retail sales tax unless there is an applicable exemption. If Mary does not collect the retail sales tax, use tax would be due from the purchasers.

Use tax should be sourced to the place of first use unless a specific exemption applies. See WAC 458-20-145 for sourcing of local taxes.

(3) **"Use" defined.** For purposes of this rule, "use," "used," "using," or "put to use" have their ordinary meaning and include any act by which a person takes or assumes dominion or control over the article (as a consumer). (See RCW 82.12.010.) Subsequent use of the same article by the same person does not generally result in an additional use tax liability.

(4) **Measure of tax – Value of article used.** Use tax generally is levied and collected on an amount equal to the value of the article used by the taxpayer. RCW 82.12.010 defines the term "value of the article used" as the purchase price of the article. There are a number of specific situations where the "value of the article used" may be different than the amount of consideration paid or given by the buyer to the seller.

(a) **When the value of the article used is the purchase price.** The term "purchase price" has the same meaning as "selling price." The selling price is the total amount of consideration, except trade-in property of like kind, including cash, credit, property, and services, for which tangible personal property is sold, leased, or rented, valued in money, whether received in money or otherwise. The selling price, and therefore the "value of the article used" also includes delivery charges. Delivery charges are charges made by the seller for preparing and delivering tangible personal property to a location designated by the buyer and includes, but are not limited to, charges for transportation, shipping, postage, handling, crating, and packing. (See RCW 82.08.010 and 82.12.010.)

(b) **When the purchase price does not represent true value.** When an article is sold under conditions in which the purchase price does not represent the true value, the "value of the article used" is to be determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character. (See RCW 82.12.010.) For additional information regarding the measure of tax in these situations, refer to WAC 458-20-112, Value of products.

A comparison/examination of arm's length sales transactions is required when determining the value of the article used on the basis of the retail selling price of similar products. An arm's length sale generally involves a transaction negotiated by unrelated parties, each acting in his or her own self-interest.

(i) In an arm's length sales transaction, the value placed on the property by the parties to the transaction may be persuasive evidence of the true value of the property. Where there is a conflict regarding the true value of tangible personal property between sales documents, entries in the accounting records and/or value reported for use tax purposes, the department often looks to the person's accounting records as an indication of the minimum value of capitalized property. Neither the department nor the taxpayer is necessarily bound by this value if it is established that the entry in the books of account does not fairly represent the true value of the article used.

(ii) Some arm's length sales transactions involve multiple pieces of property or different types of property (such as when both real and personal property are sold). While the total sales price may represent a true value for the property in total, the values allocated to the specific components may not in and of themselves represent true values for those components. This is especially apparent when the values assigned by the parties to the sales transaction vary from those entered into the accounting records and/or reported for use tax purposes. In such cases, the value of the article used for the purpose of the use tax must be determined as nearly as possible according to the retail selling price, at the place of use, of similar products of like quality and character.

(c) **Property acquired and used outside Washington before use occurs in Washington.** The purchase price of property acquired and used outside Washington before being used in this state may not represent the property's true value. Under these circumstances, the value of article used is the retail selling price at place of use of similar products of like quality and character as of the time the article is first used in Washington. This is frequently referred to as the fair market value of the property.

(d) **Imported property.** When property is imported from outside the United States for use in Washington state, the value of the article used includes any amount of tariff or duty paid with respect to importation.

(e) **Articles produced for commercial or industrial use.** A person who extracts or manufactures products or by-products for commercial or industrial use is subject to use tax and the business and occupation (B&O) tax on the value of products or by-products used. "Commercial or industrial use" is the use of products, including by-products, as a consumer by the person who extracted or manufactured the products or by-products. See WAC 458-20-134, Commercial or industrial use and WAC 458-20-136, Manufacturing, processing for hire, fabricating.

Tax applies even if the person is not generally in the business of extracting, producing, or manufacturing the products, or the extracting or manufacturing activity is incidental to the person's primary business activity. Thus, a clothing retailer who manufactures signs or other materials for display purposes incurs a liability even though the clothing retailer is not otherwise in the business of manufacturing signs and other display materials for sale.

(i) The extractor or manufacturer is responsible for remitting retail sales or use tax on all materials used while developing or producing an article for commercial or industrial use. This includes materials that are not components of the completed article.

(ii) The value of the extracted or manufactured article is subject to use tax when the article is completed and used. The measure of use tax due for the completed article may be reduced by the value of any materials actually incorporated into that article if the manufacturer or extractor previously paid sales or use tax on the materials. See subsection (4)(g) of this rule for an explanation of the measure of tax for a completed prototype.

(f) **Bailment.** For property acquired by bailment, the "value of the article used" is an amount representing a reasonable rental for the use of the bailed article, determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character. (See RCW 82.12.010.) If the nature of the article is such that it can only be used once, the reasonable rental value is the full value of the article used. See also WAC 458-20-211, Leases or rentals of tangible personal property, bailments and ETA 3013 *Rental Value of a One-Use Article*.

(g) **Prototypes.** The value of the article used with respect to an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product is:

• The retail selling price of such new or improved product when first offered for sale; or

• The value of materials incorporated into the prototype in cases where the new or improved product is not offered for sale. (See RCW 82.12.010.)

(h) **Articles manufactured and used in the production of products for the department of defense.** When articles are manufactured and used in the production of products for the department of defense, use tax is due except where there is an exemption. The value of the article used with respect to an article manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the department of defense of the United States is the value of the ingredients of the manufactured or produced article. (See RCW 82.12.010.) However, refer to WAC 458-20-13601, Manufacturers and processors for hire—Sales and use tax exemption for machinery and equipment to determine if such articles qualify for exemption under RCW 82.12.02565.

(i) **Property temporarily brought into Washington for business use.** In the case of articles owned by a user engaged in business outside the state which are brought into the state for no more than one hundred eighty days in any period of three hundred sixty-five consecutive days and which are temporarily used for business purposes by the person in this state, the value of the article used must be an amount representing a reasonable rental for the use of the articles, unless the person has paid tax under chapter 82.08 or 82.12 RCW upon the full value of the article used, as defined in RCW 82.12.010. For additional information about the use tax exemption available to nonresidents bringing property into this state see RCW 82.12.0251.

The term "nontransitory business activity" means and includes the business of extracting, manufacturing, selling tangible and intangible property, printing, publishing, and performing contracts for the constructing or improving of real or personal property. It does not include the business of conducting a circus or other form of amusement when the personnel and property of such business regularly moves from one state into another, nor does it include casual or incidental business done by a nonresident lawyer, doctor or accountant.

(i) **Rental value.** The nature of property may make determining a reasonable rental value for use tax difficult because it may not be possible to find similar products of like quality and character. In such situations, monthly reasonable rental value may be determined based on depreciation plus one percent (per month) of the purchase price. For the purpose of this computation, depreciation should be computed on a straight-line basis with an assumption that there is no

salvage value. The life of the asset must be based on "book" life rather than an accelerated life that might be used for federal tax purposes. This calculation applies even if the asset is fully depreciated.

(ii) **Example.** A piece of equipment that originally cost $100,000 and has a book life of forty-eight months results in a monthly rental value of $3,083 ((100,000/48) + (100,000 x .01)). This monthly value applies even if the asset is fully depreciated or is greater or less than the actual depreciation used for federal tax purposes. A lesser value can be used if the taxpayer retains documentation supporting the lesser value and that value is based on rental values.

(j) **Special provisions for vessel dealers and manufacturers.** The value of an article used for a vessel held in inventory and used by a vessel dealer or vessel manufacturer for personal use is the reasonable rental value of the vessel used. This value applies only if the vessel dealer or manufacturer can show that the vessel is truly held for sale and that the dealer or manufacturer is and has been making good faith efforts to sell the vessel. (See RCW 82.12.802.) This may result in a vessel manufacturer incurring multiple use tax liabilities with respect to multiple uses of the same vessel.

The use of a vessel by a vessel dealer or vessel manufacturer for certain purposes is not subject to use tax. For specific information on these exemptions see RCW 82.12.800 and 82.12.801.

(5) **Who is liable for the tax?** RCW 82.12.020 imposes use tax upon every person using tangible personal property or certain retail services as a consumer in the state of Washington. The law does not distinguish between persons using property (or certain retail services) for business or personal use. Thus, a Washington resident purchasing personal items via the internet or through a mail-order catalogue has the same legal responsibility to report and remit use tax as does a corporation purchasing office supplies. The rate of the use tax is the same as the retail sales tax rate in the location where the property is used. Refer to WAC 458-20-145, Local sales and use tax for further discussion about determining where use occurs.

(a) **When tax liability arises.** Use tax is owed at the time the tangible personal property is purchased, received as a gift, acquired by bailment, or extracted or produced or manufactured by the person using the same is first put to use in this state, unless an exemption is available. Lessees of tangible personal property, who have not paid the retail sales tax to their lessors, owe use tax at the time rental payments fall due and is measured by the amount of the rental payments.

(b) **Reporting and remitting payment to the department of revenue.**

(i) **Registered taxpayers.** Persons registered with the department under RCW 82.32.030 to do business in Washington should use their excise tax return to report and remit use tax.

