

WSR 15-05-002
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
 (Securities Division)

[Filed February 4, 2015, 2:30 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-03-063.

Title of Rule and Other Identifying Information: The securities division is proposing to amend WAC 460-80-300 to explicitly allow for delivery of Franchise Disclosure Documents over the internet or by other electronic means, or in machine-readable media.

Hearing Location(s): Department of Financial Institutions (DFI), 150 Israel Road S.W., Tumwater, WA 98501, on March 25, 2015, at 10:00 a.m.

Date of Intended Adoption: March 26, 2015.

Submit Written Comments to: Michelle Webster, Securities Division, 150 Israel Road S.W., Tumwater, WA 98501, e-mail michelle.webster@dfi.wa.gov, fax (360) 704-6491, by March 25, 2015.

Assistance for Persons with Disabilities: Contact Carolyn Hawkey, P.O. Box 9033, Olympia, WA 98507, by March 18, 2015, TTY (360) 664-8126 or (360) 902-8760.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The Washington Franchise Investment Protection Act requires delivery of a franchise disclosure document at least fourteen calendar days prior to the execution by the prospective franchisee of any binding franchise or other agreement, or at least fourteen calendar days before the prospective franchisee signs a binding agreement with, or makes any payment to, the franchisor or an affiliate in connection with the proposed franchise sale. Neither the Washington State Franchise Investment Protection Act nor the securities division's rules explicitly allow a franchisor to provide the Franchise Disclosure Document electronically to prospective franchisees. On September 14, 2003, the North American Securities Administrators Association (NASAA) approved a Statement of Policy Regarding Electronic Delivery of Franchise Disclosure Documents. On January 22, 2007, the Federal Trade Commission (FTC) adopted amendments to its franchise rule that explicitly allowed electronic delivery of Franchise Disclosure Documents.

The securities division recognizes that explicitly allowing for electronic disclosure of Franchise Disclosure Documents may benefit prospective franchisees by making Franchise Disclosure Documents more readily available and more readable. Allowing electronic disclosure also benefits franchisors by reducing costs associated with reproduction and delivery of disclosure materials. As the amendments considered by the division reflect the language of the NASAA statement of policy, and the FTC rules similarly allow for electronic delivery of Franchise Disclosure Documents, the amendments under consideration would better coordinate the securities division's rules with other federal and state laws that regulate the offer and sale of franchises. The proposed amended rule also reflects franchisors' practice in delivering electronic disclosure in reliance on the federal E-SIGN Act.

Statutory Authority for Adoption: RCW 19.100.080, 19.100.250.

Statute Being Implemented: Chapter 19.100 RCW.

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

Name of Proponent: DFI, securities division, governmental.

Name of Agency Personnel Responsible for Drafting: Michelle Webster, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8736; Implementation: Scott Jarvis, Director, DFI, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760; and Enforcement: William Beatty, Director, Securities, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8760.

No small business economic impact statement has been prepared under chapter 19.85 RCW. If any costs are borne by businesses in connection with the proposed rule, these costs will be no more than minor. As such, the agency is not required to prepare a small business economic impact statement under RCW 19.85.030.

A cost-benefit analysis is not required under RCW 34.05.328. DFI is not an agency identified in RCW 34.05.-328.

February 4, 2015

Scott Jarvis

Director

AMENDATORY SECTION (Amending WSR 09-22-050, filed 10/29/09, effective 11/29/09)

WAC 460-80-300 Delivery and receipt of offering circular. (1) Each person that sells a franchise that is registered or required to be registered pursuant to RCW 19.100-020 shall ensure that the Franchise Disclosure Document and other required documents are delivered to each offeree in accordance with RCW 19.100.080 and shall obtain a signed receipt therefore in the form prescribed by the director.

(2) A franchisor may deliver a Franchise Disclosure Document over the internet or by other electronic means, or in machine-readable media, provided:

(a) The Franchise Disclosure Document:

(i) Is delivered as a single, integrated document or file;

(ii) Has no extraneous content beyond what is required or permitted by law and by the 2008 Franchise Registration and Disclosure Guidelines promulgated by NASAA, but which may include customary devices for manipulating electronic documents in machine readable form and tools, or access to tools, that may be necessary or convenient to enable the recipient to receive and view the Franchise Disclosure Document;

(iii) Has no links to or from external documents or content;

(iv) Is delivered in a form that intrinsically enables the recipient to store, retrieve, and print the Franchise Disclosure Document; and

(v) Conforms as to its content and format to the requirements of law.

(b) The franchisor:

(i) Can prove that it delivered the Franchise Disclosure Document electronically in compliance with this section, and that it did so at or before the time required by law; and

(ii) Keeps records of its electronic delivery of Franchise Disclosure Documents and makes those records available on demand by the administrator.

(3) "Delivery" requires that the Franchise Disclosure Document be conveyed to and received by the prospective franchisee, or that the storage media in which the Franchise Disclosure Document is stored be physically delivered to the prospective franchisee in accordance with subsection (2)(a) of this section.

(4) This section does not change or waive any other requirement of law concerning registration or presale disclosure of franchise offerings.

WSR 15-05-017

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed February 6, 2015, 3:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-06-083, 13-04-089, 14-06-082, 13-03-147, and 14-08-042.

Title of Rule and Other Identifying Information: The aging and long-term support administration is proposing to amend WAC 388-96-381 Procedure for refunding resident personal funds, 388-96-738 What default case mix group and weight must the department use for case mix grouping when there is no minimum data set resident assessment for a nursing facility resident?, 388-96-739 How will the department determine which resident assessments are medicaid resident assessments?, 388-96-718 Public process for determination of rates, 388-96-585 Unallowable costs, and 388-96-809 Change of ownership—Final reports—Settlement securities.

Hearing Location(s): Office Building 2, 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 March 24, 2015, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 25, 2015.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., March 24, 2015.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by phone (360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 388-96-381 will increase the time a facility has to return resident funds from one week to thirty days and will align with a similar WAC in chapter 388-97 WAC.

WAC 388-96-738 and 388-96-739 will update references in the WAC to minimum data set 3.0 to reflect the currently used terminology and clarify the department's position on who will be counted as a medicaid resident. WAC 388-96-718 will update the language to allow for notifications to be sent via e-mail in addition to USPS mail.

WAC 388-96-585 will address unallowable expenses on the nursing facility cost reports used to determine the nursing facility medicaid rates. Currently, travel expenses outside of Idaho, Oregon, Washington, and British Columbia are generally not allowed. This would remove that restriction to allow travel expenses on the cost reports.

WAC 388-96-809 will allow a security held pursuant to this section to be released to the contractor if the new contractor assumes all liability. Previously, it was not clear what the proper and allowed course was in these situations.

Reasons Supporting Proposal: These proposed changes will increase WAC clarity, keep practices on pace with technology, and increase consistency in the cost reports.

Statutory Authority for Adoption: RCW 74.46.431(9).

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 and Implementation: Elizabeth Pashley, 4450 10th Avenue S.E., Lacey, WA 98503, (360) 725-2447; and Enforcement: Ken Callaghan, 4450 10th Avenue S.E., Lacey, WA 98503, (360) 725-2499.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed changed rules do not impose more than minor costs on affected small businesses.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules do not meet the definition of a significant legislative rule under RCW 34.05.328.

February 4, 2015
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 90-20-075, filed 9/28/90, effective 10/1/90)

WAC 388-96-381 Procedure for refunding resident personal funds. (1) When a resident is discharged or transferred, the balance of the resident's personal funds shall be returned to the individual designated in WAC 388-96-375 within (~~one week~~) thirty days and a receipt obtained. In some cases it may be advisable to mail the refund to the resident's new residence.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-585 Unallowable costs. (1) Unallowable costs listed in subsection (2) of this section represent a partial summary of such costs, in addition to those unallowable under chapter 74.46 RCW and this chapter.

(2) Unallowable costs include but are not limited to the following:

(a) costs of items or services not covered by the medical care program. Costs of such items or services will be unallowable even if they are indirectly reimbursed by the department as the result of an authorized reduction in patient contribution;

(b) Costs of services and items provided to recipients which are covered by the medical care program but not included in the medicaid per-resident day payment rate established under this chapter and chapter 74.46 RCW;

(c) Costs associated with a capital expenditure subject to section 1122 approval (part 100, Title 42 C.F.R.) if the department found it was not consistent with applicable standards, criteria, or plans. If the department was not given timely notice of a proposed capital expenditure, all associated costs will be unallowable up to the date they are determined to be reimbursable under applicable federal regulations;

(d) Costs associated with a construction or acquisition project requiring certificate of need approval, or exemption from the requirements for certificate of need for the replacement of existing nursing home beds, pursuant to chapter 70.38 RCW if such approval or exemption was not obtained;

(e) Interest costs other than those provided by WAC 388-96-556(4) on and after January 1, 1985;

(f) Salaries or other compensation of owners, officers, directors, stockholders, partners, principals, participants, and others associated with the contractor or its home office, including all board of directors' fees for any purpose, except reasonable compensation paid for service related to patient care;

(g) Costs in excess of limits or in violation of principles set forth in this chapter;

(h) Costs resulting from transactions or the application of accounting methods which circumvent the principles of the payment system set forth in this chapter and chapter 74.46 RCW;

(i) Costs applicable to services, facilities, and supplies furnished by a related organization in excess of the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere;

(j) Bad debts of nonTitle XIX recipients. Bad debts of Title XIX recipients are allowable only when:

(i) The debt is related to covered services;

(ii) It arises from the recipient's required contribution toward the cost of care;

(iii) The provider can establish reasonable collection efforts were made. Reasonable collection efforts shall consist of at least three documented attempts by the contractor to obtain payment demonstrating that the effort devoted to collecting the bad debts of Title XIX recipients is the same devoted by the contractor to collect the bad debts of nonTitle XIX recipients;

(iv) The debt was actually uncollectible when claimed as worthless; and

(v) Sound business judgment established there was no likelihood of recovery at any time in the future.

(k) Charity and courtesy allowances;

(l) Cash, assessments, or other contributions, excluding dues, to charitable organizations, professional organizations, trade associations, or political parties, and costs incurred to improve community or public relations;

(m) Vending machine expenses;

(n) Expenses for barber or beautician services not included in routine care;

(o) Funeral and burial expenses;

(p) Costs of gift shop operations and inventory;

(q) Personal items such as cosmetics, smoking materials, newspapers and magazines, and clothing, except those used in patient activity programs;

(r) Fund-raising expenses, except those directly related to the patient activity program;

(s) Penalties and fines;

(t) Expenses related to telephones, radios, and similar appliances in patients' private accommodations;

(u) Televisions acquired prior to July 1, 2001;

(v) Federal, state, and other income taxes;

(w) Costs of special care services except where authorized by the department;

(x) Expenses of an employee benefit not in fact made available to all employees on an equal or fair basis, for example, key-man insurance and other insurance or retirement plans;

(y) Expenses of profit-sharing plans;

(z) Expenses related to the purchase and/or use of private or commercial airplanes which are in excess of what a prudent contractor would expend for the ordinary and economic provision of such a transportation need related to patient care;

(aa) Personal expenses and allowances of any nursing home employees or owners or relatives of any nursing home employees or owners;

(bb) All expenses of maintaining professional licenses or membership in professional organizations;

(cc) Costs related to agreements not to compete;

(dd) Amortization of goodwill, lease acquisition, or any other intangible asset, whether related to resident care or not, and whether recognized under generally accepted accounting principles or not;

(ee) Expenses related to vehicles which are in excess of what a prudent contractor would expend for the ordinary and economic provision of transportation needs related to patient care;

(ff) Legal and consultant fees in connection with a fair hearing against the department when the department's Board of Appeals upholds the department's actions in an administrative review decision. When the administrative review decision is pending, reported legal and consultant fees will be unallowable. To be allowable, the contractor must report legal and consultant fees related to an administrative review decision issued in the contractor's favor in the cost report period in which the Board of Appeals issues its decision irrespective of when the legal and consultant fees related to the administrative review were incurred;

(gg) Legal and consultant fees of a contractor or contractors in connection with a lawsuit against the department. Judicial review is a lawsuit against the department;

(hh) Lease acquisition costs, goodwill, the cost of bed rights, or any other intangible assets;

(ii) All rental or lease costs other than those provided for in WAC 388-96-580;

(jj) Postsurvey charges incurred by the facility as a result of subsequent inspections under RCW 18.51.050 which

occur beyond the first postsurvey visit during the certification survey calendar year;

(kk) Compensation paid for any purchased nursing care services, including registered nurse, licensed practical nurse, and nurse assistant services, obtained through service contract arrangement in excess of the amount of compensation paid for such hours of nursing care service had they been paid at the average hourly wage, including related taxes and benefits, for in-house nursing care staff of like classification at the same nursing facility, as reported in the most recent cost report period;

(ll) For all partial or whole rate periods after July 17, 1984, costs of land and depreciable assets that cannot be reimbursed under the Deficit Reduction Act of 1984 and implementing state statutory and regulatory provisions;

(mm) Costs reported by the contractor for a prior period to the extent such costs, due to statutory exemption, will not be incurred by the contractor in the period to be covered by the rate;

(nn) Costs of outside activities, for example, costs allocated to the use of a vehicle for personal purposes or related to the part of a facility leased out for office space;

(oo) Travel expenses (~~((outside the states of Idaho, Oregon, and Washington and the province of British Columbia. However, travel to or from the home or central office of a chain organization operating a nursing facility is allowed whether inside or outside these areas if the travel is necessary, ordinary, and related to resident care))~~) that are not necessary, ordinary, and related to resident care;

(pp) Moving expenses of employees in the absence of demonstrated, good-faith effort to recruit within the states of Idaho, Oregon, and Washington, and the province of British Columbia;

(qq) Depreciation in excess of four thousand dollars per year for each passenger car or other vehicle primarily used by the administrator, facility staff, or central office staff;

(rr) Costs for temporary health care personnel from a nursing pool not registered with the secretary of the department of health;

(ss) Payroll taxes associated with compensation in excess of allowable compensation of owners, relatives, and administrative personnel;

(tt) Costs and fees associated with filing a petition for bankruptcy;

(uu) All advertising or promotional costs, except reasonable costs of help wanted advertising;

(vv) Interest charges assessed by any department or agency of this state for failure to make a timely refund of overpayments and interest expenses incurred for loans obtained to make the refunds;

(ww) All home office or central office costs, whether on or off the nursing facility premises, and whether allocated or not to specific services, in excess of the median of those adjusted costs for all facilities reporting such costs for the most recent report period;

(xx) Tax expenses that a nursing facility has never incurred;

(yy) Effective July 1, 2007, and for all future rate settings, any costs associated with the quality maintenance fee repealed by chapter 241, Laws of 2006;

(zz) Any portion of trade association dues attributable to legal and consultant fees and costs in connection with lawsuits against the department shall be unallowable; and

(aaa) Increased costs resulting from a series of transactions between the same parties and involving the same assets (e.g., sale and lease back, successive sales or leases of a single facility or piece of equipment).

AMENDATORY SECTION (Amending WSR 99-24-084, filed 11/30/99, effective 12/31/99)

WAC 388-96-718 Public process for determination of rates. (1) The purpose of this section is to describe the manner in which the department will comply with the federal Balanced Budget Act of 1997, Section 4711 (a)(1), codified at 42 U.S.C. 1396a (a)(13)(A).

(2) For all material changes to the methodology for determining nursing facility medicaid payment rates occurring after October 1, 1997, and requiring a Title XIX state plan amendment to be submitted to and approved by the Health Care Financing Administration under applicable federal laws, the department shall follow the following public process:

(a) The proposed estimated initial payment rates, the proposed new methodologies for determining the payment rates, and the underlying justifications shall be published. Publication shall be:

(i) In the Washington State Register; or

(ii) In the Seattle Times and Spokane Spokesman Review newspapers.

(b) The department shall maintain and update as needed a mailing list of all individuals and organizations wishing to receive notice of changes to the nursing facility medicaid payment rate methodology, and all materials submitted for publication shall be sent either postage prepaid by regular mail to such individuals and organizations or by e-mail. Individuals and organizations wishing to receive notice shall notify the department in writing.

(c) Nursing facility contractors, their associations, nursing facility medicaid beneficiaries, representatives of contractors or beneficiaries, and other concerned members of the public shall be given a reasonable opportunity to review and comment on the proposed estimated rates, methodologies and justifications. The period allowed for review and comment shall not be less than fourteen calendar days after the date of the Washington State Register containing the published material or the date the published material has appeared in both the Seattle Times and the Spokane Spokesman Review.

(d) If, after receiving and considering all comments, the department decides to move ahead with any change to its nursing facility medicaid payment rate methodology, it shall adopt needed further changes in response to comments, if any, and shall publish the final estimated initial rates, final rate determination methodologies and justifications. Publication shall be:

(i) In the Washington State Register; or

(ii) In the Seattle Times and Spokane Spokesman Review newspapers.

(e) Unless an earlier effective date is required by state or federal law, implementation of final changes in methodolo-

gies and commencement of the new rates shall not occur until final publication has occurred in the Register or in both designated newspapers. The department shall not be authorized to delay implementation of, or to alter, ignore or violate requirements of, state or federal laws in response to public process comments.

(f) Publication of proposed estimated initial payment rates and final estimated initial payment rates shall be deemed complete once the department has published:

(i) The statewide average proposed estimated initial payment rate weighted by adjusted medicaid resident days for all medicaid facilities from the most recent cost report year, including the change from the existing statewide average payment rate weighted by adjusted medicaid resident days for all medicaid facilities from the most recent cost report year; and

(ii) The statewide average final estimated initial payment rate weighted by adjusted medicaid resident days for all medicaid facilities from the most recent cost report year, including the change from the existing statewide average payment rate weighted by adjusted medicaid resident days for all medicaid facilities from the most recent cost report year.

(3) Nothing in this section shall be construed to prevent the department from commencing or completing the public process authorized by this section even though the proposed changes to the methodology for determining nursing facility medicaid payment rates are awaiting federal approval, or are the subject of pending legislative, gubernatorial or rule-making action and are yet to be finalized in statute and/or regulation.

(4)(a) Neither a contractor nor any other interested person or organization shall challenge, in any administrative appeals or exception procedure established in rule by the department under the provisions of chapter 74.46 RCW, the adequacy or validity of the public process followed by the department in proposing or implementing a change to the payment rate methodology, regardless of whether the challenge is brought to obtain a ruling on the merits or simply to make a record for subsequent judicial or other review. Such challenges shall be pursued only in courts of proper jurisdiction as may be provided by law.

(b) Any challenge to the public process followed by the department that is brought in the course of an administrative appeals or exception procedure shall be dismissed by the department or presiding officer, with prejudice to further administrative review and record-making, but without prejudice to judicial or other review as may be provided by law.

(5) The public process required and authorized by this section shall not apply to any change in the payment rate methodology that does not require a Title XIX state plan amendment under applicable federal laws, including but not limited to:

(a) Prospective or retrospective changes to nursing facility payment rates or to methodologies for establishing such rates ordered by a court or administrative tribunal, after exhaustion of all appeals by either party as may be authorized by law, or the expiration of time to appeal; or

(b) Changes to nursing facility payment rates for one or more facilities resulting from the application of authorized payment rate methodologies, principles or adjustments,

including but not limited to: Partial or phased-in termination or implementation of rate methodologies; scheduled cost rebasing; quarterly or other updates to reflect changes in case mix or other private or public source data used to establish rates; adjustments for inflation or economic trends and conditions; rate funding for capital improvements or new requirements imposed by the department; changes to resident-specific or exceptional care rates; and changes to correct errors or omissions by the contractor or the department.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

WAC 388-96-738 What default case mix group and weight must the department use for case mix grouping when there is no minimum data set resident assessment for a nursing facility resident? (1) When a resident:

(a) ~~((Dies))~~ Expires before the facility completes the resident's initial assessment, the department must assign the assessment to the special care case mix group - ~~((SSB))~~ HD2. The department must use the case mix weight assigned to the special care case mix group - ~~((SSB))~~ HD2. The department will count the case as a medicaid resident;

(b) Is discharged to an acute care facility before the nursing facility completes the resident's initial assessment, the department must assign the assessment to the special care case mix group - ~~((SSB))~~ HD2. The department must use the case mix weight assigned to the special care case mix group - ~~((SSB))~~ HD2. The department will count the case as a medicaid resident; or

(c) Is discharged for a reason other than those noted above before the facility completes the resident's initial assessment, the department must assign the assessment to the case mix group BC1 ~~((with a case mix weight of 1.000))~~. The department will count the case as a medicaid resident.

(2) If the resident assessment is untimely as defined in RCW 74.46.501 and as defined by federal regulations, then the department must assign the case to the default case mix group of BC1 ~~((which has a case mix weight of 1.000))~~. The department will count the case a medicaid resident.

AMENDATORY SECTION (Amending WSR 98-20-023, filed 9/25/98, effective 10/1/98)

WAC 388-96-739 How will the department determine which resident assessments are medicaid resident assessments? The department must identify a medicaid resident assessment through the review of the minimum data set (MDS) ~~((payer source code))~~ medicaid number field. If the nursing facility ~~((codes the payer source as "medicaid per diem," regardless of whether any other payer source codes are checked))~~ completes the MDS medicaid number field with a valid medicaid number or the appropriate code for medicaid pending, then the department will count the case as a medicaid resident assessment.

AMENDATORY SECTION (Amending WSR 11-05-068, filed 2/14/11, effective 2/26/11)

WAC 388-96-809 Change of ownership—Final reports—Settlement securities. (1) When there is a change

of ownership for any reason, final reports shall be submitted as required by WAC 388-96-022.

(2) Upon a notification of intent to change ownership, the department shall determine by settlement or reconciliation the amount of any overpayments made to the assigning or terminating contractor, including overpayments disputed by the assigning or terminating contractor. If settlements are unavailable for any period up to the date of assignment or termination, the department shall make a reasonable estimate of any overpayment or underpayments for such periods. The reasonable estimate shall be based upon prior period settlements, available audit findings, the projected impact of prospective rates, and other information available to the department. The department shall also determine and add in the total of all other debts and potential debts owed to the department regardless of source, including, but not limited to, interest owed to the department as authorized by this chapter, civil fines imposed by the department, or third-party liabilities.

(3) For all cost reports, the assigning or terminating contractor shall provide security, in a form deemed adequate by the department, equal to the total amount of determined and estimated overpayments and all debts and potential debts from any source, whether or not the overpayments are the subject of good faith dispute including but not limited to, interest owed to the department, civil fines imposed by the department, and third-party liabilities. Security shall consist of one or more of the following:

- (a) Withheld payments due the assigning or terminating contractor under the contract being assigned or terminated;
- (b) An assignment of funds to the department;
- (c) The new contractor's assumption of liability for the prior contractor's debt or potential debt;
- (d) An authorization to withhold payments from one or more medicaid nursing facilities that continue to be operated by the assigning or terminating contractor;
- (e) A promissory note secured by a deed of trust; or
- (f) Other collateral or security acceptable to the department.

(4) An assignment of funds shall:

(a) Be at least equal to the amount of determined or estimated debt or potential debt minus withheld payments or other security provided; and

(b) Provide that an amount equal to any recovery the department determines is due from the contractor from any source of debt to the department, but not exceeding the amount of the assigned funds, shall be paid to the department if the contractor does not pay the debt within sixty days following receipt of written demand for payment from the department to the contractor.

(5) The department shall release any payment withheld as security if alternate security is provided under subsection (3) of this section in an amount equivalent to the determined and estimated debt.

(6) If the total of withheld payments and assigned funds is less than the total of determined and estimated debt, the unsecured amount of such debt shall be a debt due the state and shall become a lien against the real and personal property of the contractor from the time of filing by the department with the county auditor of the county where the contractor

resides or owns property, and the lien claim has preference over the claims of all unsecured creditors.

(7) A properly completed final cost report shall be filed in accordance with WAC 388-96-022, which shall be examined by the department in accordance with WAC 388-96-205.

(8) Security held pursuant to this section shall be released to the contractor after all debts, including accumulated interest owed the department, have been paid by the old owner.

(9) Security held pursuant to this section shall be released to the contractor if the new contractor assumes all liability.

(10) If, after calculation of settlements for any periods, it is determined that overpayments exist in excess of the value of security held by the state, the department may seek recovery of these additional overpayments as provided by law.

~~((+0))~~ (11) Regardless of whether a contractor intends to change ownership, if a contractor's net medicaid overpayments and erroneous payments for one or more settlement periods, and for one or more nursing facilities, combined with debts due the department, reaches or exceeds a total of fifty thousand dollars, as determined by settlement, civil fines imposed by the department, third-party liabilities or by any other source, whether such amounts are subject to good faith dispute or not, the department shall demand and obtain security equivalent to the total of such overpayments, erroneous payments, and debts and shall obtain security for each subsequent increase in liability reaching or exceeding twenty-five thousand dollars. Such security shall meet the criteria in subsections (3) and (4) of this section, except that the department shall not accept an assumption of liability. The department shall withhold all or portions of a contractor's current contract payments or impose liens, or both, if security acceptable to the department is not forthcoming. The department shall release a contractor's withheld payments or lift liens, or both, if the contractor subsequently provides security acceptable to the department.

~~((+4))~~ (12) Notwithstanding the application of security measures authorized by this section, if the department determines that any remaining debt of the old owner is uncollectible from the old owner, the new owner is liable for the unsatisfied debt in all respects. If the new owner does not accept assignment of the contract and the contingent liability for all debt of the prior owner, a new certification survey shall be done and no payments shall be made to the new owner until the department determines the facility is in substantial compliance for the purposes of certification.

~~((+2))~~ (13) Medicaid provider contracts shall only be assigned if there is a change of ownership, and with approval by the department.

WSR 15-05-029

PROPOSED RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed February 10, 2015, 8:56 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 182-553-100 Home infusion therapy/parenteral nutrition program—General and 182-553-400 Home infusion therapy/parenteral nutrition program—Provider requirements.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Pear Conference Room, CSP 107, 626 8th Avenue, Olympia, WA 98504 (metered public parking is available street side around building. A map is available at http://www.hca.wa.gov/documents/directions_to_csp.pdf or directions can be obtained by calling (360) 725-1000), on March 24, 2015, at 10:00 a.m.

Date of Intended Adoption: Not sooner than March 25, 2015.

Submit Written Comments to: HCA Rules Coordinator, P.O. Box 45504, Olympia, WA 98504-5504, delivery 626 8th Avenue, Olympia, WA 98504, e-mail arc@hca.wa.gov, fax (360) 586-9727, by March 24, 2015.

Assistance for Persons with Disabilities: Contact Kelly Richters by March 16, 2015, TTY (800) 848-5429 or (360) 725-1307 or e-mail kelly.richters@hca.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The agency is making routine housekeeping changes to these rules to replace outdated references to DSHS and to clarify language.

Reasons Supporting Proposal: HCA is no longer part of DSHS.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Statute Being Implemented: RCW 41.05.021, 41.05.160.

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

Name of Proponent: HCA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1842; Implementation and Enforcement: Lisa Humphrey, P.O. Box 45506, Olympia, WA 98504-5506, (360) 725-1617.

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

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

February 10, 2015
Jason R. P. Crabbe
Rules Coordinator

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

WAC 182-553-100 Home infusion therapy/parenteral nutrition program—General. The ~~((department's))~~ agency's home infusion therapy/parenteral nutrition program provides the supplies and equipment necessary for parenteral

infusion of therapeutic agents to medical assistance clients. An eligible client receives equipment, supplies, and parenteral administration of therapeutic agents in a qualified setting to improve or sustain the client's health.

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

WAC 182-553-400 Home infusion therapy/parenteral nutrition program—Provider requirements. (1) Eligible providers of home infusion supplies and equipment and parenteral nutrition solutions must:

(a) Have a signed core provider agreement with the ~~((department))~~ agency; and

(b) Be one of the following provider types:

(i) Pharmacy provider;

(ii) Durable medical equipment (DME) provider; or

(iii) Infusion therapy provider.

(2) The ~~((department))~~ agency pays eligible providers for home infusion supplies and equipment and parenteral nutrition solutions only when the providers:

(a) Are able to provide home infusion therapy within their scope of practice;

(b) Have evaluated each client in collaboration with the client's physician, pharmacist, or nurse to determine whether home infusion therapy/parenteral nutrition is an appropriate course of action;

(c) Have determined that the therapies prescribed and the client's needs for care can be safely met;

(d) Have assessed the client and obtained a written physician order for all solutions and medications administered to the client in the client's residence or in a dialysis center through intravenous, epidural, subcutaneous, or intrathecal routes;

(e) Meet the requirements in WAC 388-502-0020, including keeping legible, accurate and complete client charts, and providing the following documentation in the client's medical file:

(i) For a client receiving infusion therapy, the file must contain:

(A) A copy of the written prescription for the therapy;

(B) The client's age, height, and weight; and

(C) The medical necessity for the specific home infusion service.

(ii) For a client receiving parenteral nutrition, the file must contain:

(A) All the information listed in (e)(i) of this subsection;

(B) Oral or enteral feeding trials and outcomes, if applicable;

(C) Duration of gastrointestinal impairment; and

(D) The monitoring and reviewing of the client's lab values:

(I) At the initiation of therapy;

(II) At least once per month; and

(III) When the client ~~((and/or))~~ the client's lab results, or both, are unstable.

WSR 15-05-037
PROPOSED RULES
DEPARTMENT OF CORRECTIONS

[Filed February 11, 2015, 1:05 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-01-054.

Title of Rule and Other Identifying Information: Chapter 137-30 WAC, Earned release/good time for offenders.

Hearing Location(s): Edna Lucille Goodrich (ELG) Building, 7345 Linderson Way S.W., Room 1034, Tumwater, WA 98501, on March 25, 2015, at 1 p.m.

Date of Intended Adoption: March 25, 2015.

Submit Written Comments to: John Nispel, P.O. Box 41114, Olympia, WA 98504-1114, e-mail john.nispel@doc.wa.gov, fax (360) 664-2009, by March 23, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To correct/update references to department of corrections (DOC) policy.

Reasons Supporting Proposal: References to DOC policy should be accurate.

Statutory Authority for Adoption: RCW 72.01.090.

Statute Being Implemented: RCW 72.09.130.

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

Name of Proponent: Wendy Stigall, program administrator, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Wendy Stigall, Headquarters, (360) 725-8881.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. No financial impact.

February 5, 2015
 Bernard Warner
 Secretary

AMENDATORY SECTION (Amending WSR 14-04-121, filed 2/5/14, effective 3/8/14)

WAC 137-30-030 Eligibility. (1) **ERT.** ~~((The following offenders may receive ERT:))~~

(a) Offenders convicted of a serious violent offense or a class A felony sex offense(;) may earn ERT as follows:

(i) Offense committed after June 30, 1990, and before July 1, 2003((-the ERT))- May not exceed fifteen percent of their sentence((-

(b) ~~Offenders convicted of a serious violent offense, or a class A felony sex offense;); and~~

(ii) Offense committed after June 30, 2003((-the ERT))- May not exceed ten percent of their sentence.

~~((e) Regardless of the date of offense or the date of sentencing, offenders))~~ (b) Offenders convicted before July 2, 2010, who are classified as moderate or low risk(;) may earn ERT ((up to)) not to exceed fifty percent of their sentence((- Provided, That)) regardless of the date of offense or

sentencing, provided they have not been convicted of or have a prior ~~((conviction of a))~~:

(i) Sex offense;

(ii) Violent offense;

(iii) Crime against a person, including identity theft in the first or second degree(;) committed on or after June 7, 2006;

(iv) Felony domestic violence;

(v) Residential burglary;

(vi) Violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture of, delivery of, or possession with intent to manufacture or deliver, methamphetamine;

(vii) Violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

(viii) Gross misdemeanor stalking;

(ix) Violation of a domestic violence court order, including gross misdemeanors; or

(x) Any new felony committed while under community supervision.

~~((c))~~ (c) Offenders may earn ERT ((up to one-third)) not to exceed thirty-three and one-third percent of the sentence in all other cases not identified in this section.

~~((d))~~ (d) An offender who has transferred from one sentence within a cause number to the next sentence, or from one cause number to the next cause number, may lose ERT associated with the previous sentence or cause. ERT may be taken on a consecutive sentence that is not yet being served.

~~((e))~~ (e) Offenders found guilty of infraction((s)) 557 or 810 (WAC 137-25-030) will lose fifty percent eligibility and all available ERT and privileges as outlined by department policy ~~((and will lose their fifty percent eligibility))~~. Offenders found guilty of infraction 813(;) related to employment or programming while in work release(;) will also lose all available ERT and privileges.

(2) **Good conduct time.**

(a) All offenders will be eligible for good conduct time, except:

(i) Offenders sentenced to death or life without parole;

(ii) Offenders serving the mandatory or flat time enhancement portion of their sentences;

(iii) Community custody violators sanctioned by the department on or after May 2, 2012; ~~((and))~~

(iv) Offenders sanctioned to community custody prison return or community custody inmate termination; and

(v) Indeterminate offenders whose minimum term has expired and who have not been paroled or transferred to a consecutive sentence. Any good conduct time earned or denied will be addressed to the correct sentence after the parole/transfer date is determined.

~~((Good conduct time will be applicable to all class A, B, and C felonies, except that: Indeterminate offenders cannot earn good conduct time if their minimum term has expired and they have not been paroled or transferred to a consecutive sentence. Any good conduct time earned or denied will be addressed to the correct sentence after the parole/transfer date is determined.~~

~~(e))~~ Offenders may lose earned and future good conduct time if found guilty of certain serious infractions listed in WAC 137-25-030 and sanctioned per department policy.

~~((d) A sentence reduction based on good conduct time will be established for each offender and computed on a pro rata basis for every thirty-day period served, as allowed by the offender's crime category.~~

~~(e))~~ (c) The following offenders may lose their good conduct time if found guilty of a serious infraction:

(i) Indeterminate offenders whose time has not been adopted by the indeterminate sentence review board (ISRB); and

(ii) Determinate offenders.

(d) The amount of time lost will be determined by the disciplinary hearing officer/community hearing officer/ISRB.

(e) Good conduct time lost as a result of infraction 557 or 810, or of an infraction 813 related to employment or programming while in work release, cannot be restored.

(3) Earned time.

(a) Offenders who participate in approved programs, including work and school, are eligible for earned time for each calendar month as follows:

(i) Earned time eligible under ten percent rule - One and eleven one-hundredths days;

(ii) Earned time eligible under fifteen percent rule - One and seventy-six one-hundredths days;

(iii) Earned time eligible under thirty-three and one-third percent rule - Five days;

(iv) Earned time eligible under fifty percent rule - Ten days.

(b) ~~((An offender who disagrees with the risk assessment results has the right to appeal to the superintendent of the facility where the decision was made within forty-eight hours of notification.~~

~~(e))~~ Offenders are not eligible for earned time if:

(i) They are serving an indeterminate sentence, and the ISRB has:

(A) Extended the cause ~~((has been extended))~~ to the maximum term ~~((by the ISRB))~~; or

(B) ~~((The ISRB has))~~ Previously denied future earned time.

(ii) They are not involved in mandatory programming as determined through the classification process and consistent with their custody facility plan. This includes refusing ~~((a))~~ mandatory ~~((work/school/program assignment))~~ programming or being terminated from a mandatory ~~((work/school/program))~~ program assignment for documented negative or substandard performance. An offender who is on a waiting list and then refuses a program assignment will ~~((lose))~~ not earn earned time for the month in which she or he refused.

• Offenders previously determined qualified to receive fifty percent earned time will participate in programming or activities targeted in the custody facility plan. The offender will not be penalized if programs and activities are not available.

(iii) They refuse any transfer, excluding work release. ~~((No))~~ Earned time ~~((, at the appropriate earned time percentage as allowed by crime category,))~~ will not be ~~((granted))~~

earned for ~~((each))~~ any calendar month the offender refuses assignment.

(iv) They serve twenty days or more in one calendar month in administrative ~~((segregation/intensive management status))~~ segregation or disciplinary segregation ~~((Loss of earned time will be calculated as allowed per crime category))~~ for negative behavior or unfounded/unsubstantiated protection concerns. The offender is ~~((not))~~ eligible to begin earning earned time ~~((until))~~ when the superintendent approves ~~((placement in))~~ transfer or return to general population. Offenders who are approved for transfer to general population and are scheduled for release to the community within sixty days will ~~((not lose))~~ earn earned time unless found guilty of infraction 557 or 810, or of an infraction 813 related to employment or programming while in work release. ~~((For other than negative behavior, offenders in administrative segregation will continue to earn earned time at the rate allowed by crime category, provided they maintain positive behavior throughout the placement.))~~

(v) They are serving the mandatory or flat time enhance-ment portion of their sentence, except for indeterminate offenders sentenced for crimes committed before July 1, 1984.

(vi) ~~((At a classification hearing where earned time will be addressed, the offender will receive a written record of his/her earned time at least twenty-four hours prior to the scheduled classification review if earned time is not earned. Action taken by the committee is final and cannot be appealed.~~

~~((vii) Earned time not earned as a result of infraction 557 or 810, or of an infraction 813 related to employment or programming while in work release, cannot be restored.~~

~~((viii))~~ Offenders will receive a written record of all earned time denials.

(4) Offenders are not eligible for fifty percent earned time if the offender's risk management level is changed to high risk violent or high risk nonviolent; high risk violent or high risk nonviolent offenders may earn up to one-third of the sentence.

WSR 15-05-043

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed February 12, 2015, 10:03 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-01-182.

Title of Rule and Other Identifying Information: WAC 388-418-0005 How will I know what changes to report?, this change will correct reporting requirements for cash, food, and medical programs.

Hearing Location(s): Office Building 2, 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 March 24, 2015, at 10:00 a.m.

Date of Intended Adoption: Not earlier than March 25, 2015.

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 5:00 p.m., March 24, 2015.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant by TTY (360) 664-6178, (360) 664-6092, or e-mail Kildaja@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This department is proposing to amend WAC 388-418-0005 to correct the policy concerning when categorically eligible (CE) Basic Food and food assistance program (FAP) households must report changes in income during the certification period. Current rules don't require CE households to report income changes during the certification period unless the income increases and exceeds two hundred percent of the federal poverty (also known as federal poverty level (FPL)). The income limit threshold for reporting changes should be set at one hundred thirty percent of the FPL.

The department is removing outdated references to long-term care, SSI-related medical, children's medical, pregnancy medical, and other medical benefits under this rule. These amendments are currently in effect via emergency rule making filed on December 26, 2014, as WSR 15-02-010. 2E2SHB 1738, Laws of 2011, designated the health care authority (HCA) as the single state agency responsible for the administration and supervision of Washington's medical assistance programs. HCA recodified medical assistance program rules to Title 182 WAC. Accordingly, the department is eliminating corresponding rules and medical references under Title 388 WAC.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, 2E2SHB 1738 and chapter 15, Laws of 2011, SHB 2069.

Statute Being Implemented: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 U.S.C. §2015.

Rule is necessary because of federal law, 7 C.F.R. §273.12 (a)(5)(v).

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Robert Thibodeau, 712 Pear Street S.E., Olympia, WA 98504, (360) 725-4634.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendment only affects households served by DSHS who are subject to simplified reporting rules under Basic Food or the state-funded FAP.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

February 11, 2015
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-04-051, filed 1/30/12, effective 3/1/12)

WAC 388-418-0005 How will I know what changes to report? (1) You must report changes to the department based on the kinds of assistance you receive. We inform you of your reporting requirements on letters we send you about your benefits. Follow the steps below to determine the types of changes you must report:

~~((H)) (a) If you receive ((assistance from any of the programs listed in subsection (1)), you must report changes for people in your assistance unit under chapter 388-408 WAC, based on the first program you receive benefits from:~~

~~(a) If you receive long term care benefits such as a home and community based waiver (Basic, Basic Plus, CORE, Community Protection, COPES, New Freedom, Medically Needy), care in a medical institution (nursing home, hospice care center, state veterans home, ICF/MR, RHC) or hospice, you must tell us if you have a change of:~~

~~(i) Residence;~~

~~(ii) Marital status;~~

~~(iii) Living arrangement;~~

~~(iv) Income;~~

~~(v) Resources;~~

~~(vi) Medical expenses; and~~

~~(vii) If we allow you expenses for your spouse or dependents, you must report changes in their income or shelter cost.~~

~~(b) If you receive medical benefits based on age, blindness, disability (SSI related medical), ((or ADA/ISA benefits,)) you need to tell us if:~~

~~(i) You move;~~

~~(ii) A family member moves into or out of your home;~~

~~(iii) Your resources change; or~~

~~(iv) Your income changes. This includes the income of you, your spouse or your child living with you.~~

~~(e) If you receive)) cash benefits, you need to tell us if:~~

~~(i) You move;~~

~~(ii) Someone moves out of your home;~~

~~(iii) Your total gross monthly income goes over the:~~

~~(A) Payment standard under WAC 388-478-0033 if you receive ABD cash; or~~

~~(B) Earned income limit under WAC 388-478-0035 and 388-450-0165 for all other programs;~~

~~(iv) You have liquid resources more than four thousand dollars; or~~

~~(v) You have a change in employment. Tell us if you:~~

~~(A) Get a job or change employers;~~

~~(B) Change from part-time to full-time or full-time to part-time;~~

~~(C) Have a change in your hourly wage rate or salary;~~

~~(D) Stop working; or~~

~~((E) See WAC 182-504-0100 for medical care services reporting requirements.))~~

~~((H)) (b) If you are a relative or nonrelative caregiver and receive cash benefits on behalf of a child in your care but not for yourself or other adults in your household, you need to tell us if:~~

~~(i) You move;~~

~~(ii) The child you are caring for moves out of the home;~~

~~(iii) Anyone related to you or to the child you are caring for moves into or out of the home;~~

(iv) There is a change in the earned or unearned income of anyone in your child-only means-testing assistance unit, as defined in WAC 388-450-0162 (3)(b). You do not need to report changes in earned income for your dependent children who are in school full-time (see WAC 388-450-0070).