(ii) **Unregistered persons.** Persons not required to be registered with the department should use a Consumer Use Tax Return to report and remit use tax. The Consumer Use Tax Return is available by:

(A) Using the department's internet site at dor.wa.gov;

(B) Calling the department's telephone information center at 1-800-647-7706; or

(C) Requesting the form at any of the department's local field offices.

The completed Consumer Use Tax Return, with payment, is due on or before the twenty-fifth day of the month following the month in which the tax liability occurs. For example, a person acquires clothing without payment of the retail sales tax during August. The Consumer Use Tax Return and the tax are due by September 25th.

The return and payment can be submitted electronically using the department's online system at dor.wa.gov, mailed, or delivered to any of the department's local field offices.

(6) **How does use tax differ from the retail sales tax.** There are circumstances where the law does not provide a use tax exemption to complement a retail sales tax exemption. For instance, RCW 82.08.02573 provides a retail sales tax exemption for certain fund-raising sales made by nonprofit organizations or, effective July 1, 2010, libraries (see chapter 106, section 214, Laws of 2010). Because there is no complementary use tax exemption, the buyer/user is still responsible for remitting use tax on his or her use of the purchased property.

Another instance where there is no complementary use tax exemption to the retail sales tax exemption is in RCW 82.08.0251. This exemption provides a retail sales tax exemption for articles acquired in casual sales transactions, if the seller is not required to be registered with the department. Because there is no complementary use tax exemption, the buyer/user is responsible for remitting the use tax on his or her use of the purchased property. For example, if a person purchases furniture through a classified ad from a homeowner, the buyer is responsible for reporting and paying the use tax although the sale is exempt from retail sales tax.

For information on the difference between retail sales tax and deferred sales tax see ETA 3097.

(7) **Exceptions.** The law provides certain exceptions to the imposition of tax on a single event. These exceptions occur when the law provides a method of determining the measure of tax different than the full value of the article being used.

(a) **Destroyed property.** The mere destruction or discarding of tangible personal property as unusable or worthless is usually not considered a taxable "use." The following examples identify a number of facts and then state a conclusion.

Example 1. AA Computer Software (AA) has some obsolete inventory that will no longer sell as an updated version of the software is now available for purchase. AA decides to throw away this inventory even though it has never been used. As the software was never used, use tax is not owed on the destroyed inventory.

Example 2. WW Dealer purchases a used vehicle for resale. WW Dealer publicizes an upcoming sale by airing a television commercial in which WW Dealer destroys the vehicle. WW Dealer's destruction of the vehicle for publicity purposes is considered use by a consumer. The vehicle is subject to use tax sourced at the location where WW Dealer destroys the vehicle.

(b) **Tangible personal property acquired by gift or donation.** The use of property acquired by gift or donation is subject to the use tax, unless the person gifting or donating

the property previously paid or remitted Washington retail sales or use tax on the purchase or use of the property. (See RCW 82.12.020.) However, a credit for tax paid in another jurisdiction is available if documentation of tax paid is provided. See subsection (8) of this rule for additional information.

Use tax does not apply when the same property is gifted or donated back to the original giftor or donor if the original giftor or donor previously paid the retail sales tax or use tax.

Example. John purchases a vehicle, pays retail sales tax on the purchase, and gifts the vehicle to Mary. Mary's use of the vehicle is not subject to use tax because John paid sales tax when he purchased the vehicle. After two years, Mary returns the vehicle to John. John's use of the vehicle is not subject to use tax because he paid sales tax when he originally purchased the vehicle. However, use tax is due if Mary gifts or donates the vehicle to a person other than John because Mary has not previously paid retail sales or use tax.

(c) **Tangible personal property put to both an exempt and taxable use.** If property is first used for an exempt or nontaxable purpose and is later used for a nonexempt or taxable purpose, use tax is due when the property is used for the nonexempt or taxable purpose. For instance, RCW 82.12.-0251 provides a use tax exemption for the temporary use within Washington of watercraft brought in by certain nonresidents. (See WAC 458-20-238, Sales of watercraft to nonresidents—Use of watercraft in Washington by nonresidents for a detailed explanation of the exemption requirements.) However, use tax is due if the nonresident exceeds the temporary use threshold or the nonresident subsequently becomes a Washington resident.

(d) **Intervening use of property purchased for resale.** Persons purchasing tangible personal property for resale in the regular course of business may purchase the property at wholesale without paying retail sales tax provided the property is not put to intervening use. (See RCW 82.04.050 and 82.04.060.)

A buyer who purchases taxable property at wholesale and subsequently puts the property to intervening use is subject to either the retail sales tax (commonly referred to as "deferred retail sales tax") or use tax, unless a specific use tax exemption applies to the intervening use. The tax applies even if the property is at all times held out for sale and is in fact later sold. Use tax is due even if the intervening use is the result of an unforeseen circumstance, such as when property is purchased for resale, the customer fails to satisfy the terms of the sales agreement, and the property is used until another customer is found. See WAC 458-20-102 Reseller permits regarding tax-reporting requirements when a person purchases property for both resale and consumption.

(e) **Using inventory to promote sales.** Intervening use does not include the use of inventory for floor or window display purposes if that merchandise is subsequently sold as new merchandise. Likewise, intervening use does not include the use of inventory for demonstration purposes occurring with efforts to sell the same merchandise if that merchandise is subsequently sold as new merchandise. The fact that the selling price may be discounted because the property is shop worn from display or demonstration is not, by itself, controlling for the purposes of determining whether intervening use has occurred.

Evidence that property has been put to intervening use includes, but is not limited to, the following:

(i) **Property not sold as new merchandise.** Intervening use occurs if, after use of the property for display or demonstration purposes, the property can no longer be sold as new merchandise. An indication that intervening use has occurred is if property is without a new model warranty if the sale of the property normally includes such a warranty.

(ii) **Capitalizing demonstrator or display property.** The capitalization and depreciation of property is evidence of intervening use. Thus, there is a rebuttable presumption that intervening use occurs if the accounting records identify the property as a demonstrator or as display merchandise. The burden is on the person making such entries in the accounting records to substantiate any claims the property was not put to intervening use.

(iii) **Loaning property to promote sales.** Intervening use includes loaning property to a customer or potential customer for the purpose of promoting sales of other products. For example, intervening use occurs if a coffee manufacturer and/or distributor loans brewing equipment to a customer to promote coffee sales, even if the equipment is subsequently sold to the same or different customer. In this example, the coffee manufacturer and/or distributor loaning the equipment would owe use tax on the full value of the equipment. If the manufacturer and/or distributor had not paid use tax, the customer would owe use tax on the fair market value.

(f) **Effect of the trade-in exclusion.** The exclusion for the value of trade-in property from the measure of tax applies only if the trade-in property is of the same general type or classification as the property for which it was traded-in. There is no requirement that Washington's retail sales or use tax be previously paid on the trade-in property. There is also no requirement that the property subject to use tax be acquired in Washington, or that the user be a Washington resident at the time he or she acquired the property. For additional information refer to WAC 458-20-247, Trade-ins, selling price, sellers' tax measure.

(8) **Credit for taxes paid in other jurisdictions.** RCW 82.12.035 provides a credit against Washington's use tax for legally imposed retail sales or use taxes paid by the purchaser to: Any other state, possession, territory, or commonwealth of the United States, or any political subdivision of a state, the District of Columbia, or any foreign country or political subdivision of a foreign country. (See RCW 82.56.010.)

(a) This use tax credit is available only if the present user, or his or her bailor or donor, has documentation that shows the retail sales or use tax was paid with respect to such property, extended warranty, digital products, digital codes, or service defined as a retail sale in RCW 82.04.050 to the other taxing jurisdiction.

(b) This credit is not available for other types of taxes such as, but not limited to, value-added taxes (VATs).

(c) For the purposes of allocating state and local use taxes, the department first applies the credit against the amount of any use tax due the state. Any unused portion of the credit is then applied against the amount of any use tax

due to local jurisdictions. RCW 82.56.010, Multistate Tax Compact, Article V. Elements of Sales and Use Tax Laws.

(9) **No apportionment of use tax liability.** Unless specifically provided by law, the value of the article or use tax liability may not be apportioned even though the user may use the property both within and without Washington, or use the property for both taxable and exempt purposes. For example, a construction company using an airplane for traveling to and from its Washington office and out-of-state job sites must remit use tax on the full value of the airplane, even if the airplane was purchased and delivery taken outside Washington. There is no apportionment of this value even though the airplane is used both within and outside of Washington. See ETA 3077 *Use Tax in Relation to Use of Private Airplanes for Business within and without the State*.

WSR 13-24-115
PROPOSED RULES
STATE BOARD OF EDUCATION
[Filed December 4, 2013, 9:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-08-065.

Title of Rule and Other Identifying Information: WAC 180-19-220 Oversight of authorizers—General provisions, 180-19-230 Oversight of authorizers—Special review, 180-19-240 Oversight of authorizers—Notice of identified problems, 180-19-250 Oversight of authorizers—Revocation of authorizing contract, and 180-19-260 Authorizer oversight—Transfer of charter contract.

Hearing Location(s): New Market Skills Center, Tumwater, Washington, on January 8, 2013 [2014], at 1:45 p.m. - 2:15 p.m.

Date of Intended Adoption: March 6, 2014.