(v) There is a change in the recipient child's earned or unearned income (see WAC 388-450-0070 for how we count the earned income of a child);

(vi) The recipient child has liquid resources more than four thousand dollars;

(vii) A recipient child in the home becomes a foster child; or

(viii) You legally adopt the recipient child.

~~((e) If you receive family medical benefits, you need to tell us if:~~

~~(i) You move;~~

~~(ii) A family member moves out of your home; or~~

~~(iii) If your income goes up or down by one hundred dollars or more a month and you expect this income change will continue for at least two months.))~~

(2) If you do not receive cash assistance (~~from any of the programs listed in subsection (1),~~) but you do receive benefits from (~~any of the programs listed in subsection (2))~~ basic food, you must report changes for the people in your assistance unit under chapter 388-408 WAC, (~~based on all the benefits you receive.~~) and tell us if:

~~(a) ((If you receive Basic Food benefits, you need to tell us if:~~

~~(i) If your household is a categorically eligible household as defined under WAC 388-414-0001, tell us if your total gross monthly income is more than two hundred percent of the federal poverty level; or~~

~~(ii) For all other households tell us if your)) Your total monthly income is more than the maximum gross monthly income as described in WAC 388-478-0060; or~~

~~((iii)) (b) Anyone who receives food benefits in your assistance unit and who must meet work requirements under WAC 388-444-0030 has their hours at work go below twenty hours per week.~~

~~((b) If you receive children's medical benefits, you need to tell us if:~~

~~(i) You move; or~~

~~(ii) A family member moves out of the house.~~

~~(c) If you receive pregnancy medical benefits, you need to tell us if:~~

~~(i) You move; or~~

~~(ii) You are no longer pregnant.~~

~~(d) If you receive other medical benefits, you need to tell us if:~~

~~(i) You move; or~~

~~(ii) A family member moves out of the home.))~~

WSR 15-05-052

PROPOSED RULES

DEPARTMENT OF HEALTH

(Dental Quality Assurance Commission)

[Filed February 13, 2015, 9:54 a.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 246-817-360 Prescribing, dispensing or distributing drugs, the commission proposes repealing the rule as it is duplicative in intent to RCW 18.32.020 and unnecessary.

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

Date of Intended Adoption: April 24, 2015.

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

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

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Proposed repeal of WAC 246-817-360 as it is duplicative in intent to RCW 18.32.020 and unnecessary. Repealing the rule would allow dentists to rely on the statute definition of the practice of dentistry for prescribing, rather than a rule that uses the term "dental-related condition."

Reasons Supporting Proposal: Proposed repeal of the rule will eliminate differing interpretations by stakeholders of the term "dental-related condition." RCW 18.32.685 authorizes a pharmacist to "fill prescriptions of legally licensed dentists necessary in the practice of dentistry." RCW 18.32.020 defines the practice of dentistry.

Statutory Authority for Adoption: RCW 18.32.0365.

Statute Being Implemented: RCW 18.32.020 and 18.32.685.

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

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

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

No small business economic impact statement has been prepared under chapter 19.85 RCW. 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)(v) exempts rules the content of which is explicitly and specifically dictated by statute.

February 12, 2015

Trina Castle

Executive Director

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-817-360 Prescribing, dispensing or distributing drugs.

WSR 15-05-063
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed February 17, 2015, 9:28 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-01-161.

Title of Rule and Other Identifying Information: Chapter 296-27 WAC, Recordkeeping and reporting; chapter 296-37 WAC, Standards for commercial diving operations; chapter 296-78 WAC, Safety standards for sawmills and woodworking operations; chapter 296-115 WAC, Safety requirements for charter boats; chapter 296-307 WAC, Safety standards for agriculture; and chapter 296-800 WAC, Safety and health core rules.

Hearing Location(s): Department of Labor and Industries (L&I), Room S117, 7273 Linderson Way S.W., Tumwater, WA 98501, on March 27, 2015, at 9:00 a.m.

Date of Intended Adoption: May 5, 2015.

Submit Written Comments to: Tari Enos, 7273 Linderson Way S.W., Tumwater, WA 98501, e-mail tari.enos@lni.wa.gov, fax (360) 902-5619, by April 3, 2015.

Assistance for Persons with Disabilities: Contact Tari Enos by March 13, 2015, at (360) 902-5541.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to update our rules to be at-least-as-effective-as the Occupational Safety and Health Administration's (OSHA) rules, but also maintaining the current state reporting requirement of eight hours for any inpatient hospitalization of any employee.

OSHA revised the Occupational Injury and Illness Recording and Reporting Requirements in 29 C.F.R. Part 1904 to use the North American Industry Classification System (NAICS) rather than the previously used standard industrial classification (SIC) system. The NAICS codes will now be used to determine which employers classified as low-hazard industries are partially exempt from recordkeeping requirements.

In addition, OSHA revised the reporting requirements for any work-related fatality, inpatient hospitalization, amputation, and the loss of an eye. Employers are now required to report to OSHA any work-related fatality within eight hours, and any work-related incident that results in an inpatient hospitalization, amputation, or loss of an eye for one or more employees within twenty-four hours. Also, references, formatting and minor housekeeping changes may be made throughout the chapters specified above.

AMENDED SECTIONS:**WAC 296-27-00101 Purpose and scope.**

- Added language to reflect OSHA's new reporting requirement for amputations and losses of an eye.
- Removed duplicative language that is stated in other sections of the chapter.

WAC 296-27-00103 Partial exemption for employers with ten or fewer employees.

- Updated language to reflect OSHA's new reporting requirements for amputations and losses of an eye.
- Streamlined to avoid duplicative language.
- Reordered requirements for better flow.

WAC 296-27-00105 Partial exemption for establishments in certain industries.

- Updated language from SIC to NAICS to be consistent with OSHA's changes.
- Reformatted guidance/information language into a note as it was not a requirement.
- Moved the NAICS table to this section.
- Deleted outdated[d] SIC information.
- Reformatted to remove the question and answer format.

WAC 296-27-00107 Keeping records for more than one agency.

- Changed "WISHA" to "department."

WAC 296-27-011 Recordkeeping forms and recording criteria.

- Updated language to plain talk by changing "the employer" to "you."

WAC 296-27-01101 Recording criteria.

- Updated and streamlined language to eliminate repetitive language.
- Reformatted to remove the question and answer format.
- Changed bullets into numbering.
- Removed unnecessary language that was not an actual requirement for clarity.

WAC 296-27-01103 Determination of work-relatedness.

- Reformatted to remove question and answer format.
- Updated reference.
- Moved the definitions of "work environment" and "pre-existing conditions" to the definition section.
- Combined the notes into one note box.
- Combined subsections (c) and (d) because they were closely related requirements.
- Streamlined requirements by removing unnecessary filler language to address plain talk principals and improve clarity.
- Updated "his or her" language to gender-neutral pronouns.

WAC 296-27-01105 Determination of new cases.

- Reformatted to remove question and answer format.
- Streamlined requirements by removing unnecessary filler language to address plain talk principals and improve clarity.

WAC 296-27-01107 General recording criteria.

- Reformatted to remove question and answer format.
- Streamlined requirements by removing unnecessary filler language to address plain talk principals and improve clarity.
- Moved the definitions of "routine functions," "medical treatment," and "first aid" to the definition section.
- Reformatted guidance/information language into a note as it was not a requirement.
- Grouped notes.
- Updated "his or her" language into gender-neutral pronouns.

WAC 296-27-01109 Recording criteria for needlestick and sharps injuries.

- Reformatted to remove question and answer format.
- Streamlined requirements by removing unnecessary filler language to address plain talk principals and improve clarity.
- Moved definition of "other potentially infectious materials" to definition section.

WAC 296-27-01111 Recording criteria for medical removal cases.

- Reformatted language to remove question and answer format.
- Streamlined requirements by removing unnecessary filler language to address plain talk principals and improve clarity.
- Changed previous requirements that were not requirements, but guidance, into a note.

WAC 296-27-01113 Recording criteria for occupational hearing loss cases.

- Reformatted to remove question and answer format.
- Streamlined requirements by removing unnecessary filler language to address plain talk principals and improve clarity.
- Reformatted guidance/information language into a note as it was not a requirement.
- Merged subsection (f) into WAC 296-27-01113(1) due to similarity.

WAC 296-27-01115 Recording criteria for work-related tuberculosis cases.

- Reformatted to remove question and answer format.
- Streamlined requirements by removing unnecessary filler language to address plain talk principals and improve clarity.
- Merged similar requirements.

WAC 296-27-01119 Forms.

- Reformatted to remove question and answer format.
- Streamlined requirements by removing unnecessary filler language to address plain talk principals and improve clarity.
- Moved the definition of "equivalent form" to the definition section.
- Reformatted guidance/information language into a note as it was not a requirement.

- Removed repetitive language and merged requirement in subsection (h) to WAC 296-27-01119 (3)(c).

WAC 296-27-02101 Multiple business establishments.

- Reformatted to remove question and answer format.
- Streamlined requirements by removing unnecessary filler language to address plain talk principals and improve clarity.
- Added correct reference to subsection (3)(b).
- Changed language to reflect second person point of view (from the employer's point of view).

WAC 296-27-02103 Covered employees.

- Reformatted to remove question and answer format.
- Streamlined requirements by removing unnecessary filler language to address plain talk principals and improve clarity.
- Reformatted guidance/information language into a note as it was not a requirement.

WAC 296-27-02105 Annual summary.

- Reformatted to remove question and answer format.
- Streamlined requirements by removing unnecessary filler language to address plain talk principals and improve clarity.
- Removed duplicative language.
- Changed bullets to lowercase letters.

WAC 296-27-02107 Retention and updating.

- Reformatted to remove question and answer format.
- Streamlined requirements by removing unnecessary filler language to address plain talk principals and improve clarity.
- Combined subsections (2)(b) and (c) into a note as they were both guidance.

WAC 296-27-02111 Employee involvement.

- Reformatted to remove question and answer format.
- Streamlined requirements by removing unnecessary filler language to address plain talk principals and improve clarity.
- Merged subsections (2)(a) into (1) as they were similar requirements.
- Moved the definitions of "authorized employee representative" and "personal representative" to the definition section.
- Added clarifying language as to what constituted a reasonable charge for printing copies.
- Changed bullets into numbers.

WAC 296-27-02113 Prohibition against discrimination.

- Changed "WISHA" to "the department."
- Added clarifying language about the type of variance.

WAC 296-27-02117 Variances from the recordkeeping rule.

- Reformatted to remove question and answer format.
- Added clarifying language about the type of variance and that "the act" mentioned is the federal Occupational Safety and Health Act.
- Changed bullets to lowercase letters.

WAC 296-27-031 Reporting fatalities, inpatient hospitalizations, amputations, and losses of an eye as the result of work-related incidents.

- Moved all reporting requirements from WAC 296-800-32005 into this section for consistency.
- Updated requirements to include a twenty-four hour reporting requirement for outpatient amputations and the loss of an eye per OSHA's mandated changes.
- Added clarifying language that amputations or losses of an eye that require inpatient hospitalization need to be reported within eight hours.
- Added language via OSHA about how to report fatalities, inpatient hospitalizations, amputations, or losses of an eye during normal business hours and when the offices are closed.
- Added language about what needs to be included in a report.
- Added language from OSHA about what to do if a reportable incident occurs due to a motor vehicle accident, on a public transportation system, or due to a heart attack.
- Added language from OSHA about how to respond if an employer does not find out about an incident right away or does not find out until later than [that] a reportable incident was work-related.
- Added clarifying language that an inpatient hospitalization that is only for observation or diagnostic testing is not reportable.
- Reformatted to remove question and answer format.
- Streamlined requirements by removing unnecessary filler language to address plain talk principals and improve clarity.

WAC 296-27-03101 Providing records to government representatives.

- Reformatted to remove question and answer format.
- Streamlined requirements by removing unnecessary filler language to address plain talk principals and improve clarity.
- Moved the definition of "government representative" to the definition section.

WAC 296-27-03103 Annual OSHA injury and illness survey.

- Reformatted to remove question and answer format.
- Streamlined requirements by removing unnecessary filler language to address plain talk principals and improve clarity.
- Changed bullets into lowercase letters.
- Updated and corrected section references.
- Changed "WISHA" to "the department."

WAC 296-27-03105 Requests from the Bureau of Labor Statistics (BLS) for data.

- Reformatted to remove question and answer format.
- Streamlined requirements by removing unnecessary filler language to address plain talk principals and improve clarity.
- Updated and corrected section references.

WAC 296-27-05101 Definitions.

- Reformatted definitions to be bolded with a period after the word and to begin immediately with a sentence.
- Added OSHA's definition for amputation and added a note after the definition.
- Clarified that the department means the Washington state department of labor and industries.
- Removed a definition for enucleation.
- Added a definition for work environment for clarity.
- Removed the question and answer format in the definition of establishment and changed bullets to lowercase letters.
- Moved the definition of hospitalization from chapter 296-800 WAC and updated it to reflect inpatient hospitalization to fit OSHA's requirements.
- Moved the following definitions into the definition section from other areas of the chapter for consistency: Authorized employee representative, authorized government representative, first aid, medical treatment, other potentially infectious materials, personal representative, preexisting condition, and routine functions.
- Removed the outdated SIC Industry description code table from the end of the section.

WAC 296-27-061 Nonmandatory Appendix A-age adjustments for comparing audiograms for recording hearing loss.

- Reformatted to match rest of chapter.

WAC 296-37-575 Recordkeeping requirements.

- Removed the specific recordkeeping requirements from this section and added/updated a reference to chapter 296-27 WAC for consistency and to keep all reporting and recordkeeping requirements in one location.

WAC 296-78-515 Management's responsibility.

- Removed the specific reporting requirements from this section and added a reference to chapter 296-27 WAC for consistency purposes and to keep all reporting and recordkeeping requirements in one location.

WAC 296-115-060 Operations.

- Removed specific reporting requirements from this section and added a reference to chapter 296-27 WAC for consistency purposes and to keep all reporting and recordkeeping requirements in one location.

WAC 296-307-018 What are the employer's responsibilities?

- Removed specific reporting requirements from the section and added a reference to chapter 296-27 WAC for consistency purposes and to keep all reporting and recordkeeping requirements in one location.

WAC 296-800-320 Summary.

- Removed WAC 296-800-32005 from the table of contents.
- Added clarifying language and removed the word ["reporting"] as it is no longer applicable.

WAC 296-800-32010 Make sure that any equipment involved in an accident is not moved.

- Updated the section title and language to reflect the new reporting requirements for inpatient hospitalizations, amputations, or losses of an eye.

WAC 296-800-32015 Assign people to assist the department of labor and industries.

- Updated language to reflect the new reporting requirements for inpatient hospitalizations, amputations, or losses of an eye.

WAC 296-800-370 Definitions.

- Removed the definition for "hospitalization" and added in "inpatient hospitalization."

REPEALED SECTIONS:

WAC 296-27-00109 Nonmandatory appendix to this section partially exempt industries, 296-27-041 Transition from the former rule, 296-27-04101 Summary and posting of the 2001 data, 296-27-04103 Retention and updating of old forms, 296-307-015 What must an employer do if a serious injury occurs?, and 296-800-32005 Report the death, probable death of any employee, or the in-patient hospitalization of any employee within 8 hours.

Reasons Supporting Proposal: Updating the current recordkeeping and reporting rules so L&I is at-least-as-effective-as OSHA.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, and 49.17.050.

Statute Being Implemented: Chapter 49.17 RCW.

Rule is necessary because of federal law, 29 C.F.R. Part 1904.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Lena Wang, Tumwater, Washington, (360) 902-5516; Implementation and Enforcement: Anne Soiza, Tumwater, Washington, (360) 902-5090.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No small business economic impact statement was prepared due to L&I not making any changes that made us more stringent than OSHA.

A cost-benefit analysis is not required under RCW 34.05.328. No cost-benefit analysis was prepared due to L&I not making any changes costing employers more money.

February 17, 2015

Joel Sacks

Director

AMENDATORY SECTION (Amending WSR 02-01-064, filed 12/14/01, effective 1/1/02)

WAC 296-27-00101 Purpose and scope. (1) **Purpose.** ~~((The purpose of this standard is to))~~ Chapter 296-27 WAC requires employers to record work-related injuries and illnesses, and report to the department any work-related ((fatalities, injuries and illnesses)) fatality, inpatient hospitalization, amputation, or loss of an eye within the time parameters specified in the rule.

~~((Note 1: Recording or reporting a work-related injury, illness, or fatality does not mean that the employer or employee was at fault, that a rule has been violated, or that the employee is eligible for workers' compensation or other benefits.))~~

(2) **Scope.** All employers covered by the Washington Industrial Safety and Health Act (WISHA) ~~((are covered by this))~~ must comply with the requirements in this standard, unless otherwise specified. ~~((However, most employers do not have to keep injury and illness records unless WISHA, OSHA, or the Bureau of Labor Statistics (BLS) informs them in writing that they must keep records. For example, employers with ten or fewer employees and business establishments in certain industry classifications are partially exempt from keeping injury and illness records.))~~

Note: The recordkeeping and reporting requirements ~~((of))~~ in this chapter are separate and distinct from the ~~((recordkeeping and reporting requirements under))~~ Industrial Insurance Act, Title 51 RCW ~~((the Industrial Insurance Act))~~ unless otherwise noted in this chapter, for workers' compensation benefits. These requirements do not mean that the employer or employee was at fault, or that a safety or health rule has been violated.

AMENDATORY SECTION (Amending WSR 08-05-012, filed 2/8/08, effective 4/1/08)

WAC 296-27-00103 Partial exemption for employers with ten or fewer employees. (1) ~~((Basic requirement.~~

~~((a)))~~ If your company had ten or fewer employees at all times during the last calendar year, you do not need to keep injury and illness records unless ((WISHA)) the department, OSHA, or the Bureau of Labor Statistics (BLS) informs you in writing that you must keep records under this section. However, as required by WAC 296-27-031, all employers covered by ((the WISH Act)) WISHA must report any ((workplace)) work-related incident that results in a fatality ((or the)), inpatient hospitalization ((of any employee)), amputation, or the loss of an eye.

~~((b)))~~ (a) The partial exemption for size is based on the number of employees in the entire company.

(b) To determine if you are exempt because of size, you need to determine your company's peak employment during the last calendar year. If you had no more than ten employees at any time in the last calendar year, your company qualifies for the partial exemption for size.

(2) If your company had more than ten employees at any time during the last calendar year, you must keep injury and illness records unless your establishment is classified as a partially exempt industry under WAC 296-27-00105.

~~((2))~~ Implementation-

~~((a))~~ Is the partial exemption for size based on the size of my entire company or on the size of an individual business establishment? The partial exemption for size is based on the number of employees in the entire company.

~~((b))~~ How do I determine the size of my company to find out if I qualify for the partial exemption for size? To determine if you are exempt because of size, you need to determine your company's peak employment during the last calendar year. If you had no more than ten employees at any time in the last calendar year, your company qualifies for the partial exemption for size.)

AMENDATORY SECTION (Amending WSR 09-01-158, filed 12/23/08, effective 3/1/09)

WAC 296-27-00105 Partial exemption for ~~((private employers)) establishments in certain industries.~~ (1) ~~((Basic requirement.~~

~~((a)) If your ~~((private business)) establishment is classified in a specific, low hazard ~~((retail, service, finance, insurance or real estate)) industry group listed in Table 1, Industry Exemption List for Recordkeeping at the end of this section, you do not need to keep injury and illness records unless ~~((WISHA)) the department, OSHA, or the BLS asks you to keep the records under ~~((WAC 296-27-03105 or 296-27-03107. (Public employers are not included in this exemption, except as indicated in (b) of this subsection.))~~ this chapter. However, all employers must report to ~~((WISHA)) the department any ~~((workplace)) work-related incident that results in a fatality ~~((or the in-patient)), inpatient hospitalization, amputation, or the loss of an eye of any employee (see WAC ~~((296-800-32005)) 296-27-031~~~~.~~~~~~~~~~~~

~~((b) If you are a public employer in SIC 821 (elementary and secondary schools) and 823 (libraries), you do not need to keep injury and illness records unless WISHA, OSHA or the BLS asks you to keep the records under WAC 296-27-03105 or 296-27-03107. However, all employers must report to WISHA any workplace incident that results in a fatality or the in-patient hospitalization of any employee (see WAC 296-800-32005).~~

~~((c) If one or more of your company's establishments are classified in a nonexempt industry, you must keep injury and illness records for all of such establishments unless your company is partially exempted because of size under WAC 296-27-00103.~~

~~(2) Implementation.~~

~~((a) **Does the partial industry classification exemption apply only to business establishments in the retail, services, finance, insurance or real estate industries (SICs 52-89)?** Yes, business establishments classified in agriculture; mining; construction; manufacturing; transportation; communication, electric, gas and sanitary services; or wholesale trade are not eligible for the partial industry classification exemption.~~

~~((b) **Is the partial industry classification exemption based on the industry classification of my entire company or on the classification of individual business establishments operated by my company?** The partial industry classification exemption applies to individual business establishments. If a company has several business establishments engaged in different classes of business activities, some of the company's establishments may be required to keep records, while others may be exempt.~~

~~((c) **How do I determine the Standard Industrial Classification code for my company or for individual establishments?** You determine your Standard Industrial Classification (SIC) code by using the Standard Industrial Classification manual, *Executive Office of the President, Office of Management and Budget*. You may contact your local L&I office for help in determining your SIC or visit Department of Revenue's web site, http://dor.wa.gov/reports/Qbrsearch/sic_list.htm.) **(2) The partial industry classification exemption is based on the North American Industrial Classification**~~

System (NAICS), and it applies to individual business establishments. If a company has several business establishments engaged in different classes of business activities, some of the company's establishments may be required to keep records while others may be exempt.

Note: To determine your NAICS code, you can do one of the following:

1. Contact your nearest OSHA office or the department.
2. Use the search feature at the U.S. Census Bureau NAICS main web page: <http://www.census.gov/eos/www/naics/>. In the search box for the most recent NAICS, enter a keyword that describes your type of business. A list of primary business activities containing that keyword and the corresponding NAICS codes will appear. Choose the one that most closely corresponds to your primary business activity or refine your search to obtain other choices.
3. Rather than searching through a list of primary business activities, you may also view the most recent complete NAICS structure with codes and titles by clicking on the link for the most recent NAICS on the U.S. Census Bureau NAICS main web page: <http://www.census.gov/eos/www/naics/>. Then click on the two-digit sector code to see all the NAICS codes under that sector. Then choose the six-digit code of your interest to see the corresponding definition, as well as cross-references and index items, when available.
4. If you know your old SIC code, you can also find the appropriate 2002 NAICS code by using the detailed conversion (concordance) between the 1987 SIC and 2002 NAICS available in Excel format for download at the "Concordances" link at the U.S. Census Bureau NAICS main web page: <http://www.census.gov/eos/www/naics/>.

Table 1
Industry Exemption List for Recordkeeping

<u>NAICS Code</u>	<u>Industry</u>
<u>4412</u>	<u>Other Motor Vehicle Dealers</u>
<u>4431</u>	<u>Electronics and Appliance Stores</u>
<u>4461</u>	<u>Health and Appliance Stores</u>
<u>4471</u>	<u>Gasoline Stations</u>
<u>4481</u>	<u>Clothing Stores</u>
<u>4482</u>	<u>Shoe Stores</u>
<u>4483</u>	<u>Jewelry, Luggage, and Leather Goods Stores</u>
<u>4511</u>	<u>Sporting Goods, Hobby, and Musical Instrument Stores</u>
<u>4512</u>	<u>Book, Periodical, and Music Stores</u>
<u>4531</u>	<u>Florists</u>
<u>4532</u>	<u>Office Supplies, Stationery, and Gift Stores</u>
<u>4812</u>	<u>Nonscheduled Air Transportation</u>
<u>4861</u>	<u>Pipeline Transportation of Crude Oil</u>
<u>4862</u>	<u>Pipeline Transportation of Natural Gas</u>
<u>4869</u>	<u>Other Pipeline Transportation</u>
<u>4879</u>	<u>Scenic and Sightseeing Transportation</u>
<u>4885</u>	<u>Freight Transportation Arrangement</u>

NAICS Code	Industry
<u>5111</u>	<u>Newspaper, Periodical, Book, and Directory Publishers</u>
<u>5112</u>	<u>Software Publishers</u>
<u>5121</u>	<u>Motion Picture and Video Industries</u>
<u>5122</u>	<u>Sound Recording Industries</u>
<u>5151</u>	<u>Radio and Television Broadcasting</u>
<u>5172</u>	<u>Wireless Telecommunications Carriers (except Satellite)</u>
<u>5173</u>	<u>Telecommunications Resellers</u>
<u>5179</u>	<u>Other Telecommunications</u>
<u>5181</u>	<u>Internet Service Providers and Web Search Portals</u>
<u>5182</u>	<u>Data Processing, Hosting, and Related Services</u>
<u>5191</u>	<u>Other Information Services</u>
<u>5211</u>	<u>Monetary Authorities—Central Bank</u>
<u>5221</u>	<u>Depository Credit Intermediation</u>
<u>5222</u>	<u>Nondepository Credit Intermediation</u>
<u>5223</u>	<u>Activities Related to Credit Intermediation</u>
<u>5231</u>	<u>Securities and Commodity Contracts Intermediation and Brokerage</u>
<u>5232</u>	<u>Securities and Commodity Exchanges</u>
<u>5239</u>	<u>Other Financial Investment Activities</u>
<u>5241</u>	<u>Insurance Carriers</u>
<u>5242</u>	<u>Agencies, Brokerages, and Other Insurance Related Activities</u>
<u>5251</u>	<u>Insurance and Employee Benefit Funds</u>
<u>5259</u>	<u>Other Investment Pools and Funds</u>
<u>5312</u>	<u>Office of Real Estate Agents and Brokers</u>
<u>5331</u>	<u>Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)</u>
<u>5411</u>	<u>Legal Services</u>
<u>5412</u>	<u>Accounting, Tax Preparation, Bookkeeping, and Payroll Services</u>
<u>5413</u>	<u>Architectural, Engineering, and Related Services</u>
<u>5414</u>	<u>Specialized Design Services</u>
<u>5415</u>	<u>Computer Systems Design and Related Services</u>
<u>5416</u>	<u>Management, Scientific, and Technical Consulting Services</u>
<u>5417</u>	<u>Scientific Research and Development Services</u>
<u>5418</u>	<u>Advertising and Related Services</u>

NAICS Code	Industry
<u>5511</u>	<u>Management of Companies and Enterprises</u>
<u>5611</u>	<u>Office Administrative Services</u>
<u>5614</u>	<u>Business Support Services</u>
<u>5615</u>	<u>Travel Arrangement and Reservation Services</u>
<u>5616</u>	<u>Investigation and Security Services</u>
<u>6111</u>	<u>Elementary and Secondary Schools</u>
<u>6112</u>	<u>Junior Colleges</u>
<u>6113</u>	<u>Colleges, Universities, and Professional Schools</u>
<u>6114</u>	<u>Business Schools and Computer and Management Training</u>
<u>6115</u>	<u>Technical and Trade Schools</u>
<u>6116</u>	<u>Other Schools and Instructions</u>
<u>6117</u>	<u>Educational Support Services</u>
<u>6211</u>	<u>Offices of Physicians</u>
<u>6212</u>	<u>Offices of Dentists</u>
<u>6213</u>	<u>Offices of Other Health Practitioners</u>
<u>6214</u>	<u>Outpatient Care Centers</u>
<u>6215</u>	<u>Medical and Diagnostic Laboratories</u>
<u>6244</u>	<u>Child Day Care Services</u>
<u>7114</u>	<u>Agents and Managers for Artists, Athletes, Entertainers, and Other Public Figures</u>
<u>7115</u>	<u>Independent Artists, Writers, and Performers</u>
<u>7213</u>	<u>Rooming and Boarding Houses</u>
<u>7221</u>	<u>Full-Service Restaurants</u>
<u>7222</u>	<u>Limited-Service Eating Places</u>
<u>7224</u>	<u>Drinking Places (Alcoholic Beverages)</u>
<u>8112</u>	<u>Electronic and Precision Equipment Repair and Maintenance</u>
<u>8114</u>	<u>Personal and Household Goods Repair and Maintenance</u>
<u>8121</u>	<u>Personal Care Services</u>
<u>8122</u>	<u>Death Care Services</u>
<u>8131</u>	<u>Religious Organizations</u>
<u>8132</u>	<u>Grantmaking and Giving Services</u>
<u>8133</u>	<u>Social Advocacy Organizations</u>
<u>8134</u>	<u>Civic and Social Organizations</u>
<u>8139</u>	<u>Business, Professional, Labor, Political, and Similar Organizations</u>

AMENDATORY SECTION (Amending WSR 02-01-064, filed 12/14/01, effective 1/1/02)

WAC 296-27-00107 Keeping records for more than one agency. If you create records to comply with another government agency's injury and illness recordkeeping requirements, OSHA will consider those records as meeting federal recordkeeping requirements if OSHA accepts the other agency's records under a memorandum of understanding with that agency, or if the other agency's records contain the same information as required by 29 C.F.R., Part 1904 (~~requires you to record~~). You may contact (~~WISHA or your local L&I office~~) the department for help in determining whether your records meet OSHA's requirements.

AMENDATORY SECTION (Amending WSR 02-01-064, filed 12/14/01, effective 1/1/02)

WAC 296-27-011 Recordkeeping forms and recording criteria. This section describes the types of work-related injuries and illnesses that (~~an employer~~) you must enter (~~into~~) on the OSHA (~~records and~~) recordkeeping forms. This section also explains the OSHA forms that (~~employers~~) you must use to record work-related fatalities, injuries, and illnesses.

AMENDATORY SECTION (Amending WSR 02-01-064, filed 12/14/01, effective 1/1/02)

WAC 296-27-01101 Recording criteria. (1) (~~Basic requirement. Each~~) Employers required to keep records by this chapter (~~to keep records of fatalities, injuries, and illnesses~~) must record each fatality, injury and illness that:

- (~~•~~) (a) Is work-related, see WAC 296-27-01103;
- (~~•~~) (b) Is a new case, see WAC 296-27-01105; and
- (~~•~~) (c) Meets one or more of the general recording criteria of WAC 296-27-01107 (~~or the application to~~).

(2) Additional criteria for specific cases (~~or~~) such as needlestick and sharps injury cases, hearing loss cases, medical removal cases, and musculoskeletal disorder cases are located in WAC 296-27-01109 through (~~296-27-01117~~) 296-27-01115.

(~~2~~) Implementation:

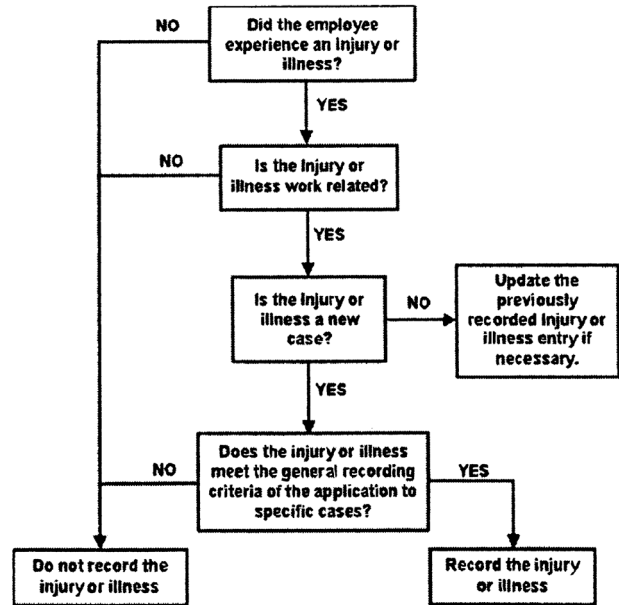
(a) ~~What sections of this rule describe recording criteria for recording work-related injuries and illnesses?~~ The table below indicates which sections of the rule address each topic:

- (i) Determination of work-relatedness. See WAC 296-27-01103.
- (ii) Determination of a new case. See WAC 296-27-01105.
- (iii) General recording criteria. See WAC 296-27-01107.
- (iv) Additional criteria. (Needlestick and sharps injury cases, tuberculosis cases, hearing loss cases, medical removal cases, and musculoskeletal disorder cases). See WAC 296-27-01109 through 296-27-01117.

(b) ~~How do I decide whether a particular injury or illness is recordable?~~

Note: The decision tree for recording work-related injuries and illnesses below shows the steps involved in (~~making this determination~~) determining whether a particular injury or illness is reportable.

Decision Tree



(~~•~~) ~~May I be required to keep other records or report additional information?~~ Yes, the director may require that additional records be kept or additional information reported to achieve the purpose of the WISH Act.)

AMENDATORY SECTION (Amending WSR 02-01-064, filed 12/14/01, effective 1/1/02)

WAC 296-27-01103 Determination of work-relatedness. (1) (~~Basic requirement.~~) You must consider an injury or illness to be work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a preexisting injury or illness. Work-relatedness is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an exception in (~~WAC 296-27-01103-2(b)~~) subsection (2)(a) through (i) of this section specifically applies.

(2) (~~Implementation:~~

(a) ~~What is the "work environment"?~~ Work environment is defined as "the establishment and other locations where one or more employees are working or are present as a condition of their employment. The work environment includes not only physical locations, but also the equipment or materials used by the employee during the course of his or her work."

(b) ~~Are there situations where an injury or illness occurs in the work environment and is not considered work-related?~~ Yes,) An injury or illness occurring in the work environment (~~that falls under~~) is not recordable or considered work-related if it meets one of the following

exceptions ~~((is not work-related, and therefore is not recordable.~~

You are ~~not~~ required to record injuries and illnesses if):

((*) (a) At the time of the injury or illness, the employee was present in the work environment as a member of the ~~(general)~~ public rather than as an employee.

((*) (b) The injury or illness involves signs or symptoms that surface at work but result solely from a nonwork-related event or exposure that occurs outside the work environment.

((*) (c) The injury or illness results solely from voluntary participation in a wellness program or in a medical, fitness, or recreational activity such as blood donation, physical examination, flu shot, exercise class, racquetball, or baseball.

((*) (d) The injury or illness is solely the result of an employee eating, drinking, or preparing food or drink for personal consumption (whether bought on the employer's premises or brought in). For example, if the employee is injured by choking on a sandwich while in the employer's establishment, the case would not be considered work-related.

(Note: ~~If the employee is made ill by ingesting food contaminated by workplace contaminants (such as lead), or gets food poisoning from food supplied by the employer, the case would be considered work-related.~~

*) (e) The injury or illness is solely the result of an employee doing personal tasks (unrelated to their employment) at the establishment outside of the employee's assigned working hours.

((*) (f) The injury or illness is solely the result of personal grooming, self-medication for a nonwork-related condition, or is intentionally self-inflicted.

((*) (g) The injury or illness is caused by a motor vehicle accident and occurs on a company parking lot or company access road while the employee is commuting to or from work.

((*) (h) The illness is the common cold or flu.

(Note: ~~Contagious diseases such as tuberculosis, brucellosis, hepatitis A, or plague are considered work-related if the employee is infected at work.~~

*) (i) The illness is a mental illness. Mental illness will not be considered work-related unless the employee voluntarily provides the employer with an opinion from a physician or other licensed health care professional with appropriate training and experience (psychiatrist, psychologist, psychiatric nurse practitioner, etc.) stating that the employee has a mental illness that is work-related.

~~((e) How do I handle a case)~~

- Notes:
- ~~1. If the employee is made ill by ingesting food contaminated by workplace contaminants (such as lead), or gets food poisoning from food supplied by the employer, the case would be considered work-related.~~
 - ~~2. Contagious diseases such as tuberculosis, brucellosis, hepatitis A, or plague are considered work-related if the employee is infected at work.~~

(3) If it is not obvious whether ~~((the precipitating))~~ an event or exposure ~~((occurred in the work environment or occurred away from work? In these situations))~~ was work-related, you must evaluate the employee's work duties and work environment to ~~((decide whether or not one or more))~~ determine if the event(s) or exposure(s) in the work environment either caused or contributed to the resulting condi-

tion or)) was work-related and resulted in either a new injury or illness or it significantly aggravated a preexisting condition. ~~((d) How do I know if an event or exposure in the work environment "significantly aggravated" a preexisting injury or illness?))~~ A preexisting condition is an injury or illness ~~((has been))~~ that is significantly aggravated ~~((, for purposes of injury and illness recordkeeping, when an))~~ by the event or exposure occurring in the work environment if it results in any of the following:

((*) (a) Death, provided that the preexisting injury or illness would likely not have resulted in death but for the occupational event or exposure.

((*) (b) Loss of consciousness, provided that the preexisting injury or illness would likely not have resulted in loss of consciousness but for the occupational event or exposure.

((*) (c) One or more days away from work, or days of restricted work, or days of job transfer that otherwise would not have occurred but for the occupational event or exposure.

((*) (d) Medical treatment in a case where no medical treatment was needed for the injury or illness before the workplace event or exposure, or a change in medical treatment was necessitated by the workplace event or exposure.

~~((e) Which injuries and illnesses are considered preexisting conditions? An injury or illness is a preexisting condition if it resulted solely from a nonwork-related event or exposure that occurred outside the work environment.~~

~~((f) How do I decide whether an injury or illness is work-related if the employee is on travel status at the time the injury or illness occurs?))~~ (4) Injuries and illnesses that occur while an employee is on travel status are work-related if, at the time of the injury or illness, the employee was engaged in work activities "in the interest of the employer." Examples ~~((of such activities))~~ include travel to and from customer contacts, conducting job tasks, and entertaining or being entertained to transact, discuss, or promote business (work-related entertainment includes only entertainment activities being engaged in at the direction of the employer). Injuries or illnesses that occur when the employee is on travel status do not have to be recorded if they meet one of the exceptions listed ~~((below:~~

If the employee has:	You may use the following to determine if an injury or illness is work-related:
* Checked into a hotel or motel for one or more days	When a traveling employee checks in to a hotel, motel, or into another temporary residence, he or she establishes a "home away from home." You must evaluate the employee's activities after he or she checks into the hotel, motel, or other temporary residence for their work-relatedness in the same manner as you evaluate the activities of a nontraveling employee. When the employee checks into the temporary residence, he or she is considered to have left the work environment. When the employee begins work each day, he or she reenters the work environment. If the employee has established a "home away from home" and is reporting to a fixed worksite each day, you also do not consider injuries or illnesses work-related if they occur while the employee is commuting between the temporary residence and the job location.

• Taken a detour for personal reasons
 Injuries or illnesses are not considered work-related if they occur while the employee is on a personal detour from a reasonably direct route of travel (e.g., has taken a side trip for personal reasons):

~~(g) How do I decide if a case is work-related when the employee is working at home?)~~ in Table 2 of this subsection:

Table 2
Determining Work-Related Injuries or Illnesses During Travel Status

<u>If the employee has:</u>	<u>You may use the following to determine if an injury or illness is work-related.</u>
<u>Checked into a hotel or motel for one or more days</u>	<u>When a traveling employee checks into a hotel, motel, or into another temporary residence, they establish a "home away from home." You must evaluate the employee's activities after they check into the hotel, motel, or other temporary residence for their work-relatedness in the same manner as you evaluate the activities of a nontraveling employee. When the employee checks into the temporary residence, they are considered to have left the work environment. When the employee begins work each day, they reenter the work environment. If the employee has established a "home away from home" and is reporting to a fixed worksite each day, you also do not consider injuries or illnesses work-related if they occur while the employee is commuting between the temporary residence and the job location.</u>
<u>Taken a detour for personal reasons</u>	<u>Injuries or illnesses are not considered work-related if they occur while the employee is on a personal detour from a reasonably direct route of travel (e.g., has taken a side trip for personal reasons).</u>

~~(5) Injuries and illnesses that occur while an employee is working at home (including work in a home office, will be) are considered work-related if the injury or illness occurs while the employee is performing work for pay or compensation in the home, and the injury or illness is directly related to the performance of work (rather than) and not to the (general) home environment (or setting). (For example,)~~

~~Note: Examples of recordable injury and illnesses that occur when an employee works at home:~~

- ~~1. If an employee drops a box of work documents and injures (his or her) their foot, the case is considered work-related.~~
- ~~2. If an employee's fingernail is punctured by a needle from a sewing machine used to perform garment work at home, becomes infected and requires medical treatment, the injury is considered work-related.~~
- ~~3. If an employee is injured because (he or she) they trip(s) on the family dog while rushing to answer a work phone call, the case is not considered work-related.~~
- ~~4. If an employee working at home is electrocuted because of faulty home wiring, the injury is not considered work-related.~~

AMENDATORY SECTION (Amending WSR 02-01-064, filed 12/14/01, effective 1/1/02)

WAC 296-27-01105 Determination of new cases. (1) ~~(Basic requirement.)~~ You must consider an injury or illness to be a "new case" if:

- (a) The employee has not previously experienced a recorded injury or illness of the same type that affects the same part of the body; or
- (b) The employee previously experienced a recorded injury or illness of the same type that affected the same part of the body but had recovered completely (all signs and symptoms had disappeared) from the previous injury or illness, and an event or exposure in the work environment caused the signs or symptoms to reappear.

~~(2) (Implementation:~~

~~(a) When an employee experiences the signs or symptoms of a chronic work-related illness, do I need to consider each recurrence of signs or symptoms to be a new case? No;))~~ For occupational illnesses where the signs or symptoms may recur or continue in the absence of an exposure in the workplace, the case must only be recorded once. Examples may include occupational cancer, asbestosis, byssinosis and silicosis.

~~((b)) (3) When an employee experiences the signs or symptoms of an injury or illness as a result of an event or exposure in the workplace, such as an episode of occupational asthma, you must ((4) treat the episode (even if the episode is a recurrence) as a new case((2 Yes, because the episode or recurrence was caused by an event or exposure in the workplace, the incident must be treated as a new case:~~

~~(e) May I rely on a physician or other licensed health care professional to determine whether a case is a new case or a recurrence of an old case?))~~

(4) You are not required to seek the advice of a physician or other licensed health care professional. However, if you do seek such advice, you must follow the ~~(physician)~~ physician's or other licensed health care professional's recommendation about whether the case is a new case or a recurrence. If you receive recommendations from two or more physicians or other licensed health care professionals, you must make a decision as to which recommendation is the most authoritative (best documented, best reasoned, or most authoritative), and record the case based upon that recommendation.

AMENDATORY SECTION (Amending WSR 07-03-163, filed 1/24/07, effective 4/1/07)

WAC 296-27-01107 General recording criteria. (1) ~~(Basic requirement.)~~ You must consider an injury or illness to meet the general recording criteria, and therefore to be recordable, if it results in any of the following:

- (a) Death(;));
- (b) Days away from work(;));
- (c) Restricted work or transfer to another job(;));
- (d) Medical treatment beyond first aid(;-or);
- (e) Loss of consciousness for any length of time.

(2) You must also ~~(consider a)~~ record any case ~~((to meet the general recording criteria if it))~~ that involves a **significant injury or illness** (see WAC 296-27-01107(21)) diagnosed by a physician or other licensed health care profes-

sional, even if it does not result in death, days away from work, restricted work ((~~of~~)), job transfer, medical treatment beyond first aid, or loss of consciousness.

~~((2) Implementation.~~

~~(a) **How do I decide if a case meets one or more of the general recording criteria?** A work-related injury or illness must be recorded if it results in one or more of the following:~~

~~(i) Death. See (b) of this subsection.~~

~~(ii) Days away from work. See (c) of this subsection.~~

~~(iii) Restricted work or transfer to another job. See (d) of this subsection.~~

~~(iv) Medical treatment beyond first aid. See (e) of this subsection.~~

~~(v) Loss of consciousness. See (f) of this subsection.~~

~~(vi) A significant injury or illness diagnosed by a physician or other licensed health care professional. See (g) of this subsection.~~

~~(b) **How do I record a work-related injury or illness that results in the employee's death?**) (3) You must record an injury or illness that results in death by entering a check mark on the OSHA 300 Log in the space for cases resulting in death. ((You must also report any work-related fatality to WISHA within eight hours, as required by WAC 296-800-32005.~~

~~(c) **How do I record a work-related injury or illness that results in days away from work?**)~~

~~(4) When an injury or illness involves one or more days away from work, you must record the injury or illness on the OSHA 300 Log with a check mark in the space for cases involving days away and an entry ((~~of~~)) for the number of calendar days away from work in the number of days column. If the employee is out for an extended period ((~~of time~~)), you must enter an estimate ((~~of~~)) for the number of days that the employee will be away, and update the day count when the actual number of days is known.~~

~~((i) **Do I count the day on which the injury occurred or the illness began?** No.) (5) You begin counting days away on the day after the injury occurred or the illness began.~~

~~((ii) **How do I record an injury or illness when a physician or other licensed health care professional recommends that the worker stay at home but the employee comes to work anyway?** You must record these injuries and illnesses on the OSHA 300 Log using the check box for cases with days away from work and enter the number of calendar days away recommended by the physician or other licensed health care professional. If a physician or other licensed health care professional recommends days away, you should encourage your employee to follow that recommendation. However, the days away must be recorded whether the injured or ill employee follows the physician or licensed health care professional's recommendation or not. If you receive recommendations from two or more physicians or other licensed health care professionals, you may make a decision as to which recommendation is the most authoritative, and record the case based upon that recommendation.~~

~~((iii) **How do I handle a case when a physician or other licensed health care professional recommends that the worker return to work but the employee stays at home anyway?** In this situation)) (6) To record an injury or illness for which the employee comes to work against the physi-~~

cian's or other licensed health care professional's recommendation, you must do the following:

(a) Record these injuries and illnesses on the OSHA 300 Log using the check box for cases with days away from work and enter the number of calendar days away recommended by the physician or other licensed health care professional.

(b) Record the days away whether the injured or ill employee follows the physician or licensed health care professional's recommendation or not.

Notes:

1. If you receive recommendations from two or more physicians or other licensed health care professionals, you may make a decision as to which recommendation is the most authoritative and record the case based upon that recommendation.

2. Encourage your employee to follow the recommendation.

(7) When an employee decides to stay at home after the date a physician or other licensed health care professional recommends that the employee return to work, you must end the count of days away from work on the date the physician or other licensed health care professional recommends that the employee return to work.

~~((iv) **How do I count weekends, holidays, or other days the employee would not have worked anyway?**) (8) You must count the number of calendar days the employee was unable to work as a result of the injury or illness, regardless of whether or not the employee was scheduled to work on those day(s). Weekend days, holidays, vacation days or other days off are included in the total number of days recorded if the employee would not have been able to work on those days because of a work-related injury or illness.~~

~~((v) **How do I record a case in which**) (9) When a worker is injured or becomes ill on a Friday and reports to work on a Monday, and was not scheduled to work on the weekend((~~?~~)), you only need to record this case ((~~only~~)) if you receive information from a physician or other licensed health care professional indicating that the employee should not have worked, or should have performed only restricted work, during the weekend. If so, you must record the injury or illness as a case with days away from work or restricted work((~~?~~)) and enter the day counts((~~?~~)) as appropriate.~~

~~((vi) **How do I record a case in which**) (10) If a worker is injured or becomes ill on the day before scheduled time off such as a holiday, a planned vacation, or a temporary plant closing((~~?~~)), you only need to record ((~~a~~)) the case ((~~of this type only~~)) if you receive information from a physician or other licensed health care professional indicating that the employee should not have worked, or should have performed only restricted work, during the scheduled time off. If so, you must record the injury or illness as a case with days away from work or restricted work((~~?~~)) and enter the day counts((~~?~~)) as appropriate.~~

~~((vii) **Is there a limit to the number of days away from work I must count?** Yes, you may "cap" the total days away at one hundred eighty calendar days.) (11) You are not required to keep track of the number of calendar days away from work if the injury or illness resulted in more than one hundred eighty calendar days away from work ((~~and/or~~)) or days of job transfer or restriction. In such a case, entering one hundred eighty in the total days away column will be considered adequate.~~

~~((viii) May I stop counting days if an employee who is away from work because of an injury or illness retires or leaves my company? Yes,)) (12) If the employee leaves your company for some reason unrelated to the injury or illness, such as retirement, a plant closing, or to take another job, you may stop counting days away from work ~~((or))~~, days of ~~((restriction/job))~~ restriction, or days of job transfer. If the employee leaves your company because of the injury or illness, you must estimate the total number of days away ~~((or))~~, days of ~~((restriction/job))~~ restriction, or days of job transfer and enter the day count on the OSHA 300 Log.~~

~~((ix)) (13) If a case occurs in one calendar year but results in days away during the next calendar year, ~~((do I record the case in both years? No,))~~ you only record the injury or illness once. You must enter the number of calendar days away for the injury or illness on the OSHA 300 Log for the year in which the injury or illness occurred. If the employee is still away from work because of the injury or illness when you prepare the annual summary, estimate the total number of calendar days you expect the employee to be away from work ~~((,))~~. Then use this number to calculate the total for the annual summary ~~((, and then))~~. Update the initial log entry later when the day count is known or reaches the one hundred eighty day cap.~~

~~((d) How do I record a work-related injury or illness that results in)) (14) You must meet the following requirements for recording restricted work or job transfer ~~((?))~~.~~

(a) When an injury or illness involves restricted work or job transfer but does not involve death or days away from work, you must record the injury or illness on the OSHA 300 Log by placing a check mark in the space for job transfer or restriction and ~~((an entry of))~~ enter the number of restricted or transferred days in the restricted workdays column.

~~((i) How do I decide if the injury or illness resulted in restricted work?)) (b) Restricted work occurs when, as the result of a work-related injury or illness:~~

(*) (i) You keep the employee from performing one or more of the routine functions of ~~((his or her))~~ their job, or from working the full workday that ~~((he or she))~~ they would otherwise have been scheduled to work; or

(*) (ii) A physician or other licensed health care professional recommends that the employee not perform one or more of the routine functions of ~~((his or her))~~ their job, or not work the full workday that ~~((he or she))~~ they would otherwise have been scheduled to work.

~~((ii) What is meant by "routine functions"? For recordkeeping purposes, an employee's routine functions are those work activities the employee regularly performs at least once per week.~~

~~((iii) Do I have to record restricted work or job transfer if it applies only to the day on which the injury occurred or the illness began? No,)) (c) You do not have to record restricted work or job transfers if you, ~~((or))~~ the physician, or other licensed health care professional ~~((,))~~ impose the restriction or transfer only for the day on which the injury occurred or the illness began.~~

~~((iv) If you or a physician or other licensed health care professional recommends a work restriction, is the injury or illness automatically recordable as a "restricted work" case? No,)) (d) A recommended work restriction is~~

recordable only if it affects one or more of the employee's routine job functions. To determine whether this is the case, you must evaluate the restriction in light of the routine functions of the injured or ill employee's job. If the restriction from you ~~((or))~~, the physician, or other licensed health care professional keeps the employee from performing one or more of ~~((his or her))~~ their routine job functions, or from working the full workday the injured or ill employee would otherwise have worked, the employee's work has been restricted and you must record the case.

~~((v) How do I record a case where the worker works only for a partial work shift because of a work-related injury or illness? A)) (e) If an employee works only for a partial work shift because of the work-related injury or illness, you must record the partial day of work ~~((is recorded))~~ as a day of job transfer or restriction ~~((for recordkeeping purposes, except for the day on which))~~. However, you need not record the partial day of work if it is the same day the injury occurred or the illness began.~~

~~((vi) If the injured or ill worker produces fewer goods or services than he or she would have produced prior to the injury or illness but otherwise performs all of the routine functions of his or her work, is the case considered a restricted work case? No,))~~

Note: The case is considered restricted work only if the worker does not perform all of the routine functions ~~((see definition in this chapter))~~ of ~~((his or her))~~ their job or does not work the full shift that ~~((he or she))~~ they would otherwise have worked.

~~((vii) How do I handle vague restrictions from a physician or other licensed health care professional, such as that the employee engage only in "light duty" or "take it easy for a week"?) (15) If you are not clear about the physician or other licensed health care professional's recommendation (i.e., engage only in "light duty" or "take it easy for the week"), you may ask ~~((that person whether))~~ the physician or other licensed health care professional:~~

(a) "Can the employee ~~((can))~~ do all of ~~((his or her))~~ their routine job functions ~~((and))~~?"

(b) "Can the employee work all of ~~((his or her))~~ their normally assigned work shift ~~((,))~~?"

(i) If the answer to both of these questions is "Yes," then the case does not involve a work restriction and does not have to be recorded ~~((as such))~~.

(ii) If the answer to one or both of these questions is "No," the case involves restricted work and must be recorded as a restricted work case.

(iii) If you are unable to obtain this additional information from the physician or other licensed health care professional who recommended the restriction, record the injury or illness as a case involving restricted work.

~~((viii) What do I do if a physician or other licensed health care professional recommends a job restriction meeting the definition, but the employee does all of his or her routine job functions anyway? You must record the injury or illness on the OSHA 300 Log as a restricted work case. If a physician or other licensed health care professional recommends a job restriction, you should ensure that the employee complies with that restriction. If you receive recommendations from two or more physicians or other licensed health care professionals, you may make a decision as to~~

which recommendation is the most authoritative, and record the case based upon that recommendation.

~~((ix) How do I decide if an injury or illness involved a transfer to another job?)~~ (16) To record an injury or illness for which a physician or other licensed health care professional recommends a job restriction, but the employee does all of their routine job functions, you must do the following:

(a) Record the injury or illness on the OSHA 300 Log as a restricted work case.

(b) Record this job restriction even if the employee chooses to do all of their routine job functions.

Notes: 1. If you receive recommendations from two or more physicians or other licensed health care professionals, you may make a decision as to which recommendation is the most authoritative and record the case based upon that recommendation.
2. If a physician or other licensed health care professional recommends a job restriction, you should ensure that the employee complies with that restriction.

(17) If you assign an injured or ill employee to a job other than ~~((his or her))~~ their regular job for part of the day, ~~((the case involves transfer to another))~~ you must record the case as a job transfer.

Notes: 1. This does not include the day on which the injury or illness occurred.

~~((x) Are))~~

2. Transfers to another job are recorded in the same way as restricted work cases ~~((? Yes, both job transfer and restricted work cases are recorded in the same box))~~ on the OSHA 300 Log. ~~((Fø))~~ Example ~~((:))~~: If you assign, or a physician or other licensed health care professional recommends that you assign, an injured or ill worker to ~~((his or her))~~ their routine job duties for part of the day and to another job for the rest of the day, the injury or illness involves a job transfer. You must record an injury or illness that involves a job transfer by placing a check in the box for job transfer.

~~((xi) How do I count days of job transfer or restriction?)~~ (18) You count days of job transfer or restriction in the same way you count days away from work ~~((, using (e)(i) through (viii) of this subsection))~~. The only difference is that, if you permanently assign the injured or ill employee to a job that has been modified or permanently changed in a manner that eliminates the routine functions the employee was restricted from performing, you may stop the day count when the modification or change is made permanent. You must count at least one day of restricted work or job transfer for such cases.

~~((e) How do I record an injury or illness that involves medical treatment beyond first aid?)~~ (19) If a work-related injury or illness results in medical treatment beyond first aid, you must record ~~((it))~~ the case on the OSHA 300 Log. If the injury or illness did not involve death, one or more days away from work, one or more days of restricted work, or one or more days of job transfer, you enter a check mark in the box for cases where the employee received medical treatment but remained at work and was not transferred or restricted.

~~((i) What is the definition of medical treatment? "Medical treatment" means the management and care of a patient to combat disease or disorder. For the purposes of this section, medical treatment does not include:~~

~~• Visits to a physician or other licensed health care professional solely for observation or counseling;~~

~~• The conduct of diagnostic procedures, such as X rays and blood tests, including the administration of prescription medications used solely for diagnostic purposes (e.g., eye drops to dilate pupils); or~~

~~• "First aid" as defined in (e) of this subsection.~~

~~((ii) What is "first aid"? For the purposes of this section, "first aid" means the following:~~

~~• Using a nonprescription medication at nonprescription strength (for medications available in both prescription and nonprescription form, a recommendation by a physician or other licensed health care professional to use a nonprescription medication at prescription strength is considered medical treatment for recordkeeping purposes);~~

~~• Administering tetanus immunizations (other immunizations, such as Hepatitis B vaccine or rabies vaccine, are considered medical treatment);~~

~~• Cleaning, flushing or soaking wounds on the surface of the skin;~~

~~• Using wound coverings such as bandages, Band-Aids™, gauze pads, etc.; or using butterfly bandages or Steri-Strips™ (other wound closing devices such as sutures, staples, etc., are considered medical treatment);~~

~~• Using hot or cold therapy;~~

~~• Using any nonrigid means of support, such as elastic bandages, wraps, nonrigid back belts, etc. (devices with rigid stays or other systems designed to immobilize parts of the body are considered medical treatment for recordkeeping purposes);~~

~~• Using temporary immobilization devices while transporting an accident victim (e.g., splints, slings, neck collars, back boards, etc.);~~

~~• Drilling of a fingernail or toenail to relieve pressure, or draining fluid from a blister;~~

~~• Using eye patches;~~

~~• Removing foreign bodies from the eye using only irrigation or a cotton swab;~~

~~• Removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs or other simple means;~~

~~• Using finger guards;~~

~~• Using massages (physical therapy or chiropractic treatment are considered medical treatment for recordkeeping purposes); or~~

~~• Drinking fluids for relief of heat stress.~~

~~((iii) Are any other procedures included in first aid? No, this is a complete list of all treatments considered first aid for the purpose of this section.~~

~~((iv) Does))~~

Note: The professional status of the person providing ~~((the))~~ treatment ~~((have any))~~ has no effect on what is considered first aid or medical treatment ~~((? No, the treatments listed in (e)(ii) of this subsection are considered to be first aid regardless of the professional status of the person providing the treatment. Even when these treatments are provided by a physician or other licensed health care professional, they are considered first aid for the purposes of this section. Similarly, treatment beyond first aid is considered to be medical treatment even when it is provided by someone other than a physician or other licensed health care professional))~~ as defined in WAC 296-27-051.

~~((v) What if a physician or other licensed health care professional recommends medical treatment but the employee does not follow the recommendation? If a physician or other licensed health care professional recommends medical treatment, you should encourage the injured or ill employee to follow that recommendation. However,)) (20) You must record ~~((the))~~ a case even if the injured or ill employee does not follow the physician or other licensed health care professional's recommendation for medical treatment.~~

~~((f) Is every work related injury or illness case involving a loss of consciousness recordable? Yes, you must record a work-related injury or illness if the worker becomes unconscious, regardless of the length of time the employee remains unconscious.~~

~~((g) What is a)) (21) You must record "significant" diagnosed ~~((injury or illness that is recordable under the general criteria even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness?))~~ injuries or illnesses, such as work-related cases involving cancer, chronic irreversible disease, a fractured or cracked bone, or a punctured eardrum ~~((must always be recorded under the general criteria))~~ at the time of diagnosis by a physician or other licensed health care professional even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness.~~

Note: OSHA believes that most significant injuries and illnesses will result in one of the criteria listed in WAC 296-27-01107(1): Death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness. However, there are some significant injuries, such as a punctured eardrum or a fractured toe or rib, for which neither medical treatment nor work restrictions may be recommended. In addition, there are some significant progressive diseases, such as byssinosis, silicosis, and some types of cancer, for which medical treatment or work restrictions may not be recommended at the time of diagnosis but are likely to be recommended as the disease progresses. Cancer, chronic irreversible diseases, fractured or cracked bones, and punctured eardrums are generally considered significant injuries and illnesses, and must be recorded at the initial diagnosis, even if medical treatment or work restrictions are not recommended, or are postponed, in a particular case.

AMENDATORY SECTION (Amending WSR 03-09-110, filed 4/22/03, effective 8/1/03)

WAC 296-27-01109 Recording criteria for needlestick and sharps injuries. (1) ~~((Basic requirement.))~~ You must record all work-related needlestick injuries and cuts from sharp objects that are contaminated with another person's blood or other potentially infectious material (as defined in this chapter and by chapter 296-823 WAC, Occupational exposure to bloodborne pathogens). You must enter the case on the OSHA 300 Log as an injury. To protect the employee's privacy, you may not enter the employee's name on the OSHA 300 Log (see the requirements for privacy concern cases in WAC 296-27-01119 (3) and (4)).

(2) ~~((Implementation.~~

~~((a) What does "other potentially infectious materials" mean? The term "other potentially infectious materials"~~

is defined in the bloodborne pathogens portion of Part J (Biological Agents) of chapter 296-62 WAC, General occupational health standards. These materials include:

- The following human body fluids: Semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids;

- Any unfixed tissue or organ (other than intact skin) from a human (living or dead); and

- HIV-containing cell or tissue cultures, organ cultures, and HIV- or HBV-containing culture medium or other solutions; and blood, organs, or other tissues from experimental animals infected with HIV or HBV.

~~((b) Does this mean that I must record all cuts, lacerations, punctures, and scratches? No.))~~ You ~~((need to))~~ must record cuts, lacerations, punctures, and scratches only if they are work-related and involve contamination with another person's blood or other potentially infectious material. If the cut, laceration, or scratch involves a clean object, or a contaminant other than blood or other potentially infectious material, you need to record the case only if it meets one or more of the general recording criteria in WAC 296-27-01107.

~~((c))~~ (3) If ~~((I record an))~~ after recording the initial injury ~~((and))~~, the employee is later diagnosed with an infectious bloodborne disease, ~~((do I need to))~~ you must update ~~((the))~~ both of the following on the OSHA 300 Log ~~((? Yes, you must update the classification of the case on the OSHA 300 Log if the case results))~~ if it resulted in death, days away from work, restricted work, or job transfer ~~((You must also update the))~~.

(a) The classification of the case from an injury to an illness; and

(b) The description to identify the infectious disease ~~((and change the classification of the case from an injury to an illness.~~

~~((d) What if one of my employees is splashed or exposed to blood or other potentially infectious material without being cut or scratched? Do I need to record this incident?))~~

(4) You ~~((need to))~~ must record ~~((such an))~~ incidents where an employee is splashed or exposed to blood or other potentially infectious material without being cut or scratched on the OSHA 300 Log as an illness if:

~~((+))~~ (a) It results in the diagnosis of a bloodborne illness, such as HIV, hepatitis B, or hepatitis C; or

~~((+))~~ (b) It meets one or more of the general recording criteria in WAC 296-27-01107.

AMENDATORY SECTION (Amending WSR 02-01-064, filed 12/14/01, effective 1/1/02)

WAC 296-27-01111 Recording criteria for ~~((cases involving))~~ medical removal ~~((under OSHA standards))~~ cases. (1) ~~((Basic requirement. If an employee is medically removed))~~ Under the medical surveillance requirements, you must record ~~((the))~~ any case that involves the medical removal of an employee on the OSHA 300 Log.

(2) ~~((Implementation.~~

~~(a) **How do I classify medical removal cases on the OSHA 300 Log?** You must enter each medical removal case (on the OSHA 300 Log) as either a case involving days away from work or a case involving restricted work activity (depending on how you decide to comply with the medical removal requirement. If the). For medical removal (is the result of a) cases that resulted from chemical exposure, you must (enter the case on the OSHA 300 Log by checking) check the "poisoning" column.~~

~~((b) **Do all standards have medical removal provisions?** No, some OSHA standards, such as the standards covering bloodborne pathogens and noise, do not have medical removal provisions. Many standards that cover specific chemical substances have medical removal provisions. These standards include, but are not limited to, lead, cadmium, methylene chloride, formaldehyde, and benzene.~~

~~(c) **Do I have to record a case where I voluntarily removed the employee from exposure before the medical removal criteria are met?** No, if the case involves voluntary medical removal before the medical removal levels required by this standard, you do not need to record the case on the OSHA 300 Log.)~~

Notes: 1. Standards that do not include medical removal provisions include bloodborne pathogens and noise.
2. Standards that cover specific chemical substances have medical removal provisions. These standards include, but are not limited to, lead, cadmium, methylene chloride, formaldehyde, and benzene.
3. If you voluntarily remove an employee from exposure before the medical removal criteria are met, you do not have to record the case.

AMENDATORY SECTION (Amending WSR 07-03-163, filed 1/24/07, effective 4/1/07)

WAC 296-27-01113 Recording criteria for (cases involving) occupational hearing loss cases. (1) ~~((Basic requirement-))~~ You must record a hearing loss case on the OSHA 300 Log by checking the column for hearing loss if an employee's hearing test (audiogram) reveals that a recordable threshold shift (RTS) in one or both ears has occurred.

(2) ~~((Implementation.~~

~~(a) **How do I evaluate the current audiogram to determine whether a recordable threshold shift has occurred?**~~

~~(i) If the employee has never previously experienced a recorded hearing loss,) To determine whether a RTS has occurred, you must (compare) evaluate the employee's current audiogram with ((that employee's)) their baseline audiogram. If the employee has previously experienced a recorded hearing loss, you must compare the employee's current audiogram with the ((employee's revised baseline audiogram (the)) audiogram reflecting the employee's previously recorded hearing loss case.(~~

~~(ii) The employee has a recordable threshold shift when:~~

~~• There is a change in the hearing threshold, relative to the baseline audiogram for that employee, of an average of 10 decibels (dB) or greater at 2000, 3000, and 4000 hertz (Hz) in one or both ears.~~

~~AND~~

~~• The employee's overall hearing loss (threshold) is 25 dB or greater (averaged at 2000, 3000, and 4000 Hz) in the same ear as the change.)~~

Note: Audiometric test results reflect the employee's overall hearing ability in comparison to audiometric zero. Therefore, using the employee's current audiogram, you must use the average hearing level at 2000, 3000, and 4000 Hz to determine whether or not the employee's total hearing level is 25 dB or more.

~~((b) **May I adjust the current audiogram to reflect the effects of aging on hearing?** Yes. When you are determining) (3) To determine whether ((an)) RTS has occurred, you may age adjust the employee's current audiogram results by using Tables A-1 or A-2((-as appropriate-)) in Appendix A of this chapter. You may not use an age adjustment when determining whether the employee's total hearing level is 25 dB or more above audiometric zero.~~

~~((c) **Do I have to record the hearing loss if I am going to retest the employee's hearing?** No, if you retest the employee's hearing within thirty days of the first test, and the retest does not confirm the RTS.) (4) You are not required to record the hearing loss case on the OSHA 300 Log if you retest the employee's hearing within thirty days of the first test, and the retest does not confirm the RTS. If the retest confirms the RTS, you must record the hearing loss illness within seven calendar days of the retest. If subsequent audiometric testing indicates that an RTS is not persistent, you may erase or line-out the recorded entry.~~

~~((d) **Are there any special rules for determining whether a hearing loss case is work-related?** No.) (5) You must ((use the rules in WAC 296-27-01103 to determine if the hearing loss is)) consider the case to be work-related((-)) if an event or exposure in the work environment either caused or contributed to the hearing loss((-)) or significantly aggravated a preexisting hearing loss((-you must consider the case to be work-related)).~~

~~((e) **If a physician or other licensed health care professional determines the hearing loss is not work-related, do I still need to record the case?** No.) (6) You are not required to consider the case work-related or recordable if a physician or other licensed health care professional determines that the hearing loss is not work-related or has not been significantly aggravated by occupational noise exposure((-you are not required to consider the case work-related or to record the case on the OSHA 300 Log.~~

~~(f) **How do I complete the OSHA 300 Log for hearing loss?** When you enter a recordable hearing loss case on the OSHA 300 Log, you must check the 300 Log column for hearing loss))~~

AMENDATORY SECTION (Amending WSR 02-01-064, filed 12/14/01, effective 1/1/02)

WAC 296-27-01115 Recording criteria for work-related tuberculosis cases. ~~((1-))~~ Basic requirement.) You must record a tuberculosis (TB) case on the OSHA 300 Log by checking the "respiratory condition" column if any ((of your)) employee((s)) has been occupationally exposed to anyone with a known case of active ((tuberculosis(-))TB((-)), and that employee subsequently develops a ((tuberculosis)) TB infection((-as evidenced)) that is confirmed by a positive

skin test or diagnosis by a physician or other licensed health care professional (~~(-you must record the case on the OSHA 300 Log by checking the "respiratory condition" column.~~

(2) Implementation.

(a) ~~Do I have to record, on the Log, a positive TB skin test result obtained at a preemployment physical?~~ No, you do not have to record it because the employee was not occupationally exposed to a known case of active tuberculosis in your workplace.

(b) ~~May I line out or erase a recorded TB case if I obtain evidence that the case was not caused by occupational exposure?~~ Yes,))

- Notes:
1. You do not have to record a positive TB skin test result obtained at a preemployment physical because the employee was not occupationally exposed to a known case of active TB in your workplace.
 2. You may line-out or erase ((the) a TB case from the log under the following circumstances:
 - ((*) a. The worker ((is) contracted TB while living in a household with a person who ((has) had been previously diagnosed with active TB;
 - ((*) b. The public health department has identified the worker as a contact of an individual with a case of active TB unrelated to the workplace; or
 - ((*) c. A medical investigation shows that the employee's infection was caused by exposure to TB away from work, or proves that the case was not related to the workplace TB exposure.

AMENDATORY SECTION (Amending WSR 07-03-163, filed 1/24/07, effective 4/1/07)

WAC 296-27-01119 Forms. (1) ~~((Basic requirement.))~~ You must use the following OSHA forms (or equivalent forms), for recording work-related injuries and illnesses:

(a) OSHA 300, Log of Work-Related Injuries and Illnesses;

(b) OSHA 300-A, ~~((and))~~ Summary of Work-Related Injuries and Illnesses; and

(c) OSHA 301 ~~((forms, or equivalent forms, for recordable injuries and illnesses. The OSHA 300 form is called the Log of Work-Related Injuries and Illnesses, the 300-A is the Summary of Work-Related Injuries and Illnesses, and the OSHA 301 form is called the)), Injury and Illness Incident Report.~~

(2) ~~((Implementation.~~

(a) ~~What do I need to do to complete the OSHA 300 Log?~~) You must complete the OSHA forms as follows:

(a) At the top of the OSHA 300 Log, enter your business information ((about your business at the top of the OSHA 300 Log,)) and enter a one or two line description for each recordable injury or illness((-and)). Summarize this information on the OSHA 300-A form at the end of the year.

(b) ~~((What do I need to do to complete the OSHA 301 Incident Report? You must))~~ Complete an OSHA 301 Incident Report form, or an equivalent form, for each recordable injury or illness entered on the OSHA 300 Log.

(c) ~~((How quickly must each injury or illness be recorded? You must))~~ Enter each recordable injury or illness on the OSHA 300 Log and 301 Incident Report within seven

calendar days of receiving information that a recordable injury or illness has occurred.

~~((d) What is an equivalent form? An equivalent form is one that has the same information, is as readable and understandable, and is completed using the same instructions as the OSHA form it replaces. Many employers use an insurance form instead of the OSHA 301 Incident Report, or supplement an insurance form by adding any additional information listed on the OSHA form.~~

~~(e) May I keep my records on a computer? Yes, if the computer can produce equivalent forms when they are needed, as described under WAC 296-27-02111 and 296-27-03103, you may keep your records using the computer system.~~

~~(f) Are there situations where I do not put the employee's name on the forms for privacy reasons? Yes, if you have a "privacy concern case,")~~

Note: You may keep your injury and illness forms on a computer if you can produce equivalent forms when they are needed, as described under WAC 296-27-02111, 296-27-03101(1), and 296-27-03103.

(3) For privacy concern cases, you must follow these requirements when filling out the OSHA 300 Log:

(a) You may not enter the employee's name on the OSHA 300 Log. Instead, enter "privacy case" in the space normally used for the employee's name(~~(-This will))~~ in order to protect the ((privacy)) identity of the injured or ill employee when another employee, a former employee, or an authorized employee representative is provided access to the OSHA 300 Log under WAC 296-27-02111.

(b) You must keep a separate, confidential list of the case numbers and employee names for your privacy concern cases so you can update the cases and provide the information to the government if asked to do so.

~~((g) How do I determine if an injury or illness is a privacy concern case? You must consider))~~ (c) The following injuries or illnesses ~~((to be))~~ are the only types of privacy concern cases recognized by this section:

((*) (i) An injury or illness to an intimate body part or the reproductive system;

((*) (ii) An injury or illness resulting from a sexual assault;

((*) (iii) Mental illnesses;

((*) (iv) HIV infection, hepatitis, or tuberculosis;

((*) (v) Needlestick injuries and cuts from sharp objects that are contaminated with another person's blood or other potentially infectious material (see definition in WAC ((296-27-01109 for definitions)) 296-27-051 of this chapter); and

((*) (vi) Other illnesses if the employee independently and voluntarily requests that ~~((his or her))~~ their name not be entered on the log.

~~((h) May I classify any other types of injuries and illnesses as privacy concern cases? No, this is a complete list of all injuries and illnesses considered privacy concern cases for the purposes of this section.~~

~~(i) If I have removed the employee's name, but still believe that the employee may be identified from the information on the forms, is there anything else that I can do to further protect the employee's privacy? Yes;))~~ (4) If you have a reasonable basis to believe that information

describing the privacy concern case may be personally identifiable even though the employee's name has been omitted, you may use discretion in describing the injury or illness on both the OSHA 300 and 301 forms. You must enter enough information to identify the cause of the incident and the general severity of the injury or illness, but you do not need to include details of an intimate or private nature. For example, a sexual assault case could be described as "injury from assault," or an injury to a reproductive organ could be described as "lower abdominal injury."

~~((j) What must I do to protect employee privacy if I wish to provide access to the OSHA Forms 300 and 301 to persons other than government representatives, employees, former employees or authorized representatives?)~~

(5) If you decide to voluntarily disclose the forms to persons other than government representatives, employees, former employees or authorized representatives (as required by WAC 296-27-02111 and 296-27-03103), you must remove or hide the employees' names and other personally identifying information, except for the following cases. You may disclose the forms with personally identifying information only:

((i)) (a) To an auditor or consultant hired by the employer to evaluate the safety and health program;

((ii)) (b) To the extent necessary for processing a claim for workers' compensation or other insurance benefits; or

((iii)) (c) To a public health authority or law enforcement agency for uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required under Department of Health and Human Services Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. 164.512.

((3)) (6) Falsification, failure to keep records or reports.

(a) RCW 49.17.190(2) of the act provides that "whoever knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction be guilty of a gross misdemeanor and be punished by a fine of not more than ten thousand dollars, or by imprisonment for not more than six months or by both."

(b) Failure to maintain records or file reports required by this chapter, or in the detail required by the forms and instructions issued under this chapter, may result in the issuance of citations and assessment of penalties as provided for in chapter 296-900 WAC, Administrative rules.

AMENDATORY SECTION (Amending WSR 02-01-064, filed 12/14/01, effective 1/1/02)

WAC 296-27-02101 Multiple business establishments. (1) ~~((Basic requirement.))~~ You must keep a separate OSHA 300 Log for each establishment that is expected to be in operation for one year or longer.

(2) ~~((Implementation.))~~

~~(a) Do I need to keep injury and illness records for short-term establishments (i.e., establishments that will exist for less than a year)?~~ Yes, however, you do not have to keep You must keep injury and illness records for short-term establishments (i.e., establishments that will exist for

less than a year). You do not have to keep a separate OSHA 300 Log for each such establishment. You may keep one OSHA 300 Log that covers all of your short-term establishments. You may also include the short-term establishments' recordable injuries and illnesses on an OSHA 300 Log that covers short-term establishments for individual company divisions or geographic regions.

~~((b) May I keep the records for all of my establishments at my headquarters location or at some other central location?~~ Yes, you may keep the records for an establishment at your headquarters or other central location if you ~~can~~) (3) If you keep records for an establishment at your headquarters or other central location, you must be able to:

((*) (a) Transmit information about the injuries and illnesses from the establishment to the central location within seven calendar days of receiving information that a recordable injury or illness has occurred; **and**

((*) (b) Produce and send the records from the central location to the establishment within the time frames required by WAC 296-27-02111, 296-27-03101(1), and 296-27-03103 when you are required to provide records to a government representative, employees, former employees, or employee representatives.

~~((c) Some of my employees work at several different locations or do not work at any of my establishments at all. How do I record cases for these employees?)~~ (4) If you have employees that work at different locations or do not work at any of your establishments, you must link each of your employees with one of your establishments~~((?))~~ for recordkeeping purposes. You must record the injury and illness on the OSHA 300 Log of the injured or ill employee's establishment, or on an OSHA 300 Log that covers that employee's short-term establishment.

~~((d) How do I record an injury or illness when~~) (5) If an employee of one of ~~((my))~~ your establishments is injured or becomes ill while visiting or working at another of ~~((my))~~ your establishments, or while working away from any of ~~((my))~~ your establishments~~((? If the injury or illness occurs at one of your establishments))~~, you must record the injury or illness on the OSHA 300 Log of the establishment at which the injury or illness occurred. If the employee is injured or becomes ill and is not at one of your establishments, you must record the case on the OSHA 300 Log at the establishment at which the employee normally works.

AMENDATORY SECTION (Amending WSR 02-01-064, filed 12/14/01, effective 1/1/02)

WAC 296-27-02103 Covered employees. (1) ~~((Basic requirement.))~~ You must record on the OSHA 300 Log the recordable injuries and illnesses of all employees on your payroll, whether they are labor, executive, hourly, salary, part-time, seasonal, or migrant workers. You also must record the recordable injuries and illnesses that occur to employees who are not on your payroll if you supervise these employees on a day-to-day basis. If your business is organized as a sole proprietorship or partnership, the owner or partners are not considered employees for recordkeeping purposes.

((2) Implementation:

~~(a) If a self-employed person is injured or becomes ill while doing work at my business, do I need to record the injury or illness? No, self-employed individuals are not covered by the WISH Act or this standard.~~

~~(b) If I obtain employees from a temporary help service, employee leasing service, or personnel supply service, do I have to record an injury or illness occurring to one of those employees?)~~

Note: If a self-employed person is injured or becomes ill while working for you, you are not required to report the injury or illness because they are not covered under WISHA or the recordkeeping requirements.

(2) You must record ((these)) injuries and illnesses of employees from a temporary help service, employee-leasing service, or personnel supply service if you supervise these employees on a day-to-day basis.

~~((e) If an employee in my establishment is a contractor's employee, must I record an injury or illness occurring to that employee?)~~ (3) You must record an injury or illness of a contractor's employee who is working in your establishment if you supervise them on a day-to-day basis. However, if the contractor's employee is under the day-to-day supervision of the contractor, the contractor is responsible for recording the injury or illness. ((If you supervise the contractor employee's work on a day-to-day basis, you must record the injury or illness.

~~(d) Must the personnel supply service, temporary help service, employee leasing service, or contractor also record the injuries or illnesses occurring to temporary, leased or contract employees that I supervise on a day-to-day basis? No, you and the temporary help service, employee leasing service, personnel supply service, or contractor should coordinate your efforts to)~~ (4) You must make sure that each injury and illness is recorded only once:

(a) Either on your OSHA 300 Log (if you provide day-to-day supervision); or

(b) On the other employer's OSHA 300 Log (if that company provides day-to-day supervision).

AMENDATORY SECTION (Amending WSR 02-01-064, filed 12/14/01, effective 1/1/02)

WAC 296-27-02105 Annual summary. (1) ~~((Basic requirement.))~~ At the end of each calendar year, you must:

~~((*) (a) Review the OSHA 300 Log to verify that the entries are complete and accurate, and correct any deficiencies identified;~~

~~((*) (b) Use the OSHA 300-A Log or equivalent form of your recorded injuries and illnesses to create ((an)) your annual summary ((of injuries and illnesses recorded on the OSHA 300 Log));~~

~~((*) (c) Certify the annual summary; and~~

~~((*) (d) Post the annual summary.~~

~~(2) ((Implementation:~~

~~(a) How extensively do I have to review the OSHA 300 Log entries at the end of the year? You must review the entries as extensively as necessary to make sure that they are complete and correct.~~

~~(b) How do I complete the annual summary?)~~ You must complete the annual summary by doing the following:

~~((*) (a) Total the columns on the OSHA 300 Log (if you had no recordable cases, enter zeros for each column total); and~~

~~((*) (b) Enter the calendar year covered, the company's name, establishment name, establishment address, annual average number of employees covered by the OSHA 300 Log, and the total hours worked by all employees covered by the OSHA 300 Log.~~

~~((*) If you are using an equivalent form other than the OSHA 300-A summary form, as permitted under WAC 296-27-01105, the summary you use must also))~~ (c) Include the employee access and employer penalty statements found on the OSHA 300-A summary form when using an equivalent form as permitted by this chapter. For the definition of "equivalent form" see WAC 296-27-051.

~~((e) How do I certify the annual summary?)~~ (3) A company executive must certify that ((he or she has)) they have examined the OSHA 300 Log and that ((he or she)) they reasonably believe((s)), based on ((his or her)) their knowledge of the process by which the information was recorded, that the annual summary is correct and complete.

~~((d) Who is considered a company executive?)~~ (4) The company executive who certifies the log must be one of the following persons:

~~((*) (a) An owner of the company (only if the company is a sole proprietorship or partnership);~~

~~((*) (b) An officer of the corporation;~~

~~((*) (c) The highest ranking company official working at the establishment; or~~

~~((*) (d) The immediate supervisor of the highest ranking company official working at the establishment.~~

~~((e) How do I post the annual summary?)~~ (5) You must post a copy of the annual summary in each establishment in a conspicuous place or places where notices to employees are customarily posted. You must ensure that the posted annual summary is not altered, defaced or covered by other material.

~~((f) When do I have to post the annual summary?)~~ (6) You must post the summary no later than February 1 of the year following the year covered by the records and keep the posting in place until April 30.

AMENDATORY SECTION (Amending WSR 02-01-064, filed 12/14/01, effective 1/1/02)

WAC 296-27-02107 Retention and updating. (1) ~~((Basic requirement.))~~ You must save the OSHA 300 Log, the privacy case list (if one exists), the OSHA 300-A Annual Summary, and the OSHA 301 Incident Report forms for five years following the end of the calendar year that each of these records cover.

~~(2) ((Implementation:~~

~~(a) Do I have to update the OSHA 300 Log during the five year storage period? Yes, during the storage period.))~~ You must update your stored OSHA 300 Logs during the five-year retention period to include newly discovered recordable injuries or illnesses and to show any changes that have occurred in the classification of previously recorded

injuries and illnesses. If the description or outcome of a case changes, you must remove or line-out the original entry and enter the new information.