Submit Written Comments to: Jack Archer, Old Capitol Building, 600 Washington Street S.E., Olympia, WA 98504, e-mail jackarcher@k12.wa.us, fax (360) 586-2357, by January 3, 2014.

Assistance for Persons with Disabilities: Contact Denise Ross by December 31, 2013, TTY (360) 664-3631 or (360) 725-6025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rules is compliance with RCW 28A.710.120(7), which requires the state board of education (SBE) to establish timelines and a process for taking actions under this section in response to performance deficiencies by a school district board of directors that has been approved as a charter authorizer under RCW 28A.710.090 and WAC 180-19-010 through 180-19-040. The proposed rules establish specific powers, duties and procedures for the SBE in carrying out its responsibility for oversight of the performance of authorizers under RCW 28A.710.120, and clarity to authorizers as to the manner in which this oversight will be conducted. The rules include provisions for:

(1) SBE procedures for general oversight of authorizers under the authority granted by RCW 28A.710.120(1);

(2) Special reviews under RCW 28A.710.120(2), including definitions of the statutory "triggers" for such special reviews under this subsection, the handling of complaints about an authorizer or its portfolio of schools, timelines, and the results of a special review;

(3) Notice to an authorizer under RCW 28A.710.120(4) of identified authorizing problems, and opportunity for authorizer response;

(4) Revocation of the authorizing contract by the SBE, including definition of the statutory grounds for revocation, notice to the authorizer of SBE intent to revoke, and notice of revocation if the authorizer fails to remedy identified violations or deficiencies, with opportunity for the authorizer to seek an adjudicative proceeding under the authority set forth in RCW 28A.710.120 (3) and (5);

(5) Transfer of charter contracts held by the authorizer, in the event of revocation, to the Washington charter school commission, including provisions for obtaining the mutual consent of the commission and each charter school governing board for the transfer, transfer of student records and data to the new authorizer, and notification to parents of the transfer as provided for in RCW 28A.710.120(6).

Statutory Authority for Adoption: RCW 28A.710.120.

Statute Being Implemented: RCW 28A.710.120 (Initiative 1240).

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

Name of Proponent: SBE, governmental.

Name of Agency Personnel Responsible for Drafting: Jack Archer, Old Capitol Building, 600 Washington Street S.E., Olympia, WA, (360) 725-6035; Implementation and Enforcement: Ben Rarick, Old Capitol Building, 600 Washington Street S.E., Olympia, WA, (360) 725-6025.

A school district fiscal impact statement has been prepared under section 1, chapter 210, Laws of 2012.

SCHOOL DISTRICT FISCAL IMPACT STATEMENT

WSR:	**Title of Rule:** Oversight of Charter Schools Authorizers.	**Agency:** SDF - School District Fiscal Impact - SPI.

Part I: Estimates:
No fiscal impact. Fiscal impact is indeterminate.

Part II: Narrative Explanation:
II. A – Brief Description Of What the Measure Does That Has Fiscal Impact: *Briefly describe by section, the significant provisions of the rule, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.*

WAC 180-19-220(3) says that the SBE shall utilize information including but not limited to the annual authorizer reports submitted to the board under RCW 28A.710.100, all reports and data submitted to the office of superintendent of public instruction under chapter 28A.710 RCW, charter contracts and the findings of any special review conducted under RCW 28A.710.120. The board will require submission of or access to materials or data from the authorizer deemed rea-

sonably necessary to evaluate the performance and effectiveness of the authorizer.

Similarly, per WAC 180-19-230, C, SBE can request additional information in the event of investigating a complaint.

II. B – Cash Receipts Impact: *Briefly describe and quantify the cash receipts impact of the rule on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.*

None.

II. C – Expenditures: *Briefly describe the agency expenditures necessary to implement this rule (or savings resulting from this rule), identifying by section number the provisions of the rule that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.*

Expenditures to be incurred by the charter school authorizers are indeterminate. The majority of what is required of authorizers for SBE to conduct their review is already required by law. The additional expense lies in whatever the state board requires to be reviewed or submitted as reasonably nec3essary [necessary] to evaluate the performance and effectiveness of the authorizer.

Since this request will vary on a case-by-case basis, there is no way to come up with a reasonable cost estimate that authorizers will experience.

Part III: Expenditure Detail:

III. A – Expenditures by Object or Purpose: Indeterminate.

Part IV: Capital Budget Impact: None.

A copy of the statement may be obtained by contacting Thomas J. Kelly, Old Capitol Building, 600 Washington Street S.E., Olympia, WA, phone (360) 725-6031, e-mail thomas.kelly@k12.wa.us.

A cost-benefit analysis is not required under RCW 34.05.328. None required.

December 3, 2013
Ben Rarick
Executive Director

NEW SECTION

WAC 180-19-220 Oversight of authorizers—General Provisions. (1) The state board of education is responsible under RCW 28A.710.120 for oversight of the performance and effectiveness of all authorizers approved under RCW 28A.710.090. This oversight is ongoing and is not limited to the specific actions and procedures described in these rules. For the purposes of the board's rules governing the oversight of authorizers, the term "authorizer" means a school district board of directors that has been approved to be a charter school authorizer under RCW 28A.710.090.

(2) In reviewing or evaluating the performance of authorizers against nationally recognized principles and standards for quality authorizing, the board will compare the authorizer's performance to the standards for quality set forth in the *Principles and Standards for Quality Charter School Authorizing*, 2012 edition, published by the National Association of Charter School Authorizers. A link to this publication shall be posted on the board's public web site.

(3) In carrying out its responsibilities for overseeing the performance and effectiveness of authorizers under RCW 28A.710.120, the board shall utilize information including, but not limited to, the annual authorizer reports submitted to the board under RCW 28A.710.100, all reports and data submitted to the office of the superintendent of public instruction under chapter 28A.710 RCW, charter contracts, and the findings of any special review conducted under RCW 28A.710.120(2). The board will require submission of or access to materials or data from the authorizer deemed reasonably necessary to evaluate the performance and effectiveness of the authorizer.

(4) The board may contract for services with persons or entities having relevant expertise in the performance of its duties under RCW 28A.710.120.

(5) The board may conduct site visits to charter schools in an authorizer's portfolio for the purpose of conducting oversight of the performance of an authorizer under these rules. The board shall provide reasonable notice to the authorizer and the charter governing board prior to a site visit.

(6) In carrying out its duties for oversight of the performance and effectiveness of authorizers under RCW 28A.710.120, the board shall respect the principal role and responsibility of the authorizer for monitoring and oversight of the charter school under RCW 28A.710.100, and the authority of the charter school board to manage and operate the charter school under RCW 28A.710.030 and the terms of its charter contract.

NEW SECTION

WAC 180-19-230 Oversight of authorizers—Special review. (1) The board is authorized, upon a determination of persistently unsatisfactory performance of an authorizer's portfolio of charter schools, a pattern of well-founded complaints about the authorizer or its charter schools, or other objective circumstances, to conduct a special review of an authorizer's performance. The purpose of the special review is to determine the need for additional action by the board as provided in these rules.

(2) "Persistently unsatisfactory performance of an authorizer's portfolio of charter schools" shall consist, for any school or schools, of:

(a) Repeated failure to meet the expectations for academic performance set forth in the charter contract including, but not limited to, applicable state and federal accountability requirements, without evidence of a trend indicating the school will meet those expectations.

(b) Repeated failure to meet the financial performance targets within the charter contract;

(c) Repeated failure to meet the targets for organizational performance within the charter contract;

(3) "A pattern of well-founded complaints" means multiple complaints that are found by the board to be supported by sufficient factual information alleging that an authorizer is not in compliance with a charter contract, its authorizing contract, or its authorizer duties, including the failure to develop and follow nationally recognized principles and standards for charter authorizing.

(a) Any individual or entity may submit a written complaint to the board about an authorizer or its charter schools. The complaint should state in specific terms the alleged violation of law, failure to comply with a charter contract or its authorizing contract, or failure to develop and follow nationally recognized principles and standards for charter authorizing. The complaint must be signed and dated and provide contact information for use by the board in requesting additional information as deemed needed. The board shall post a standard form for submission of complaints on its public web site.

(b) Upon receipt, the board shall transmit the complaint to the authorizer for its written response, which shall be submitted to the board within thirty days of receipt.

(c) The board may request additional information from the complainant or the authorizer as deemed necessary to investigate the complaint.

(d) If the complaint is determined not to be well-founded, the board shall notify the complainant in writing and the board shall not be required to take further action.

(e) If the complaint is determined to be well-founded, the board shall provide written notification of such determination to the complainant and the authorizer.

(4) "Other objective circumstances" include, but are not limited to, failure of the authorizer or its charter schools to comply with an applicable state or federal law or regulation, or evidence that a charter school is not operating in a manner that fulfills the requirements of its charter contract or has a substantial risk of becoming operationally unable to fulfill those requirements.

(5) The board must provide written notice to the authorizer of initiation of a special review, documenting the reasons for the decision to conduct the review. The board must provide opportunity for the authorizer to respond in writing to the specific determinations of the need for the review.

(6) The board shall submit a written report of the results of the special review to the authorizer and other interested persons. The report may include recommended corrective actions. The report shall be posted on the board's public web site.