~~((b) Do I have to update the annual summary? No, you are not required to update the annual summary, but you may do so if you wish.~~

~~(e) Do I have to update the OSHA 301 Incident Reports? No, you are not required to update the OSHA 301 Incident Reports, but you may do so if you wish.)~~

Note: During the five-year retention period, you are not required to update the OSHA 300-A Annual Summary of Work-Related Injuries or Illnesses, or the OSHA 301 Incident Reports, but you may do so if you wish.

AMENDATORY SECTION (Amending WSR 02-01-064, filed 12/14/01, effective 1/1/02)

WAC 296-27-02111 Employee involvement. (1) ~~(Basic requirement.)~~ Your employees and their representatives must be involved in the recordkeeping system in several ways. You must do the following:

(a) ~~(You must)~~ Establish a process for how employees report work-related injuries and illnesses to you.

(b) ~~Inform each employee of how ((he or she is)) they are to report an injury or illness to you.~~

~~((b) You must)~~ (c) Provide limited access to your injury and illness records for your employees and their representatives.

(2) ~~(Implementation.~~

~~(a) What must I do to make sure that employees report work-related injuries and illnesses to me?~~

~~• You must set up a way for employees to report work-related injuries and illnesses promptly; and~~

~~• You must tell each employee how to report work-related injuries and illnesses to you.~~

~~(b) Do I have to give my employees and their representatives access to the OSHA injury and illness records? Yes.)~~

Your employees, former employees, their personal representatives, and their authorized employee representatives have the right to access the OSHA injury and illness records, with some limitations, as discussed ((below)) in subsection (3) through (7) of this section.

~~((Who is an authorized employee representative? An authorized employee representative is an authorized collective bargaining agent of employees.~~

~~• Who is a "personal representative" of an employee or former employee? A personal representative is:~~

~~• Any person that the employee or former employee designates as such, in writing; or~~

~~• The legal representative of a deceased or legally incapacitated employee or former employee.~~

~~• If an employee or representative asks for access to the OSHA 300 Log, when do I have to provide it?~~

~~•) (3) When an employee, former employee, personal representative, or authorized employee representative asks for copies of your current or stored OSHA 300 Log(s) for an establishment the employee or former employee has worked in, you must give the requester a copy of the relevant OSHA 300 Log(s) by the end of the next business day.~~

~~((May I remove the names of the employees or any other information from the OSHA 300 Log before I give~~

~~copies to an employee, former employee, or employee representative? No.) (4) You must leave ((the)) employee names and any other information on the OSHA 300 Log before giving copies to an employee, former employee, or an employee representative. However, to protect the privacy of injured and ill employees, you may not record the employee's name on the OSHA 300 Log for certain "privacy concern cases," as specified in WAC 296-27-01119 ((2)(f) through (i)) (3).~~

~~((If an employee or representative asks for access to the OSHA 301 Incident Report, when do I have to provide it?~~

~~•) (5) When an employee, former employee, or personal representative asks for a copy of the OSHA 301 Incident Report describing an injury or illness to that employee or former employee, you must give the requester a copy of the OSHA 301 Incident Report containing that information by the end of the next business day.~~

~~((•) (6) When an authorized employee representative asks for copies of the OSHA 301 Incident Reports for an establishment where the agent represents employees under a collective bargaining agreement, you must give copies of those forms to the authorized employee representative within seven calendar days. You are only required to give the authorized employee representative information from the OSHA 301 Incident Report section titled "Tell us about the case." You must remove all other information from the copy of the OSHA 301 Incident Report or the equivalent substitute form that you give to the authorized employee representative.~~

~~((May I charge for the copies? No.) (7) You may not charge for these copies the first time they are provided. However, if one of the designated persons asks for additional copies, you may assess a reasonable charge for retrieving and copying the records. An example of what a "reasonable charge" would be is what a print company would charge for copying the same documents.~~

AMENDATORY SECTION (Amending WSR 02-01-064, filed 12/14/01, effective 1/1/02)

WAC 296-27-02113 Prohibition against discrimination. (1) Employers are prohibited from discriminating against an employee for reporting a work-related fatality, injury or illness. Employees are also protected when they file a safety and health complaint, or ask for records which are required to be maintained by this section or exercise rights extended ((by the WISH Act)) under WISHA.

~~((1) WISHA)) (2) The department may not issue ((a) an injury and illness recordkeeping variance to a private sector employer ((and)). However, the department must recognize all recordkeeping variances issued by Federal OSHA.~~

~~((2) WISHA)) (3) The department may only grant an injury and illness recording and reporting variance to a state or local government employer within the state after obtaining approval to grant the variance from Federal OSHA.~~

AMENDATORY SECTION (Amending WSR 02-01-064, filed 12/14/01, effective 1/1/02)

WAC 296-27-02117 Variances from the recordkeeping rule. (1) ~~(Basic requirement.)~~ If you wish to keep

records in a different manner from that prescribed in this section, you may submit a variance petition to the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Washington, DC 20210. You can obtain a variance only if you can show that your alternative recordkeeping system:

((★) (a) Collects the same information as this section requires;

((★) (b) Meets the purposes of the federal Occupational Safety and Health Act; and

((★) (c) Does not interfere with the administration of the federal Occupational Safety and Health Act.

(2) ~~(Implementation-~~

~~((a) **What do I need to include in my variance petition?**)) You must include the following items in your variance petition:~~

((★) (a) Your name and address;

((★) (b) A list of the state(s) where the variance would be used;

((★) (c) The address(es) of the business establishment(s) involved;

((★) (d) A description of why you are seeking a variance;

((★) (e) A description of the different recordkeeping procedures you propose to use;

((★) (f) A description of how your proposed procedures will collect the same information as would be collected by this section and achieve the purpose of the act; and

((★) (g) A statement that you have informed your employees of the petition by giving them or their authorized representative a copy of the petition and by posting a statement summarizing the petition in the same way as notices are posted under 29 C.F.R. 1903.2(a).

~~((b) **How will the Assistant Secretary handle my variance petition?**)) (3) The Assistant Secretary will take the following steps to process your variance petition.~~

((★) (a) The Assistant Secretary will offer your employees and their authorized representatives an opportunity to submit written data, views, and arguments about your variance petition.

((★) (b) The Assistant Secretary may allow the public to comment on your variance petition by publishing the petition in the *Federal Register*. If the petition is published, the notice will establish a public comment period and may include a schedule for a public meeting on the petition.

((★) (c) After reviewing your variance petition and any comments from your employees and the public, the Assistant Secretary will decide whether or not your proposed recordkeeping procedures will meet the purposes of the act, will not otherwise interfere with the act, and will provide the same information as required by this section. If your procedures meet these criteria, the Assistant Secretary may grant the variance subject to such conditions as he or she finds appropriate.

((★) (d) If the Assistant Secretary grants your variance petition, OSHA will publish a notice in the *Federal Register* to announce the variance. The notice will include the practices the variance allows you to use, any conditions that apply, and the reasons for allowing the variance.

~~((e) **If I apply for a variance, may I use my proposed recordkeeping procedures while the Assistant Secretary**~~

~~**is processing the variance petition?** No, alternative recordkeeping practices are only allowed after the variance is approved.)) (4) You must comply with this section's requirements while the Assistant Secretary is reviewing your variance petition.~~

~~((d) **If I have already been cited for not following the requirements of this section, will my variance petition have any effect on the citation and penalty?** No, in addition.)) (5) The Assistant Secretary may elect not to review your variance petition if it includes an element for which you have been cited and the citation is still under review by a court, an administrative law judge (ALJ), or the OSH Review Commission.~~

~~((e) **If I receive a variance, may it be revoked at a later date?** Yes.)) (6) A variance may be revoked for good cause. The variance revocation procedures are the same as those followed to request the exception. In cases of willfulness or where necessary for public safety, the Assistant Secretary will:~~

((★) (a) Notify you in writing of the facts or conduct that may warrant revocation of your variance; and

((★) (b) Provide you, your employees, and authorized employee representatives with an opportunity to participate in the revocation procedures.

((f)) (7) The department of labor and industries must recognize any recordkeeping or reporting variance issued by federal OSHA.

AMENDATORY SECTION (Amending WSR 09-01-158, filed 12/23/08, effective 3/1/09)

WAC 296-27-031 Reporting ((fatality, injury, and illness information)) fatalities, inpatient hospitalizations, amputations, and losses of an eye as the result of work-related incidents. (1) ~~((Basic requirement.))~~ You must report ~~((fatalities, injuries and illnesses information as required by WAC 296-800-32005))~~ to the department within eight hours of a work-related incident that results in:

(a) A fatality; or

(b) An inpatient hospitalization of any employee.

(2) ~~(Implementation-~~

~~((a) **If the local L&I office is closed, how do I report the incident?**)) You must report to the department within twenty-four hours of a work-related incident that results in either an amputation or the loss of an eye that does not require inpatient hospitalization.~~

Notes: 1. If the amputation or loss of an eye requires inpatient hospitalization, follow the eight-hour reporting requirement in WAC 296-27-031(1).

2. Inpatient hospitalization that involves only observation or diagnostic testing is not a reportable inpatient hospitalization.

(3) If you do not learn about a reportable fatality, inpatient hospitalization, amputation, or loss of an eye at the time it takes place, you must make the report to the department within the following time periods after the fatality, inpatient hospitalization, amputation, or loss of an eye is reported to you or any of your agents:

(a) Eight hours for a fatality or an inpatient hospitalization of one or more employees.

(b) Twenty-four hours for an amputation or a loss of an eye that does not require inpatient hospitalization.

(4) If you do not learn right away that the reportable fatality, inpatient hospitalization, amputation, or loss of an eye was the result of a work-related incident, you must make the report to the department within the following time periods after you or any of your agents learn that the reportable fatality, inpatient hospitalization, amputation, or loss of an eye was the result of a work-related incident:

(a) Eight hours for a fatality or an inpatient hospitalization of one or more employees.

(b) Twenty-four hours for an amputation or a loss of an eye that does not require inpatient hospitalization.

(5) You must report the fatality, inpatient hospitalization, amputation, or loss of an eye in the required time frame using one of the following methods:

(a) By telephone to the department's toll-free telephone number, 1-800-4BE-SAFE (1-800-423-7233) or in person to the Labor and Industries' office located nearest to the site of the incident;

(b) By telephone to the OSHA toll-free telephone number, 1-800-321-OSHA (1-800-321-6742);

(c) By electronic submission using the reporting application located on OSHA's public web site at www.osha.gov; or

(d) By any other means.

(6) If the local office is closed, you must report a fatality ((or in-patient)), inpatient hospitalization, amputation, or the loss of an eye incident by:

(a) Calling ((either)) the department at 1-800-4BE-SAFE (1-800-423-7233) ((or by contacting the Occupational Safety and Health Administration (OSHA) by calling its central);

(b) Calling OSHA's toll-free telephone number at 1-800-321-6742; or

(c) Using the reporting application located on OSHA's public web site at www.osha.gov.

~~((b) What information do I need to give about the incident?)) (7) You must give the department the following information for each fatality ((or in-patient)), inpatient hospitalization ((incident)), amputation, or loss of an eye:~~

~~((Name of the work place)) (a) The establishment name;~~

~~((b) The location of the work-related incident;~~

~~((c) The time and date of the work-related incident;~~

~~((d) The type of reportable event (i.e., fatality, inpatient hospitalization, amputation, or loss of an eye);~~

~~(e) The number of ((fatalities or hospitalized)) employees who suffered a fatality, inpatient hospitalization, amputation, or loss of an eye;~~

~~((f) The names of ((injured employees)) the employees who suffered a fatality, inpatient hospitalization, amputation, or loss of an eye;~~

~~((g) Your contact person and their phone number; and~~

~~((h) A brief description of the work-related incident.~~

(8) If a fatality does not occur during or right after the work-related incident, you must only report it to the department if the fatality occurs within thirty days of the work-related incident.

(9) You must report a fatality, inpatient hospitalization, amputation, or loss of an eye that resulted from a motor vehi-

cle accident that occurred in a construction work zone. If the motor vehicle accident occurred on a public street or highway, but not in a construction work zone, you do not have to report the fatality, inpatient hospitalization, amputation, or loss of an eye. However, the fatality, inpatient hospitalization, amputation, or loss of an eye must be recorded on your OSHA injury and illness records, if you are required to keep such records.

(10) You do not have to report an incident that resulted in a fatality, inpatient hospitalization, amputation, or loss of an eye to the department if it occurred on a commercial or public transportation system (e.g., airplane, train, subway, or bus). However, the fatality, inpatient hospitalization, amputation, or loss of an eye must be recorded on your OSHA injury and illness records, if you are required to keep such records.

(11) You must report to the department a heart attack that occurs in the work environment that results in a fatality or inpatient hospitalization. The department will decide whether to investigate the event, depending on the circumstances of the heart attack.

(12) You must only report to the department each inpatient hospitalization that involves medical care or treatment. Inpatient hospitalization involving only observation or diagnostic testing need not be reported.

AMENDATORY SECTION (Amending WSR 02-01-064, filed 12/14/01, effective 1/1/02)

WAC 296-27-03101 Providing records to government representatives. (1) ~~((Basic requirement.))~~ When an authorized government representative asks for the records you keep under this section, you must provide copies of the records within four business hours.

~~((Implementation.~~

~~((a) What government representatives have the right to get copies of records required by this section? The government representatives authorized to receive the records are:~~

~~• A representative of the Secretary of Labor conducting an inspection or investigation under the act;~~

~~• A representative of the Secretary of Health and Human Services (including the National Institute for Occupational Safety and Health-NIOSH) conducting an investigation under section 20(b) of the act; or~~

~~• A representative of the state department of labor and industries.~~

~~((b) Do I have to produce the records within four hours if my records are kept at a location in a different time zone? Your response will be considered timely if you give the records to the government representative within four business hours of the request.)) If you maintain the records at a location in a different time zone, you may use the business hours of the establishment at which the records are located when calculating the deadline.~~

AMENDATORY SECTION (Amending WSR 02-01-064, filed 12/14/01, effective 1/1/02)

WAC 296-27-03103 Annual OSHA injury and illness survey. (1) ~~((Basic requirement.))~~ If you receive OSHA's annual survey form, you must fill it out and send it to OSHA or OSHA's designee, as stated on the survey form. You must

report the following information for the year described on the form:

((*) (a) The number of workers you employed;

((*) (b) The number of hours worked by your employees; and

((*) (c) The requested information from the records that you keep under this section.

(2) ~~(Implementation.~~

~~((a) Does every employer have to send data to OSHA? No.))~~ Each year, OSHA sends injury and illness survey forms to employers in certain industries. ~~((In any year, some employers will receive an OSHA survey form and others will not.))~~ You do not have to send injury and illness data to OSHA unless you receive a survey form.

~~((b) How quickly do I need to respond to an OSHA survey form?))~~ (3) You must send the survey reports to OSHA, or OSHA's designee, by mail or other means described in the survey form, within thirty calendar days, or by the date stated in the survey form, whichever is later.

~~((c) Do I have to respond to an OSHA survey form if I am normally exempt from keeping OSHA injury and illness records? Yes, even))~~ (4) If you are exempt from keeping injury and illness records under WAC ~~((296-27-001))~~ 296-27-00103 through 296-27-00107, OSHA may inform you in writing that it will be collecting injury and illness information from you in the following year. If you receive such a letter, you must keep the injury and illness records required by WAC 296-27-01103 ~~((to 296-27-01117))~~ through 296-27-01115 and make a survey report for the year covered by the survey.

~~((d) Do employers in))~~ (5) Washington ~~((have to answer))~~ state employers must respond to the OSHA survey form ~~((? Yes))~~ if they receive one.

~~((e) Does this section affect WISHA/OSHA's authority to inspect my workplace? No.))~~ (6) Nothing in this section affects ~~((WISHA/OSHA's))~~ the departments or federal OSHA's statutory authority to investigate conditions related to occupational safety and health.

AMENDATORY SECTION (Amending WSR 02-01-064, filed 12/14/01, effective 1/1/02)

WAC 296-27-03105 Requests from the Bureau of Labor Statistics (BLS) for data. (1) ~~((Basic requirement.))~~ If you receive a Survey of Occupational Injuries and Illnesses form from the ~~((Bureau of Labor Statistics))~~ BLS ~~((?))~~, or a BLS designee, you must promptly complete the form and return it following the instructions contained on the survey form.

(2) ~~(Implementation.~~

~~((a) Does every employer have to send data to the BLS? No.))~~ Each year, the BLS sends injury and illness survey forms to randomly selected employers and uses the information to create the nation's occupational injury and illness statistics. In any year, some employers will receive a BLS survey form and others will not. You do not have to send injury and illness data to the BLS unless you receive a survey form.

~~((b) If I get a survey form from the BLS, what do I have to do?))~~ (3) If you receive a Survey of Occupational

Injuries and Illnesses form from the ~~((Bureau of Labor Statistics))~~ BLS ~~((?))~~, or a BLS designee, you must promptly complete the form and return it, following the instructions contained on the survey form.

~~((c) Do I have to respond to a BLS survey form if I am normally exempt from keeping OSHA injury and illness records? Yes, even))~~ (4) If you are exempt from keeping injury and illness records under WAC 296-27-00103 through 296-27-00107, the BLS may inform you in writing that it will be collecting injury and illness information from you in the coming year. If you receive such a letter, you must keep the injury and illness records required by WAC 296-27-01103 ~~((to 296-27-01117))~~ through 296-27-01115 and make a survey report for the year covered by the survey.

~~((d) Do I have to answer the BLS survey form if I am located in a state plan state? Yes, all employers who receive a survey form))~~ (5) Washington state employers must respond to the BLS survey ~~((, even those in state plan states))~~ form if they receive one.

AMENDATORY SECTION (Amending WSR 02-01-064, filed 12/14/01, effective 1/1/02)

WAC 296-27-05101 Definitions. Amputation. The traumatic loss of an appendage, such as an upper or lower limb (or part of the limb) or other external body part that has been severed or cut off either completely or partially at the time of the injury, or is surgically removed due to irreparable damage. Amputations may or may not include bone loss.

Note: Amputations include fingertip amputations and amputations of body parts that have since been reattached. Amputations do not include loss of an eye, broken or chipped teeth, scalplings, or avulsions, such as degloving, where the skin and tissue have been torn away from the underlying subcutaneous tissue, tendons, muscle, or bone.

Authorized employee representative. An authorized collective bargaining agent of employees.

Authorized government representative. A representative of the Secretary of Labor, conducting an inspection or investigation under the act, a representative of the Secretary of Health and Human Services (including the National Institute for Occupational Safety and Health (NIOSH)) conducting an investigation under section 20(b) of the act, or a representative of the state department of labor and industries.

Department. The Washington state department of labor and industries.

Employer ~~((means)).~~ A person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such person or persons and includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations: Provided, That any persons, partnership, or business entity not having employees, and who is covered by the Industrial Insurance Act must be considered both an employer and employee.

Establishment ~~((means)).~~ A single physical location where business is conducted or where services or industrial

operations are performed. For activities where employees do not work at a single physical location, such as construction; transportation; communications, electric, gas and sanitary services; and similar operations, the establishment is represented by main or branch offices, terminals, stations, etc., that either supervise such activities or are the base from which personnel carry out these activities.

(1) ~~((Can one business location include two or more establishments?))~~ Normally, one business location has only one establishment. Under limited conditions, the employer may consider two or more separate businesses that share a single location to be separate establishments. ~~((An employer))~~ You may divide one location into two or more establishments only when:

(*) (a) Each of the establishments represents a distinctly separate business;

(*) (b) Each business is engaged in a different economic activity;

(*) (c) No one industry description in the ~~((Standard Industrial Classification Manual (1987)))~~ North American Industrial Classification System applies to the joint activities of the establishments; and

(*) (d) Separate reports are routinely prepared for each establishment on the number of employees, their wages and salaries, sales or receipts, and other business information. For example, if an employer operates a construction company at the same location as a lumber yard, the employer may consider each business to be a separate establishment.

(2) ~~((Can an establishment include more than one physical location? Yes, but only under certain conditions. An employer))~~ You may combine two or more physical locations into a single establishment only when:

~~((The employer))~~ (a) You operate ~~((s))~~ the locations as a single business operation under common management;

(*) (b) The locations are all located in close proximity to each other; and

~~((The employer))~~ (c) You keep ~~((s))~~ one set of business records for the locations, such as records on the number of employees, their wages and salaries, sales or receipts, and other kinds of business information. For example, one manufacturing establishment might include the main plant, a warehouse a few blocks away, and an administrative services building across the street.

(3) ~~((If an))~~ For employees who telecommute ~~((s))~~ from home, ~~((is his or her))~~ the employee's home ~~((considered))~~ is not a ~~((separate))~~ business establishment ~~((? No, for employees who telecommute from home, the employee's home is not a business establishment))~~, and a separate OSHA 300 Log is not required. Employees who telecommute must be linked to one of your establishments under WAC 296-27-02101 ~~((2(e)))~~ (4).

First aid. For the purpose of this chapter, first aid only includes the following:

(a) Using a nonprescription medication at nonprescription strength (for medications available in both prescription and nonprescription form, a recommendation by a physician or other licensed health care professional to use a nonprescription medication at prescription strength is considered medical treatment for recordkeeping purposes);

(b) Administering tetanus immunizations (other immunizations, such as Hepatitis B vaccine or rabies vaccine, are considered medical treatment);

(c) Cleaning, flushing, or soaking wounds on the surface of the skin;

(d) Using wound coverings such as bandages, Band-Aids™, gauze pads, etc., or using butterfly bandages or Steri-Strips™ (other wound closing devices such as sutures, staples, etc., are considered medical treatment);

(e) Using hot or cold therapy;

(f) Using any nonrigid means of support, such as elastic bandages, wraps, nonrigid back belts, etc., (devices with rigid stays or other systems designed to immobilize parts of the body are considered medical treatment for recordkeeping purposes);

(g) Using temporary immobilization devices while transporting an accident victim (e.g., splints, slings, neck collars, back boards, etc.);

(h) Drilling of a fingernail or toenail to relieve pressure, or draining fluid from a blister;

(i) Using eye patches;

(j) Removing foreign bodies from the eye using only irrigation or a cotton swab;

(k) Removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs, or other simple means;

(l) Using finger guards;

(m) Using massages (physical therapy or chiropractic treatment are considered medical treatment for recordkeeping purposes); or

(n) Drinking fluids for relief of heat stress.

Injury or illness ((means)). An abnormal condition or disorder. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illnesses include both acute and chronic illnesses, such as, but not limited to, a skin disease, respiratory disorder, or poisoning. Injuries and illness are recordable only if they are new, work-related cases that meet one or more of this section's recording criteria.

Inpatient hospitalization. To be admitted into a hospital or equivalent facility for medical treatment.

Loss of an eye(s). The physical removal of an eye occurring either at the time of injury or is surgically removed due to irreparable damage. The loss of sight without the removal is not reportable, unless the worker is admitted as an inpatient hospitalization after losing sight as a result of a worker-related incident, then it is reportable within the eight-hour time frame specified in WAC 296-27-031(1).

Medical treatment. The management and care of a patient to combat disease or disorder. For the purposes of this section, medical treatment does not include:

(a) Visits to a physician or other licensed health care professional solely for observation or counseling;

(b) The conduct of diagnostic procedures, such as X rays and blood tests, including the administration of prescription medications used solely for diagnostic purposes (e.g., eye drops to dilate pupils); or

(c) First aid (see definition of first aid).

((Note: Injuries and illnesses are recordable only if they are new, work-related cases that meet one or more of this section's recording criteria.

~~”)OSHA((“means))~~, Occupational Safety and Health Administration.

Other potentially infectious materials. Includes all of the following:

(a) The following human body fluids: Semen, vaginal secretions, cerebrospinal fluid, synovial fluid, pleural fluid, pericardial fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, any body fluid that is visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids;

(b) Any unfixed tissue or organ (other than intact skin) from a human (living or dead);

(c) HIV-containing cell or tissue cultures, organ cultures, and HIV- or HBV-containing culture medium or other solutions; and blood, organs, or other tissues from experimental animals infected with HIV or HBV; and

(d) Blood and tissues of experimental animals infected with bloodborne pathogens.

Personal representative. Any person that the employee or former employee designates as such in writing, or the legal representative of a deceased or legally incapacitated employee or former employee.

Physician or other licensed health care professional ((means)). A physician or other licensed health care professional whose legally permitted scope of practice (i.e., license, registration, or certification) allows ((him or her)) them to independently perform, or be delegated the responsibility to perform, the activities described by this regulation.

Preexisting condition. An injury or illness that resulted solely from a nonwork-related event or exposure.

Routine functions. For recordkeeping purposes, routine functions are those work activities the employee regularly performs at least once per week.

WISHA. The Washington Industrial Safety and Health Act.

Work environment. The establishment and other locations where one or more employees are working or are present as a condition of their employment. The work environment includes not only physical locations, but also the equipment or materials used by the employee during the course of their work.

You ((means)). An employer (see definition of employer).

~~((Table "1" — Private Employer Exemptions~~

~~SIC Industry description code~~

- ~~525 Hardware Stores~~
- ~~542 Meat and Fish Markets~~
- ~~544 Candy, Nut, and Confectionary Stores~~
- ~~545 Dairy Products Stores~~
- ~~546 Retail Bakeries~~
- ~~549 Miscellaneous Food Stores~~
- ~~551 New and Used Car Dealers~~
- ~~552 Used Car Dealers~~
- ~~554 Gasoline Service Stations~~
- ~~557 Motorcycle Dealers~~

~~SIC Industry description code~~

- ~~56 Apparel and Accessory Stores~~
- ~~573 Radio, Television, & Computer Stores~~
- ~~58 Eating and Drinking Places~~
- ~~591 Drug Stores and Proprietary Stores~~
- ~~592 Liquor Stores~~
- ~~594 Miscellaneous Shopping Goods Stores~~
- ~~599 Retail Stores, Not Elsewhere Classified~~
- ~~60 Depository Institutions (banks & savings institutions)~~
- ~~61 Nondepository~~
- ~~62 Security and Commodity Brokers~~
- ~~63 Insurance Carriers~~
- ~~64 Insurance Agents, Brokers & Services~~
- ~~653 Real Estate Agents and Managers~~
- ~~654 Title Abstract Offices~~
- ~~67 Holding and Other Investment Offices~~
- ~~722 Photographic Studios, Portrait~~
- ~~723 Beauty Shops~~
- ~~724 Barber Shops~~
- ~~725 Shoe Repair and Shoeshine Parlors~~
- ~~726 Funeral Service and Crematories~~
- ~~729 Miscellaneous Personal Services~~
- ~~731 Advertising Services~~
- ~~732 Credit Reporting and Collection Services~~
- ~~733 Mailing, Reproduction, & Stenographic Services~~
- ~~737 Computer and Data Processing Services~~
- ~~738 Miscellaneous Business Services~~
- ~~764 Reupholstery and Furniture Repair~~
- ~~78 Motion Picture~~
- ~~791 Dance Studios, Schools, and Halls~~
- ~~792 Producers, Orchestras, Entertainers~~
- ~~793 Bowling Centers~~
- ~~81 Legal Services~~
- ~~82 Educational Services (schools, colleges, universities and libraries)~~
- ~~832 Individual and Family Services~~
- ~~835 Child Day Care Services~~
- ~~839 Social Services, Not Elsewhere Classified~~
- ~~841 Museums and Art Galleries~~
- ~~86 Membership Organizations~~
- ~~87 Engineering, Accounting, Research, Management and Related Services~~
- ~~899 Services, not elsewhere classified~~

Table "2" — Public Employer Exemptions

SIC Industry description code

5821 Public Elementary and Secondary Schools
823 Public Libraries))

AMENDATORY SECTION (Amending WSR 03-24-085, filed 12/2/03, effective 1/1/04)

WAC 296-27-061 Nonmandatory Appendix A—Age adjustment calculations for comparing audiograms for recording hearing loss. IMPORTANT: These computations may only be used for comparison of audiograms to record hearing loss on the OSHA 300 Log. This appendix is non-mandatory.

(1) In determining whether a recordable threshold shift has occurred, allowance may be made for the contribution of aging to the change in hearing level by adjusting the most recent audiogram. If you choose to adjust the audiogram, you must follow the procedure described below. This procedure and the age correction tables were developed by the National Institute for Occupational Safety and Health in the criteria document entitled "Criteria for a Recommended Standard...Occupational Exposure to Noise," ((HSM)-11001).

(2) For each audiometric test frequency:

((+)) (a) Determine from Tables A-1 or A-2 the age correction values for the employee by:

((A)) (i) Finding the age at which the most recent audiogram was taken and recording the corresponding values of age corrections at 1000 Hz through 6000 Hz;

((B)) (ii) Finding the age at which the baseline audiogram was taken and recording the corresponding values of age corrections at 1000 Hz through 6000 Hz.

((+)) (b) Subtract the values found in step ((+)(B)) (a)(ii) from the value found in step ((+)(A)) (a)(i).

((+)) (c) The differences calculated in step ((+)) (b) represent that portion of the change in hearing that may be due to aging.

EXAMPLE: Employee is a 32-year-old male. The audiometric history for his right ear is shown in decibels below.

Audiometric Test Frequency (Hz)					
Employee's age	1000	2000	3000	4000	6000
26	10	5	5	10	5
*27	0	0	0	5	5
28	0	0	0	10	5
29	5	0	5	15	5
30	0	5	10	20	10
31	5	10	20	15	15
*32	5	10	10	25	20

The audiogram at age 27 is considered the baseline since it shows the best hearing threshold levels. Asterisks have been used to identify the baseline and most recent audiogram. A threshold shift of 20 dB exists at 4000 Hz between the audiograms taken at ages 27 and 32.

(The threshold shift is computed by subtracting the hearing threshold at age 27, which was 5, from the hearing threshold at age 32, which is 25.) A retest audiogram has confirmed this shift. The contribution of aging to this change in hearing may be estimated in the following manner:

Go to Table A-1 and find the age correction values (in dB) for 4000 Hz at age 27 and age 32.

	Frequency (Hz)				
	1000	2000	3000	4000	6000
Age 32	6	5	7	10	14
Age 27	5	4	6	7	11
Difference	1	1	1	3	3

The difference represents the amount of hearing loss that may be attributed to aging in the time period between the baseline audiogram and the most recent audiogram. In this example, the difference at 4000 Hz is 3 dB. This value is subtracted from the hearing level at 4000 Hz, which in the most recent audiogram is 25, yielding 22 after adjustment. Then the hearing threshold in the baseline audiogram at 4000 Hz (5) is subtracted from the adjusted annual audiogram hearing threshold at 4000 Hz (22). Thus the age-corrected threshold shift would be 17 dB (as opposed to a threshold shift of 20 dB without age correction).

TABLE A-1 - AGE CORRECTION VALUES IN DECIBELS FOR MALES

Audiometric Test Frequency (Hz)					
Age	1000	2000	3000	4000	6000
20 or younger	5	3	4	5	8
21	5	3	4	5	8
22	5	3	4	5	8
23	5	3	4	6	9
24	5	3	5	6	9
25	5	3	5	7	10
26	5	4	5	7	10
27	5	4	6	7	11
28	6	4	6	8	11
29	6	4	6	8	12
30	6	4	6	9	12
31	6	4	7	9	13
32	6	5	7	10	14
33	6	5	7	10	14
34	6	5	8	11	15
35	7	5	8	11	15
36	7	5	9	12	16
37	7	6	9	12	17
38	7	6	9	13	17
39	7	6	10	14	18

Audiometric Test Frequency (Hz)					
Age	1000	2000	3000	4000	6000
40	7	6	10	14	19
41	7	6	10	14	20
42	8	7	11	16	20
43	8	7	12	16	21
44	8	7	12	17	22
45	8	7	13	18	23
46	8	8	13	19	24
47	8	8	14	19	24
48	9	8	14	20	25
49	9	9	15	21	26
50	9	9	16	22	27
51	9	9	16	23	28
52	9	10	17	24	29
53	9	10	18	25	30
54	10	10	18	26	31
55	10	11	19	27	32
56	10	11	20	28	34
57	10	11	21	29	35
58	10	12	22	31	36
59	11	12	22	32	37
60 or older	11	13	23	33	38

TABLE ((F-2)) A-2 - AGE CORRECTION VALUES IN DECIBELS FOR FEMALES

Audiometric Test Frequency (Hz)					
Age	1000	2000	3000	4000	6000
20 or younger	7	4	3	3	6
21	7	4	4	3	6
22	7	4	4	4	6
23	7	5	4	4	7
24	7	5	4	4	7
25	8	5	4	4	7
26	8	5	5	4	8
27	8	5	5	5	8
28	8	5	5	5	8
29	8	5	5	5	9
30	8	6	5	5	9
31	8	6	6	5	9
32	9	6	6	6	10
33	9	6	6	6	10
34	9	6	6	6	10
35	9	6	7	7	11

Audiometric Test Frequency (Hz)					
Age	1000	2000	3000	4000	6000
36	9	7	7	7	11
37	9	7	7	7	12
38	10	7	7	7	12
39	10	7	8	8	12
40	10	7	8	8	13
41	10	8	8	8	13
42	10	8	9	9	13
43	11	8	9	9	14
44	11	8	9	9	14
45	11	8	10	10	15
46	11	9	10	10	15
47	11	9	10	11	16
48	12	9	11	11	16
49	12	9	11	11	16
50	12	10	11	12	17
51	12	10	12	12	17
52	12	10	12	13	18
53	13	10	13	13	18
54	13	11	13	14	19
55	13	11	14	14	19
56	13	11	14	15	20
57	13	11	15	15	20
58	14	12	15	16	21
59	14	12	16	16	21
60 or older	14	12	16	17	22

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 296-27-00109 Nonmandatory appendix to this section—Partially exempt industries.
- WAC 296-27-041 Transition from the former rule.
- WAC 296-27-04101 Summary and posting of the 2001 data.
- WAC 296-27-04103 Retention and updating of old forms.

AMENDATORY SECTION (Amending WSR 12-24-071, filed 12/4/12, effective 1/4/13)

WAC 296-37-575 Recordkeeping requirements. (1) Recording and reporting. ~~((a))~~ The employer ~~((shall))~~ must comply with ~~((the requirements of))~~ chapter ~~((s))~~ 296-27 ~~((; 296-800, and 296-900))~~ WAC for recording work-related injuries and illnesses and reporting to the department any work-related fatality, inpatient hospitalization, amputation, or the loss of an eye.

~~((b) The employer shall record the occurrence of any diving-related injury or illness which requires any dive team member to be hospitalized, specifying the circumstances of the incident and the extent of any injuries or illnesses.))~~

(2) Availability of records.

(a) Upon the request of the director of the department of labor and industries or his duly authorized designees, the employer shall make available for inspection and copying any record or document required by this standard.

(b) Records and documents required by this standard shall be provided upon request to employees, designated representatives, and the assistant director in accordance with chapter 296-802 WAC. Safe practices manuals (WAC 296-37-530), depth-time profiles (WAC 296-37-540), recording of dives (WAC 296-37-545), decompression procedure assessment evaluations (WAC 296-37-545), and records of hospitalizations ~~((WAC 296-37-575))~~ chapter 296-27 WAC shall be provided in the same manner as employee exposure records or analyses using exposure or medical records. Equipment inspections and testing records which pertain to employees (WAC 296-37-570) shall also be provided upon request to employees and their designated representatives.

(c) Records and documents required by this standard shall be retained by the employer for the following period:

(i) Dive team member medical records (physician's reports) (WAC 296-37-525) - Five years;

(ii) Safe practices manual (WAC 296-37-530) - Current document only;

(iii) Depth-time profile (WAC 296-37-540) - Until completion of the recording of dive, or until completion of decompression procedure assessment where there has been an incident of decompression sickness;

(iv) Recording dive (WAC 296-37-545) one year, except five years where there has been an incident of decompression sickness;

(v) Decompression procedure assessment evaluations (WAC 296-37-545) - Five years;

(vi) Equipment inspections and testing records (WAC 296-37-570) - Current entry or tag, or until equipment is withdrawn from service;

(vii) Records of hospitalizations (WAC ~~((296-37-575))~~ 296-27-02107) - Five years.

(d) After the expiration of the retention period of any record required to be kept for five years, the employer shall forward such records to the National Institute for Occupational Safety and Health, Department of Health and Human Services. The employer shall also comply with any additional requirements set forth in chapter 296-802 WAC.

AMENDATORY SECTION (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

WAC 296-78-515 Management's responsibility. (1) It shall be the responsibility of management to establish, supervise, and enforce, in a manner which is effective in practice:

(a) A safe and healthful working environment.

(b) An accident prevention program as required by these standards.

(c) Training programs to improve the skill and competency of all employees in the field of occupational safety and health. Such training shall include the on-the-job instructions on the safe use of powered materials handling equipment, machine tool operations, use of toxic materials and operation of utility systems prior to assignments to jobs involving such exposures.

(2) The employer shall develop and maintain a hazard communication program as required by WAC 296-901-140, which will provide information to all employees relative to hazardous chemicals or substances to which they are exposed, or may become exposed, in the course of their employment.

(3) Management shall not assign mechanics, millwrights, or other persons to work on equipment by themselves when there is a probability that the person could fall from elevated work locations or equipment or that a person could be pinned down by heavy parts or equipment so that they could not call for or obtain assistance if the need arises.

Note: This subsection does not apply to operators of motor vehicles, watchperson or certain other jobs which, by their nature, are singular employee assignments. However, a definite procedure for checking the welfare of all employees during their working hours shall be instituted and all employees so advised.

(4) After the emergency actions following accidents that cause serious injuries that have immediate symptoms, a preliminary investigation of the cause of the accident shall be conducted. The investigation shall be conducted by a person designated by the employer, the immediate supervisor of the injured employee, witnesses, employee representative if available and any other person with the special expertise required to evaluate the facts relating to the cause of the accident. The findings of the investigation shall be documented by the employer for reference at any following formal investigation.

(5) Reporting ~~((of fatality or hospitalization incidents.~~

~~(a) Within eight hours after the fatality or probable fatality of any employee from a work-related incident or the inpatient hospitalization of any employee as a result of a work-related incident, the employer of any employees so affected shall report the fatality/hospitalization by telephone or in person, to the nearest office of the department or by using the OSHA toll-free central telephone number, 1-800-321-6742.~~

~~(i) This requirement applies to each such fatality or hospitalization which occurs within thirty days of the incident.~~

~~(ii) Exception: If any employer does not learn of a reportable incident at the time it occurs and the incident would otherwise be reportable under this subsection, the employer shall make a report within eight hours of the time the incident is reported to any agent or employee of the employer.~~

~~(iii) Each report required by this subsection shall relate the following information: Establishment name, location of the incident, time of the incident, number of fatalities or hospitalized employees, contact person, phone number, and a brief description of the incident.~~

~~(b) Equipment involved in an incident resulting in an immediate or probable fatality or in the inpatient hospitalization of any employee, shall not be moved, until a representative of the department investigates the incident and releases~~

such equipment, except where removal is essential to prevent further incident. Where necessary to remove the victim, such equipment may be moved only to the extent of making possible such removal.

~~(e) Upon arrival of a department investigator, employer shall assign to assist the investigator, the immediate supervisor and all employees who were witnesses to the incident, or whoever the investigator deems necessary to complete the investigation.~~

~~(6) A system for maintaining records of occupational injuries and illnesses as prescribed by chapter 296-27 WAC.~~

Note: Recordable cases include:

- (a) Every occupational death.
- (b) Every industrial illness.
- (c) Every occupational injury that involves one of the following:
 - (i) Unconsciousness.
 - (ii) Inability to perform all phases of regular job.
 - (iii) Inability to work full time on regular job.
 - (iv) Temporary assignment to another job.
 - (v) Medical treatment beyond first aid.

~~All employers with eleven or more employees shall record occupational injury and illness information on forms OSHA 101—supplementary record occupational injuries and illnesses and OSHA 200—log and summary. Forms other than OSHA 101 may be substituted for the supplementary record of occupational injuries and illnesses if they contain the same items.) and recording requirements. The employer must comply with chapter 296-27 WAC for recording work-related injuries and illnesses and reporting to the department any work-related fatality, inpatient hospitalization, amputation, or the loss of an eye.~~

~~(6) The employer must comply with the accident investigation requirements in WAC 296-800-320.~~

(7) Personal protective equipment required by this standard shall be provided at no cost to employees.

AMENDATORY SECTION (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

WAC 296-115-060 Operations. (1) No person will rent, lease, or hire out a charter boat, carry, advertise for carrying, or arrange for carrying, more than six passengers on a vessel for a fee or other consideration on state waters unless the vessel meets the requirements of this chapter.

(2) Notice of casualty.

(a) The owner or person in charge of any vessel involved in a marine accident or casualty involving any of the following must report the incident immediately to the department:

(i) Damage to property in excess of one thousand five hundred dollars.

(ii) Major damage affecting the seaworthiness or safety of the vessel.

(iii) Loss of life or an injury to a person that requires medical treatment beyond first aid.

(iv) Fire on board the vessel.

(b) The report must be in writing to the assistant director. Upon receipt of the report the assistant director may request an investigation by a marine dock inspector.

(c) For work-related injuries and illness involving any employee that resulted in death, inpatient hospitalization, amputation or loss of an eye, the employer must comply with the recordkeeping and reporting regulations in chapter 296-27 WAC.

(3) Miscellaneous operations.

(a) In the case of collision, accident, or other casualty involving a vessel the operator, must:

(i) So far as possible without serious danger to the vessel or persons aboard, render any necessary assistance to other persons affected by the collision, accident, or casualty to save them from danger.

(ii) Provide the name and address of the vessel owner and the name of the vessel to any person injured and to the owner of any property damaged.

(b) The person in charge of the vessel must see that the provisions of the certificate of inspection are strictly adhered to. This will not limit the person in charge from taking any action in an emergency judged necessary to help vessels in distress or to prevent loss of life.

(c) The operator of a vessel must comply with the provisions of the USCG Navigation Rules International/Inland, Commandants Instruction M16672.2D.

(d) The operator of a vessel must test the vessel's steering gear, signaling whistle, controls, and communication system before getting under way for the day's operation.

(e) Vessels using fuel with a flashpoint of 110°F or lower must not take on fuel when passengers are on board.

(f) All vessels must enforce "no smoking" provisions when fueling. Locations on the vessel where flammable liquids are stored must be posted "no smoking."

(g) All vessels must prepare and post emergency check-off lists in a conspicuous place accessible to crew and passengers, covering the following:

(i) Man overboard.

(ii) Fire.

(h) The persons in charge must conduct emergency drills to ensure that the crew is familiar with their duties in an emergency and must document the drills.

(i) Carrying hazardous substances is prohibited on vessels. However, the assistant director may authorize a vessel to carry specific types and quantities of hazardous substances if the assistant director approves the type, quantity, and manner in which it is carried.

(j) All areas accessible to passengers or crew must be kept in a clean and sanitary condition. All walking surfaces must be free of slipping or tripping hazards and in good repair.

(4) First aid.

(a) All passenger vessels at all times must have a person holding a valid certificate of first-aid/CPR training.

(b) A first-aid kit or first-aid room must be provided on all vessels. The size and quantity of first-aid supplies or equipment required must be determined by the number of persons normally dependent upon each kit or equipment. The first-aid kit or supplies must be in a weatherproof container with individually sealed packages for each type of item. The location of the first-aid station or kit must be posted or marked "first aid" on the container.

AMENDATORY SECTION (Amending WSR 05-01-166, filed 12/21/04, effective 4/2/05)

WAC 296-307-018 What are the employer's responsibilities?

You must:

(1) Provide a safe and healthful working environment.
 (2) Ensure that employees do not use defective or unsafe tools and equipment, including tools and equipment that may be furnished by the employee.

(3) Implement a written accident prevention program as required by these standards.

(4) Implement a hazard communication program as required by WAC 296-307-550.

(5) Establish a system for ~~((reporting and))~~ complying with chapter 296-27 WAC for recording ((accidents on the OSHA 200 log. (See chapter 296-27 WAC.)) work-related injuries and illnesses and reporting to the department any work-related fatality, inpatient hospitalization, amputation, or loss of an eye. In addition, you must also report to the department within eight hours after any work-related incident that results in injury or illness from acute pesticide exposure.

(6) Follow the requirements for accident investigations in WAC 296-800-320.

(7) Provide safety education and training programs.

~~((7))~~ (8) Implement the requirements of WAC 296-62-074 through 296-62-07451 to ensure the safety of employees who are exposed to cadmium in the workplace.

~~((8))~~ (9) Implement the requirements of WAC 296-307-642 through 296-307-656 to ensure the safety of employees who are exposed to confined spaces in the workplace.

~~((9))~~ (10) Control chemical agents.

You must:

- Control chemical agents in a manner that they will not present a hazard to your workers; or

- Protect workers from the hazard of contact with, or exposure to, chemical agents.

Reference: Pesticides are chemical agents and are covered by chapter 296-307 WAC Part I, Pesticides (worker protection standard). Pesticides may also be covered by WAC 296-307-594, Respirators.

~~((10))~~ (11) Protect employees from biological agents.

You must:

- Protect employees from exposure to hazardous concentrations of biological agents that may result from processing, handling or using materials or waste.

Note: Examples of biological agents include:

- Animals or animal waste
- Body fluids
- Biological agents in a medical research lab
- Mold or mildew.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-307-015 What must an employer do if a serious injury occurs?

AMENDATORY SECTION (Amending WSR 09-01-158, filed 12/23/08, effective 3/1/09)

WAC 296-800-320 Summary. Your responsibility:

To ~~((report and))~~ conduct an investigation of certain types of accidents.

You must:

~~((Report the death, or probable death, of any employee, or the in-patient hospitalization of any employee within 8 hours~~

~~WAC 296-800-32005))~~

Make sure ~~((that any))~~ equipment involved in ((an)) a work-related accident is not moved.

WAC 296-800-32010

Assign people to assist the department of labor and industries

WAC 296-800-32015

Conduct a preliminary investigation for all serious injuries

WAC 296-800-32020

Document the investigation findings

WAC 296-800-32025

AMENDATORY SECTION (Amending WSR 08-05-012, filed 2/8/08, effective 4/1/08)

WAC 296-800-32010 Make sure ((that any)) equipment involved in ((an)) a work-related accident is not moved. You must:

- Not move equipment involved in a ~~((work or))~~ work-related accident ~~((or incident))~~ if any of the following results:

- A death

- ~~((A probable death))~~

- An ~~((employee's))~~ inpatient hospitalization

- An amputation

- The loss of an eye

- Not move the equipment until a representative of the department of labor and industries investigates the incident and releases the equipment unless:

- Moving the equipment is necessary to:

- ~~((♦))~~ Remove any victims

- ~~((♦))~~ Prevent further incidents and injuries

AMENDATORY SECTION (Amending WSR 08-05-012, filed 2/8/08, effective 4/1/08)

WAC 296-800-32015 Assign people to assist the department of labor and industries. You must:

- Assign witnesses and other employees to assist department of labor and industries personnel who arrive at the scene to investigate the incident involving:

- A death

- ~~((Probable death))~~

- An ~~((employee's))~~ inpatient hospitalization

- An amputation

- The loss of an eye

Include:

- The immediate supervisor

- Employees who were witnesses to the incident

- Other employees the investigator feels are necessary to complete the investigation.

AMENDATORY SECTION (Amending WSR 14-07-086, filed 3/18/14, effective 5/1/14)

WAC 296-800-370 Definitions.

Abatement action plans

Refers to your written plans for correcting a WISHA violation.

Abatement date

The date on the citation when you must comply with specific safety and health standards listed on the citation and notice of assessment or the corrective notice of redetermination.

Acceptable

As used in **Electrical, WAC 296-800-280** means an installation or equipment is acceptable to the director of labor and industries, and approved:

- If it is accepted, or certified, or listed, or labeled, or otherwise determined to be safe by a nationally recognized testing laboratory; or
- With respect to an installation or equipment of a kind which no nationally recognized testing laboratory accepts, certifies, lists, labels, or determines to be safe, if it is inspected or tested by another federal agency, or by a state, municipal, or other local authority responsible for enforcing occupational safety provisions of the National Electrical Code, and found in compliance with the provisions of the National Electrical Code as applied in this section;

OR

- With respect to custom-made equipment or related installations which are designed, fabricated for, and intended for use by a particular customer, if it is determined to be safe for its intended use by its manufacturer on the basis of test data which the employer keeps and makes available for inspection to the director and his/her authorized representatives. Refer to federal regulation 29 C.F.R. 1910.7 for definition of nationally recognized testing laboratory.

Accepted

As used in **Electrical, WAC 296-800-280** means an installation is accepted if it has been inspected and found by a nationally recognized testing laboratory to conform to specified plans or to procedures of applicable codes.

Access

As used in safety data sheets (SDSs) as exposure records, WAC 296-901-14014 means the right and opportunity to examine and copy exposure records.

Affected employees

As used in WISHA appeals, penalties and other procedural rules, WAC 296-800-350 means employees exposed to hazards identified as violations in a citation.

Analysis using exposure or medical records

- An analysis using exposure records or medical records can be any collection of data or a statistical study. It can be based on either:
 - Partial or complete information from individual employee exposure or medical records or
 - Information collected from health insurance claim records
- The analysis is not final until it has been:
 - Reported to the employer or
 - Completed by the person responsible for the analysis

ANSI

This is an acronym for the American National Standards Institute.

Approved means:

- Approved by the director of the department of labor and industries or their authorized representative, or by an organization that is specifically named in a rule, such as Underwriters' Laboratories (UL), Mine Safety and Health Administration (MSHA), or the National Institute for Occupational Safety and Health (NIOSH).
- As used in **Electrical, WAC 296-800-280** means acceptable to the authority enforcing this section. The authority enforcing this section is the director of labor and industries. The definition of acceptable indicates what is acceptable to the director and therefore approved.

Assistant director

The assistant director for the WISHA services division at the department of labor and industries or his/her designated representative.

ASTM

This is an acronym for American Society for Testing and Materials.

Attachment plug or plug

As used in the basic electrical rules, WAC 296-800-280 means the attachment at the end of a flexible cord or cable that is part of a piece of electrical equipment. When it is inserted into an outlet or receptacle, it connects the conductors supplying electrical power from the outlet to the flexible cable.

Bare conductor

A conductor that does not have any covering or insulation.

Bathroom

A room maintained within or on the premises of any place of employment, containing toilets that flush for use by employees.

Biological agents

Organisms or their by-products.

Board

As used in WISHA appeals, penalties and other procedural rules, WAC 296-800-350 means the board of industrial insurance appeals.

Ceiling

An exposure limit that must not be exceeded during any part of the employee's workday. The ceiling must be determined over the shortest time period feasible and should not exceed fifteen minutes.

Certification

As used in WISHA appeals, penalties and other procedural rules, WAC 296-800-350 means refers to an employer's written statement describing when and how a citation violation was corrected.

C.F.R.

This is an acronym for Code of Federal Regulations.

Chemical

Any element, chemical compound, or mixture of elements and/or compounds.

Chemical agents (airborne or contact)

A chemical agent is any of the following:

- Airborne chemical agent which is any of the following:

– Dust - Solid particles suspended in air, that are created by actions such as:

- Handling.
- Drilling.
- Crushing.
- Grinding.
- Rapid impact.
- Detonation.

• Decrepitation of organic or inorganic materials such as rock, ore, metal, coal, wood, and grain.

– Fume - Solid particles suspended in air, that are created by condensation from the gaseous state.

– Gas - A normally formless fluid, such as air, which can be changed to the liquid or solid state by the effect of increased pressure or decreased temperature or both.

– Mist - Liquid droplets suspended in air. Mist is created by:

- Condensation from the gaseous to the liquid state;

OR

• Converting a liquid into a dispersed state with actions such as splashing, foaming, spraying or atomizing.

– Vapor - The gaseous form of a substance that is normally in the solid or liquid state.

- Contact chemical agent which is any of the following:

– Corrosive - A substance that, upon contact, causes destruction of living tissue by chemical action, including acids with a pH of 2.5 or below or caustics with a pH of 11.0 or above.

– Irritant - A substance that will induce a local inflammatory reaction upon immediate, prolonged, or repeated contact with normal living tissue.

– Toxicant - A substance that has the inherent capacity to produce personal injury or illness to individuals by absorption through any body surface.

Chemical manufacturer

An employer with a workplace where one or more chemicals are produced for use or distribution.

Chemical name

The scientific designation of a chemical in accordance with one of the following:

- The nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC)
- The Chemical Abstracts Service (CAS) rules of nomenclature
- A name which will clearly identify the chemical for the purpose of conducting a hazard evaluation.

Circuit breaker

• Is a device used to manually open or close a circuit. This device will also open the circuit automatically and without damage to the breaker when a predetermined overcurrent is applied. (600 volts nominal or less)

• Is a switching device capable of making, carrying, and breaking currents under normal circuit conditions, and also making, carrying for a specified time, and breaking currents under specified abnormal circuit conditions, such as those of short circuit. (Over 600 volts nominal)

Citation

Refers to the citation and notice issued to an employer for any violation of WISHA safety and health rules. A cita-

tion and notice may be referred to as a citation and notice of assessment but is more commonly referred to as a citation.

Commercial account

As used in Hazard communication, WAC 296-901-140 means an arrangement in which a retail distributor sells hazardous chemical(s) to an employer, generally in large quantities over time, and/or at costs that are below the regular retail price.

Common name

As used in Hazard communication, WAC 296-901-140 means any designation or identification such as:

- Code name
- Code number
- Trade name
- Brand name
- Generic name used to identify a chemical other than by its chemical name.

Compressed gas

A gas or mixture of gases that, when in a container, has an absolute pressure exceeding:

- 40 psi at 70°F (21.1°C)

OR

- 104 psi at 130°F (54.4°C) regardless of the pressure at 70°F (21.1°C)

Compressed gas can also mean a liquid with a vapor pressure that exceeds 40 psi at 100°F (37.8°C)

Conductor

A wire that transfers electric power.

Container

As used in Hazard communication, WAC 296-901-140 means any container, except for pipes or piping systems, that contains a hazardous chemical. It can be any of the following:

- Bag
- Barrel
- Bottle
- Box
- Can
- Cylinder
- Drum
- Reaction vessel
- Storage tank

Correction date

The date by which a violation must be corrected. Final orders or extensions that give additional time to make corrections establish correction dates. A correction date established by an order of the board of industrial insurance appeals remains in effect during any court appeal unless the court suspends the date.

Corrective notice

Refers to a notice changing a citation and is issued by the department after a citation has been appealed.

Corrosive

A substance that, upon contact, causes destruction of living tissue by chemical action, including acids with a pH of 2.5 or below or caustics with a pH of 11.0 or above.

Covered conductor

A conductor that is covered by something else besides electrical insulation.

Damp location

As used in basic electrical rules, WAC 296-800-280 means partially protected areas that are exposed to moderate moisture. Outdoor examples include roofed open porches and marquees. Interior examples include basements and barns.

Department

Those portions of the department of labor and industries responsible for enforcing the Washington Industrial Safety Act (WISHA).

Designated representative

- Any individual or organization to which an employee gives written authorization.
- A recognized or certified collective bargaining agent without regard to written authorization.
- The legal representative of a deceased or legally incapacitated employee.

Director

The director means the director of the department of labor and industries or their designee.

Distributor

A business, other than a chemical manufacturer or importer, that supplies hazardous chemicals to other distributors or to employers.

Documentation

As used in WISHA appeals, penalties and other procedural rules, WAC 296-800-350 means material that you submit to prove that a correction is completed. Documentation includes, but is not limited to, photographs, receipts for materials and/or labor.

Dry location

As used in basic electrical rules, WAC 296-800-280 means areas not normally subjected to damp or wet conditions. Dry locations may become temporarily damp or wet, such as when constructing a building.

Dust

Solid particles suspended in air that are created by actions such as:

- Handling.
- Drilling.
- Crushing.
- Grinding.
- Rapid impact.
- Detonation.
- Decrepitation of organic or inorganic materials such as rock, ore, metal, coal, wood, and grain.

Emergency washing facilities

Emergency washing facilities are emergency showers, eyewashes, eye/face washes, hand-held drench hoses, or other similar units.

Electrical outlets

Places on an electric circuit where power is supplied to equipment through receptacles, sockets, and outlets for attachment plugs.

Employee

Based on chapter 49.17 RCW, the term employee and other terms of like meaning, unless the context of the provision containing such term indicates otherwise, means an employee of an employer who is employed in the business of his or her employer whether by way of manual labor or otherwise and every person in this state who is engaged in the

employment of or who is working under an independent contract the essence of which is personal labor for an employer under this standard whether by way of manual labor or otherwise.

Employee exposure record

As used in safety data sheets (SDSs) as exposure records, WAC 296-901-14014 means a record containing any of the following kinds of information:

- Environmental (workplace) monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretation of the results obtained;
- Biological monitoring results which directly assess the absorption of a toxic substance or harmful physical agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent or which assess an employee's use of alcohol or drugs;
- Safety data sheets indicating that the material may pose a hazard to human health;

OR

- In the absence of the above, a chemical inventory or any other record which reveals where and when used and the identity (e.g., chemical, common or trade name) of a toxic substance or harmful physical agent.

Employer

Based on chapter 49.17 RCW, an employer is any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees or who contracts with one or more persons, the essence of which is the personal labor of such person or persons and includes the state, counties, cities, and all municipal corporations, public corporations, political subdivisions of the state, and charitable organizations: Provided, That any persons, partnership, or business entity not having employees, and who is covered by the Industrial Insurance Act must be considered both an employer and an employee.

Exit

Provides a way of travel out of the workplace.

Exit route

A continuous and unobstructed path of exit travel from any point within a workplace to safety outside.

Explosive

A chemical that causes a sudden, almost instant release of pressure, gas, and heat when exposed to a sudden shock, pressure, or high temperature.

Exposed live parts

Electrical parts that are:

- Not suitably guarded, isolated, or insulated

AND

- Capable of being accidentally touched or approached closer than a safe distance.

Exposed wiring methods

Involve working with electrical wires that are attached to surfaces or behind panels designed to allow access to the wires.

Exposure or exposed

As used in Hazard communication, WAC 296-901-140 and safety data sheets (SDSs) as exposure records, WAC 296-901-14014. An employee has been, or may have possibly been, subjected to a hazardous chemical, toxic substance or harmful physical agent while working. An employee could have been exposed to hazardous chemicals, toxic substances, or harmful physical agents in any of the following ways:

- Inhalation
- Ingestion
- Skin contact
- Absorption
- Related means.

The terms exposure and exposed only cover workplace exposure involving a toxic substance or harmful physical agent in the workplace different from typical nonoccupational situations in the way it is:

- Used
- Handled
- Stored
- Generated
- Present

Exposure record

See definition for employee exposure record.

Extension ladder

A portable ladder with 2 or more sections and is not self-supporting. The 2 or more sections travel in guides or brackets that let you change the length. The size of a portable ladder is determined by adding together the length of each section.

Failure-to-abate

Any violation(s) resulting from not complying with an abatement date.

Final order

Any of the following (unless an employer or other party files a timely appeal):

- Citation and notice;
- Corrective notice;
- Decision and order from the board of industrial insurance appeals;
- Denial of petition for review from the board of industrial insurance appeals; or
- Decision from a Washington State superior court, court of appeals, or the state supreme court.

Final order date

The date a final order is issued.

First aid

The extent of treatment you would expect from a person trained in basic first aid, using supplies from a first-aid kit.

Tests, such as X rays, must not be confused with treatment.

Flammable

A chemical covered by one of the following categories:

- Aerosol flammable means a flammable aerosol as defined by WAC 296-901-14024, Appendix B—Physical hazard criteria;
- Gas, flammable means:
 - A gas that, at temperature and pressure of the surrounding area, forms a flammable mixture with air at a concentration of 13% by volume or less or

- A gas that, at temperature and pressure of the surrounding area, forms a range of flammable mixtures with air wider than 12% by volume, regardless of the lower limit.

- Liquid, flammable means any liquid having a flashpoint at or below 199.4°F (93°C). Flammable liquids are divided into four categories as follows:

(a) Category 1 shall include liquids having flashpoints below 73.4°F (23°C) and having a boiling point at or below 95°F (35°C).

(b) Category 2 shall include liquids having flashpoints below 73.4°F (23°C) and having a boiling point above 95°F (35°C).

(c) Category 3 shall include liquids having flashpoints at or above 73.4°F (23°C) and at or below 140°F (60°C). When a Category 3 liquid with a flashpoint at or above 100°F (37.8°C) is heated for use to within 30°F (16.7°C) of its flashpoint, it shall be handled in accordance with the requirements for a Category 3 liquid with a flashpoint below 100°F (37.8°C).

(d) Category 4 shall include liquids having flashpoints above 140°F (60°C) and at or below 199.4°F (93°C). When a Category 4 flammable liquid is heated for use to within 30°F (16.7°C) of its flashpoint, it shall be handled in accordance with the requirements for a Category 3 liquid with a flashpoint at or above 100°F (37.8°C).

(e) When liquid with a flashpoint greater than 199.4°F (93°C) is heated for use to within 30°F (16.7°C) of its flashpoint, it shall be handled in accordance with the requirements for a Category 4 flammable liquid.

- Solid, flammable means a solid, other than a blasting agent or explosive as defined in 29 C.F.R. 1910.109(a), that is likely to cause fire through friction, moisture absorption, spontaneous chemical change, or retained heat from manufacturing or processing, or which can be ignited readily. Solid, inflammable also means that when the substance is ignited, it burns so powerfully and persistently that it creates a serious hazard. A chemical must be considered to be a flammable solid if, when tested by the method described in 16 C.F.R. 1500.44, it ignites and burns with a self-sustained flame at a rate greater than one-tenth of an inch per second along its major axis.

Flashpoint

- The minimum temperature at which a liquid gives off a vapor within a test vessel in sufficient concentration to form an ignitable mixture with air near the surface of the liquid and shall be determined as follows:

- The flashpoint of liquids having a viscosity less than 45 Saybolt Universal Second(s) at 100°F (37.8°C) and a flashpoint below 175°F (79.4°C) shall be determined in accordance with the Standard Method of Test for Flash Point by the Tag Closed Tester, ASTM D-56-69, or an equivalent method as defined by WAC 296-901-14024, Appendix B—Physical hazard criteria.

Flexible cords and cables

Typically used to connect electrical equipment to an outlet or receptacle. These cords can have an attachment plug to connect to a power source or can be permanently wired into the power source. Flexible cords, extension cords, cables and electrical cords are all examples of flexible cord.

Floor hole

An opening in any floor, platform, pavement, or yard that measures at least one inch but less than 12 inches at its smallest dimension and through which materials and tools (but not people) can fall.

Examples of floor holes are:

- Belt holes
- Pipe openings
- Slot openings

Floor opening

An opening in any floor, platform, pavement, or yard that measures at least 12 inches in its smallest dimension and through which a person can fall.

Examples of floor openings are:

- Hatchways
- Stair or ladder openings
- Pits
- Large manholes

The following are NOT considered floor openings:

- Openings occupied by elevators
- Dumbwaiters
- Conveyors
- Machinery
- Containers

Foreseeable emergency

As used in Hazard communication, WAC 296-901-140 means any potential event that could result in an uncontrolled release of a hazardous chemical into the workplace. Examples of foreseeable emergencies include equipment failure, rupture of containers, or failure of control equipment.

Fume

Solid particles suspended in air that are created by condensation from the gaseous state.

Gas

A normally formless fluid, such as air, which can be changed to the liquid or solid state by the effect of increased pressure or decreased temperature or both.

Ground

As used in Electrical, WAC 296-800-280, a connection between an electrical circuit or equipment and the earth or other conducting body besides the earth. This connection can be intentional or accidental.

Grounded

A connection has been made between an electrical circuit or equipment and the earth or another conducting body besides the earth.

Grounded conductor

A system or circuit conductor that is intentionally grounded.

Ground-fault circuit-interrupter

A device whose function is to interrupt the electric circuit to the load when a fault current to ground exceeds some predetermined value that is less than that required to operate the overcurrent protective device of the supply circuit.

Grounding conductor

Is used to connect equipment or the grounded circuit of a wiring system to a grounding electrode or electrodes.

Grounding conductor, equipment

A conductor used to connect noncurrent-carrying metal parts of equipment, raceways, and other enclosures to the

system grounded conductor and/or the grounding electrode conductor at the service equipment or at the source of a separately derived system.

Guarded

Covered, shielded, fenced, enclosed, or otherwise protected by means of suitable covers, casings, barriers, rails, screens, mats, or platforms to remove the likelihood of being accidentally touched or approached closer than a safe distance.

Hand-held drench hoses

Hand-held drench hoses are single-headed emergency washing devices connected to a flexible hose that can be used to irrigate and flush the face or other body parts.

Handrail

A single bar or pipe supported on brackets from a wall or partition to provide a continuous handhold for persons using a stair.

Harmful physical agent

Any physical stress such as noise, vibration, repetitive motion, heat, cold, ionizing and nonionizing radiation, and hypo- or hyperbaric pressure which:

- Is listed in the latest edition of the National Institute for Occupational Safety and Health (NIOSH) *Registry of Toxic Effects of Chemical Substances* (RTECS); or
- Has shown positive evidence of an acute or chronic health hazard in testing conducted by, or known to, the employer;

OR

- Is the subject of a safety data sheet kept by or known to the employer showing that the material may pose a hazard to human health.

Hazard

Any condition, potential or inherent, which can cause injury, death, or occupational disease.

Hazard warning

As used in Hazard communication, WAC 296-901-140 can be a combination of words, pictures, symbols, or combination appearing on a label or other appropriate form of warning which shows the specific physical and health hazard(s), including target organ effects, of the chemical(s) in the container(s).

Note: See definition for physical hazard and health hazard to determine which hazards must be covered.

Hazardous chemical

Any chemical that is a physical or health hazard.

Health hazard

A chemical, mixture, biological agent, or physical agent that may cause health effects in short- or long-term exposed employees. Based on statistically significant evidence from at least one study conducted using established scientific principles. Health hazards include:

- Carcinogens
- Toxic or highly toxic agents
- Reproductive toxins
- Irritants
- Corrosives
- Sensitizers
- Hepatotoxins (liver toxins)
- Nephrotoxins (kidney toxins)
- Neurotoxins (nervous system toxins)

- Substances that act on the hematopoietic system (blood or blood-forming system)
- Substances that can damage the lungs, skin, eyes, or mucous membranes
- Hot or cold conditions.

Hospitalization

~~To be admitted to a hospital or an equivalent medical facility on an emergent in-patient basis requiring an overnight stay.)~~

Identity

As used in Hazard communication, WAC 296-901-140 means any chemical or common name listed on the safety data sheet (SDS) for the specific chemical. Each identity used must allow cross-references among the:

- Required list of hazardous chemicals
- Chemical label
- MSDSs

Imminent danger violation

Any violation(s) resulting from conditions or practices in any place of employment, which are such that a danger exists which could reasonably be expected to cause death or serious physical harm, immediately or before such danger can be eliminated through the enforcement procedures otherwise provided by the Washington Industrial Safety and Health Act.

Importer

The first business within the Customs Territory of the USA that:

- Receives hazardous chemicals produced in other countries

AND

- Supplies them to distributors or employers within the USA

Inpatient hospitalization

To be admitted into a hospital or equivalent facility for medical treatment.

Insulated

A conductor has been completely covered by a material that is recognized as electrical insulation and is thick enough based on:

- The amount of voltage involved

AND

- The type of covering material

Interim waiver

An order granted by the department allowing an employer to vary from WISHA requirements until the department decides to grant a permanent or temporary waiver.

Irritant

A substance that will induce a local inflammatory reaction upon immediate, prolonged, or repeated contact with normal living tissue.

Ladder

Consists of 2 side rails joined at regular intervals by crosspieces called steps, rungs, or cleats. These steps are used to climb up or down.

Listed

Equipment is listed if it:

- Is listed in a publication by a nationally recognized laboratory (such as UL, underwriters laboratory) that inspects the production of that type of equipment,

AND

- States the equipment meets nationally recognized standards or has been tested and found safe to use in a specific manner.

Medical treatment

Treatment provided by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first-aid treatment even if provided by a physician or registered professional personnel.

Mist

Liquid droplets suspended in air. Mist is created by:

- Condensation from the gaseous to the liquid state;

OR

- Converting a liquid into a dispersed state with actions such as splashing, foaming, spraying or atomizing.

Mixture

As used in Hazard communication, WAC 296-901-140, any combination of 2 or more chemicals (if that combination did not result from a chemical reaction).

Movable equipment

As used in WAC 296-800-35052, a hand-held or non-hand-held machine or device;

- That is powered or nonpowered;

AND

- Can be moved within or between worksites

Must

Must means mandatory.

NEMA

These initials stand for National Electrical Manufacturing Association.

NFPA

This is an acronym for National Fire Protection Association.

Nose

The portion of the stair tread that projects over the face of the riser below it.

Occupational Safety and Health Administration (OSHA)

Created in 1970 when the U.S. Congress passed the Occupational Safety and Health Act, the Occupational Safety and Health Administration (OSHA) provides safety on the job for workers. OSHA oversees state plans (such as WISHA in Washington) that have elected to administer the safety and health program for their state. OSHA requires WISHA rules to be at least as effective as OSHA rules.

Office work environment

An indoor or enclosed occupied space where clerical work, administration, or business is carried out.

In addition, it includes:

- Other workplace spaces controlled by the employer and used by office workers, such as cafeterias, meeting rooms, and washrooms.
- Office areas of manufacturing and production facilities, not including process areas.
- Office areas of businesses such as food and beverage establishments, agricultural operations, construction, commercial trade, services, etc.

Open riser

A stair step with an air space between treads has an open riser.

Organic peroxide

This is an organic compound containing the bivalent-0-0-structure. It may be considered a structural derivative of hydrogen peroxide if one or both of the hydrogen atoms has been replaced by an organic radical.

Outlet

See definition for electrical outlets.

Oxidizer

A chemical other than a blasting agent or explosive as defined in WAC 296-52-60130 or C.F.R. 1910.109(a), that starts or promotes combustion in other materials, causing fire either of itself or through the release of oxygen or other gases.

Permissible exposure limits (PELs)

Permissible exposure limits (PELs) are employee exposures to toxic substances or harmful physical agents that must not be exceeded. PELs are specified in applicable WISHA rules.

Person

Based on chapter 49.17 RCW, one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

Personal eyewash units

Personal eyewash units are portable, supplementary units that support plumbed units or self-contained units, or both, by delivering immediate flushing for less than fifteen minutes.

Personal service room

Used for activities not directly connected with a business' production or service function such as:

- First aid
- Medical services
- Dressing
- Showering
- Bathrooms
- Washing
- Eating

Personnel

See the definition for employees.

Physical hazard

Means a chemical that is classified as posing one of the following hazardous effects: Explosive; flammable (gases, aerosols, liquids, or solids); oxidizer (liquid, solid or gas); self-reactive; pyrophoric (liquid or solid); self-heating; organic peroxide; corrosive to metal; gas under pressure; or in contact with water emits flammable gas. WAC 296-901-14024, Appendix B—Physical hazard criteria.

Platform

Platform means an extended step or landing that breaks a continuous run of stairs.

Plug

See definition for attachment plug.

Potable water

Water that is suitable for drinking by the public and meets the requirements of chapter 246-290 or 246-291 WAC.

Predictable and regular basis

Employee functions such as, but not limited to, inspection, service, repair and maintenance which are performed

- At least once every 2 weeks

OR

- 4 man-hours or more during any sequential 4-week period (to calculate man-hours multiply the number of employees by the number of hours during a 4-week period).

Produce

As used in Hazard communication, WAC 296-901-140, any one of the following:

- Manufacture
- Process
- Formulate
- Blend
- Extract
- Generate
- Emit
- Repackage

Purchaser

As used in Hazard communication, WAC 296-901-140, an employer who buys one or more hazardous chemicals to use in their workplace.

Pyrophoric

A chemical is pyrophoric if it will ignite spontaneously in the air when the temperature is 130°F (54.4°C) or below.

Qualified person

A person who has successfully demonstrated the ability to solve problems relating to the subject matter, work, or project, either by:

- Possession of a recognized degree, certificate, or professional standing;

OR

- Extensive knowledge, training and experience.

Railing or standard railing

A vertical barrier erected along exposed edges of a floor opening, wall opening, ramp, platform, or runway to prevent falls of persons.

Reassume jurisdiction

The department has decided to take back its control over a citation and notice being appealed.

Receptacle or receptacle outlet

As used in basic electrical rules, WAC 296-800-280 means outlets that accept a plug to supply electric power to equipment through a cord or cable.

Record

A record is any item, collection, or grouping of information. Examples include:

- Paper document
- Microfiche
- Microfilm
- X-ray film
- Computer record

Refuge area

• A protected space along an exit route that is separated from other spaces inside the building by a barrier with at least a one-hour fire resistance rating;

OR

• A floor in a building with an automatic sprinkler system that has at least two spaces that are separated by smoke-resistant partitions. See WAC 296-24-607 for requirements for automatic sprinkler systems.

Repeat violation

A violation is a repeat violation if the employer has been cited one or more times previously for a substantially similar hazard.

~~(Refuge area~~

~~• A protected space along an exit route that is separated from other spaces inside the building by a barrier with at least a one-hour fire resistance rating;~~

OR

~~• A floor in a building with an automatic sprinkler system that has at least two spaces that are separated by smoke-resistant partitions. See WAC 296-24-607 for requirements for automatic sprinkler systems.)~~

Responsible party

As used in Hazard communication, WAC 296-901-140. Someone who can provide appropriate information about the hazardous chemical and emergency procedures.

Rise

The vertical distance from the top of a tread to the top of the next higher tread.

Riser

The vertical part of the step at the back of a tread that rises to the front of the tread above.

Rungs

Rungs are the cross pieces on ladders that are used to climb up and down the ladder.

Runway

An elevated walkway above the surrounding floor or ground level. Examples of runways are footwalks along shafting or walkways between buildings.

Safety data sheet (SDS)

Written, printed, or electronic information (on paper, microfiche, or on-screen) that informs manufacturers, distributors, employers or employees about a hazardous chemical, its hazards, and protective measures as required by safety data sheet and label preparation, WAC 296-901-140.

Safety factor

The term safety factor means the ratio of when something will break versus the actual working stress or safe load when it is used.

Self-lighting or self-luminous

A light source that:

- Is illuminated by a self-contained power source other than batteries;

AND

- Operates independently from external power sources.

Serious violation

Serious violation must be deemed to exist in a workplace if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use in such workplace, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

Short-term exposure limit (STEL)

An exposure limit, averaged over a short time period (usually measured for 15 minutes) that must not be exceeded during any part of an employee's workday.

Should

Should means recommended.

Single ladder

A type of portable ladder with one section.

It is distinguished by all of the following:

- It has one section
- It cannot support itself
- Its length cannot be adjusted

Smoking

A person is smoking if they are:

- Lighting up
- Inhaling
- Exhaling
- Carrying a pipe, cigar or cigarette of any kind that is burning

Specific chemical identity

This term applies to chemical substances. It can mean the:

- Chemical name
- Chemical Abstracts Service (CAS) registry number
- Any other information that reveals the precise chemical designation of the substance.

Stair railing

A vertical barrier attached to a stairway with an open side to prevent falls. The top surface of the stair railing is used as a handrail

Stairs or stairway

A series of steps and landings:

- Leading from one level or floor to another
- Leading to platforms, pits, boiler rooms, crossovers, or around machinery, tanks, and other equipment
- Used more or less continuously or routinely by employees, or only occasionally by specific individuals
- With three or more risers

Standard safeguard

Safety devices that prevent hazards by their attachment to:

- Machinery
- Appliances
- Tools
- Buildings
- Equipment

These safeguards must be constructed of:

- Metal
- Wood
- Other suitable materials

The department makes the final determination about whether a safeguard is sufficient for its use.

Step ladder

A portable ladder with:

- Flat steps
- A hinge at the top allowing the ladder to fold out and support itself
- Its length that cannot be adjusted.

Time weighted average (TWA₈)

An exposure limit, averaged over 8 hours, that must not be exceeded during an employee's work shift.

Toeboard

A barrier at floor level along exposed edges of a floor opening, wall opening, platform, runway, or ramp, to prevent falls of materials.

Toxic chemical

As used in first aid, WAC 296-800-150, is a chemical that produces serious injury or illness when absorbed through any body surface.

Toxic substance

Any chemical substance or biological agent, such as bacteria, virus, and fungus, which is any of the following:

- Listed in the latest edition of the National Institute for Occupational Safety and Health (NIOSH) *Registry of Toxic Effects of Chemical Substances* (RTECS)
- Shows positive evidence of an acute or chronic health hazard in testing conducted by, or known to, the employer
- The subject of a safety data sheet kept by or known to the employer showing the material may pose a hazard to human health.

Toxicant

A substance that has the inherent capacity to produce personal injury or illness to individuals by absorption through any body surface.

Trade secret

Any confidential:

- Formula
- Pattern
- Process
- Device
- Information
- Collection of information

The trade secret is used in an employer's business and gives an opportunity to gain an advantage over competitors who do not know or use it.

See WAC 296-901-14018 for requirements dealing with trade secrets.

Tread

As used in stairs and stair railings, WAC 296-800-250 means the horizontal part of the stair step.

Tread run

As used in stairs and stair railings, WAC 296-800-250 means the distance from the front of one stair tread to the front of an adjacent tread.

Tread width

The distance from front to rear of the same tread including the nose, if used.

UL (Underwriters' Laboratories, Inc.)

You will find these initials on electrical cords and equipment. The initials mean the cord or equipment meets the standards set by the Underwriters' Laboratories, Inc.

Unstable (reactive)

As used in Hazard communication, WAC 296-901-140. An unstable or reactive chemical is one that in its pure state, or as produced or transported, will vigorously polymerize, decompose, condense, or will become self-reactive under conditions of shocks, pressure or temperature.

Use

As used in Hazard communication, WAC 296-901-140, means to:

- Package

- Handle
- React
- Emit
- Extract
- Generate as a by-product
- Transfer.

Vapor

The gaseous form of a substance that is normally in the solid or liquid state.

Voltage of a circuit

The greatest effective potential difference between any two conductors or between a conductor and ground.

Voltage to ground

The voltage between a conductor and the point or conductor of the grounded circuit. For undergrounded circuits, it is the greatest voltage between the conductor and any other conductor of the circuit.

Voltage, nominal

Nominal voltage is a value assigned to a circuit or system to designate its voltage class (120/240, 480Y/277, 600, etc.). The actual circuit voltage can vary from the value if it is within a range that permits the equipment to continue operating in a satisfactory manner.

WAC

This is an acronym for **Washington Administrative Code**, which are rules developed to address state law.

Water-reactive

As used in Hazard communication, WAC 296-901-140, a water-reactive chemical reacts with water to release a gas that is either flammable or presents a health hazard.

Watertight

Constructed so that moisture will not enter the enclosure or container.

Weatherproof

Constructed or protected so that exposure to the weather will not interfere with successful operation. Rainproof, rain-tight, or watertight equipment can fulfill the requirements for weatherproof where varying weather conditions other than wetness, such as snow, ice, dust, or temperature extremes, are not a factor.

Wet location

As used in basic electrical rules, WAC 296-800-280 means:

- Underground installations or in concrete slabs or masonry that are in direct contact with the earth
- Locations that can be saturated by water or other liquids
- Unprotected locations exposed to the weather (like vehicle washing areas)

WISHA

This is an acronym for the Washington Industrial Safety and Health Act.

Work area

As used in Hazard communication, WAC 296-901-140, a room or defined space in a workplace where hazardous chemicals are produced or used, and where employees are present.

Working days

Means a calendar day, except Saturdays, Sundays, and legal holidays. Legal holidays include:

- New Year's Day - January 1
- Martin Luther King, Jr. Day
- Presidents' Day
- Memorial Day
- Independence Day - July 4
- Labor Day
- Veterans' Day - November 11
- Thanksgiving Day
- The day after Thanksgiving Day; and
- Christmas Day - December 25

The number of working days must be calculated by not counting the first working day and counting the last working day.

Worker

See the definition for employee.

Workplace

- The term workplace means:

– Any plant, yard, premises, room, or other place where an employee or employees are employed for the performance of labor or service over which the employer has the right of access or control, and includes, but is not limited to, all workplaces covered by industrial insurance under Title 51 RCW, as now or hereafter amended.

– As used in Hazard communication, WAC 296-901-140 means an establishment, job site, or project, at one geographical location containing one or more work areas.

You

See definition of employer.

Your representative

Your representative is the person selected to act in your behalf.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 296-800-32005 Report the death, probable death of any employee, or the in-patient hospitalization of any employee within 8 hours.

WSR 15-05-064
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed February 17, 2015, 9:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-01-160.

Title of Rule and Other Identifying Information: Medical aid rules—Conversion factors and maximum daily fees, WAC 296-20-135, 296-23-220, and 296-23-230.

Hearing Location(s): Department of Labor and Industries, Room S117, 7273 Linderson Way S.W., Tumwater, WA 98501, on March 24, 2015, at 1:00 p.m.

Date of Intended Adoption: April 21, 2015.

Submit Written Comments to: Tom Davis, P.O. Box 44322, Olympia, WA 98504-4322, e-mail Thomas.Davis@LNI.wa.gov, fax (360) 902-4249, by 5 p.m. on March 31, 2015.

Assistance for Persons with Disabilities: Contact Tom Davis by March 17, 2015, TTY (360) 902-6687 or fax (360) 902-4249.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: (1) Changing the conversion factor used to calculate payment levels for services payable through the resource based relative value scale (RBRVS) fee schedule; (2) changing the conversion factor used to calculate payment for anesthesia services; and (3) increasing the maximum daily payment for physical and occupational therapy.

WAC 296-20-135(3), increase the RBRVS conversion factor from \$58.58 to \$59.98. Increase the anesthesia conversion factor from \$3.31 to \$3.38.

WAC 296-23-220 and 296-23-230, increase the maximum daily rate for physical and occupational therapy services from \$122.00 to \$124.44.

Reasons Supporting Proposal: This rule will provide medical aid updates regarding rate setting for most professional health care services for injured workers.

Statutory Authority for Adoption: RCW 51.04.020(1) and 51.04.030.

Statute Being Implemented: RCW 51.36.080.

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: (1) Increasing the conversion factor used to calculate maximum payment for RBRVS and anesthesia services; and (2) increasing the maximum daily payment for physical and occupational therapy services.

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

Name of Agency Personnel Responsible for Drafting: Tom Davis, Tumwater, Washington, (360) 902-6687; Implementation and Enforcement: Vickie Kennedy, Assistant Director, Tumwater, Washington, (360) 902-4997.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule adoption is exempt under RCW 34.05.328 (5)(b)(vi) and 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply because the content of this rule is explicitly dictated by statute and fits within the exceptions listed in RCW 34.05.328 (5)(b)(vi).

February 17, 2015

Joel Sacks

Director

AMENDATORY SECTION (Amending WSR 14-09-094, filed 4/22/14, effective 7/1/14)

WAC 296-20-135 Conversion factors. (1) Conversion factors are used to calculate payment levels for services reimbursed under the Washington resource based relative value scale (RBRVS), and for anesthesia services payable with base and time units.