NEW SECTION

WAC 180-19-240 Oversight of authorizers—Notice of identified problems. (1) If at any time the board finds that an authorizer is not in compliance with a charter contract, its authorizing contract, or the authorizer duties under RCW 28A.710.100, it shall provide the authorizer with written notification of the identified problems with specific reference to the charter contract, the authorizing contract, or the authorizer duties under RCW 28A.710.100.

(2) The authorizer shall respond to the written notification and remedy the problems within a specific time frame as determined reasonable by the board under the circumstances.

(3) Nothing in this section requires the board to conduct a special review under WAC 180-19-XXX before providing an authorizer with notice of identified problems.

NEW SECTION

WAC 180-19-250 Oversight of authorizers—Revocation of authorizing contract. (1) Evidence of material or persistent failure by an authorizer to carry out its duties according to nationally recognized principles and standards for charter authorizing is grounds for revocation of an authorizer's chartering contract. This may include:

(a) Failure to comply with the terms of the authorizing contract between the authorizer and the board;

(b) Violation of a term of the charter contract between the authorizer and a charter school;

(c) Demonstrated failure to develop and follow chartering policies and practices that are consistent with the principles and standards for quality charter authorizing developed by the National Association of Charter School Authorizers in any of the following areas, as required by RCW 28A.710.-100:

(i) Organizational capacity;

(ii) Soliciting and evaluating charter applications;

(iii) Performance contracting;

(iv) Ongoing charter school oversight and evaluation;

(v) Charter renewal decision making.

(2) Notice of intent to revoke. If the board makes a determination, after due notice to the authorizer and reasonable opportunity to effect a remedy, that the authorizer continues to be in violation of a material provision of a charter contract or its authorizing contract, or has failed to remedy other identified authorizing problems:

(a) The board shall notify the authorizer in writing that it intends to revoke the authorizer's chartering authority under RCW 28A.710.120. The notification to the authorizer shall explain and document the reasons for the intent to revoke chartering authority.

(b) The authorizer shall, within thirty days of notification, submit a written response showing clearly that the authorizer has implemented or will promptly implement, a sufficient remedy for the violation or deficiencies that are the stated grounds for the intent to revoke chartering authority.

(3) Notice of revocation. If the authorizer fails to provide a timely written response or if the response is deemed inadequate by the board to meet the requirement set forth in subsection (1) of this section:

(a) The board shall provide the authorizer with written notice of revocation of the authorizer's chartering authority. The notice of revocation shall state the effective date of revocation, which shall not be sooner than twenty days from the date of receipt of the notice of revocation by the authorizer unless a timely notice of a request for an adjudicative proceeding is filed as set forth herein.

(b) The authorizer may request an adjudicative proceeding to contest the revocation. The request for an adjudicative proceeding must be submitted in writing by the authorizer to

the board within twenty days of receipt of the notice of revocation at the following address:

Old Capitol Building
P.O. Box 47206
600 Washington St. S.E., Room 253
Olympia, Washington 98504

Any adjudicative proceeding shall be conducted in accordance with the Administrative Procedure Act (APA).

NEW SECTION

WAC 180-19-260 Authorizer oversight—Transfer of charter contract. (1) In the event that a notice of revocation is provided to the authorizer under WAC 180-19-XXX, any charter contract held by that authorizer shall be transferred, for the remaining portion of the charter term, to the Washington charter school commission on documentation of mutual agreement to the transfer by the charter school and the commission.

(2) Documentation of mutual agreement shall consist of a written agreement between the charter school board and the commission, signed and dated by the chair or president of the charter school board and the chair of the commission. The agreement shall include any modification or amendment of the charter contract as may be mutually agreed upon by the charter school board and the commission.

(3) The commission shall submit the agreement to the state board of education. The board shall review the agreement and on a determination that the requirements of these rules have been met, issue written certification of the transfer of the charter contract to the charter school governing board and the commission.

(4) On certification by the board of the transfer of the charter contract, the prior authorizer shall transfer to the commission all student records and school performance data collected and maintained in the performance of its duties as an authorizer under RCW 28A.710.100 and 28A.710.170.

(5) The commission, in consultation with the charter school governing board, shall develop and implement a procedure for timely notification to parents of the transfer of the charter contract and any modifications or amendments to the charter included in the memorandum of understanding.

WSR 13-24-116
PROPOSED RULES
STATE BOARD OF EDUCATION

[Filed December 4, 2013, 9:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-17-077.

Title of Rule and Other Identifying Information: Amending WAC 180-17-050 Release of a school district from designation as a required action district, authorizing the state board of education (SBE) to provide for a district to remain as a Level I required action district or assign the district to Level II status. Additionally, proposing adoption of the following new sections: WAC 180-17-060 Designation of required action district to Level II status, 180-17-070 Level II needs assessment and revised required action plan requirements, 180-17-080 Level II required action plan—Procedures for direct submission to state board of education by superintendent of public instruction—Role of required action plan review panel, 180-17-090 Input of the education accountability system oversight committee prior to Level II designations, and 180-17-100 Establishment of accountability framework to improve student achievement for all children.

Hearing Location(s): New Market Skills Center, Lecture Hall Room, 7299 New Market Street S.W., Tumwater, WA 98501-6536, on January 8, 2013 [2014], at 2:15 p.m.

Date of Intended Adoption: January 9, 2014.

Submit Written Comments to: Linda Drake, Old Capitol Building, 600 Washington Street S.E., Olympia, WA, 98504, e-mail linda.drake@k12.wa.us, fax (360) 586-2357, by January 3, 2014.

Assistance for Persons with Disabilities: Contact Denise Ross by January 1, 2013 [2014], TTY (360) 664-3631 or (360) 725-6025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: E2SSB 5329 amended RCW 28A.657.110(1) to require SBE to propose rules for establishing an accountability framework. In addition, E2SSB 5329 amended sections of chapter 28A.657 RCW expanding the scope and impact of the school district accountability system. The bill established a second level (Level II) of required action for districts that do not demonstrate sufficient improvement after three years of implementing a required action plan.

The purpose of proposed rules are to: (1) Establish a timeline of activities associated with the implementation of Level II required action; (2) articulate the criteria for assigning districts to Level II required action; and (3) establish guiding principles that articulate an accountability framework. The anticipated effects of the proposed rules are to:

- Provide for the SBE to determine that a school district remain a Level I required action district and submit a new or revised plan, or be assigned to Level II status.
- Clarify the process and criteria for assigning districts to Level II required action:
  - Defines the criteria for designation of a district to Level II required action status.
  - Establishes timelines for (1) Level II needs assessments and revised required action plan, (2) review by the required action plan review panel, if needed, (3) input of the education accountability system oversight committee and requirement for a public hearing.
- Provide a basis for the office of superintendent of public instruction to create the accountability system design, as directed by RCW 28A.657.110(1):
  - Establishes the principles and priorities that fulfill the statutory purpose of the accountability framework.

Statutory Authority for Adoption: Chapter 28A.657 RCW.

Statute Being Implemented: Chapter 28A.657 RCW (E2SSB 5329).

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

Name of Proponent: SBE, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Ben Rarick, Old Capitol Building, 600 Washington Street S.E., Olympia, WA, (360) 725-6025.

A school district fiscal impact statement has been prepared under section 1, chapter 210, Laws of 2012.

SCHOOL DISTRICT FISCAL IMPACT STATEMENT

WSR:	**Title of Rule:** Chapter 180-17 WAC, Accountability.	**Agency:** SDF - School District Fiscal Impact - SPI.

Part I: Estimates:
No fiscal impact. Fiscal impact is indeterminate.

December 4, 2013
Ben Rarick
Executive Director

Part II: Narrative Explanation:

II. A – Brief Description Of What the Measure Does That Has Fiscal Impact: *Briefly describe by section, the significant provisions of the rule, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.*

WAC 180-17-070 requires that upon assignment of a school district to Level II required action district status, the state board shall notify the superintendent of public instruction who shall direct that a Level II needs assessment and review be conducted to determine the reasons why the previous required action plan did not succeed in improving student achievement. The needs assessment shall be completed within ninety days of the Level II designation and presented to the board at its next regularly scheduled meeting.

The cost of this needs assessment was not covered in prior fiscal estimates, and is indeterminate because we do not know how many schools will be required to perform this task. The per school estimate is $10,000 per school.

II. B – Cash Receipts Impact: *Briefly describe and quantify the cash receipts impact of the rule on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.*

None.

II. C – Expenditures: *Briefly describe the agency expenditures necessary to implement this rule (or savings resulting from this rule), identifying by section number the provisions of the rule that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.*

Expenditures to be incurred by school districts are indeterminate.

Part III: Expenditure Detail:

III. A – Expenditures by Object or Purpose: Indeterminate.

Part IV: Capital Budget Impact: None.

A copy of the statement may be obtained by contacting Thomas J. Kelly, Old Capitol Building, 600 Washington Street S.E., Olympia, WA, phone (360) 725-6031, e-mail thomas.kelly@k12.wa.us.

A cost-benefit analysis is not required under RCW 34.05.328. None required.

AMENDATORY SECTION (Amending WSR 10-23-083, filed 11/16/10, effective 12/17/10)

WAC 180-17-050 Release of a school district from designation as a required action district. (1) The state board of education shall release a school district from designation as a required action district upon recommendation by the superintendent of public instruction, and confirmation by the board, that the district has met the requirements for release set forth in RCW 28A.657.100.