(2) **Washington RBRVS** services have a conversion factor of ~~\$(58.58)~~ 59.98. The fee schedules list the reimbursement levels for these services.

(3) **Anesthesia services** that are paid with base and time units have a conversion factor of ~~\$(3.34)~~ 3.38 per minute, which is equivalent to ~~\$(49.65)~~ 50.70 per 15 minutes. The base units and payment policies can be found in the fee schedules.

AMENDATORY SECTION (Amending WSR 14-23-064, filed 11/18/14, effective 1/1/15)

WAC 296-23-220 Physical therapy rules. Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 regarding the use of conversion factors.

All supplies and materials must be billed using HCPCS Level II codes. Refer to chapter 296-21 WAC for additional information. HCPCS codes are listed in the fee schedules.

Refer to chapter 296-20 WAC (WAC 296-20-125) and to the department's billing instructions for additional information.

Physical therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed physical therapist, a physical therapist assistant serving under the direction of a licensed physical therapist as required in RCW 18.74.180 (3)(a), or a licensed athletic trainer serving under the direction of a licensed physical therapist as required in RCW 18.250.010 (4)(a)(v). In addition, physician assistants may order physical therapy under these rules for the attending doctor. Doctors rendering physical therapy should refer to WAC 296-21-290.

The department or self-insurer will review the quality and medical necessity of physical therapy services provided to workers. Practitioners should refer to WAC 296-20-01002 for the department's rules regarding medical necessity and to WAC 296-20-024 for the department's rules regarding utilization review and quality assurance.

The department or self-insurer will pay for a maximum of one physical therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or ~~\$(122.00)~~ 124.44 whichever is less. These limits will not apply to physical therapy that is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for physical therapists who render care to workers.

Use of diaphuse or similar machines on workers is not authorized. See WAC 296-20-03002 for further information.

A physical therapy progress report must be submitted to the attending doctor and the department or the self-insurer following twelve treatment visits or one month, whichever occurs first. Physical therapy treatment beyond initial twelve

treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

Physical therapy services rendered in the home and/or places other than the practitioner's usual and customary office, clinic, or business facilities will be allowed only upon prior authorization by the department or self-insurer.

No inpatient physical therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Biofeedback treatment may be rendered on doctor's orders only. The extent of biofeedback treatment is limited to those procedures allowed within the scope of practice of a licensed physical therapist. See chapter 296-21 WAC for rules pertaining to conditions authorized and report requirements.

Billing codes and reimbursement levels are listed in the fee schedules.

AMENDATORY SECTION (Amending WSR 14-09-094, filed 4/22/14, effective 7/1/14)

WAC 296-23-230 Occupational therapy rules. Practitioners should refer to WAC 296-20-010 through 296-20-125 for general information and rules pertaining to the care of workers.

Refer to WAC 296-20-132 and 296-20-135 for information regarding the conversion factors.

All supplies and materials must be billed using HCPCS Level II codes, refer to the department's billing instructions for additional information.

Occupational therapy treatment will be reimbursed only when ordered by the worker's attending doctor and rendered by a licensed occupational therapist or an occupational therapist assistant serving under the direction of a licensed occupational therapist. In addition, physician assistants may order occupational therapy under these rules for the attending doctor. Vocational counselors assigned to injured workers by the department or self-insurer may request an occupational therapy evaluation. However, occupational therapy treatment must be ordered by the worker's attending doctor or by the physician assistant.

An occupational therapy progress report must be submitted to the attending doctor and the department or self-insurer following twelve treatment visits or one month, whichever occurs first. Occupational therapy treatment beyond the initial twelve treatments will be authorized only upon substantiation of improvement in the worker's condition. An outline of the proposed treatment program, the expected restoration goals, and the expected length of treatment will be required.

The department or self-insurer will review the quality and medical necessity of occupational therapy services. Practitioners should refer to WAC 296-20-01002 for the department's definition of medically necessary and to WAC 296-

20-024 for the department's rules regarding utilization review and quality assurance.

The department will pay for a maximum of one occupational therapy visit per day. When multiple treatments (different billing codes) are performed on one day, the department or self-insurer will pay either the sum of the individual fee maximums, the provider's usual and customary charge, or \$((+22.00)) 124.44 whichever is less. These limits will not apply to occupational therapy which is rendered as part of a physical capacities evaluation, work hardening program, or pain management program, provided a qualified representative of the department or self-insurer has authorized the service.

The department will publish specific billing instructions, utilization review guidelines, and reporting requirements for occupational therapists who render care to workers.

Occupational therapy services rendered in the worker's home and/or places other than the practitioner's usual and customary office, clinic, or business facility will be allowed only upon prior authorization by the department or self-insurer.

No inpatient occupational therapy treatment will be allowed when such treatment constitutes the only or major treatment received by the worker. See WAC 296-20-030 for further information.

The department may discount maximum fees for treatment performed on a group basis in cases where the treatment provided consists of a nonindividualized course of therapy (e.g., pool therapy; group aerobics; and back classes).

Billing codes, reimbursement levels, and supporting policies for occupational therapy services are listed in the fee schedules.

WSR 15-05-067

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed February 17, 2015, 12:29 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-20-065 and 14-16-063.

Title of Rule and Other Identifying Information: WAC 458-20-101 Tax registration and tax reporting and 458-20-193 Inbound and outbound sales of tangible personal property.

Hearing Location(s): Capital Plaza Building, 4th Floor Executive Conference Room, 1025 Union Avenue S.E., Olympia, WA, on March 30, 2015, at 10:00 a.m. Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Call-in option can be provided upon request no later than three days before the hearing date.

Date of Intended Adoption: April 6, 2015.

Submit Written Comments to: David Hesford, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail DavidH@dor.wa.gov, by March 30, 2015.

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 hear-

ing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Rule 193 provides guidance on how Washington's B&O tax and retail sales taxes apply to interstate sales of tangible personal property. Rule 101 provides, in relevant part, tax reporting and registration requirements for out-of-state businesses.

The department is proposing to amend Rule 193 to reflect current law, and to adopt consistent trailing nexus standards. The department is proposing to amend Rule 101 to be consistent with proposed amendments to Rule 193, as further clarified below.

Key updates the department is proposing for Rules 193 and 101 are:

1. *Dissociation*: Rule 193 currently provides if a taxpayer can prove that its sales in the state are "dissociated" from its local business activity, then those sales are not subject to Washington tax despite the taxpayer's nexus with the state. The department proposes removing the dissociation concept from the rule. Consistent with this proposed change to Rule 193, the department proposes removing the dissociation concept found in subsection (5)(a) of Rule 101.

2. *Trailing nexus*: Rule 193 currently provides that once a taxpayer establishes nexus in Washington, it will continue to have nexus for up to five years even if the taxpayer ceased performing the instate activity which created nexus. Section 102, chapter 23, Laws of 2010 1st sp.s., changed the trailing nexus for B&O tax to one year following the year the taxpayer ceases having nexus with the state. This legislation did not address the trailing nexus period for other excise taxes. The department proposes adopting a one year standard for all excise taxes for uniformity purposes.

3. *Definition of "receipt"*: The department proposes incorporating the current statutory definition of "receipt," which specifically excludes possession by a shipping company. In addition, the department proposes including the special sourcing provisions for sales of commercial airplane parts in RCW 82.04.627.

4. *Drop shipments*: The department proposes providing clearer and more detailed guidance regarding the tax consequences associated with drop shipment sales.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: David Hesford, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1586; Implementation: Dylan Waits, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1583; and Enforcement: Alan Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rules do 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 rules are not significant legislative rules as defined by RCW 34.05.328.

February 17, 2015
Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-13-093, filed 6/17/14, effective 7/18/14)

WAC 458-20-101 Tax registration and tax reporting.

(1) **Introduction.** This section explains tax registration and tax reporting requirements for the Washington state department of revenue as established in RCW 82.32.030 and 82.32.045. This section discusses who is required to be registered, and who must file excise tax returns. This section also discusses changes in ownership requiring a new registration, the administrative closure of taxpayer accounts, and the revocation and reinstatement of a tax reporting account with the department of revenue. Persons required to file tax returns should also refer to WAC 458-20-104 (Small business tax relief based on volume of business).

(2) **Persons required to obtain tax registration endorsements.** Except as provided in (a) of this subsection, every person who is engaged in any business activity for which the department of revenue is responsible for administering and/or collecting a tax or fee, shall apply for and obtain a tax registration endorsement with the department of revenue. (See RCW 82.32.030.) This endorsement shall be reflected on the face of the business person's registrations and licenses document. The tax registration endorsement is non-transferable, and valid for as long as that person continues in business.

(a) Registration under this section is not required if all of the following conditions are met:

(i) The person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW (business and occupation tax), is less than twelve thousand dollars per year;

(ii) A person's gross income from all business activities taxable under chapter 82.16 RCW (public utility tax), is less than twelve thousand dollars per year;

(iii) The person is not required to collect or pay to the department of revenue retail sales tax or any other tax or fee which the department is authorized to administer and/or collect; and

(iv) The person is not otherwise required to obtain a license or registration subject to the master application procedure provided in chapter 19.02 RCW. For the purposes of this section, the term "license or registration" means any agency permit, license, certificate, approval, registration, charter, or any form or permission required by law, including agency rule, to engage in any activity.

(b) The term "tax registration endorsement," as used in this section, has the same meaning as the term "tax registration" or "certificate of registration" used in Title 82 RCW and other sections in chapter 458-20 WAC.

(c) The term "person" has the meaning given in RCW 82.04.030.

(d) The term "tax reporting account number" as used in this section, is the number used to identify persons registered with the department of revenue.

(3) **Requirement to file tax returns.** Persons registered with the department must file tax returns and remit the appropriate taxes to the department, unless they are placed on an "active nonreporting" status by the department.

(a) The department may relieve any person of the requirement to file returns by placing the person in an active nonreporting status if all of the following conditions are met:

(i) The person's value of products (RCW 82.04.450), gross proceeds of sales (RCW 82.04.070), or gross income of the business (RCW 82.04.080), from all business activities taxable under chapter 82.04 RCW (business and occupation tax), is less than twenty-eight thousand dollars per year;

(ii) The person's gross income (RCW 82.16.010) from all business activities taxable under chapter 82.16 RCW (public utility tax) is less than twenty-four thousand dollars per year; and

(iii) The person is not required to collect or pay to the department retail sales tax or any other tax or fee the department is authorized to collect.

(b) The department will notify those persons it places on an active nonreporting status. (A person may request to be placed on an active nonreporting status if the conditions of (a) of this subsection are met.)

(c) Persons placed on an active nonreporting status by the department are required to timely notify the department if their business activities do not meet any of the conditions explained in (a) of this subsection. These persons will be removed from an active nonreporting status, and must file tax returns and remit appropriate taxes to the department, beginning with the first period in which they do not qualify for an active nonreporting status.

(d) Persons that have not been placed on an active nonreporting status by the department must continue to file tax returns and remit the appropriate taxes.

(4) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The status of each situation must be determined after a review of all facts and circumstances.

(a) Bob Brown is starting a bookkeeping service. The gross income of the business is expected to be less than twelve thousand dollars per year. Due to the nature of the business activities, Bob is not required to pay or collect any other tax which the department is authorized to collect.

Bob Brown is not required to apply for and obtain a tax registration endorsement with the department of revenue. The conditions under which a business person may engage in business activities without obtaining the tax registration endorsement have been met. However, if Bob Brown in some future period has gross income exceeding twelve thousand dollars per year, he will be required to obtain a tax registration endorsement. If Bob's gross income exceeds twenty-eight thousand dollars per year, he will be required to file tax returns and remit the appropriate taxes.

(b) Cindy Smith is opening a business to sell books written for children to local customers at retail. The gross pro-

ceeds of sales are expected to be less than twelve thousand dollars per year.

Cindy Smith must apply for and obtain a tax registration endorsement with the department of revenue. While gross income is expected to be less than twelve thousand dollars per year, Cindy Smith is required to collect and remit retail sales tax.

(c) Alice Smith operates a taxicab service with an average gross income of eighteen thousand dollars per year. She also owns a management consulting service with an average gross income of fifteen thousand dollars per year. Assume that Alice is not required to collect or pay to the department any other tax or fee the department is authorized to collect. Alice qualifies for an active nonreporting status because her taxicab income is less than the twenty-four thousand dollar threshold for the public utility tax, and her consulting income is less than the twenty-four thousand dollar threshold for the business and occupation (B&O) tax. If the department of revenue does not first place her on an active nonreporting status, she may request the department to do so.

(5) **Out-of-state businesses.** The B&O and public utility taxes are imposed on the act or privilege of engaging in business activity within Washington. RCW 82.04.220 and 82.16.020. Out-of-state persons who have established sufficient nexus in Washington to be subject to Washington's B&O or public utility taxes must obtain a tax registration endorsement with this department if they do not satisfy the conditions expressed in subsection (2)(a) of this section. Out-of-state persons required to collect Washington's retail sales or use tax, or who have elected to collect Washington's use tax, even though not statutorily required to do so, must obtain a tax registration endorsement.

~~((a) Persons with out-of-state business locations should not include income that is disassociated from their in-state activities in their computations for determining whether the gross income thresholds provided in subsection (2)(a)(i) and (ii) of this section are satisfied.~~

~~(b))~~ Out-of-state persons making sales into or doing business within Washington should also refer to the following rules in chapter 458-20 WAC for a discussion of their tax reporting responsibilities:

~~((i))~~ (a) WAC 458-20-103 (Time and place of sale);

~~((ii))~~ (b) WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property);

~~((iii))~~ (c) WAC 458-20-193D (Transportation, communication, public utility activities, or other services in interstate or foreign commerce);

~~((iv))~~ (d) WAC 458-20-194 (Doing business inside and outside the state); and

~~((v))~~ (e) WAC 458-20-221 (Collection of use tax by retailers and selling agents).

(6) **Registration procedure.** The state of Washington initiated the unified business identifier (UBI) program to simplify the registration and licensing requirements imposed on the state's business community. Completion of the master application enables a person to register or license with several state agencies, including the department of revenue, using a single form. The person will be assigned one unified business identifier number, which will be used for all state agencies participating in the UBI program. The department

may assign the unified business identifier number as the taxpayer's revenue tax reporting account number, or it may assign a different or additional number as the revenue tax reporting account number.

(a) Persons completing the master application will be issued a registrations and licenses document. The face of this document will list the registrations and licenses (endorsements) which have been obtained.

(b) The department of revenue does not charge a registration fee for issuing a tax registration endorsement. Persons required to complete a master application may, however, be subject to other fees.

(c) While the UBI program is administered by the department of licensing, master applications are available at any participating UBI service provider location. The following agencies of the state of Washington participate in the UBI program (see RCW 19.02.050 for a more complete listing of participating agencies):

(i) The office of the secretary of state;

(ii) The department of licensing;

(iii) The department of employment security;

(iv) The department of labor and industries;

(v) The department of revenue.

(7) **Temporary revenue registration certificate.** A temporary revenue registration certificate may be issued to any person who operates a business of a temporary nature.

(a) Temporary businesses, for the purposes of registration, are those with:

(i) Definite, predetermined dates of operation for no more than two events each year with each event lasting no longer than one month; or

(ii) Seasonal dates of operation lasting no longer than three months. However, persons engaging in business activities on a seasonal basis every year should refer to subsection (8) of this section.

(b) Each temporary registration certificate is valid for a single event. Persons that subsequently make sales into Washington may incur additional tax liability. Refer to WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property) for additional information on tax reporting requirements. It may be required that a tax registration endorsement be obtained, in lieu of a temporary registration certificate. See subsection (2) of this section.

(c) Temporary revenue registration certificates may be obtained by making application at any participating UBI agency office, or by completing a seasonal registration form.

(8) **Seasonal revenue tax reporting accounts.** Persons engaging in seasonal business activities which do not exceed two quarterly reporting periods each calendar year may be eligible for a tax reporting account with a seasonal reporting status. This is a permanent account until closed by the taxpayer. The taxpayer must specify in which quarterly reporting periods he or she will be engaging in taxable business activities. The quarterly reporting periods in which the taxpayer is engaging in taxable business activities may or may not be consecutive, but the same quarterly period or periods must apply each year. The taxpayer is not required to be engaging in taxable business activities during the entire period.

The department will provide and the taxpayer will be required to file tax returns only for the quarterly reporting periods specified by the taxpayer. Examples of persons which may be eligible for the seasonal reporting status include persons operating Christmas tree and/or fireworks stands. Persons engaging in taxable business activities in more than two quarterly reporting periods in a calendar year will not qualify for the seasonal reporting status.

(9) Display of registrations and licenses document.

The taxpayer is required to display the registrations and licenses document in a conspicuous place at the business location for which it is issued.

(10) Multiple locations. A registrations and licenses document is required for each place of business at which a taxpayer engages in business activities for which the department of revenue is responsible for administering and/or collecting a tax or fee, and any main office or principal place of business from which excise tax returns are to be filed. This requirement applies to locations both within and without the state of Washington.

(a) For the purposes of this subsection, the term "place of business" means:

(i) Any separate establishment, office, stand, cigarette vending machine, or other fixed location; or

(ii) Any vessel, train, or the like, at any of which the taxpayer solicits or makes sales of tangible personal property, or contracts for or renders services in this state or otherwise transacts business with customers.

(b) A taxpayer wishing to report all tax liability on a single excise tax return may request a separate registrations and licenses document for each location. The original registrations and licenses document shall be retained for the main office or principal place of business from which the returns are to be filed, with additional documents obtained for all branch locations. All registrations and licenses documents will reflect the same tax reporting account number.

(c) A taxpayer desiring to file a separate excise tax return covering a branch location, or a specific construction contract, may apply for and receive a separate revenue tax reporting account number. A registrations and licenses document will be issued for each tax reporting account number and will represent a separate account.

(d) A master application must be completed to obtain a separate registrations and licenses document, or revenue tax reporting account number, for a new location.

(11) Change in ownership. When a change in ownership of a business occurs, the new owner must apply for and obtain a new registrations and licenses document. The original document must be destroyed, and any further use of the tax reporting account number for tax purposes is prohibited.

(a) A "change in ownership," for purposes of registration, occurs upon but is not limited to:

(i) The sale of a business by one individual, firm or corporation to another individual, firm or corporation;

(ii) The dissolution of a partnership;

(iii) The withdrawal, substitution, or addition of one or more partners where the general partnership continues as a business organization and the change in the composition of the partners is equal to or greater than fifty percent;

(iv) Incorporation of a business previously operated as a partnership or sole proprietorship;

(v) Changing from a corporation to a partnership or sole proprietorship; or

(vi) Changing from a corporation, partnership or sole proprietorship to a limited liability company or a limited liability partnership.

(b) For the purposes of registration, a "change in ownership" does not occur upon:

(i) The sale of all or part of the common stock of a corporation;

(ii) The transfer of assets to an assignee for the benefit of creditors or upon the appointment of a receiver or trustee in bankruptcy;

(iii) The death of a sole proprietor where there will be a continuous operation of the business by the executor, administrator, or trustee of the estate or, where the business was owned by a marital community or registered domestic partnership, by the surviving spouse or surviving domestic partner of the deceased owner;

(iv) The withdrawal, substitution, or addition of one or more partners where the general partnership continues as a business organization and the change in the composition of the partners is less than fifty percent; or

(v) A change in the trade name under which the business is conducted.

(c) While changes in a business entity may not result in a "change in ownership," the completion of a new master application may be required to reflect the changes in the registered account.

(12) Change in location. Whenever the place of business is moved to a new location, the taxpayer must notify the department of the change. A new registrations and licenses document will be issued to reflect the change in location.

(13) Lost registrations and licenses documents. If any registrations and licenses document is lost, destroyed or defaced as a result of accident or of natural wear and tear, a new document will be issued upon request.

(14) Administrative closure of taxpayer accounts. The department may, upon written notification to the taxpayer, close the taxpayer's tax reporting account and rescind its tax registration endorsement whenever the taxpayer has reported no gross income and there is no indication of taxable activity for two consecutive years.

The taxpayer may request, within thirty days of notification of closure, that the account remain open. A taxpayer may also request that the account remain open on an "active non-reporting" status if the requirements of subsection (3)(a) of this section are met. The request shall be reviewed by the department and if found to be warranted, the department will immediately reopen the account. The following are acceptable reasons for continuing as an active account:

(a) The taxpayer is engaging in business activities in Washington which may result in tax liability.

(b) The taxpayer is required to collect or pay to the department of revenue a tax or fee which the department is authorized to administer and/or collect.

(c) The taxpayer has in fact been liable for excise taxes during the previous two years.

(15) **Reopening of taxpayer accounts.** A business person choosing to resume business activities for which the department of revenue is responsible for administering and/or collecting a tax or fee, may request a previously closed account be reopened. The business person must complete a new master application. When an account is reopened a new registrations and licenses document, reflecting a current tax registration endorsement, shall be issued. Persons requesting the reopening of an account which had previously been closed due to a revocation action should refer to subsection (16) of this section.

(16) **Revocation and reinstatement of tax registration endorsements.** Actions to revoke tax registration endorsements must be conducted by the department pursuant to the provisions of chapter 34.05 RCW, the Administrative Procedure Act, and the taxpayers bill of rights of chapter 82.32A RCW. Persons should refer to WAC 458-20-10001, Adjudicative proceedings—Brief adjudicative proceedings—Wholesale and retail cigarette license revocation/suspension—Certificate of registration (tax registration endorsement) revocation, for an explanation of the procedures and processes pertaining to the revocation of tax registration endorsements.

(a) The department of revenue may, by order, revoke a tax registration endorsement if:

(i) Any tax warrant issued under the provisions of RCW 82.32.210 is not paid within thirty days after it has been filed with the clerk of the superior court; or

(ii) The taxpayer is delinquent, for three consecutive reporting periods, in the transmission to the department of retail sales tax collected by the taxpayer; or

(iii) Either:

(A) The taxpayer was convicted of violating RCW 82.32.290(4) and continues to engage in business without fully complying with RCW 82.32.290 (4)(b)(i) through (iii); or

(B) A person convicted of violating RCW 82.32.290(4) is an owner, officer, director, partner, trustee, member, or manager of the taxpayer, and the person and taxpayer have not fully complied with RCW 82.32.290 (4)(b)(i) through (iii).

For purposes of (a)(iii) of this subsection, the terms "manager," "member," and "officer" mean the same as defined in RCW 82.32.145.

(b) The revocation order will be, if practicable, posted in a conspicuous place at the main entrance to the taxpayer's place of business. The department may also post a copy of the revocation order in any public facility, as may be allowed by the public entity that owns or occupies the facility. The revocation order posted at the taxpayer's place of business must remain posted until the tax registration endorsement has been reinstated or the taxpayer has abandoned the premises. A revoked endorsement will not be reinstated until:

(i) The amount due on the warrant has been paid, or satisfactory arrangements for payment have been approved by the department, and the taxpayer has posted with the department a bond or other security in an amount not exceeding one-half the estimated average annual liability of the taxpayer; or

(ii) The taxpayer and, if applicable, the owner, officer, director, partner, trustee, member, or manager of the taxpayer who was convicted of violating RCW 82.32.290(4) are in full compliance with RCW 82.32.290 (4)(b)(i) through (iii), if the tax registration endorsement was revoked as described in (a)(iii) of this subsection.

(c) It is unlawful for any taxpayer to engage in business after its tax registration endorsement has been revoked.

(17) **Penalties for noncompliance.** The law provides that any person engaging in any business activity, for which registration with the department of revenue is required, shall obtain a tax registration endorsement.

(a) The failure to obtain a tax registration endorsement prior to engaging in any taxable business activity constitutes a gross misdemeanor.

(b) Engaging in business after a tax registration endorsement has been revoked by the department constitutes a Class C felony.

(c) Any tax found to have been due, but delinquent, and any tax unreported as a result of fraud or misrepresentation, may be subject to penalty as provided in chapter 82.32 RCW, WAC 458-20-228 and 458-20-230.

AMENDATORY SECTION (Amending WSR 10-06-070, filed 2/25/10, effective 3/28/10)

WAC 458-20-193 ((Inbound and outbound)) Interstate sales of tangible personal property. (1) **Introduction.**

~~((This section explains Washington's B&O tax and retail sales tax applications to interstate sales of tangible personal property. It covers the outbound sales of goods originating in this state to persons outside this state and of inbound sales of goods originating outside this state to persons in this state. This section does not include import and export transactions.~~

~~(2) **Definitions:** For purposes of this section the following terms mean:~~

~~(a) "State of origin" means the state or place where a shipment of tangible personal property (goods) originates.~~

~~(b) "State of destination" means the state or place where the purchaser/consignee or its agent receives a shipment of goods.~~

~~(c) "Delivery" means the act of transferring possession of tangible personal property. It includes among others the transfer of goods from consignor to freight forwarder or for-hire carrier, from freight forwarder to for-hire carrier, one for-hire carrier to another, or for-hire carrier to consignee.~~

~~(d) "Receipt" or "received" means the purchaser or its agent first either taking physical possession of the goods or having dominion and control over them.~~

~~(e) "Agent" means a person authorized to receive goods with the power to inspect and accept or reject them.~~

~~(f) "Nexus" means the activity carried on by the seller in Washington which is significantly associated with the seller's ability to establish or maintain a market for its products in Washington.~~

~~(3) **Outbound sales.** Washington state does not assess its taxes on sales of goods which originate in Washington if receipt of the goods occurs outside Washington.~~

~~(a) Where tangible personal property is located in Washington at the time of sale and is received by the purchaser or~~

its agent in this state, or the purchaser or its agent exercises ownership over the goods inconsistent with the seller's continued dominion over the goods, the sale is subject to tax under the retailing or wholesaling classification. The tax applies even though the purchaser or its agent intends to and thereafter does transport or send the property out of state for use or resale there, or for use in conducting interstate or foreign commerce. It is immaterial that the contract of sale or contract to sell is negotiated and executed outside the state or that the purchaser resides outside the state.

(b) Where the seller delivers the goods to the purchaser who receives them at a point outside Washington neither retailing nor wholesaling business tax is applicable. This exemption applies even in cases where the shipment is arranged through a for-hire carrier or freight consolidator or freight forwarder acting on behalf of either the seller or purchaser. It also applies whether the shipment is arranged on a "freight prepaid" or a "freight collect" basis. The shipment may be made by the seller's own transportation equipment or by a carrier for hire. For purposes of this section, a for-hire carrier's signature does not constitute receipt upon obtaining the goods for shipment unless the carrier is acting as the purchaser's agent and has express written authority from the purchaser to accept or reject the goods with the right of inspection.

(4) Proof of exempt outbound sales.

(a) If either a for-hire carrier or the seller itself carries the goods for receipt at a point outside Washington, the seller is required to retain in its records documentary proof of the sales and delivery transaction and that the purchaser in fact received the goods outside the state in order to prove the sale is tax exempt. Acceptable proofs, among others, will be:

(i) The contract or agreement of sale, if any, **And**

(ii) If shipped by a for-hire carrier, a waybill, bill of lading or other contract of carriage indicating the seller has delivered the goods to the for-hire carrier for transport to the purchaser or the purchaser's agent at a point outside the state with the seller shown on the contract of carriage as the consignor (or other designation of the person sending the goods) and the purchaser or its agent as consignee (or other designation of the person to whom the goods are being sent); or

(iii) If sent by the seller's own transportation equipment, a trip sheet signed by the person making delivery for the seller and showing:

The seller's name and address,

The purchaser's name and address,

The place of delivery, if different from purchaser's address,

The time of delivery to the purchaser together with the signature of the purchaser or its agent acknowledging receipt of the goods at the place designated outside the state of Washington.

(b) Delivery of the goods to a freight consolidator, freight forwarder or for-hire carrier merely utilized to arrange for and/or transport the goods is not receipt of the goods by the purchaser or its agent unless the consolidator, forwarder or for-hire carrier has express written authority to accept or reject the goods for the purchaser with the right of inspection. See also WAC 458-20-174, 458-20-17401, 458-20-175, 458-

20-176, 458-20-177, 458-20-238 and 458-20-239 for certain statutory exemptions.

(5) Other B&O taxes – Outbound and inbound sales.

(a) **Extracting, manufacturing.** Persons engaged in these activities in Washington and who transfer or make delivery of such produced articles for receipt at points outside the state are subject to business tax under the extracting or manufacturing classification and are not subject to tax under the retailing or wholesaling classification. See also WAC 458-20-135 and 458-20-136. The activities taxed occur entirely within the state, are inherently local, and are conducted prior to the commercial journey. The tax is measured by the value of products as determined by the selling price in the case of articles on which the seller performs no further manufacturing after transfer out of Washington. It is immaterial that the value so determined includes an additional increment of value because the sale occurs outside the state. If the seller performs additional manufacturing on the article after transferring the article out of state, the value should be measured under the principles contained in WAC 458-20-112.

(b) **Extracting or processing for hire, printing and publishing, repair or alteration of property for others.** These activities when performed in Washington are also inherently local and the gross income or total charge for work performed is subject to business tax, since the operating incidence of the tax is upon the business activity performed in this state. No deduction is permitted even though the articles produced, imprinted, repaired or altered are delivered to persons outside the state. It is immaterial that the customers are located outside the state, that the work was negotiated or contracted for outside the state, or that the property was shipped in from outside the state for such work.

(c) **Construction, repair.** Construction or repair of buildings or other structures, public road construction and similar contracts performed in this state are inherently local business activities subject to B&O tax in this state. This is so even though materials involved may have been delivered from outside this state or the contracts may have been negotiated outside this state. It is immaterial that the work may be performed in this state by foreign sellers who performed preliminary services outside this state.

(d) **Renting or leasing of tangible personal property.** Lessors who rent or lease tangible personal property for use in this state are subject to B&O tax upon their gross proceeds from such rentals for periods of use in this state. Proration of tax liability based on the degree of use in Washington of leased property is required.

It is immaterial that possession of the property leased may have passed to the lessee outside the state or that the lease agreement may have been consummated outside the state. Lessors will not be subject to B&O tax if all of the following conditions are present:

(i) The equipment is not located in Washington at the time the lessee first takes possession of the leased property; and

(ii) The lessor has no reason to know that the equipment will be used by the lessee in Washington; and

(iii) The lease agreement does not require the lessee to notify the lessor of subsequent movement of the property into

Washington and the lessor has no reason to know that the equipment may have been moved to Washington.

(6) ~~Retail sales tax—Outbound sales.~~ The retail sales tax generally applies to all retail sales made within this state. The legal incidence of the tax is upon the purchaser, but the seller is obligated to collect and remit the tax to the state. The retail sales tax applies to all sales to consumers of goods located in the state when goods are received in Washington by the purchaser or its agent, irrespective of the fact that the purchaser may use the property elsewhere. However, as indicated in subsection (4)(b), delivery of the goods to a freight consolidator, freight forwarder or for hire carrier arranged either by the seller or the purchaser, merely utilized to arrange for and/or transport the goods out of state is not receipt of the goods by the purchaser or its agent in this state, unless the consolidator, forwarder or for hire carrier has express written authority to accept or reject the goods for the purchaser with the right of inspection.

(a) The retail sales tax does not apply when the seller delivers the goods to the purchaser who receives them at a point outside the state, or delivers the same to a for hire carrier consigned to the purchaser outside the state. This exemption applies even in cases where the shipment is arranged through a for hire carrier or freight consolidator or freight forwarder acting on behalf of either the seller or the purchaser. It also applies regardless of whether the shipment is arranged on a "freight prepaid" or a "freight collect" basis and regardless of who bears the risk of loss. The seller must retain proof of exemption as outlined in subsection (4), above.

(b) RCW 82.08.0273 provides an exemption from the retail sales tax to certain nonresidents of Washington for purchases of tangible personal property for use outside this state when the nonresident purchaser provides proper documentation to the seller. This statutory exemption is available only to residents of states and possessions or Province of Canada other than Washington when the jurisdiction does not impose a retail sales tax of three percent or more. These sales are subject to B&O tax.

(c) A statutory exemption (RCW 82.08.0269) is allowed for sales of goods for use in states, territories and possessions of the United States which are not contiguous to any other state (Alaska, Hawaii, etc.), but only when, as a necessary incident to the contract of sale, the seller delivers the property to the purchaser or its designated agent at the usual receiving terminal of the for hire carrier selected to transport the goods; under such circumstance that it is reasonably certain that the goods will be transported directly to a destination in such noncontiguous states, territories and possessions. As proof of exemption, the seller must retain the following as part of its sales records:

(i) A certification of the purchaser that the goods will not be used in the state of Washington and are intended for use in the specified noncontiguous state, territory or possession.

(ii) Written instructions signed by the purchaser directing delivery of the goods to a dock, depot, warehouse, airport or other receiving terminal for transportation of the goods to their place of ultimate use. Where the purchaser is also the carrier, delivery may be to a warehouse receiving terminal or other facility maintained by the purchaser when the circum-

stances are such that it is reasonably certain that the goods will be transported directly to their place of ultimate use.

(iii) A dock receipt, memorandum bill of lading, trip sheet, cargo manifest or other document evidencing actual delivery to such dock, depot, warehouse, freight consolidator or forwarder, or receiving terminal.

(iv) The requirements of (i) and (ii) above may be complied with through the use of a blanket exemption certificate as follows:

Exemption Certificate

We hereby certify that all of the goods which we have purchased and which we will purchase from you will not be used in the State of Washington but are for use in the state, territory or possession of

You are hereby directed to deliver all such goods to the following dock, depot, warehouse, freight consolidator, freight forwarder, transportation agency or other receiving terminal:

.....
.....

for the transportation of those goods to their place of ultimate use.

This certificate shall be considered a part of each order that we have given you and which we may hereafter give to you, unless otherwise specified, and shall be valid until revoked by us in writing.

DATED

.....
(Purchaser)
By
(Officer or Purchaser's
Representative)
Address:

(v) There is no business and occupation tax deduction of the gross proceeds of sales of goods for use in noncontiguous states unless the goods are received outside Washington.

(d) See WAC 458-20-173 for explanation of sales tax exemption in respect to charges for labor and materials in the repair, cleaning or altering of tangible personal property for nonresidents when the repaired property is delivered to the purchaser at an out-of-state point.

(7) ~~Inbound sales.~~ Washington does not assert B&O tax on sales of goods which originate outside this state unless the goods are received by the purchaser in this state and the seller has nexus. There must be both the receipt of the goods in Washington by the purchaser and the seller must have nexus for the B&O tax to apply to a particular sale. The B&O tax will not apply if one of these elements is missing.

(a) Delivery of the goods to a freight consolidator, freight forwarder or for hire carrier located outside this state merely utilized to arrange for and/or transport the goods into this state is not receipt of the goods by the purchaser or its agent unless the consolidator, forwarder or for hire carrier

has express written authority to accept or reject the goods for the purchaser with the right of inspection.

(b) When the sales documents indicate the goods are to be shipped to a buyer in Washington, but the seller delivers the goods to the buyer at a location outside this state, the seller may use the proofs of exempt sales contained in subsection 4 to establish the fact of delivery outside Washington.

(c) If a seller carries on significant activity in this state and conducts no other business in the state except the business of making sales, this person has the distinct burden of establishing that the instate activities are not significantly associated in any way with the sales into this state. Once nexus has been established, it will continue throughout the statutory period of RCW 82.32.050 (up to five years), notwithstanding that the instate activity which created the nexus ceased. Persons taxable under the service B&O tax classification should refer to WAC 458-20-194. The following activities are examples of sufficient nexus in Washington for the B&O tax to apply:

(i) The goods are located in Washington at the time of sale and the goods are received by the customer or its agent in this state.

(ii) The seller has a branch office, local outlet or other place of business in this state which is utilized in any way, such as in receiving the order, franchise or credit investigation, or distribution of the goods.

(iii) The order for the goods is solicited in this state by an agent or other representative of the seller.

(iv) The delivery of the goods is made by a local outlet or from a local stock of goods of the seller in this state.

(v) The out-of-state seller, either directly or by an agent or other representative, performs significant services in relation to establishment or maintenance of sales into the state, even though the seller may not have formal sales offices in Washington or the agent or representative may not be formally characterized as a "salesperson."

(vi) The out-of-state seller, either directly or by an agent or other representative in this state, installs its products in this state as a condition of the sale.

(8) **Retail sales tax—Inbound sales.** Persons engaged in selling activities in this state are required to be registered with the department of revenue. Sellers who are not required to be registered may voluntarily register for the collection and reporting of the use tax. The retail sales tax must be collected and reported in every case where the retailing B&O tax is due as outlined in subsection 7. If the seller is not required to collect retail sales tax on a particular sale because the transaction is disassociated from the instate activity, it must collect the use tax from the buyer.

(9) **Use tax—Inbound sales.** The following sets forth the conditions under which out-of-state sellers are required to collect and remit the use tax on goods received by customers in this state. A seller is required to pay or collect and remit the tax imposed by chapter 82.12 RCW if within this state it directly or by any agent or other representative:

(a) Has or utilizes any office, distribution house, sales house, warehouse, service enterprise or other place of business; or

(b) Maintains any inventory or stock of goods for sale; or

(c) Regularly solicits orders whether or not such orders are accepted in this state; or

(d) Regularly engages in the delivery of property in this state other than by for-hire carrier or U.S. mail; or

(e) Regularly engages in any activity in connection with the leasing or servicing of property located within this state.

(i) The use tax is imposed upon the use, including storage preparatory to use in this state, of all tangible personal property acquired for any use or consumption in this state unless specifically exempt by statute. The out-of-state seller may have nexus to require the collection of use tax without personal contact with the customer if the seller has an extensive, continuous, and intentional solicitation and exploitation of Washington's consumer market. (See WAC 458-20-221).

(ii) Every person who engages in this state in the business of acting as an independent selling agent for unregistered principals, and who receives compensation by reason of sales of tangible personal property of such principals for use in this state, is required to collect the use tax from purchasers, and remit the same to the department of revenue, in the manner and to the extent set forth in WAC 458-20-221.

(10) **Examples—Outbound sales.** The following examples show how the provisions of this section relating to interstate sales of tangible personal property will apply when the goods originate in Washington (outbound sales). The examples presume the seller has retained the proper proof documents and that the seller did not manufacture the items being sold.

(a) Company A is located in Washington. It sells machine parts at retail and wholesale. Company B is located in California and it purchases machine parts from Company A. Company A carries the parts to California in its own vehicle to make delivery. It is immaterial whether the goods are received at either the purchaser's out-of-state location or at any other place outside Washington state. The sale is not subject to Washington's B&O tax or its retail sales tax because the buyer did not receive the goods in Washington. Washington treats the transaction as a tax exempt interstate sale. California may impose its taxing jurisdiction on this sale.

(b) Company A, above, ships the parts by a for-hire carrier to Company B in California. Company B has not previously received the parts in Washington directly or through a receiving agent. It is immaterial whether the goods are received at either Company B's out-of-state location or any other place outside Washington state. It is immaterial whether the shipment is freight prepaid or freight collect. Again, Washington treats the transaction as an exempt interstate sale.

(c) Company B, above, has its employees or agents pick up the parts at Company A's Washington plant and transports them out of Washington. The sale is fully taxable under Washington's B&O tax and, if the parts are not purchased for resale by Company B, Washington's retail sales tax also applies.

(d) Company B, above, hires a carrier to transport the parts from Washington. Company B authorizes the carrier, or another agent, to inspect and accept the parts and, if necessary, to hold them temporarily for consolidation with other goods being shipped out of Washington. This sale is taxable under Washington's B&O tax and, if the parts are not pur-

chased for resale by Company B, Washington's retail sales tax also applies.

(e) Washington will not tax the transactions in the above examples (a) and (b) if Company A mails the parts to Company B rather than using its own vehicles or a for-hire carrier for out-of-state receipt. By contrast, Washington will tax the transactions in the above examples (c) and (d) if for some reason Company B or its agent mails the parts to an out-of-state location after receiving them in Washington. The B&O tax applies to the latter two examples and if the parts are not purchased for resale by Company B then retail sales tax will also apply.

(f) Buyer C who is located in Alaska purchases parts for its own use in Alaska from Seller D who is located in Washington. Buyer C specifies to the seller that the parts are to be delivered to the water carrier at a dock in Seattle. The buyer has entered into a written contract for the carrier to inspect the parts at the Seattle dock. The sale is subject to the B&O tax because receipt took place in Washington. The retail sales tax does not apply because of the specific exemption at RCW 82.08.0269. This transaction would have been exempt of the B&O tax if the buyer had taken no action to receive the goods in Washington.

(11) Examples—Inbound sales. The following examples show how the provisions of this section relating to interstate sales of tangible personal property will apply when the goods originate outside Washington (inbound sales). The examples presume the seller has retained the proper proof documents:

(a) Company A is located in California. It sells machine parts at retail and wholesale. Company B is located in Washington and it purchases machine parts for its own use from Company A. Company A uses its own vehicles to deliver the machine parts to its customers in Washington for receipt in this state. The sale is subject to the retail sales and B&O tax if the seller has nexus, or use tax if nexus is not present.

(b) Company A, above, ships the parts by a for-hire carrier to Company B in Washington. The goods are not accepted by Company B until the goods arrive in Washington. The sale is subject to the retail sales or use tax and is also subject to the B&O tax if the seller has nexus in Washington. It is immaterial whether the shipment is freight prepaid or freight collect.

(c) Company B, above, has its employees or agents pick up the parts at Company A's California plant and transports them into Washington. Company A is not required to collect sales or use tax and is not liable for B&O tax on the sale of these parts. Company B is liable for payment of use tax at the time of first use of the parts in Washington.