(2) If the board determines that the required action district has not met the requirements for a release in RCW 28A.657.100, ((~~the school district shall remain in required action and submit a new or revised required action plan under the process and timeline as prescribed in WAC 180-17-020 or 180-17-030~~)) the state board of education may determine that the district remain a Level I required action district and submit a new or revised required action plan under the process and timeline prescribed in WAC 180-17-020, or to the extent applicable in WAC 180-17-030, or it may assign the district to Level II status, according to the requirements of WAC 180-17-060.

NEW SECTION

WAC 180-17-060 Designation of required action district to Level II status. (1) For required action districts which have not demonstrated recent and significant progress toward the requirements for release under RCW 28A.657.-100, the state board of education may direct that the district be assigned to Level II status of the required action process.

(2) For the purposes of this section, recent and significant progress shall be defined as progress occurring within the two most recently completed school years, which is determined by the board to be substantial enough to put the school on track to exit the list of persistently lowest-achieving schools list, as defined in RCW 28A.657.020, if the rate of progress is sustained for an additional three school years. Schools meeting their annual measurable objectives (AMOs) for the all students group for two consecutive years, as established by the office of the superintendent of public instruction, may also be deemed to have made recent and significant progress under this section.

(3) If the required action district received a federal School Improvement Grant for the same persistently lowest-achieving school in 2010 or 2011, the superintendent may recommend that the district be assigned to Level II of the required action process after one year of implementing a

required action plan under this chapter if the district is not making progress.

(4) Districts assigned by the state board of education as required action districts must be evaluated for exit under the same criteria used for their original designation into required action status; except, the board may, at its discretion, exit a district if subsequent changes in the exit criteria make them eligible for exit.

NEW SECTION

WAC 180-17-070 Level II needs assessment and revised required action plan requirements. (1) Upon assignment of a school district to Level II required action district status, the state board shall notify the superintendent of public instruction who shall direct that a Level II needs assessment and review be conducted to determine the reasons why the previous required action plan did not succeed in improving student achievement. The needs assessment shall be completed within ninety days of the Level II designation and presented to the board at its next regularly scheduled meeting.

(2) The needs assessment and review shall include an evaluation of the extent to which the instructional and administrative practices of the school materially changed in response to the original Level I needs assessment and the periodic reviews conducted by the office of the superintendent of public instruction, during Phase I required action.

(3) Based on the results of the Level II needs assessment and review, the superintendent of public instruction shall work collaboratively with the school district board of directors to develop a revised required action plan for Level II.

(4) The Level II required action plan shall include the following components:

(a) A list of the primary reasons why the previous plan did not succeed in improving student achievement.

(b) A list of the conditions which will be binding on the district in the Level II plan. These may include:

(i) Assignment of on-site school improvement specialists or other personnel by the superintendent of public instruction;

(ii) Targeted technical assistance to be provided through an educational service district or other provider;

(iii) Assignment or reassignment of personnel;

(iv) Reallocation of resources, which may include redirection of budgeted funds or personnel, as well as changes in use of instructional and professional development time;

(v) Changes to curriculum or instructional strategies;

(vi) Use of a specified school improvement model; or

(vii) Other conditions which the superintendent of public instruction determines to be necessary to ensure that the revised action plan will be implemented with fidelity and will result in improved student achievement.

(5) The plan shall be submitted to the state board of education for approval prior to May 30th of the year preceding implementation, with a cover letter bearing the signatures of the superintendent of public instruction and the chair of the board of directors of the required action district, affirming mutual agreement to the plan.

NEW SECTION

WAC 180-17-080 Level II required action plan—Procedures for direct submission to state board of education by superintendent of public instruction—Role of required action plan review panel. (1) If the superintendent of public instruction and the school district board of directors are unable to come to an agreement on a Level II required action plan within ninety days of the completion of the needs assessment and review conducted under subsection (2) of this section, the superintendent of public instruction shall complete and submit a Level II required action plan directly to the state board of education for approval. Such submissions must be presented and approved by the board prior to July 15th of the year preceding the school year of implementation.

(2) The school district board of directors may submit a request to the required action plan review panel for reconsideration of the superintendent's Level II required action plan within ten days of the submission of the plan to the state board of education. The state board of education will delay decision on the Level II required action plan for twenty calendar days from the date of the request, in order to receive any recommendations and comment provided by the review panel, which shall be convened expeditiously by the superintendent of public instruction as required, pursuant to RCW 28A.657.070 (2)(c). After the state board of education considers the recommendations of the required action review panel, the decision of the board regarding the Level II required action plan is final and not subject to further reconsideration. The board's decision must be made by public vote, with an opportunity for public comment provided at the same meeting.

(3) If changes to a collective bargaining agreement are necessary to implement a Level II required action plan, the procedures prescribed under RCW 28A.657.050 shall apply. A designee of the superintendent shall participate in the discussions among the parties to the collective bargaining agreement.

(4) In Level II required action, the superintendent of public instruction shall work collaboratively with the local board of education. However, if the superintendent of public instruction finds that the Level II required action plan is not being implemented as specified, including the implementation of any binding conditions within the plan, the superintendent may direct actions that must be taken by school district personnel and the board of directors to implement the Level II required action plan. If necessary, the superintendent of public instruction may exercise authority under RCW 28A.505.120 regarding allocation of funds.

(5) If the superintendent of public instruction seeks to make material changes to the Level II required action plan at any time, those changes must be submitted to the state board of education for approval at a public meeting where an opportunity for public comment is provided.

NEW SECTION

WAC 180-17-090 Input of the education accountability system oversight committee prior to Level II designations. (1) Prior to assigning a required action district to Level II status, the board must hold a public hearing on the pro-

posal, and must take formal action at a public meeting to submit its recommendation to the education accountability system oversight committee established in chapter 28A.657 RCW for review and comment.

(2) Prior to assigning a district to Level II status, the board must provide a minimum of thirty calendar days to receive comments by the education accountability system oversight committee. If written comment is provided by the committee, it shall be included in board meeting materials, and posted to the board's web site for public review. The superintendent of public instruction may begin the Level II needs assessment process once the board has formally requested committee input on a Level II designation, but may not initiate any part of the required action process until the board has made an official designation into Level II status.

NEW SECTION

WAC 180-17-100 Establishment of accountability framework to improve student achievement for all children. (1) Pursuant to the requirements of RCW 28A.657.110 (chapter 159, Laws of 2013), the state board of education adopts the following guiding principles in fulfillment of its responsibility to establish an accountability framework. The framework establishes the guiding principles for a unified system of support for challenged schools that aligns with basic education, increases the level of support based upon the magnitude of need, and uses data for decisions.

(2) The statutory purpose of the accountability framework is to provide guidance to the superintendent of public instruction in the design of a comprehensive system of specific strategies for recognition, provision of differentiated support and targeted assistance and, if necessary, intervention in underperforming schools and school districts, as defined under RCW 28A.657.020.

(3) The board finds that the accountability system design and implementation should reflect the following principles and priorities:

(a) Student growth is an essential element in an effective school accountability system. However, inclusion of student growth shall not come at the expense of a commitment to and priority to get all students to academic standard. Washington's accountability system should work toward incorporating metrics of growth adequacy, which measure how much growth is necessary to bring students and schools to academic standard within a specified period of time. An objective standard of career and college-readiness for all students should remain the long-term focus of the system.

(b) The board recognizes that the transition to common core state standards creates practical challenges for shorter term goal-setting, as a new baseline of student performance is established on a series of more rigorous standards and assessments. Normative measures of accountability are a transitional strategy during periods of significant change. Long-term, however, the accountability framework shall establish objective standards for index performance tiers and exit criteria for required action status. The board does not support a permanent system of moving, normative performance targets for our schools and students. The long-term goal remains gradually reduced numbers of schools in the bottom tiers of the index.

(c) To the greatest extent allowable by federal regulations, the federal accountability requirements for Title I schools should be treated as an integrated aspect of the overall state system of accountability and improvement applying to all schools. The composite achievement index score should be used as the standard measure of school achievement, and should be directly aligned with designations of challenged schools in need of improvement made annually by the superintendent of public instruction, and the lists of persistently low-achieving schools as required under federal regulations.

(d) The integration of state and federal accountability policies should also be reflected in program administration. To the greatest extent allowed by federal regulation, state and federal improvement planning should be streamlined administratively through a centralized planning tool. Improvement and compliance plans required across various state programs and federal title programs should be similarly integrated to the extent allowable. Planning will become less burdensome and more meaningful when the linkages between programs become more apparent in the way they are administered.

(e) The state's graduation requirements should ultimately be aligned to the performance levels associated with career and college readiness. During implementation of these standards, the board recognizes the necessity of a minimum proficiency standard for graduation that reflects a standard approaching full mastery, as both students and educators adapt to the increased rigor of common core and the underlying standard of career and college-readiness for all students.

(f) In the education accountability framework, goal-setting should be a reciprocal process and responsibility of the legislature, state agencies, and local districts and schools. The state education system should set clearly articulated performance goals for itself in a manner consistent with the planning requirements established for school districts and schools. State goal-setting should be grounded in what is practically achievable in the short-term and aspirational in the long-term, and should reflect realistic assumptions about the level of resources needed, and the time necessary, for implementation of reforms to achieve the desired system outcomes.