(d) Company B, above, hires a carrier to transport the parts from California. Company B authorizes the carrier, or an agent, to inspect and accept the parts and, if necessary, to hold them temporarily for consolidation with other goods being shipped to Washington. The seller is not required to collect retail sales or use tax and is not liable for the B&O tax on these sales. Company B is subject to use tax on the first use of the parts in Washington.

(e) Company B, above, instructs Company A to deliver the machine parts to a freight consolidator selected by Company B. The freight consolidator does not have authority to

receive the goods as agent for Company B. Receipt will not occur until the parts are received by Company B in Washington. Company A is required to collect retail sales or use tax and is liable for B&O tax if Company A has nexus for this sale. The mere delivery to a consolidator or for-hire carrier who is not acting as the buyer's receiving agent is not receipt by the buyer.

(f) Transactions in examples (11)(a) and (11)(b) will also be taxable if Company A mails the parts to Company B for receipt in Washington, rather than using its own vehicles or a for-hire carrier. The tax will continue to apply even if Company B for some reason sends the parts to a location outside Washington after the parts were accepted in Washington.

(g) Company W with its main office in Ohio has one employee working from the employee's home located in Washington. The taxpayer has no offices, inventory, or other employees in Washington. The employee calls on potential customers to promote the company's products and to solicit sales. On June 30, 1990 the employee is terminated. After this date the company no longer has an employee or agent calling on customers in Washington or carries on any activities in Washington which is significantly associated with the seller's ability to establish or maintain a market for its products in Washington. Washington customers who had previously been contacted by the former employee continue to purchase the products by placing orders by mail or telephone directly with the out-of-state seller. The nexus which was established by the employee's presence in Washington will be presumed to continue through December 31, 1994 and subject to B&O tax. Nexus will cease on December 31, 1994 if the seller has not established any new nexus during this period. Company W may disassociate and exclude from B&O tax sales to new customers who had no contact with the former employee. The burden of proof to disassociate is on the seller.

(h) Company X is located in Ohio and has no office, employees, or other agents located in Washington or any other contact which would create nexus. Company X receives by mail an order from Company Y for parts which are to be shipped to a Washington location. Company X purchases the parts from Company Z who is located in Washington and requests that the parts be drop shipped to Company Y. Since Company X has no nexus in Washington, Company X is not subject to B&O tax or required to collect retail sales tax. Company X has not taken possession or dominion or control over the parts in Washington. Company Z may accept a resale certificate (WAC 458-20-102A) for sales made before January 1, 2010, or a Streamlined Sales and Use Tax Agreement Certificate of Exemption or a Multistate Tax Commission Exemption Certificate (WAC 458-20-102) for sales made on or after January 1, 2010, from Company X which will bear the registration number issued by the state of Ohio. Company Y is required to pay use tax on the value of the parts. Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by Company Z for five years from the date of last use or December 31, 2014.

(i) Company ABC is located in Washington and purchases goods from Company XYZ located in Ohio. Upon receiving the order, Company XYZ ships the goods by a for-hire carrier to a public warehouse in Washington. The goods

will be considered as having been received by Company ABC at the time Company ABC is entitled to receive a warehouse receipt for the goods. Company XYZ will be subject to the B&O tax at that time if it had nexus for this sale.

(j) P&S Department Stores has retail stores located in Washington, Oregon, and in several other states. John Doe goes to a P&S store in Portland, Oregon to purchase luggage. John Doe takes physical possession of the luggage at the store and elects to finance the purchase using a credit card issued to him by P&S. John Doe is a Washington resident and the credit card billings are sent to him at his Washington address. P&S does not have any responsibility for collection of retail sales or use tax on this transaction because receipt of the luggage by the customer occurred outside Washington.

(k) JET Company is located in the state of Kansas where it manufactures specialty parts. One of JET's customers is AIR who purchases these parts as components of the product which AIR assembles in Washington. AIR has an employee at the JET manufacturing site who reviews quality control of the product during fabrication. He also inspects the product and gives his approval for shipment to Washington. JET is not subject to B&O tax on the sales to AIR. AIR receives the parts in Kansas irrespective that JET may be shown as the shipper on bills of lading or that some parts eventually may be returned after shipment to Washington because of hidden defects.)

(a) This rule explains the application of the business and occupation (B&O) and retail sales taxes to interstate sales of tangible personal property. In general, Washington imposes its B&O and retail sales taxes on sales of tangible personal property if the seller has nexus with Washington and the sale occurs in Washington.

(b) The following rules may also be helpful:

(i) WAC 458-20-193C, Imports and exports—Sales of goods from or to persons in foreign countries.

(ii) WAC 458-20-193D, Transportation, communication, public utility activities, or other services in interstate or foreign commerce.

(iii) WAC 458-20-178, Use tax and the use of tangible personal property.

(iv) WAC 458-20-221, Collection of use tax by retailers and selling agents.

(c) Examples included in this rule identify a number of facts and then state a conclusion; they should be used only as a general guide. The tax results of all situations must be determined after a review of all the facts and circumstances.

(d) This rule does not cover sales of intangibles or services and does not address the use tax obligation of a purchaser of goods in Washington.

(e) For purposes of this rule, the term "tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses, but does not include steam, electricity, or electrical energy. It includes prewritten computer software (as such term is defined in RCW 82.04.215) in tangible form. However, this rule does not address electronically delivered prewritten computer software or remote access software.

(2) **Organization of rule.** This rule is divided into three parts:

(a) Part I – Nexus standard for sales of tangible personal property;

(b) Part II – Sourcing sales of tangible personal property; and

(c) Part III – Drop shipment sales.

Part I – Nexus Standard for Sales of Tangible Personal Property

(101) **Introduction.** The nexus standard described here is provided in RCW 82.04.067(6) and is used to determine whether a person who sells tangible personal property has nexus with Washington for B&O and retail sales tax purposes. The economic nexus standard under RCW 82.04.067(1) through (5) (as further described in WAC 458-20-19401) does not apply to the activity of selling tangible personal property and is, therefore, not addressed in this rule. Further, Public Law 86-272 (15 U.S.C. Sec. 381 et seq.) applies only to taxes on or measured by net income. Washington's B&O tax is measured by gross receipts. Consequently, Public Law 86-272 does not apply.

(102) **Nexus.** A person who sells tangible personal property is deemed to have nexus with Washington if the person has a physical presence in this state, which need only be demonstrably more than the slightest presence. RCW 82.04.067(6).

(a) **Physical presence.** A person is physically present in this state if:

(i) The person has property in this state;

(ii) The person has one or more employees in this state;

or

(iii) The person, either directly or through an agent or other representative, engages in activities in this state that are significantly associated with the person's ability to establish or maintain a market for its products in Washington.

(b) **Property.** A person has property in this state if the person owns, leases, or otherwise has a legal or beneficial interest in real or personal property in Washington.

(c) **Employees.** A person has employees in this state if the person is required to report its employees for Washington unemployment insurance tax purposes, or the facts and circumstances otherwise indicate that the person has employees in the state.

(d) **In-state activities.** Even if a person does not have property or employees in Washington, the person is physically present in Washington when the person, either directly or through an agent or other representative, engages in activities in this state that are significantly associated with the person's ability to establish or maintain a market for its products in Washington. It is immaterial that the activities that establish nexus are not significantly associated with a particular sale into this state.

For purposes of this rule, the term "agent or other representative" includes an employee, independent contractor, commissioned sales representative, or other person acting either at the direction of or on behalf of another.

A person performing the following nonexclusive list of activities, directly or through an agent or other representative, generally is performing activities that are significantly asso-

ciated with establishing or maintaining a market for a person's products in this state:

- (i) Soliciting sales of goods in Washington;
- (ii) Installing, assembling, or repairing goods in Washington;
- (iii) Constructing, installing, repairing, or maintaining real property or tangible personal property in Washington;
- (iv) Delivering products into Washington other than by mail or common carrier;
- (v) Having an exhibit at a trade show to maintain or establish a market for one's products in the state (but not merely attending a trade show);
- (vi) An online seller having a brick-and-mortar store in this state accepting returns on its behalf;
- (vii) Performing activities designed to establish or maintain customer relationships including, but not limited to:
 - (A) Meeting with customers in Washington to gather or provide product or marketing information, evaluate customer needs, or generate goodwill; or
 - (B) Being available to provide services associated with the product sold (such as warranty repairs, installation assistance or guidance, and training on the use of the product), if the availability of such services is referenced by the seller in its marketing materials or communications.

(103) **Effect of having nexus.** A person selling tangible personal property that has nexus with Washington is subject to B&O tax on that person's retail and wholesale sales, and is responsible for collecting and remitting retail sales tax on that person's sales of tangible personal property sourced to Washington, unless a specific exemption applies.

(104) **Trailing nexus.** RCW 82.04.220 provides that for B&O tax purposes a person who stops the business activity that created nexus in Washington continues to have nexus for the remainder of that calendar year, plus one additional calendar year (also known as "trailing nexus"). The department applies the same trailing nexus period for retail sales tax and other taxes reported on the excise tax return.

Part II – Sourcing Sales of Tangible Personal Property

(201) **Introduction.** RCW 82.32.730 explains how to determine where a sale of tangible personal property occurs based on "sourcing rules" established under the streamlined sales and use tax agreement. Sourcing rules for the lease or rental of tangible personal property are beyond the scope of this rule, as are the sourcing rules for "direct mail," "advertising and promotional direct mail," or "other direct mail" as such terms are defined in RCW 82.32.730. See RCW 82.32.-730 for further explanation of the sourcing rules for those particular transactions.

(202) Receive and receipt.

(a) **Definition.** "Receive" and "receipt" mean taking possession of tangible personal property.

(b) Receipt by a shipping company.

(i) "Receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser, regardless of whether the shipping company has the authority to accept and inspect the goods on behalf of the purchaser.

(ii) A "shipping company" for purposes of this rule means a separate legal entity that ships, transports, or delivers tangible personal property on behalf of another, such as a

common carrier, contract carrier, or private carrier either affiliated (e.g., an entity wholly owned by the seller or purchaser) or unaffiliated (e.g., third-party carrier) with the seller or purchaser. A shipping company is not a division or branch of a seller or purchaser that carries out shipping duties for the seller or purchaser, respectively. In the case where a seller or purchaser uses its own transportation equipment for delivery, receipt occurs at the location where the seller or purchaser's own transportation equipment delivers (in the case of the seller) or picks up (in the case of a purchaser) the goods. Whether an entity is a "shipping company" for purposes of this rule applies only to sourcing sales of tangible personal property and does not apply to whether a "shipping company" can create nexus for a seller.

(203) **Possession.** "Possession" is the control of tangible personal property and includes both actual and constructive possession.

(a) **"Control"** means the power to sell or use tangible personal property, or to authorize the sale or use by another.

(b) **"Actual possession"** occurs when the person with control has physical possession.

(c) **"Constructive possession"** occurs when the person with control does not have actual physical possession.

(204) **Sourcing sales of tangible personal property – In general.** The following provisions in this subsection apply to sourcing sales of most items of tangible personal property.

(a) **Business location.** When tangible personal property is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

Example 1. Jane is an Idaho resident who purchases tangible personal property at a retailer's physical store location in Washington. Even though Jane takes the property back to Idaho for her use, the sale is sourced to Washington because Jane received the property at the seller's business location in Washington.

Example 2. Department Store has retail stores located in Washington, Oregon, and in several other states. John, a Washington resident, goes to Department Store's store in Portland, Oregon to purchase luggage. John takes possession of the luggage at the store. Although Department Store has nexus with Washington through its Washington store locations, Department Store is not liable for B&O tax and does not have any responsibility to collect Washington retail sales tax on this transaction because the purchaser, John, took possession of the luggage at the seller's business location outside of Washington.

Example 3. An out-of-state purchaser sends its own trucks to Washington to receive goods at a Washington-based seller and to immediately transport the goods to the purchaser's out-of-state location. The sale occurs in Washington because the purchaser receives the goods in Washington. The sale is subject to B&O and retail sales tax.

Example 4. The same purchaser in Example 3 uses a wholly owned affiliated shipping company (a legal entity separate from the purchaser) to pick up the goods in Washington and deliver them to the purchaser's out-of-state location. Because "receive" and "receipt" do not include possession by the shipping company, the purchaser receives the goods when the goods arrive at the purchaser's out-of-state location and not when the shipping company takes posses-

sion of the goods in Washington. The sale is not subject to B&O and retail sales tax.

(b) Place of receipt. If the sourcing rule explained in (a) of this subsection does not apply, the sale is sourced to the location where receipt by the purchaser or purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or purchaser's donee, as known to the seller.

(i) The term "purchaser's donee" means the person to whom the purchaser directs shipment of the goods.

(ii) Commercial law delivery terms, and the Uniform Commercial Code's provisions defining sale or where risk of loss passes, do not determine where the place of receipt occurs.

(iii) The seller must retain in its records documents used in the ordinary course of the seller's business to show how the seller knows the location of where the purchaser or purchaser's donee received the goods. Acceptable proof includes, but is not limited to, the following documents:

(A) Instructions for delivery to the seller indicating where the purchaser wants the goods delivered, provided on a sales contract, sales invoice, or any other document used in the seller's ordinary course of business showing the instructions for delivery;

(B) If shipped by a shipping company, a waybill, bill of lading or other contract of carriage indicating where delivery occurs; or

(C) If shipped by the seller using the seller's own transportation equipment, a trip-sheet signed by the person making delivery for the seller and showing:

- The seller's name and address;
- The purchaser's name and address;
- The place of delivery, if different from the purchaser's address; and

• The time of delivery to the purchaser together with the signature of the purchaser or its agent acknowledging receipt of the goods at the place designated by the purchaser.

Example 5. John buys luggage from a Department Store that has nexus with Washington (as in Example 2), but has the store ship the luggage to John in Washington. Department Store has nexus with Washington, and receipt of the luggage by John occurred in Washington. Department Store owes Washington retailing B&O tax and must collect Washington retail sales tax on this sale.

Example 6. Parts Store is located in Washington. It sells machine parts at retail and wholesale. Parts Collector is located in California and buys machine parts from Parts Store. Parts Store ships the parts directly to Parts Collector in California, and Parts Collector takes possession of the machine parts in California. The sale is not subject to B&O or retail sales taxes in this state because Parts Collector did not receive the parts in Washington.

Example 7. An out-of-state seller with nexus in Washington uses a third-party shipping company to ship goods to a customer located in Washington. The seller first delivers the goods to the shipping company outside Washington using its own transportation equipment. Even though the shipping company took possession of the goods outside of Washington, possession by the shipping company is not receipt by the purchaser for Washington tax purposes. The sale is subject to

B&O and retail sales tax in this state because the purchaser has taken possession of the goods in Washington.

Example 8. A Washington purchaser's affiliated shipping company arranges to pick up goods from an out-of-state seller at its out-of-state location, and deliver those goods to the Washington purchaser's Yakima facility. The affiliated shipping company has the authority to accept and inspect the goods prior to transport on behalf of the buyer. When the affiliated shipping company takes possession of the goods out-of-state, the Washington purchaser has not received the goods out-of-state. Possession by a shipping company on behalf of a purchaser is not receipt for purposes of this rule, regardless of whether the shipping company has the authority to accept and inspect the goods on behalf of the buyer. Receipt occurs when the buyer takes possession of the goods in Washington. The sale is subject to B&O and retail sales tax in this state.

Example 9. An instate seller arranges for shipping its goods to an out-of-state purchaser by first delivering its goods to a Washington-based shipping company at its Washington location for further transport to the out-of-state customer's location. Possession of the goods by the shipping company in Washington is not receipt by the purchaser for Washington tax purposes, and the sale is not subject to B&O and retail sales tax in Washington.

Example 10. An out-of-state manufacturer/seller of a bulk good with nexus in Washington sells the good to a Washington-based purchaser in the business of selling small quantities of the good under its own label in its own packaging. The purchaser directs the seller to deliver the goods to a third-party packaging plant located out-of-state for repackaging of the goods in the purchaser's own packaging. The purchaser then has a third-party shipping company pick up the goods at the packaging plant. The Washington purchaser takes constructive possession of the goods outside of Washington because it has exercised dominion and control over the goods by having them repackaged at an out-of-state packaging facility before shipment to Washington. The sale is not subject to B&O and retail sales tax in this state because the purchaser received the goods outside of Washington.

(c) Other sourcing rules. There may be unique situations where the sourcing rules provided in (a) and (b) of this subsection do not apply. In those cases, please refer to the provisions of RCW 82.32.730 (1)(c) through (e).

(205) Sourcing sales of certain types of property.

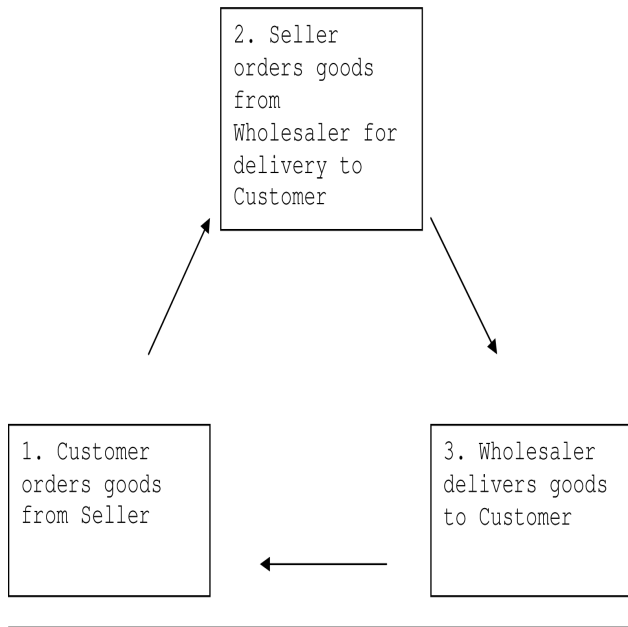
(a) Sales of commercial aircraft parts. As more particularly provided in RCW 82.04.627, the sale of certain parts to the manufacturer of a commercial airplane in Washington is deemed to take place at the site of the final testing or inspection.

(b) Sales of certain itinerant property. Sales of the following types of property are sourced to the location at or from which the property is delivered in accordance with RCW 82.32.730 (7)(a) through (c): Watercraft; modular, manufactured, or mobile homes; and motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as "transportation equipment" as defined in RCW 82.32.730. See WAC 458-20-145 (2)(b) for further information regarding the sourcing of these sales.

(c) Sales of flowers and related goods by florists. Sales by a "florist" are subject to a special origin sourcing rule. For specific information concerning "florist sales," who qualifies as a "florist," and the related sourcing rules, see RCW 82.32.-730 (7)(d) and (9)(e) and WAC 458-20-158.

Part III – Drop Shipments

(301) Introduction. A drop shipment generally involves two separate sales. A person (the seller) contracts to sell tangible personal property to a customer. The seller then contracts to purchase that property from a wholesaler and instructs that wholesaler to deliver the property directly to the seller's customer. Below is a diagram of a basic drop shipment transaction:



The following sections discuss the taxability of drop shipments in Washington when:

- (a) The seller and wholesaler do not have nexus;
- (b) The seller has nexus and the wholesaler does not;
- (c) The wholesaler has nexus and the seller does not; and
- (d) The seller and wholesaler both have nexus. In each of the following scenarios, the customer receives the property in Washington and the sale is sourced to Washington. Further, in each of the following scenarios, a reseller permit has been acquired to document any wholesale sales in Washington. See WAC 458-20-102, Reseller permits.

(302) Seller and wholesaler do not have nexus. Where the seller and the wholesaler do not have nexus with Washington, sales of tangible personal property by the seller to the customer and the wholesaler to the seller are not subject to B&O tax. In addition, neither the seller nor the wholesaler is required to collect retail sales tax on the sale.

(303) Seller has nexus but wholesaler does not. Where the seller has nexus with Washington but the wholesaler does not have nexus with Washington, the wholesaler's sale of tangible personal property to the seller is not subject to B&O tax and the wholesaler is not required to collect retail sales tax on

the sale. The sale by the seller to the customer is subject to wholesaling or retailing B&O tax, as the case may be. The seller must collect retail sales tax from the customer unless specifically exempt by law.

(304) Wholesaler has nexus but seller does not. Where the wholesaler has nexus with Washington but the seller does not have nexus with Washington, wholesaling B&O tax applies to the sale of tangible personal property by the wholesaler to the seller for shipment to the seller's customer. The wholesaler has nexus with Washington, and the customer receives the property in Washington. The sale from the seller to its Washington customer is not subject to B&O tax, and the seller is not required to collect retail sales tax on the sale.

Example 11. Seller is located in Ohio and does not have nexus with Washington. Seller receives an order from Customer, located in Washington, for parts that are to be shipped to Customer in Washington for its own use as a consumer. Seller buys the parts from Wholesaler, which has nexus with Washington, and requests that the parts be shipped directly to Customer. Seller is not subject to B&O tax and is not required to collect retail sales tax on its sale to Customer. The sale by Wholesaler to Seller is subject to wholesaling B&O tax.

(305) Seller and wholesaler have nexus with Washington. Where the seller and wholesaler have nexus with Washington, wholesaling B&O tax applies to the wholesaler's sale of tangible personal property to the seller. The sale from the seller to the customer is subject to wholesaling or retailing B&O tax as the case may be. The seller must collect retail sales tax from the customer unless the sale is specifically exempt by law.

**WSR 15-05-069
PROPOSED RULES
WASHINGTON STATE UNIVERSITY**

[Filed February 17, 2015, 3:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-01-163.

Title of Rule and Other Identifying Information: Chapter 504-26 WAC, Standards of conduct for students.

Hearing Location(s): Lighty 405, WSU Pullman, Pullman, Washington, on March 26, 2015, at 4:00 p.m.

Date of Intended Adoption: May 8, 2015.

Submit Written Comments to: Ralph Jenks, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, e-mail prf.forms@wsu.edu, fax (509) 335-3969, by March 26, 2015.

Assistance for Persons with Disabilities: Contact Deborah Bartlett, (509) 335-2005, by March 24, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments would permit a student to request that the university remove from his or her record a single disciplinary violation relating to the possession or use of alcohol and/or marijuana, and/or other violation of the university's policies relating to alcohol and drugs. Granting such a request is discretionary, and must be made according to university policies and procedures. In addition, the amendments include minor edits that bring the policies in line with current practices.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Name of Proponent: Washington State University, public.

Name of Agency Personnel Responsible for Drafting: Adam Jussel, Director, Student Standards and Accountability, Lighty Services 260, Pullman, Washington 99164-1064, (509) 335-4532; Implementation and Enforcement: Melynda Huskey, Interim Vice-President and Dean of Students, Office of the Dean of Students, French Administration 134, Pullman, Washington 99164-1013, (509) 335-2193.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule has no impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. The university does not consider this rule to be a significant legislative rule.

February 17, 2015

Ralph T. Jenks, Director
Procedures, Records, and Forms
University Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-01-080, filed 12/15/14, effective 1/15/15)

WAC 504-26-001 Preamble. Washington State University, a community dedicated to the advancement of knowledge, expects all students to behave in a manner consistent with its high standards of scholarship and conduct. Students are expected to uphold and be accountable for these standards both on and off campus and acknowledge the university's authority to take disciplinary action. The purpose of these standards and processes is to educate students and protect the welfare of the university community.

Accordingly, the conduct process is nonadversarial, confidential except to the extent permitted by law and these standards of conduct (this chapter), and not to be considered analogous to court proceedings. Further, the conduct process is independent of any criminal or civil penalties. WSU permits students to have advisors in certain circumstances in the student conduct process, but the role of the advisor is very limited. Sanctions under these standards of conduct are intended to challenge students' moral and ethical decision making and help them bring their behavior into accord with university community expectations. When students are unable to conform their behavior to community expectations, the student conduct process may determine that they should no longer share in the privilege of participating in the university community.

~~((Washington State University is guided by a commitment to excellence embodied in a set of core values. The university aims to create an environment that cultivates individual virtues and institutional integrity in the community. The mission of the university is supported when students uphold and take responsibility for the full scope of these values. The university's core values are identified in its strategic plan. Under the terms of enrollment, students acknowledge the university's authority to take disciplinary action for conduct on or off university property that is detrimental to the univer-~~

~~sity's core values. Students who violate the university standards of conduct are subject to discipline, which may include temporary or permanent removal from the university.))~~

AMENDATORY SECTION (Amending WSR 15-01-080, filed 12/15/14, effective 1/15/15)

WAC 504-26-100 Composition of conduct and appeals boards. (1) The university conduct board shall be composed of five individuals appointed by the vice-president for student affairs and comprised of students and persons who are any category of university employee, including affiliate faculty and staff. The chairperson of the conduct board shall be named by the vice-president for student affairs and ~~((may be any category of))~~ shall be a university employee.

Any three persons constitute a quorum of a conduct board and may act, provided that at least one student and the chairperson are present.

(2) The appeals board shall be appointed by the vice-president for student affairs. It shall be composed of three persons, including the chair. The chair shall be a university employee. The other members may be university employees, including affiliate faculty and staff, or students, provided that the student members have had at least one academic year of service on the university conduct board. Three persons constitute a quorum of the appeals board.

AMENDATORY SECTION (Amending WSR 15-01-080, filed 12/15/14, effective 1/15/15)

WAC 504-26-200 Jurisdiction of the standards of conduct for students. The standards of conduct for students shall apply to conduct that occurs on university premises, at university sponsored activities, and to off-campus conduct that adversely affects the university community and/or the pursuit of its objectives. These standards of conduct may be applied to behavior conducted online, via electronic mail or other electronic means.

Each student is responsible and accountable for his/her conduct from the time of application for admission through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from school, takes a leave of absence, or graduates while a disciplinary matter or investigation is pending. Definitions from these standards are incorporated into Washington State University's executive policy 15, which prohibits discrimination, sexual harassment, and sexual misconduct. The university has sole discretion to determine what conduct occurring off campus adversely impacts the university community and/or the pursuit of university objectives.

AMENDATORY SECTION (Amending WSR 15-01-080, filed 12/15/14, effective 1/15/15)

WAC 504-26-212 Alcohol. Use, possession, manufacture, or distribution of alcoholic beverages (except as expressly permitted by university regulations, and federal, state, and local laws), or public intoxication. Alcoholic bev-

erages may not, in any circumstance, be used by, possessed by, or distributed to any person (~~under twenty-one years~~) not of legal age.

AMENDATORY SECTION (Amending WSR 15-01-080, filed 12/15/14, effective 1/15/15)

WAC 504-26-304 Recognized student organization conduct. Sororities, fraternities, and recognized student organizations shall comply with the standards of conduct for students and with university policies. When a member or members of a recognized student organization violates the standards of conduct for students, the recognized student organization and/or individual members may be subject to appropriate sanctions authorized by these standards in accordance with the university's group accountability guidelines (~~(issued by the office of student standards and accountability)~~).

AMENDATORY SECTION (Amending WSR 15-01-080, filed 12/15/14, effective 1/15/15)

WAC 504-26-401 Complaints and student conduct process. (1) Any member of the university community may file a complaint against a student for violations of the standards of conduct for students. (~~(Any complaint is to be submitted as soon as possible after the event takes place, preferably within thirty days.)~~)

(2) A student conduct officer, or designee, may review and investigate any complaint to determine whether it appears to state a violation of the standards of conduct for students. If a conduct officer determines that a complaint appears to state a violation of the standards of conduct, she or he considers whether the matter might be resolved through agreement with the accused or through alternative dispute resolution proceedings involving the complainant and the accused. The complainant and the accused are informed of university options for alternative dispute resolution and may request that the matter be addressed using alternative dispute resolution techniques. Generally, the accused and complainant must agree to the use of alternative dispute resolution techniques. If the accused and the student conduct officer reach an agreed resolution of the complaint, the disposition is final; there is no right to appeal from an agreed disposition.

(3) If the conduct officer has determined that a complaint has merit and if the matter is not resolved through agreement or alternative dispute resolution, the matter is handled through either a conduct officer hearing or as a university conduct board hearing.

(a) When the allegation involves harm or threat of harm to any person or person's property and the accused disputes the facts and/or denies responsibility, the matter may be referred to the university conduct board for resolution.

(b) If the possible or recommended sanction is expulsion or suspension, the matter is referred to the university conduct board.

(c) Matters other than those listed in (a) and (b) of this subsection are heard by a conduct officer, unless the conduct officer exercises his or her discretion to refer the matter to a conduct board at any time before a decision is issued. A student may request that a conduct board hear the case, but the

final decision to refer the matter to the university conduct board for hearing is made by the university conduct officer and such decision is not subject to appeal.

(4) The student conduct officer provides complainants who have been targets of alleged misconduct or who feel victimized thereby with names of university and community advocates or resources who may be able to help the complainant address his or her concerns about the behaviors and provide support to the complainant throughout the conduct process. Upon request, a university advisor from the office of the dean of students is available to the complainant and the accused student to assist in understanding the student conduct process. Due to federal privacy law, the university may not disclose to the complainant any sanctions taken against the accused student, unless the complainant was the victim of a violent crime for which the accused was found responsible as defined under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99), or the accused student consents to such disclosure.

(5) All notifications and service under this chapter are delivered either by electronic mail or other electronic means, delivered personally, or sent via regular U.S. mail. Notifications sent via regular U.S. mail are sent to the party's last known address or the address on file with the university registrar. The student or recognized student organization is responsible for maintaining an updated mailing address on file with the registrar. Deadlines described in this chapter begin the date the notification is sent via electronic means, personally delivered, or placed in regular U.S. mail.

(6) Throughout the conduct process, the complainant and the accused student have the right to be assisted by an advisor they choose, at their own expense. Upon request, a university advisor from the office of the dean of students is available to the complainant and the accused student to assist in understanding the student conduct process. The complainant and/or the accused student is responsible for presenting his or her own information, and therefore, during the hearing, advisors are not permitted to address the board, witnesses, conduct officers or any party or representatives invited by the parties to the hearing, nor to participate directly in any university conduct board hearing, conduct officer hearing, or other aspect of the conduct process. An advisor may communicate with the accused and recesses may be allowed for this purpose. A student should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the scheduled meeting or hearing. The scheduling conflicts of an advisor are not considered good cause for a delay and do not entitle either party to a delay.

(7) The conduct officer or university conduct board's determinations are made on the basis of a "preponderance of the evidence," that is, whether it is more likely than not that the accused student violated the standards of conduct for students.

(8) Formal rules of process, procedure, and/or technical rules of evidence, such as are applied in criminal or civil court, are not used in conduct proceedings. Relevant evidence, including hearsay, is admissible if it is the type of evidence that reasonable members of the university community would rely upon in the conduct of their affairs. The chair of

the university conduct board and/or the conduct officer shall have the discretion to determine admissibility of evidence.

AMENDATORY SECTION (Amending WSR 15-01-080, filed 12/15/14, effective 1/15/15)

WAC 504-26-403 Conduct board proceedings. (1)

Any student charged by a conduct officer with a violation of any provision of the standards of conduct for students that is to be heard by a conduct board is provided notice as described in WAC 504-26-401(5).

(2) The written notice shall be completed by the conduct officer and shall include:

(a) The specific complaint, including the university policy or regulations allegedly violated;

(b) The approximate time and place of the alleged act that forms the factual basis for the charge of violation;

(c) The time, date, and place of the hearing;

(d) A list of the witnesses who may be called to testify, to the extent known;

(e) A description of all documentary and real evidence to be used at the hearing, to the extent known, including a statement that the student shall have the right to inspect his or her student conduct file.

(3) Time for hearings.

(a) The conduct board hearing is scheduled not less than seven days after the student has been sent notice of the hearing, except in the case of interim suspensions as set forth in WAC 504-26-406.

(b) Requests to extend the time and/or date for hearing must be addressed to the chair of the university conduct board, and must be copied to the office of student standards and accountability. A request for extension of time is granted only upon a showing of good cause.

(4) University conduct board hearings are conducted by a university conduct board. A goal of the hearing is to have an educational tone and to avoid creation of an unduly adversarial environment. The hearings are conducted according to the following guidelines, except as provided by subsection (6) of this section:

(a) Procedures:

(i) University conduct board hearings are conducted in private.

(ii) The complainant, accused student, and his or her advisor, if any, are allowed to attend the entire portion of the university conduct board hearing at which information is received (excluding deliberations). Admission of any other person to the university conduct board hearing is at the discretion of the university conduct board chair and/or the student conduct officer.

(iii) In university conduct board hearings involving more than one accused student, the student conduct officer, at his or her discretion, may permit joint or separate hearings.

(iv) In university conduct board hearings involving graduate students, board memberships are comprised to include graduate students and graduate teaching faculty to the extent possible.

(v) The complainant, the accused student, and the student conduct officer may arrange for witnesses to present pertinent information to the university conduct board. The con-

duct officer tries to arrange the attendance of possible witnesses who are identified by the complainant. Complainant witnesses must provide written statements to the conduct officer at least two weekdays prior to the hearing. Witnesses identified by the accused student must provide written statements to the conduct officer at least two weekdays prior to the conduct hearing. The accused student is responsible for informing his or her witnesses of the time and place of the hearing. Witnesses provide information to and answer questions from the university conduct board, the complainant, and the accused student, as appropriate. Questions may be suggested by the accused student and/or complainant to be answered by each other or by other witnesses. Written questions are directed to the conduct board chair, rather than to the witness directly. This method is used to preserve the educational tone of the hearing and to avoid creation of an unduly adversarial environment, and to allow the board chair to determine the relevancy of questions. Questions concerning whether potential information may be received are resolved at the discretion of the chair of the university conduct board. The chair of the university conduct board shall have the discretion to determine admissibility of ~~((evidence))~~ information.

(vi) Pertinent records, exhibits, and written statements (including student impact statements) may be accepted as information for consideration by a university conduct board at the discretion of the chair and/or conduct officer.

(vii) Questions related to the order of the proceedings are subject to the final decision of the chair of the university conduct board.

(viii) After the portion of the university conduct board hearing concludes in which all pertinent information is received, the university conduct board shall determine (by majority vote) whether the accused student has violated each section of the standards of conduct for students as charged and what sanctions, if any, are appropriate.

(b) If the accused student is found responsible for any of the charges (~~((brought against the accused))~~), the board may, at that time, consider the student's past contacts with the office of student standards and accountability in determining an appropriate sanction.

(c) The accused student or recognized student organization is notified of the conduct board's decision within ten calendar days from the date the matter is heard. The accused student or recognized student organization shall receive written notice of the decision, the reasons for the decision (both the factual basis therefore and the conclusions as to how those facts apply to the standards of conduct for students), the sanction, notice that the order will become final unless internal appeal is filed within twenty-one days of the date the letter was personally delivered, deposited in the U.S. mail, or electronically mailed, and a statement of how to file an appeal.

(i) The written decision is the university's initial order.

(ii) If the student or recognized student organization does not appeal the conduct board's decision before twenty-one calendar days from the date of the decision letter, it becomes the university's final order.

(5) There is a single verbatim record, such as an audio record, of all university conduct board hearings (not includ-

ing deliberations). Deliberations are not recorded. The record is the property of the university.

(6) If an accused student to whom notice of the hearing has been sent (in the manner provided above) does not appear before a university conduct board hearing, the information in support of the complaint is presented and considered in his or her absence, and the board may issue a decision based upon that information.

(7) The university conduct board may for convenience or to accommodate concerns for the personal safety, well-being, and/or fears of confrontation of the complainant, accused student, and/or other witnesses during the hearing provide separate facilities, and/or permit participation by telephone, audio tape, written statement, or other means, as determined in the sole judgment of the vice-president for student affairs or designee to be appropriate.

AMENDATORY SECTION (Amending WSR 15-01-080, filed 12/15/14, effective 1/15/15)

WAC 504-26-405 Sanctions. (1) The following sanctions may be imposed upon any student found to have violated the standards of conduct for students:

(a) Warning. A notice in writing to the student that the student is violating or has violated institutional regulations.

(b) Probation. Formal action placing conditions upon the student's continued attendance at the university. Probation is for a designated period of time and warns the student or recognized student organization that suspension, expulsion, loss of recognition, or any other sanction outlined in this section may be imposed if the student is found to violate any institutional regulation(s) or fails to complete his or her conditions of probation during the probationary period. A student on probation is not eligible to run for or hold an office in any recognized student group or organization; she or he is not eligible for certain jobs on campus, including but not limited to resident advisor or orientation counselor; and she or he is not eligible to serve on the university conduct or appeals board.

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

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

(e) Education. The university may require the student to successfully complete an educational project designed to create an awareness of the student's misconduct.

(f) Community service. Imposition of service hours (not to exceed eighty hours per student or per member of a recognized student organization).

(g) Residence hall suspension. Separation of the student from a residence hall or halls for a definite period of time, after which the student may be eligible to return. Conditions for readmission may be specified.

(h) Residence hall expulsion. Permanent separation of the student from a residence hall or halls.

(i) University suspension. Separation of the student from the university for a definite period of time, after which the student is eligible to request readmission. Conditions for readmission may be specified.

(j) University expulsion. Permanent separation of the student from the university. Also referred to as university dismissal. The terms are used interchangeably throughout this chapter.

(k) Revocation of admission and/or degree. Admission to or a degree awarded from the university may be revoked for fraud, misrepresentation, or other violation of law or university standards in obtaining the degree, or for other serious violations committed by a student (~~prior to graduation~~) before awarding of the degree.

(l) Withholding degree. The university may withhold awarding a degree otherwise earned until the completion of the process set forth in this standards of conduct for students, including the completion of all sanctions imposed, if any.

(m) Trespass. A student may be restricted from any or all university premises based on his or her misconduct.

(n) Loss of recognition. A recognized student organization's recognition may be withheld permanently or for a specific period of time. A fraternity or sorority may be prohibited from housing freshmen. Loss of recognition is defined as withholding university services, privileges, or administrative approval from a student organization. Services, privileges, and approval to be withdrawn include, but are not limited to, intramural sports (although individual members may participate), information technology services, university facility use and rental, campus involvement office organizational activities, and office of Greek life advising.

(o) Hold on transcript and/or registration. A hold restricts release of a student's transcript or access to registration until satisfactory completion of conditions or sanctions imposed by a (~~student~~) conduct officer or university conduct board. Upon proof of satisfactory completion of the conditions or sanctions, the hold is released.

(p) No contact order. A prohibition of direct or indirect physical, verbal, and/or written contact with another individual or group.

(q) Fines. Previously established and published fines may be imposed. Fines are established each year prior to the beginning of the academic year and are approved by the vice-president for student affairs.

(2) More than one of the sanctions listed above may be imposed for any single violation.

(3)(a) In determining an appropriate sanction, the conduct officer or relevant board may consider any record of past contacts with the office of student standards and accountability, and the nature and severity of such past contact(s).

(b) The conduct board and/or appeals board may consider suspending or expelling any student found responsible for violating the university's sexual misconduct code (WAC 504-26-221).

(4) Other than university expulsion or revocation or withholding of a degree, disciplinary sanctions are not made part of the student's permanent academic record, but shall become part of the student's disciplinary record.

(5) In cases heard by university conduct boards, sanctions are determined by that board. The student conduct officer has the authority to assign sanctions in any conduct officer hearing.

(6) Academic integrity violations.

No credit need be given for work that is not a student's own. Thus, in academic integrity violations, the responsible instructor has the authority to assign a grade and/or educational sanction in accordance with the expectations set forth in the relevant course syllabus. The instructor's choices may include, but are not limited to, assigning a grade of "F" for the assignment and/or assigning an educational sanction such as extra or replacement assignments, quizzes, or tests, or assigning a grade of "F" for the course.

AMENDATORY SECTION (Amending WSR 15-01-080, filed 12/15/14, effective 1/15/15)

WAC 504-26-407 Review of decision. (1) The findings and sanctions rendered by the university conduct board or a ((student)) conduct officer may be appealed by the complainant and accused student(s) in the manner prescribed in the decision letter containing the ((university's)) findings and sanctions. Such appeal must be made before twenty-one days of the date of the decision letter. The director of student standards and accountability provides a copy of the appeal request by one party to the other party (parties) as appropriate.

(a) The university president or designee, of his or her own initiative, may direct that an appeals board be convened to review a conduct board or conduct officer decision without notice to the parties. However, the appeals board may not take any action less favorable to the accused student(s), unless notice and an opportunity to explain the matter is first given to the accused student(s).

(b) If the complainant or accused student and/or the student conduct officer or designee wish to explain their views of the matter to the appeals board they shall be given an opportunity to do so in writing.

(c) The appeals board shall make any inquiries necessary to ascertain whether the proceeding must be converted to a formal adjudicative hearing under the Administrative Procedure Act (chapter 34.05 RCW).

(2) Except as required to explain the basis of new information, an appeal is limited to a review of the verbatim record of the university conduct board hearing and ((supporting documents)) the conduct file for conduct board decisions or the conduct file for conduct officer decisions for one or more of the following purposes:

(a) To determine whether the university conduct board hearing was conducted fairly in light of the charges and information presented, and in conformity with prescribed procedures giving the complaining party a reasonable opportunity to prepare and to present information that the standards of conduct for students were violated, and giving the accused student a reasonable opportunity to prepare and to present a response to those allegations. Deviations from designated procedures are not a basis for sustaining an appeal unless significant prejudice results.

(b) To determine whether the decision reached regarding the accused student was based on substantial information, that is, whether there were facts in the case that, if believed by the fact finder, were sufficient to establish that a violation of the standards of conduct for students occurred.

(c) To determine whether the sanction(s) imposed were appropriate for the violation of the standards of conduct for students which the student was found to have committed.