(g) While the board supports the use of school improvement models beyond those identified by the federal Department of Education under the No Child Left Behind Act, the board will uphold a standard of rigor in review of these plans to ensure that authentic change occurs in instructional and leadership practices as a result of required action plan implementation. Rigorous school improvement models should not be overly accommodating of existing policies and practices in struggling schools, and summative evaluations should be able to document verifiable change in practice.

(h) Recognition of school success is an important part of an effective accountability framework. The board is committed to an annual process of school recognition, and believes that award-winning schools can make significant contributions to the success of the system by highlighting replicable best practices. All levels of success should be celebrated, including identifying improvement in low-performing

schools, and highlighting examples of good schools that later achieve exemplary status.

(i) Fostering quality teaching and learning is the ultimate barometer of success for a system of school accountability and support. The central challenge for the superintendent of public instruction is developing delivery systems to provide the needed resources and technical assistance to schools in need, whether they be rural or urban, homogenous or diverse, affluent or economically challenged. In instances where traditional approaches have failed, the system will need to be prepared to develop innovative ways to secure the right instructional and leadership supports for districts and schools that need them.

WSR 13-24-124
PROPOSED RULES
LIQUOR CONTROL BOARD

[Filed December 4, 2013, 11:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-13-022.

Title of Rule and Other Identifying Information: WAC 314-02-082 What is a beer and wine theater license? and 314-02-087 What is a spirits, beer, and wine theater license?

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Ave S.E., Olympia, WA 98504, on January 8, 2014, at 10:00 a.m.

Date of Intended Adoption: January 15, 2014.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9689, by January 8, 2014.

Assistance for Persons with Disabilities: Contact Karen McCall by January 8, 2014, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SHB 1001 and ESB 5607 passed in the 2013 legislative session directs the board to adopt rules to implement the new licenses.

Reasons Supporting Proposal: Rules are needed to clarify the new license types and what requirements licensees must meet to obtain and maintain a license.

Statutory Authority for Adoption: RCW 66.24.650 and 66.24.655.

Statute Being Implemented: RCW 66.24.650 and 66.24.655.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not required.

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

December 4, 2013
Sharon Foster
Chairman

NEW SECTION

WAC 314-02-082 What is a beer and wine theater license? (1) A beer and wine theater is a place of business where motion pictures or other primarily nonparticipatory entertainment or events are shown. The holder of a beer and wine theater license is allowed to sell beer, strong beer, and wine, at retail, for consumption on the licensed premises.

(2) The requirements for the beer and wine theater license are as follows:

(a) The theater has no more than four screens.

(b) All servers of beer and wine are required to attend a mandatory alcohol server training (MAST) program.

(c) The serving size for wine is five ounces. The serving size for beer is twelve ounces.

(d) If the theater premises will be frequented by minors, an alcohol control plan agreement must be signed and submitted to the board during the application process.

(3) The alcohol control plan agreement will be provided on a form by the board and includes the following requirements:

(a) To ensure that alcoholic beverages are not sold to persons under the age of twenty-one, staff will request identification from any patron who appears to be age thirty or under and who is attempting to purchase an alcoholic beverage.

(b) Alcoholic beverages must be served in containers that differ significantly from containers utilized for nonalcoholic beverages.

(c) All alcoholic beverages sold under this license must be sold by the individual drink.

(d) If staff observes a patron who is in the possession of or who is consuming an alcoholic beverage who appears to be of questionable age, staff will request identification from that patron. If the patron is unable to produce an acceptable form of identification verifying their age the alcohol will be confiscated.

(e) Staff will accept only those forms of identification that are acceptable per WAC 314-11-025 to verify a person's age for the purpose of selling, serving, or allowing a person to possess or consume alcohol.

(f) All employees involved in the sale, service and/or supervision of alcoholic beverages will be required to attend MAST to obtain the appropriate permit for their level of service.

(g) Sufficient lighting must be maintained at the point of sale so that identification can be confirmed and patrons observed for signs of intoxication.

(h) To ensure alcoholic beverages are served in a safe, responsible, and controlled manner, sales and service of alcoholic beverages will be limited to one serving per person per transaction.

(i) If a patron is accompanied by another patron who wants to pay for both people's drinks, they may do so, pro-

vided that both patrons are of legal age to purchase, and have proper identification, if requested, and are not displaying signs of intoxication.

(j) Alcohol may only be sold, served, and consumed in areas designated in the alcohol control plan agreement and approved by the board.

(k) Staff will refuse to sell an alcoholic beverage to any person who appears to be intoxicated. Alcoholic beverages will be removed from any person who appears to be intoxicated.

(l) This alcohol control plan agreement will be prominently posted on the licensed premises.

(4) Penalties are doubled for a violation involving minors or the failure to follow the signed alcohol control plan agreement.

(5) If a theater premises has a restaurant located outside of the actual theater screening areas, beer and wine may be served and consumed in the restaurant area.

(a) Beer may be sold by the pitcher as well as by individual serving for consumption in the restaurant area.

(b) Wine may be sold by the bottle as well as by the individual serving for consumption in the restaurant area.

NEW SECTION

WAC 314-02-087 What is a spirits, beer, and wine theater license? (1) A spirits, beer, and wine theater is a place of business where motion pictures or other primarily nonparticipatory entertainment or events are shown. The holder of a beer and wine theater license is allowed to sell spirits, beer, strong beer, and wine, at retail, for consumption on the licensed premises.

(2) The requirements for the spirits, beer, and wine theater license are as follows:

(a) The theater has no more than one hundred twenty seats per screen.

(b) All servers of beer and wine are required to attend a mandatory alcohol server training (MAST) program.

(c) The serving size for spirits is one and one quarter ounce. The serving size for wine is five ounces. The serving size for beer is twelve ounces.

(d) There must be tabletop accommodations for in theater dining.

(e) If the theater premises will be frequented by minors an alcohol control plan agreement must be signed and submitted to the board during the application process.

(3) A spirits, beer, and wine theater licensee must serve at least eight complete meals. Establishments shall be maintained in a substantial manner as a place for preparing, cooking, and serving of complete meals.

(a) "Complete meal" means an entree and at least one side dish.

(b) "Entree" means the main course of a meal. Some examples of entrees are fish, steak, chicken, pork, pasta, pizza, hamburgers, seafood salad, Cobb salad, chef's salad, sandwiches, and breakfast items (as long as they include a side dish). Entrees do not include snack items, or menu items which consist solely of precooked frozen food that is reheated, or consist solely of carry-out items obtained from another business.

(c) Examples of side dishes are soups, vegetables, salads, potatoes, french fries, rice, fruit, and bread.

(d) The restaurant must maintain the kitchen equipment necessary to prepare the complete meals required under this section.

(e) The complete meals must be prepared on the restaurant premises.

(f) A chef or cook must be on duty while complete meals are offered.

(g) A menu must be available to customers.

(h) The food items required to maintain the menu must be on the restaurant premises. These items must be edible.

(4) The alcohol control plan agreement will be provided on a form by the board and includes the following requirements:

(a) Ensure that alcoholic beverages are not sold to persons under the age of twenty-one, staff will request identification from any patron who appears to be age thirty or under and who is attempting to purchase an alcoholic beverage.

(b) Alcoholic beverages must be served in containers that differ significantly from containers utilized for nonalcoholic beverages.

(c) All alcoholic beverages sold under this license must be sold by the individual drink.

(d) If staff observes a patron who is in the possession of or who is consuming an alcoholic beverage, who appears to be of questionable age, staff will request identification from that patron. If the patron is unable to produce an acceptable form of identification verifying their age, the alcohol will be confiscated.

(e) Staff will accept only those forms of identification that are acceptable per WAC 314-11-025 to verify a person's age for the purpose of selling, serving, or allowing a person to possess or consume alcohol.

(f) All employees involved in the sale, service, and/or supervision of alcoholic beverages will be required to attend MAST to obtain the appropriate permit for their level of service.

(g) Sufficient lighting must be maintained at the point of sale so that identification can be confirmed and patrons observed for signs of intoxication.

(h) To ensure alcoholic beverages are served in a safe, responsible, and controlled manner, sales and service of alcoholic beverages will be limited to one serving per person per transaction.

(i) If a patron is accompanied by another patron who wants to pay for both people's drinks, they may do so, provided that both patrons are of legal age to purchase, and have proper identification, if requested, and are not displaying signs of intoxication.

(j) Alcohol may only be sold, served, and consumed in areas designated in the alcohol control plan agreement and approved by the board.

(k) Staff will refuse to sell an alcoholic beverage to any person who appears to be intoxicated. Alcoholic beverages will be removed from any person who appears to be intoxicated.

(l) This alcohol control plan agreement will be prominently posted on the licensed premises.

(5) Penalties are doubled for a violation involving minors or the failure to follow the signed alcohol control plan agreement.

(6) If the theater premises has a restaurant located outside of the actual theater screening areas, spirits, beer, and wine may be served and consumed in the restaurant area.

(a) Spirits may be sold by the individual drink.

(b) Beer may be sold by the pitcher as well as by individual serving for consumption in the restaurant area.

(c) Wine may be sold by the bottle as well as by the individual serving for consumption in the restaurant area.

WSR 13-24-125
PROPOSED RULES
LIQUOR CONTROL BOARD
[Filed December 4, 2013, 11:16 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 13-07-027.

Title of Rule and Other Identifying Information: WAC 314-55-083 What are the security requirements for a marijuana licensee? and 314-55-102 Quality assurance testing; and new sections WAC 314-55-200 How will the liquor control board identify marijuana, useable marijuana, and marijuana infused product during checks of licensed businesses?, 314-55-210 Will the liquor control board seize or confiscate marijuana, useable marijuana, and marijuana-infused products?, 314-55-220 What is the process once the board summarily orders marijuana, useable marijuana, or marijuana-infused products of a marijuana licensee to be destroyed?, and 314-55-230 What are the procedures the liquor control board will use to destroy or donate marijuana, useable marijuana, or marijuana-infused products to law enforcement?

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on January 8, 2014, at 10:00 a.m.

Date of Intended Adoption: January 15, 2014.

Submit Written Comments to: Karen McCall, P.O. Box 43080, Olympia, WA 98504, e-mail kjm@liq.wa.gov, fax (360) 664-9689, by January 8, 2014.

Assistance for Persons with Disabilities: Contact Karen McCall by January 8, 2014, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Initiative 502 legalized marijuana for recreational use under certain conditions. These rules are to implement I-502 and to further clarify other permanent rules to implement I-502.

Reasons Supporting Proposal: This is a new industry in the state of Washington. Rules are needed to clarify the new laws created by I-502 so the public is aware of the qualifications and requirements for marijuana licenses in the state of Washington.

Statutory Authority for Adoption: RCW 69.50.342, 69.50.345.

Statute Being Implemented: RCW 69.50.342, 69.50.345.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Alan Rathbun, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, Enforcement Chief, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1729.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not required.

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

December 4, 2013
Sharon Foster
Chairman

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-083 What are the security requirements for a marijuana licensee? The security requirements for a marijuana licensee are as follows:

(1) **Display of identification badge.** All employees on the licensed premises shall be required to hold and properly display an identification badge issued by the licensed employer at all times while on the licensed premises.

(2) **Alarm systems.** At a minimum, each licensed premises must have a security alarm system on all perimeter entry points and perimeter windows. Motion detectors, pressure switches, duress, panic, and hold-up alarms may also be utilized.

(3) **Surveillance system.** At a minimum, a complete video surveillance with minimum camera resolution of 640x470 pixel and must be internet protocol (IP) compatible and recording system for controlled areas within the licensed premises and entire perimeter fencing and gates enclosing an outdoor grow operation, to ensure control of the area. The requirements include image acquisition, video recording, management and monitoring hardware and support systems. All recorded images must clearly and accurately display the time and date. Time is to be measured in accordance with the U.S. National Institute Standards and Technology standards.

(a) All controlled access areas, security rooms/areas and all points of ingress/egress to limited access areas, all points of ingress/egress to the exterior of the licensed premises, and all point-of-sale (POS) areas must have fixed camera coverage capable of identifying activity occurring within a minimum of twenty feet of all entry and exit points.

(b) Camera placement shall allow for the clear and certain identification of any individual on the licensed premises.

(c) All entrances and exits to the facility shall be recorded from both indoor and outdoor vantage points, and capable of clearly identifying any activities occurring within the facility or within the grow rooms in low light conditions. The surveillance system storage device must be secured onsite in a lock box, cabinet, closet, or secured in another manner to protect from employee tampering or criminal theft.

(d) All perimeter fencing and gates enclosing an outdoor grow operation must have full video surveillance capable of clearly identifying any activities occurring within twenty feet of the exterior of the perimeter. Any gate or other entry point that is part of the enclosure for an outdoor growing operation must have fixed camera coverage capable of identifying activity occurring within a minimum of twenty feet of the exterior, twenty-four hours a day. A motion detection lighting system may be employed to illuminate the gate area in low light conditions.

(e) Areas where marijuana is grown, cured or manufactured including destroying waste, shall have a camera placement in the room facing the primary entry door, and in adequate fixed positions, at a height which will provide a clear, unobstructed view of the regular activity without a sight blockage from lighting hoods, fixtures, or other equipment, allowing for the clear and certain identification of persons and activities at all times.

(f) All marijuana or marijuana-infused products that are intended to be removed or transported from marijuana producer to marijuana processor and/or marijuana processor to marijuana retailer shall be staged in an area known as the "quarantine" location for a minimum of twenty-four hours. Transport manifest with product information and weights must be affixed to the product. At no time during the quarantine period can the product be handled or moved under any circumstances and is subject to auditing by the liquor control board or designees.

(g) All camera recordings must be continuously recorded twenty-four hours a day. All surveillance recordings must be kept for a minimum of forty-five days on the licensee's recording device. All videos are subject to inspection by any liquor control board employee or law enforcement officer, and must be copied and provided to the board or law enforcement officer upon request.

(4) **Traceability:** To prevent diversion and to promote public safety, marijuana licensees must track marijuana from seed to sale. Licensees must provide the required information on a system specified by the board. All costs related to the reporting requirements are borne by the licensee. Marijuana seedlings, clones, plants, lots of usable marijuana or trim, leaves, and other plant matter, batches of extracts and marijuana-infused products must be traceable from production through processing, and finally into the retail environment including being able to identify which lot was used as base material to create each batch of extracts or infused products. The following information is required and must be kept completely up-to-date in a system specified by the board:

(a) Key notification of "events," such as when a plant enters the system (moved from the seedling or clone area to the vegetation production area at a young age);

(b) When plants are to be partially or fully harvested or destroyed;

(c) When a lot or batch of marijuana-infused product is to be destroyed;

(d) When usable marijuana or marijuana-infused products are transported;

(e) Any theft of marijuana seedlings, clones, plants, trim or other plant material, extract, infused product, or other item containing marijuana;

(f) There is a seventy-two hour mandatory waiting period after the notification described in this subsection is given before any plant may be destroyed or a lot or batch of marijuana or marijuana-infused product may be destroyed;

(g) There is a twenty-four hour mandatory waiting period after the notification described in this subsection to allow for inspection before a lot of marijuana is transported from a producer to a processor;

(h) There is a twenty-four hour mandatory waiting period after the notification described in this subsection to allow for inspection before ((~~useable~~)) usable marijuana, or marijuana-infused products are transported from a processor to a retailer((~~.~~));

(i) Prior to reaching eight inches in height or width, each marijuana plant must be tagged and tracked individually, which typically should happened when a plant is moved from the seed germination or clone area to the vegetation production area;

(j) A complete inventory of all marijuana seedlings, clones, all plants, lots of usable marijuana or trim, leaves, and other plant matter, batches of extract and marijuana-infused products;

(k) All point of sale records;

(l) Marijuana excise tax records;

(m) All samples sent to an independent testing lab and the quality assurance test results;

(n) All free samples provided to another licensee for purposes of negotiating a sale;

(o) All samples used for testing for quality by the producer or processor;

(p) Samples containing usable marijuana provided to retailers;

(q) Samples provided to the board or their designee for quality assurance compliance checks; and

(r) Other information specified by the board.

(5) **Start-up inventory for marijuana producers.** Within fifteen days of starting production operations a producer must have all nonflowering marijuana plants physically on the licensed premises. The producer must ((~~immediately~~)), within twenty-four hours, record each marijuana plant that enters the facility in the traceability system during this fifteen day time frame. No flowering marijuana plants may be brought into the facility during this fifteen day time frame. After this fifteen day time frame expires, a producer may only start plants from seed or create clones from a marijuana plant located physically on their licensed premises, or purchase marijuana seeds, clones, or plants from another licensed producer.

(6) **Samples.** Free samples of usable marijuana may be provided by producers or processors, or used for product quality testing, as set forth in this section.

(a) Samples are limited to two grams and a producer may not provide any one licensed processor more than four grams of usable marijuana per month free of charge for the purpose of negotiating a sale. The producer must record the amount of each sample and the processor receiving the sample in the traceability system.

(b) Samples are limited to two grams and a processor may not provide any one licensed retailer more than four grams of usable marijuana per month free of charge for the

purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system.

(c) Samples are limited to two units and a processor may not provide any one licensed retailer more than six ounces of marijuana infused in solid form per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system.

(d) Samples are limited to two units and a processor may not provide any one licensed retailer more than twenty-four ounces of marijuana-infused liquid per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system.

(e) Samples are limited to one-half gram and a processor may not provide any one licensed retailer more than one gram of marijuana-infused extract meant for inhalation per month free of charge for the purpose of negotiating a sale. The processor must record the amount of each sample and the retailer receiving the sample in the traceability system.

(f) Producers may sample one gram of ((~~useable~~)) usable marijuana per strain, per month for quality sampling. Sampling for quality may not take place at a licensed premises. Only the producer or employees of the licensee may sample the ((~~useable~~)) usable marijuana for quality. The producer must record the amount of each sample and the employee(s) conducting the sampling in the traceability system.

(g) Processors may sample one unit, per batch of a new edible marijuana-infused product to be offered for sale on the market. Sampling for quality may not take place at a licensed premises. Only the processor or employees of the licensee may sample the edible marijuana-infused product. The processor must record the amount of each sample and the employee(s) conducting the sampling in the traceability system.

(h) Processors may sample up to one quarter gram, per batch of a new marijuana-infused extract for inhalation to be offered for sale on the market. Sampling for quality may not take place at a licensed premises. Only the processor or employee(s) of the licensee may sample the marijuana-infused extract for inhalation. The processor must record the amount of each sample and the employee(s) conducting the sampling in the traceability system.

(i) The limits described in subsection (3) of this section do not apply to the usable marijuana in sample jars that may be provided to retailers described in WAC 314-55-105(8).

(j) Retailers may not provide free samples to customers.

AMENDATORY SECTION (Amending WSR 13-21-104, filed 10/21/13, effective 11/21/13)

WAC 314-55-102 Quality assurance testing. (1) A person with financial interest in an accredited third-party testing lab may not have direct or indirect financial interest in a licensed marijuana producer or processor for whom they are conducting required quality assurance tests.

(2) As a condition of accreditation, each lab must employ a scientific director responsible to ensure the achievement and maintenance of quality standards of practice. The scientific director shall meet the following minimum qualifications:

(a) Has earned, from a college or university accredited by a national or regional certifying authority a doctorate in the chemical or biological sciences and a minimum of two years' post-degree laboratory experience; or

(b) Has earned a master's degree in the chemical or biological sciences and has a minimum of four years' of post-degree laboratory experience; or

(c) Has earned a bachelor's degree in the chemical or biological sciences and has a minimum of six years of post-education laboratory experience.

(3) As a condition of accreditation, labs must follow the most current version of the Cannabis Inflorescence and Leaf monograph published by the *American Herbal Pharmacopoeia* or notify the board what alternative scientifically valid testing methodology the lab is following for each quality assurance test. The board may require third-party validation of any monograph or analytical method followed by the lab to ensure the methodology produces scientifically accurate results prior to them using those standards when conducting required quality assurance tests.

(4) As a condition of accreditation, the board may require third-party validation and ongoing monitoring of a lab's basic proficiency to correctly execute the analytical methodologies employed by the lab. The board may contract with a vendor to conduct the validation and ongoing monitoring described in this subsection. The lab shall pay all vendor fees for validation and ongoing monitoring directly to the vendor.

(5) Labs must adopt and follow minimum good lab practices (GLPs), and maintain internal standard operating procedures (SOPs), and a quality control/quality assurance (QC/QA) program as specified by the board. The board or authorized third-party organization can conduct audits of a lab's GLPs, SOPs, QC/QA, and inspect all other related records.

(6) The general body of required quality assurance tests for marijuana flowers, infused products, and extracts may include moisture content, potency analysis, foreign matter inspection, microbiological screening, pesticide and other chemical residue and metals screening, and residual solvents levels.

(7) Table of required quality assurance tests.

Product	Test(s) Required	Sample Size Needed to Complete all Tests
Flowers to be sold as usable marijuana (see note below)	1. Moisture content 2. Potency analysis 3. Foreign matter inspection 4. Microbiological screening	Up to 7 grams
Flowers to be used to make an extract (nonsolvent) like kief, hashish, bubble hash, or infused dairy butter, or oils or fats derived from natural sources	None	None
Extract (nonsolvent) like kief, hashish, bubble hash or infused dairy butter, or oils or fats derived from natural sources	1. Potency analysis 2. Foreign matter inspection 3. Microbiological screening	Up to 7 grams
Flowers to be used to make an extract (solvent based), made with a CO_2 extractor, or with a food grade ethanol or glycerin	1. Foreign matter inspection 2. Microbiological screening	Up to 7 grams
Extract (solvent based) made using n-butane, isobutane, propane, heptane, or other solvents or gases approved by the board of at least 99% purity	1. Potency analysis 2. Residual solvent test 3. Microbiological screening (only if using flowers and other plant material that failed initial test)	Up to 2 grams
Extract made with a CO_2 extractor like hash oil	1. Potency analysis 2. Microbiological screening (only if using flowers and other plant material that failed initial test)	Up to 2 grams
Extract made with food grade ethanol	1. Potency analysis 2. Microbiological screening (only if using flowers and other plant material that failed initial test)	Up to 2 grams
Extract made with food grade glycerin or propylene glycol	1. Potency analysis	Up to 1 gram
Infused edible	1. Potency analysis 2. Microbiological screening	1 unit
Infused liquid like a soda or tonic	1. Potency analysis 2. Microbiological screening	1 unit
Infused topical	1. Potency analysis	1 unit

(8) Independent testing labs may request additional sample material in excess of amounts listed in the table in subsection (7) of this section for the purposes of completing required quality assurance tests. Labs meeting the board's accreditation requirements may retrieve samples from a marijuana licensee's licensed premises and transport the samples directly to the lab.

(9) Labs meeting the board's accreditation requirements are not limited in the amount of ((~~useable~~)) usable marijuana and marijuana products they may have on their premises at any given time, but they must have records to prove all marijuana and marijuana-infused products only for the testing purposes described in WAC 314-55-102.

(10) At the discretion of the board, a producer or processor must provide an employee of the board or their designee samples in the amount listed in subsection (7) of this section for random compliance checks. Samples may be screened for pesticides and chemical residues, unsafe levels of metals, and used for other quality assurance tests deemed necessary by the board. All costs of this testing will be borne by the producer or processor.

(11) No lot of usable flower or batch of marijuana-infused product may be sold or transported until the completion of all required quality assurance testing.

(12) Any ((~~useable~~)) usable marijuana or marijuana-infused product that passed the required quality assurance tests may be labeled as "Class A." Only "Class A" ((~~useable~~)) usable marijuana or marijuana-infused product will be allowed to be sold.

(13) If a lot of marijuana flowers fail a quality assurance test, any marijuana plant trim, leaf and other usable material from the same plants automatically fails quality assurance testing also. Upon approval of the board, a lot that fails a quality assurance test may be used to make a CO_2 or solvent based extract. After processing, the CO_2 or solvent based extract must still pass all required quality assurance tests in WAC 314-55-102.

(14) At the request of the producer or processor, the board may authorize a retest to validate a failed test result on a case-by-case basis. All costs of the retest will be borne by the producer or the processor.

NEW SECTION

WAC 314-55-200 How will the liquor control board identify marijuana, usable marijuana, and marijuana-infused products during checks of licensed businesses? Officers shall identify marijuana, usable marijuana, and marijuana-infused products during on-site inspections of licensed producers, processors, and retailers of marijuana by means of product in the traceability system, and/or by observation based on training and experience. Products that are undetermined to be marijuana, usable marijuana, and marijuana-infused products will be verified by the following:

(1) Officers may take a sample large enough for testing purposes;

(2) Field test kits may be used if available and appropriate for the type of product being verified; and

(3) Those samples not able to be tested with a field test kit may be tested through the Washington state toxicology or crime lab.

NEW SECTION

WAC 314-55-210 Will the liquor control board seize or confiscate marijuana, usable marijuana, and marijuana-infused products? The liquor control board may seize or confiscate marijuana, usable marijuana, and marijuana-infused products under the following circumstances:

(1) During an unannounced or announced administrative search or inspection of a licensed location, or vehicle involved in the transportation of marijuana products, where any product was found to be in excess of product limitations set forth in WAC 314-55-075, 314-55-077, and 314-55-079.

(2) Any product not properly logged in inventory records or untraceable product required to be in the traceability system.

(3) Marijuana, usable marijuana, and marijuana-infused product that are altered or not properly packaged and labeled in accordance with WAC 314-55-105.

(4) During a criminal investigation, officers shall follow seizure laws detailed in RCW 69.50.505 and any other applicable criminal codes.

NEW SECTION

WAC 314-55-220 What is the process once the board summarily orders marijuana, usable marijuana, or marijuana-infused products of a marijuana licensee to be destroyed? (1) The board may issue an order to summarily destroy marijuana, usable marijuana, or marijuana-infused products after the board's enforcement division has completed a preliminary staff investigation of the violation and upon a determination that immediate destruction of marijuana, usable marijuana, or marijuana-infused products is necessary for the protection or preservation of the public health, safety, or welfare.

(2) Destruction of any marijuana, usable marijuana, or marijuana-infused products under this provision shall take effect immediately upon personal service on the licensee or employee thereof of the summary destruction order unless otherwise provided in the order.

(3) When a license has been issued a summary destruction order by the board, an adjudicative proceeding for the associated violation or other action must be promptly instituted before an administrative law judge assigned by the office of administrative hearings. If a request for an administrative hearing is timely filed by the licensee, then a hearing shall be held within ninety days of the effective date of the summary destruction ordered by the board.

NEW SECTION

WAC 315-55-230 What are the procedures the liquor control board will use to destroy or donate marijuana, usable marijuana, and marijuana-infused products to law enforcement? (1) The liquor control board may require a marijuana licensee to destroy marijuana, usable marijuana, and marijuana-infused products found in a licensed establishment to be in excess of product limits set forth in WAC 314-55-075, 314-55-077, and 314-55-079.

(2) Destruction of seized marijuana, usable marijuana, marijuana-infused products, or confiscated marijuana after case adjudication, will conform with liquor control board evidence policies, to include the option of donating marijuana, usable marijuana, and marijuana-infused products, set for destruction, to local and state law enforcement agencies for training purposes only.

(3) Marijuana, usable marijuana, and marijuana-infused products set for destruction shall not reenter the traceability system or market place.