(d) To consider new information, sufficient to alter a decision, or other relevant facts not brought out in the original hearing, because such information and/or facts were not known to the person appealing at the time of the original university conduct board hearing.

(3) The university appeals board shall review the record and all information provided by the parties and take one of the following actions:

(a) Affirm, reverse, or modify the conduct board's or conduct officer's decision;

(b) Affirm, reverse, or modify the sanctions imposed by the conduct board or conduct officer;

(c) Set aside the findings and sanctions or remand the matter back to the conduct board or conduct officer with instructions for further proceedings.

(4) The appeals board's decision shall be personally delivered, sent via regular U.S. mail, or electronically mailed to the student. Such decision shall be delivered or mailed to the last known address of the accused student(s) or electronically mailed to the student's official university electronic mail account. It is the student's responsibility to maintain a correct and updated address with the registrar. The university appeals board's decision letter is the final order and shall advise the student or recognized student organization that judicial review may be available. If the appeals board does not provide the student with a response within twenty days after the request for appeal is received, the request for appeal is deemed denied.

(5) The appeals board decision is effective as soon as the order is signed, except in cases involving expulsion or loss of recognition. In cases involving expulsion or loss of recognition, the appeals board decision is effective ten calendar days from the date the order is signed, unless the university president or designee provides written notice of additional review as provided in subsection (6) of this section.

(6) For cases involving expulsion or loss of recognition, the university president or designee may review a decision of the appeals board by providing written notice to the student or recognized student organization no later than ten calendar days from the date the appeals board decision is signed.

(a) This review is limited to the record and purposes stated in subsection (2) of this section.

(b) Prior to issuing a decision, the president or designee shall make any inquiries necessary to determine whether the proceeding should be converted into a formal adjudicative hearing under the Administrative Procedure Act (chapter 34.05 RCW).

(c) If the complainant or accused student and/or the student conduct officer or designee wish to explain their views of the matter to the president or designee, they shall do so in writing.

(d) The president or designee's decision is in writing, includes a brief statement of the reasons for the decision, and is issued within twenty calendar days after the date of the appeals board order. The decision becomes effective as soon as it is signed and includes a notice that judicial review may be available.

(7) Students may petition to delay the date that the final order of the university becomes effective by directing a petition to the chair of the appeals board, or the president or designee, as applicable, within ten calendar days of the date the order was personally delivered to the student or placed in the regular U.S. mail, or electronically mailed. The chair, or the president or designee, as applicable, shall have authority to decide whether to grant or deny the request.

(8) There is no further review beyond that of the findings of responsibility or outcomes assigned by university or college academic integrity hearing boards.

AMENDATORY SECTION (Amending WSR 15-01-080, filed 12/15/14, effective 1/15/15)

WAC 504-26-501 Records. (1) Standards of conduct for students records are maintained in accordance with the university's records retention schedule.

(2) The disciplinary record is confidential, and is released only as authorized under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99) and the university policy on student educational records (chapter 504-21 WAC).

(3) A student may request a copy of his or her own disciplinary record at his or her own reasonable expense by making a written request to the office of student standards and accountability.

(4) Personally identifiable student information is redacted to protect other students privacy.

(5) A student may authorize release of his or her own disciplinary record to a third party in compliance with FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99) by making a written request to the office of student standards and accountability.

(6) The university may inform the complainant of the outcome of any disciplinary proceeding involving a crime of violence as defined by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(7) The university informs the complainant of the outcome of any disciplinary proceeding alleging sexual misconduct. (34 C.F.R. 668.46 (b)(11)(vi)(B).)

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

(a) The student's parents or legal guardians may review these records if the student is a minor or a dependent for tax purposes as defined by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(b) Release to another educational institution, upon request, where the student seeks or intends to enroll, as allowed by FERPA (20 U.S.C. Sec. 1232g; 34 C.F.R. Part 99).

(9) A student may request removal from her or his record of a single disciplinary violation relating to the possession or use of alcohol and/or marijuana, and/or other violation of the university's policies relating to alcohol and drugs. Granting such a request is discretionary, and the student must make

such a request in accordance with university policies and procedures.

WSR 15-05-070

PROPOSED RULES

WASHINGTON STATE UNIVERSITY

[Filed February 17, 2015, 3:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-23-085.

Title of Rule and Other Identifying Information: Chapter 504-15 WAC, Campus parking and traffic regulations.

Hearing Location(s): Lighty 403, WSU Pullman, Pullman, Washington, on March 27, 2015, at 4:00 p.m.

Date of Intended Adoption: May 8, 2015.

Submit Written Comments to: Ralph Jenks, Rules Coordinator, P.O. Box 641225, Pullman, WA 99164-1225, e-mail prf.forms@wsu.edu, fax (509) 335-3969, by March 27, 2015.

Assistance for Persons with Disabilities: Contact Deborah Bartlett, (509) 335-2005, by March 24, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The university is updating the campus parking and traffic regulations and expanding rules regarding permit display.

Statutory Authority for Adoption: RCW 28B.30.150.

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

Name of Proponent: Washington State University, public.

Name of Agency Personnel Responsible for Drafting: Christopher Boyan, Assistant Director of Operations, Transportation Services, Parking Services 101a, Pullman, Washington 99164-5500, (509) 335-2950; Implementation and Enforcement: Bill Gardner, Executive Director, Police Department, Public Safety, Safety 60, Pullman, Washington 99164-7300, (509) 335-8548.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This rule has no impact on small business.

A cost-benefit analysis is not required under RCW 34.05.328. The university does not consider this rule to be a significant legislative rule.

February 17, 2015

Ralph T. Jenks, Director
Procedures, Records, and Forms
University Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-11-024, filed 5/12/14, effective 6/12/14)

WAC 504-15-100 Definitions. The definitions in this section are applicable within the context of this chapter.

(1) Campus. Describes all property owned, leased, and/or controlled by the university Pullman campus which is or may hereafter be dedicated mainly to the educational, research, housing, recreational, parking, or other activities of the university.

(2) Commuter student. Any student who does not live in a university residence hall (dormitory). All students living in fraternities, sororities, university-owned housing (other than residence halls), and private housing are considered to be commuter students.

(3) Day. Unless otherwise specified, the term "day" refers to a calendar day.

(4) ~~(Disability parking. See persons with disability.~~

~~(5))~~ Disability zone. A parking zone designated for exclusive use by persons with disability and identified with a sign bearing the associated international symbol.

~~((6))~~ (5) Electric-assisted bicycle. As defined under RCW 46.04.169.

~~((7))~~ (6) Fire zone. An area needed for emergency access to buildings, fire hydrants, or fire equipment. Such areas include, but are not limited to, areas with adjacent curbs or rails painted red.

~~((8))~~ (7) Gate card. A plastic card that activates the gates controlling access to certain parking areas.

~~((9) Holiday. See university holiday.~~

~~(10))~~ (8) Illegal use of permit. A parking violation in which a parking ticket is issued under the following circumstances:

(a) Use of a parking permit or indicator on a vehicle other than the specified vehicle identified by a license plate number on the permit.

(b) Use of a parking permit or indicator obtained under false pretenses.

(c) Use of a modified parking permit or indicator.

(d) Use and/or retention of a parking permit or indicator by person(s) ineligible, or no longer eligible, for such a permit as described and authorized in this chapter.

~~((11))~~ (9) Impound. To take and hold a vehicle in legal custody by use of a wheel lock and/or towing.

~~((12))~~ (10) Indicator. A decal or hanger displayed adjacent to a parking permit which defines additional parking areas available to a permit holder.

~~((13))~~ (11) Loading zone. A loading dock, or an area signed "loading zone" adjacent to a facility, in a parking area, or near a residence hall. Such an area is intended for loading and unloading bulky or voluminous material. Loading zones are restricted at all times unless signed otherwise.

~~((14))~~ (12) Moped. As defined under RCW 46.04.304.

~~((15))~~ (13) Motorcycle. As defined under RCW 46.04.330.

~~((16))~~ (14) Motorized foot scooter. As defined under RCW 46.04.336.

~~((17))~~ (15) Motor vehicle. As defined under RCW 46.04.320.

~~((18))~~ (16) No parking zone. Any area not specifically marked and/or signed for parking. Such areas include, but are not limited to, areas with adjacent curbs or rails painted yellow.

~~((19))~~ (17) Officer. Any parking or police official employed by the university who is designated by the parking administrator or chief of police to issue parking tickets, to place and remove wheel locks, or to cause vehicles to be towed under this chapter.

~~((20))~~ (18) Owner. The person registered with any state as the present owner of a vehicle in the most current registra-

tion records available to the university, the owner's expressed representative, or any transferee not designated in such records, provided that the parking administrator or chief of police has received actual written notice of the transfer.

~~((21))~~ (19) Park/parking. This refers to the placement or standing of a vehicle, with or without a driver in attendance, and with or without the engine running.

~~((22))~~ (20) Parking administrator. The director in charge of the parking department or designee.

~~((23))~~ (21) Parking appeals committee. Any person or persons appointed to consider parking violations and the application of fees, fines, and sanctions. Said person or persons are appointed by the vice-president whose responsibilities include supervision of the parking department or designee.

~~((24))~~ (22) Parking department. The university department which is charged with the responsibility of managing, operating, planning, and maintaining parking facilities; enforcing the parking regulations; and coordinating commute trip reduction efforts for the Pullman campus.

~~((25))~~ (23) Parking meter. A single fixed device that typically requires payment and limits the amount of time a vehicle can park in a single space. Also referred to as "meter" in this chapter. A parking meter is not a parking payment device.

~~((26))~~ (24) Parking payment device. A machine that requires payment and vends a parking permit and/or a paid receipt. Parking payment devices may be located in various places on the campus. A parking payment device is not a parking meter.

~~((27))~~ (25) Parking permit. A vinyl, plastic, paper, or other instrument sanctioned by the parking department that is displayed from a vehicle, and authorizes parking in specified areas. Some parking permits may be purchased online and may be virtual in nature, and identified by other means such as by license plate. Also referred to as "permit" in this chapter.

~~((28))~~ (26) Parking ticket. The first notice of a parking violation which is usually placed in a visible location on a motor vehicle.

~~((29))~~ (27) Pay parking facility. A location where parking is provided and payment is made on-site via a parking payment device, cashier, or other means other than a parking meter.

~~((30))~~ (28) Pedestrian mall. A space that is designed primarily for pedestrian use, but with limited authorized use of motor vehicle and other motorized and nonmotorized conveyances. These restricted areas are depicted on the Pullman campus map and/or with signing at the entrances to the pedestrian mall areas.

~~((31))~~ (29) Persons with disability. For the purpose of this chapter, persons with disability shall refer to a person or persons with disability or disabilities who qualify for a state-issued ~~(persons with disability))~~ individual with disabilities parking identification and permit.

~~((32))~~ (30) Resident priority zone. A parking area close to a residence hall (i.e., crimson zone or gray zone) that is typically limited to use by ~~(resident))~~ residence hall students.

~~((33))~~ (31) Residence hall student. A student with a current, valid residence hall contract, who lives in a residence hall.

~~((34))~~ (32) Residence hall. Residence hall units (dormitories) that are owned by the university but are not included as university-owned housing apartments. Occupants of residence halls are considered ~~((resident))~~ residence hall students and are eligible for parking permits in resident priority zones.

~~((35))~~ (33) Service vehicle. A vehicle used to provide a service for the university or a tenant or contractor of the university (e.g., a university owned vehicle or a privately owned vehicle with a valid service vehicle authorization displayed).

~~((36))~~ (34) Service zone. Parking spaces or area designated for the use of service vehicles, other government-owned vehicles, and vehicles displaying a service indicator or commercial permit. Authorized vehicles may park in these zones on an occasional basis for a maximum of fifteen minutes, except for vehicles that display a commercial permit, or a service indicator issued for an extended time. Service zones are restricted at all times unless signed otherwise.

~~((37))~~ (35) Staff. For the purposes of these regulations, "staff" includes all nonstudent employees of the university and the nonstudent employees of other entities located on, or regularly doing business on campus. Teaching assistants, research assistants, and other students employed by the university, or other entities located on, or regularly doing business on campus, are not "staff." They are considered to be students for the purpose of these regulations.

~~((38))~~ (36) Standing. "Standing" is the stopping of a vehicle with the driver remaining in it.

~~((39))~~ (37) Storage of a vehicle. Impounded vehicles are held in storage until released. During such time they are subject to storage fees.

~~((40))~~ (38) Student. The term "student" includes all persons who are not staff who are taking courses at the university, enrolled full-time or part-time, pursuing undergraduate, graduate, professional studies, or auditing one or more classes.

~~((41))~~ (39) Summer session. The summer session includes all summer sessions beginning on the first day of the earliest session, and ending on the last day of the latest session.

~~((42))~~ (40) University. Refers to Washington State University.

~~((43))~~ (41) University holiday. A day regarded by the university as an official university holiday.

~~((44))~~ (42) University-owned housing. Housing units or apartments, and their respective parking areas, that are owned by the university, but are not included as residence halls. Occupants of university-owned housing are eligible for housing parking permits issued by the university.

~~((45))~~ (43) Unpaid. A full or partial outstanding balance due. This definition includes parking tickets which are pending appeal.

~~((46))~~ (44) Vacation. A period of time when classes or final exams are not in session. Except for holidays that fall within this period, the business offices of the university are open during this time.

~~((47))~~ (45) Vehicle storage. Vehicle storage means the parking or leaving of any vehicle for a period of more than twenty-four consecutive hours.

(46) Visitors. Persons who are not staff or students and who only visit the campus on an occasional basis.

~~((48))~~ (47) Wheel lock. A device used to temporarily immobilize a motor vehicle. Wheel locked vehicles are considered to be impounded in place and subject to storage fees.

~~((49))~~ (48) Wheel lock-eligible list. The current list of wheel lock-eligible vehicles as maintained by the parking department. A vehicle remains on the wheel lock-eligible list until all fines and fees related to parking tickets are paid in full or otherwise resolved to include the payment of fines and fees related to parking tickets not yet eligible for late fees.

~~((50))~~ (49) Wheel lock-eligible vehicle. Any vehicle on which three or more parking tickets more than thirty days old are unpaid and which parking tickets were issued during the time the vehicle was registered to or otherwise held by the owner. The vehicle remains wheel lock-eligible until all fines and fees related to parking tickets are paid in full or otherwise resolved to include the payment of fines and fees related to parking tickets not yet eligible for late fees.

(50) WSU disability permit. WSU-issued zone permit displayed with a valid state-issued disability placard or disability license plate.

AMENDATORY SECTION (Amending WSR 14-11-024, filed 5/12/14, effective 6/12/14)

WAC 504-15-350 Use of areas for emergency, maintenance, events, or construction ~~(, or special needs)~~. (1) The university reserves the right to restrict access to any campus parking area, roadway, or sidewalk at any time it is deemed necessary for maintenance, safety, events, construction, or emergencies ~~(, or to meet special needs)~~. The parking department provides notice to users when possible.

(2) The parking department may authorize the towing of vehicles parked in areas that are designated to be used for emergencies, maintenance, events, or construction. Towing is at the owner's expense.

(3) Public safety and maintenance personnel performing official duties may deviate from these regulations as required to conduct emergency procedures.

AMENDATORY SECTION (Amending WSR 10-11-083, filed 5/17/10, effective 7/1/10)

WAC 504-15-370 ~~(Storage of)~~ Vehicle ~~(s)~~ storage. The storage of vehicles, including motorcycles and mopeds, is prohibited on campus unless otherwise authorized by the parking department.

AMENDATORY SECTION (Amending WSR 10-11-083, filed 5/17/10, effective 7/1/10)

WAC 504-15-520 Parking permits—Form and display. All parking permits must be entirely visible and displayed in the approved position on the vehicle with permit numbers and relevant dates visible. Vehicles with permits which are not displayed in accordance with the provisions of

this section are subject to parking tickets for the violation of improperly displaying a permit.

(1) Autos and trucks:

(a) ~~((Hanging)) Daily permits~~~~((, both annual and daily,))~~ must be displayed ~~((hanging from the rear view mirror post))~~ as instructed on the permit.

(b) ~~Annual permits~~ ~~((mounted solely by suction cup and permit decals directly affixed to the windshield))~~ must be displayed on the ~~((front windshield at the lower))~~ left ~~((corner))~~ side (driver's side) of the windshield. ~~((Decals))~~ Permits must be mounted completely by means of their own ((adhesive (not by tape))) design. No additional substances may be used to adhere the permit unless approved by the parking department.

(2) Motorcycles and mopeds. Motorcycle and moped permits must be mounted completely by means of their own adhesive and prominently displayed on the left rear side of the vehicle or on top of the rear tail light.

AMENDATORY SECTION (Amending WSR 14-11-024, filed 5/12/14, effective 6/12/14)

WAC 504-15-540 Zone parking permits—Availability and use. The management and assignment of parking zones is designed to provide a parking space to each permit holder. However, uncontrolled access to parking areas and unexpected parking demand make it impossible to guarantee a parking space in a permit holder's assigned zone. Every effort is made via surveys and limits on permit sales, to ensure that permit holders are not displaced from their assigned zones.

Staff and students are generally assigned to specific parking areas, referred to as zones. Parking zones are color-coded with respect to their price and numbered with respect to the specific parking zone assignment of each permit holder. Permit holders may park in their assigned zone as reflected by the combination of color and number on their permit and corresponding sign, or they may park in other zones as described below.

(1) Orange permits. Orange permit holders may park in their numerically assigned orange zone, or in any green, yellow, red, or blue zone. These permits may be made available on a daily basis.

(2) Green permits. Green permit holders may park in their numerically assigned green zone, or in any yellow, red, or blue zone. These permits may be made available on a daily basis.

(3) Yellow permits. Yellow permit holders may park in their numerically assigned yellow zone, or in any red or blue zone. These permits may be made available on a daily basis.

(4) Red permits. Red permit holders may park in their numerically assigned red zone or in any blue zone. These permits may be made available on a daily basis.

(5) Crimson permits. Crimson permit holders may park in their numerically assigned crimson zone, or in the numerically corresponding gray zone (e.g., a crimson 1 permit is valid in the gray 1 zone, but not in the gray 2 zone), or in any blue zone. Crimson permit holders must turn in their crimson permit for a refund or credit toward another permit, if applicable, immediately upon moving out of the residence hall.

Only ~~((resident))~~ residence hall students are eligible for crimson permits with the exception of the crimson 3 zone, which is available to all students. ~~((Resident))~~ Residence hall students are eligible for crimson, gray, or blue permits only.

(6) Gray permits. Gray permit holders may park in their numerically assigned gray zone, or in any blue zone. These permits may be made available on a daily basis. Gray permit holders must turn in their gray permit for refund or credit toward another permit, if applicable, immediately upon moving out of a residence hall. Only ~~((resident))~~ residence hall students are eligible for gray permits. ~~((Resident))~~ Residence hall students are eligible for crimson, gray, or blue permits only.

(7) Blue permits. Blue permit holders may park in any blue zone. These permits may be made available on a daily basis.

AMENDATORY SECTION (Amending WSR 14-11-024, filed 5/12/14, effective 6/12/14)

WAC 504-15-560 Other parking permits—Availability and use. (1) Visitor permits. For information about visitor parking, refer to the parking department's web site.

(2) Golden cougar permits. Golden cougar permits are special ~~((visitor))~~ permits that are issued to retired staff in recognition of their service without additional cost. They are issued on an annual basis and are valid in ~~((green, yellow, red, blue zones, and visitor permit only parking spaces))~~ designated areas that are approved by the parking department. Staff who are employed by the university or by other entities located on campus after formal retirement are not eligible to use a golden cougar permit in lieu of a regular paid zone permit.

(3) Event permits. Event permits are available to patrons who participate in events held on the university campus. They are available on a daily basis only. Event permits are assigned to specific zones on a space-available basis. Event permits are not valid in restricted spaces.

(4) Motorcycle permits. Motorcycle permits are valid within boundaries of areas specifically posted and/or marked for motorcycle permits. Motorcycle permits are available on an annual and daily basis.

(5) Moped permits. Moped permits are valid within boundaries of areas specifically posted and/or marked for moped permits. Moped permits are available on an annual and daily basis.

(6) Commercial permits. Commercial permits are issued to vendors, suppliers, and service representatives of outside companies performing a service for the university. Commercial permits are available on an annual or daily basis. Annual commercial permits are valid in service zones, parking meters, and green, yellow, red and blue zones, and visitor-permit-only parking spaces. Daily commercial permits may be assigned to specific zones on a space-available basis. Commercial permits are not valid in orange zones or pay parking facilities.

(7) Construction permits. A construction permit is issued to personnel who are working on a construction site on campus. Construction permits are available on an annual or daily basis and are assigned to a specific parking area.

(8) Housing permits. A housing permit is issued to eligible residents of university-owned housing. Housing permits are valid only in specific housing parking areas.

(9) Carpool. Upon application, a bona fide carpool as defined by the campus policies and procedures is given preference in the assignment of parking zones, and issued a permit that facilitates the carpool. Obtaining or using a carpool permit under false pretenses constitutes the illegal use of a permit.

(10) Departmental permits. Departmental parking permits are available for use by department employees who need to use their personal vehicles for university business. Departmental permits are available in different forms and are valid at parking meters; service zones; orange, green, yellow, red, blue, crimson, and gray permit zones; and pay parking facilities. Departmental permits are not valid in reserved spaces. The use of departmental permits for anything other than official departmental business is prohibited by the State Ethics Act.

AMENDATORY SECTION (Amending WSR 08-08-050, filed 3/27/08, effective 7/1/08)

WAC 504-15-600 Parking (~~(permits)~~) for persons with disability. (1) The provisions of this chapter cover (~~the purchase and display of~~) disability parking (~~(permits)~~) and the payment of fees and fines associated with parking for persons with disability.

(2) For the purpose of this chapter, persons with disability shall refer to a person or persons with disability who qualify for a state-issued (~~(persons with disability)~~) individual with disabilities parking identification and permit as provided in chapter 308-96B WAC.

(3) The university uses the state (~~(persons with disability)~~) individual with disabilities parking permit system to determine eligibility for (~~(a university persons with)~~) disability parking (~~(permit. Persons desiring to purchase a university persons with disability parking permit must present a valid state-issued persons with disability parking identification and permit)~~).

(4) Unless otherwise authorized, parking in spaces designated for persons with disability requires a (~~(valid university persons with)~~) WSU disability (~~(parking)~~) permit to park on campus. (~~(University parking permits for persons with disability are available at the blue zone rate.)~~)

(5) Persons with a (~~(university persons with)~~) WSU disability (~~(parking)~~) permit may park in a persons with disability parking space and any other, nonrestricted permit space within a parking permit zone.

(6) Persons with a (~~(university persons with)~~) WSU disability (~~(parking)~~) permit may not park in restricted spaces with the exception of persons with disability parking spaces.

(7) Unless otherwise posted, any university parking permit to include a (~~(persons with)~~) WSU disability (~~(parking)~~) permit is not valid in lieu of payment of regular posted fees in pay parking facilities.

(8) A state-issued (~~(persons with disability)~~) individual with disabilities license plate, placard, or permit is valid in lieu of a (~~(university persons with)~~) WSU disability (~~(park-~~

~~ing)~~) permit in parking zones during times when a university permit is not required.

(9) The university intends to retain control of access to the pedestrian malls on campus. For that reason a (~~(university persons with)~~) WSU disability (~~(parking)~~) permit is required in lieu of a state-issued (~~(persons with disability)~~) individual with disabilities license plate, placard, or permit as authorization to use a pedestrian mall to access marked persons with disability parking spaces within the confines of a pedestrian mall.

AMENDATORY SECTION (Amending WSR 08-08-050, filed 3/27/08, effective 7/1/08)

WAC 504-15-650 Parking fees and fines. (1) Schedules for parking fees, parking administrative fees, late payment fees, parking fines and sanctions, parking meter rates, prorated and refund schedules, and the effective date thereof are submitted to the president or his/her designee and to the board of regents for approval by motion, provided, however, that increases in fees and fines do not exceed limits established by the board of regents. Increases in fees and fines that do not exceed limits established by the board of regents are not submitted to the board of regents so long as the board of regents has delegated authority to the president or his designee to approve all such fees and fines. The schedules described above for all parking fees and fines are thereafter posted in the public area of the parking department office and posted on the parking department's web site.

(2) Before purchasing a permit, the balance of any fees and fines owed to the parking department must be paid in full.

(3) Payments. Parking fees and fines may be paid at the parking department by cash, check, approved payment card, or money order. A payroll deduction plan is available for eligible university employees and eligible graduate students.

(~~(3)~~) (4) The annual fee for any shorter period relative to all permits shall be prorated according to the published schedule.

(~~(4)~~) (5) The proper fee must be paid for all vehicles parked in parking meter spaces unless otherwise authorized.

(~~(5)~~) (6) Staff members whose work schedules qualify them for nighttime differential pay may purchase a permit for one-half the regular fee. Verification is required.

(~~(6)~~) (7) Refunds. Annual permits being relinquished may be returned to the parking department for a pro rata refund in accordance with university policy. Identifiable remnants of the permit must be returned. The balance of any fees and fines owed the parking department is deducted from any refund due. Refunds for temporary permits are not granted. Refunds for pretax payroll deductions cannot be granted pursuant to federal tax laws.

(~~(7)~~) (8) The parking department makes a wide array of options available in advance to university departments for use by their visitors, guests, and employees for the purpose of conducting departmental business. However, when necessary, university departments that can establish in writing that a parking ticket issued by the parking department was received as a result of parking any vehicle for the purpose of conducting official state business, or while conducting official business with the university or an entity located at the

university are assessed a parking fee assessment (PFA) in lieu of the parking fine. Such requests for PFAs are signed by a department fiscal custodian. A PFA consists of the maximum daily parking fee plus an additional administrative fee for failing to purchase and provide the necessary parking permit or fee in advance or at the time of parking. University departments are encouraged to avoid additional administrative fees associated with PFAs by purchasing and storing pre-paid parking permits and by making them available as the department deems necessary. Nothing in this regulation allows a university employee to receive, or attempt to receive, any benefit associated with his or her personal expenses in violation of the State Ethics Act. All questionable employee conduct regarding the application of this section is reported to, and investigated by, the university internal auditor. This section applies only to parking tickets issued pursuant to this chapter.

AMENDATORY SECTION (Amending WSR 08-08-050, filed 3/27/08, effective 7/1/08)

WAC 504-15-865 General. (1) Pursuant to the provisions of this chapter, an officer shall cause a vehicle to be wheel locked, or towed, or both, if:

- (a) The vehicle is on the wheel lock-eligible list; or
- (b) The vehicle displays a lost, stolen, or counterfeit parking permit.
- (2) Any vehicle may be towed away at owner's/operator's expense if the vehicle:
 - (a) Has been immobilized by wheel lock for more than twenty-four hours; or
 - (b) Is illegally parked in a marked tow-away zone; or
 - (c) Is a hazard or obstruction to vehicular or pedestrian traffic (including, but not limited to, vehicles parked at curbs or rails painted yellow or red or in crosswalks); or
 - (d) Cannot be immobilized with a wheel lock device; or
 - (e) Is illegally parked in a disability space; or
 - (f) Is parked in an area designated to be used for emergencies, maintenance, events, or construction; or
 - (g) Is otherwise illegally parked on the executive authority of the parking department or the university police department.
- (3) The driver and/or owner of a towed vehicle shall pay towing and storage expenses.
- (4) Any vehicle immobilized by use of the wheel lock device in excess of twenty-four hours is assessed a storage fee for each calendar day or portion thereof, beyond the first twenty-four hours.
- (5) The university assumes no responsibility in the event of damages resulting from towing, use of wheel lock devices, storage, or attempts to move a vehicle with a wheel lock device installed.
- (6) No vehicle impounded by towing or wheel lock devices shall be released until the following fines are paid in cash or with an approved payment card:
 - (a) All unpaid parking ticket fines and late fees against said vehicle and any other vehicle registered to the owner;
 - (b) A wheel lock fee; and
 - (c) All towing and storage fees.

(7) A person wishing to challenge the validity of any fines or fees imposed under this chapter may appeal such fines or fees as provided in WAC 504-15-860. However, in order to secure release of the vehicle, such person must pay the amount of such fines or fees as a bond which shall be refunded to the extent the appeal is successful.

(8) An accumulation of six unpaid violations during any twelve-month period, exclusive of overtime at parking meter violations, and overtime in time zone violations, subjects the violator to revocation or denial of parking privileges. Vehicles without permits which accumulate the above number of violations may be prohibited from parking on university property.

AMENDATORY SECTION (Amending WSR 14-11-024, filed 5/12/14, effective 6/12/14)

WAC 504-15-930 Bicycles, skateboards, scooters, and roller skates. (1) The riding and use of bicycles, skateboards, scooters, and roller skates is prohibited on all building plazas, all pedestrian overpasses, interior building spaces, parking structures, parking structure ramps, all stairways, steps, ledges, benches, planting areas, ~~(and)~~ any other fixtures, and in any other posted area.

(2) Bicycles, skateboards, scooters, and roller skates may be ridden and used on sidewalks outside the prohibited areas when a bike path is not provided.

(3) Electric-assisted bicycles must be used in a human propulsion only mode on pedestrian malls and sidewalks.

(4) Motorized foot scooters must be used in a human propulsion only mode on sidewalks.

(5) Operators must move at a safe speed and yield to pedestrians at all times. Reckless or negligent operation of bicycles, skateboards, scooters, and roller skates on any part of campus is prohibited.

(6) Bicyclists must obey all traffic laws applying to persons riding bicycles when operating bicycles on roadways.

(7) Bicycles may be secured only at university-provided bicycle racks and bicycle storage facilities designed for such purpose.

(8) Bicycles that are not secured at university-provided bicycle racks or bicycle storage facilities may be impounded at the owner's expense.

(9) Abandoned and inoperable bicycles. Internal policies regarding abandoned and inoperable bicycles, including the impoundment of bicycles at the WSU Pullman campus, may be established upon approval by the vice-president or designee whose responsibilities include supervision of the parking department.

WSR 15-05-079

PROPOSED RULES

EDMONDS COMMUNITY COLLEGE

[Filed February 18, 2015, 9:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-14-110.

Title of Rule and Other Identifying Information: Repeal existing chapter 132Y-125 WAC, Student discipline. Replace with amended chapter 132Y-125 WAC, Student code of conduct—Hearing procedures.

Hearing Location(s): Edmonds Community College, Clearview Building, Room 121, 7030 196th Street S.W., Lynnwood, WA 98036, on Friday, April 10, 2015, at 11:00 a.m. to 1:00 p.m.

Date of Intended Adoption: Tuesday, May 19, 2015.

Submit Written Comments to: Christina Castorena, Vice-President for Student Services, 20000 68th Avenue West, Lynnwood, WA 98036, e-mail christina.castorena@email.edcc.edu, fax (425) 640-1159, by Thursday, April 9, 2015.

Assistance for Persons with Disabilities: Contact Patty Michajla, assistant to president, by Thursday, April 2, 2015, (425) 640-1516.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The existing student discipline WAC has not been updated since 1994. In order to establish an updated student code of conduct that reflects current state and federal laws, including compliance with Title IX and the Violence Against Women Reauthorization Act (VAWA), attorneys representing the Washington state community and technical college system drafted a model student conduct code for schools to adopt as written or to customize to address the needs of their respective diverse student populations. The model also includes language dealing with marijuana use, sale and possession on campus, or on campus owned or controlled properties. A college committee comprised of strategic stakeholders met over a one-year period to review and modify the model student code to best fit Edmonds Community College. The proposed new student code of conduct WAC accomplishes the following: (1) Establishes a 21st Century-based student code of conduct; (2) streamlines policies and procedures; (3) provides clearer language in addressing inappropriate behaviors and behavioral expectations; and (4) strengthens due process and outcomes for students.

Reasons Supporting Proposal: The new WAC was vetted to various constituencies across the college to gather input and feedback. Overall updating is needed to remain current with best practices and proper legal language. Centralizing discipline functions will provide more consistency in the process. Clarifying specific conduct that is prohibited will provide better accountability and notification to students. Adding the option of disciplinary conditions will allow greater flexibility in providing remediation. The changed procedures and appeal rights will better comply with Title IX and VAWA.

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

Statute Being Implemented: 20 U.S.C. § 1681 et seq.; 42 U.S.C. § 13925.

Rule is necessary because of federal law, Title IX, 20 U.S.C. § 1681 et seq.; VAWA, 42 U.S.C. § 13925.

Name of Proponent: Edmonds Community College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Christina Castorena,

Vice-President, Student Services, Lynnwood Hall, Room 142, (425) 640-1668.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A statement is not required for these college rules under RCW 19.85.030.

A cost-benefit analysis is not required under RCW 34.05.328. The cost-benefit analysis in RCW 34.05.328 does not apply to these college rules.

February 18, 2015
Mark Cassidy
Rules Coordinator
Vice-President
for Human Resources

Chapter 132Y-125 WAC

STUDENT (~~(DISCIPLINE)~~) CODE OF CONDUCT— HEARING PROCEDURES

NEW SECTION

WAC 132Y-125-001 Student code of conduct. (1) **Authority.** The Edmonds Community College board of trustees, acting pursuant to RCW 28B.50.140(14), delegates to the president of the college the authority to administer disciplinary action. Administration of the disciplinary procedures is the responsibility of the vice-president for student services or designee. The student conduct officer shall serve as the principal investigator and administrator for alleged violations of this code.

(2) **Statement of student rights.** As members of the Edmonds Community College academic community, students are encouraged to develop the capacity for critical judgment and to engage in an independent search for truth. Freedom to teach and freedom to learn are inseparable facets of academic freedom. The freedom to learn depends upon appropriate opportunities and conditions in the classroom, on the campus, and in the larger community. Students should exercise their freedom with responsibility. The responsibility to secure and to respect general conditions conducive to the freedom to learn is shared by all members of the college community.

The following rights are guaranteed to each student within the limitations of statutory law and college policies necessary to achieve the educational goals of the college, and also acting pursuant to Edmonds Community College Academic Freedom Policy (B.1.4):

(a) **Academic freedom.**

(i) Students are guaranteed the rights of free inquiry, expression, and assembly upon and within college facilities that are generally open and available to the public.

(ii) Students are free to pursue appropriate educational objectives from among the college's curricula, programs, and services, subject to the limitations of RCW 28B.50.090 (3)(b).

(iii) Students shall be protected from academic evaluation which is arbitrary, prejudiced, or capricious, but are responsible for meeting the standards of academic performance established by each of their instructors.

(iv) Students have the right to a learning environment which is free from unlawful discrimination, inappropriate and disrespectful conduct, and any and all harassment, including sexual harassment.

(b) Due process.

(i) The rights of students to be secure in their persons, quarters, papers, and effects against unreasonable searches and seizures is guaranteed.

(ii) No disciplinary sanction may be imposed on any student without notice to the accused of the nature of the charges.

(iii) A student accused of violating this code of student conduct is entitled, upon request, to procedural due process as set forth in the student conduct hearing procedures.

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

(a) Academic dishonesty. Any act of academic dishonesty including, but not limited to:

(i) Cheating including, but not limited to, intentional use or attempted use of unauthorized material, information, or study aids, misrepresentation of invention or any information such as falsifying research, inventing or exaggerating data, or listing incorrect or fictitious references.

(ii) Plagiarism including, but not limited to, presenting or submitting another person's, entities', and/or sources' ideas, words, or other works in an instructional course without assigning proper credit.

(iii) Unauthorized collaboration including, but not limited to, intentionally sharing or working together in an academic exercise when such actions are not approved by the course instructor.

(iv) Academic dishonesty including, but not limited to, presenting or submitting in an instructional course either information that is known to be false (while concealing that falsity) or work that is substantially the same as that previously submitted in another course (without the current instructor's approval).

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

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

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

(iii) Knowingly furnishing false information, or failing to furnish accurate and honest information, in response to the request or requirement of a college officer or employee.

(c) Obstruction or disruption of:

(i) Any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(ii) Any operation of the college, including the infringement on the rights of another member(s) of the college community; or

(ii) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college.

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

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

(ii) Stalking is intentional and repeated harassment or repeated following of another person, which places that person in reasonable fear that the stalker intends to injure the person, another person, or the property of the person or another person, and the stalker either intends to frighten, intimidate, or harass the person, or knows or reasonably should know that the person is frightened, intimidated or harassed, even if the stalker lacks such an intent.

(A) The person being harassed or followed is placed in reasonable fear that the stalker intends to injure the person, another person, or property of the person or of another person.

(B) Reasonable fear is a fear that a reasonable person in the same situation would experience under most circumstances.

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

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

(i) The college or state;

(ii) Any student, college official, employee, or college affiliated or sponsored organization; or

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

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

(g) Failure to comply with directive. Failure to comply with the direction of a college official or employee who is acting in the legitimate performance of their duties, including refusal to properly identify oneself to such a person when requested to do so.

(h) Weapons. Possession of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing

bodily harm, unless previously authorized in writing by the president or designee.

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

(j) **Tobacco violation.** Violation of the college's Tobacco Use – Smoking on Campus Policy (C 6.3.520).

(k) **Alcohol.** The use, possession, delivery, sale, or being observably under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(l) **Marijuana.** The use, possession, delivery, sale, or being observably under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(m) **Drugs.** The use, possession, delivery, sale, or being observably under the influence of any legend drug, narcotic drug, or controlled substance as defined in chapters 69.41 and 69.50 RCW except in accordance with a lawful prescription for that student by a licensed health care professional.

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

(o) **Discrimination.** Conduct which harms or adversely affects any member of the college community because of their race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy, marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity and expression; veteran's status; any other legally protected classification; or any violation of the college's nondiscrimination policy.

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

(i) **Sexual harassment.** Conduct includes, but is not limited to, engaging in unwelcome sexual advances, requests for sexual favors, or other sexual conduct, including verbal, non-verbal, electronic or social media communication, or physical touching of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational programs or that creates an intimidating, hostile, or offensive environment for other campus community members, or violation of the college's sexual harassment policy.

(ii) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(iii) **Sexual violence.** "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(A) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(B) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(C) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(D) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

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

(F) Consent: Knowing, voluntary and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact. A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(q) **Harassment.** Unwelcome and offensive conduct, including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy, marital status; age; religion; creed; genetic information; sexual orientation; gender identity and expression; veteran's status; or any other legally protected classification. See "sexual harassment" as defined in (p)(i) of this subsection. Harassing conduct may include, but is not limited to,

physical conduct, verbal, written, social media, and electronic communications.

(r) **Retaliation.** Retaliation against any individual for reporting, providing information, exercising one's own rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment.

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

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

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

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

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

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

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

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

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

(ix) Failure to comply with the college's regulation on appropriate use of college information technology resources or the electronic use policies as established by the college.

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

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

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

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

(i) Falsification or misrepresentation of information;

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

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

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

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

(vi) Failure to comply with any disciplinary sanction(s) imposed under EdCC's student conduct code.

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

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

(4) **Sanctions.** Disciplinary actions include, but are not limited to, the following sanctions that may be imposed upon students according to the student code of conduct hearing procedures.

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

(b) **Reprimand.** Notice in writing that the student has violated one or more terms of the college's student conduct code and that continuation of the same or similar behavior may result in more severe disciplinary action.

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

(d) **Suspension.** Dismissal from the college and from the student status for a stated period of time. There may be no refund of tuition or fees for the quarter in which the action is taken.

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

(5) **Terms and conditions.** Disciplinary terms and conditions that may be imposed alone or in conjunction with the imposition of a sanction(s) include, but are not limited to, the following:

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

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

(c) **No contact/trespass order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility for a stated period of time.

NEW SECTION

WAC 132Y-125-005 Statement of jurisdiction. The student conduct code shall apply to student conduct that occurs on college premises, to conduct that occurs at or in connection with college sponsored activities, or to off-campus conduct that, in the judgment of the college, adversely affects the college community or the pursuit of its objectives. Jurisdiction extends to, but is not limited to, locations in which students are engaged in official college activities including, but not limited to, foreign or domestic travel, activities funded by the associated students, athletic events, training internships, cooperative and distance education, online education, practicums, supervised work experiences, or any other college-sanctioned social or club activities. Students are responsible for their conduct from the time of application for admission through the actual receipt of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment. These standards shall apply to a student's conduct even if the student withdraws from college while a disciplinary matter is pending. The college has sole discretion, on a case-by-case basis, to determine whether the student conduct code will be applied to conduct that occurs off-campus.

NEW SECTION

WAC 132Y-125-010 Definitions. The following definitions shall apply for purposes of this student conduct code:

- (1) "Business day" means a weekday, excluding weekends and college holidays and/or college closures.
- (2) "College premises" includes all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.
- (3) "Conduct review officer" is the vice-president for student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions, in accordance with the procedures of this code. The president is

authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

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

(5) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or an expulsion are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(6) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) Sending the document by e-mail and first class mail to the specified college official's office and college e-mail address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

(7) "The president" is the president of Edmonds Community College. The president is authorized to delegate any of his or her responsibilities as set forth in this chapter, and as may be reasonably necessary.

(8) "Respondent" is the student against whom disciplinary proceedings have been initiated or who has received sanctions.

(9) "Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) Sending the document by e-mail and by certified mail or first class mail to the party's last known address.

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

(10) "Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered "students."

(11) "Student conduct officer" is a college administrator designated by the vice-president for student services to be responsible for implementing and enforcing the student conduct code. The vice-president for student services is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

NEW SECTION**WAC 132Y-125-015 Initiation of disciplinary action.**

(1) All disciplinary actions will be initiated by the student conduct officer. If that officer is the subject of a complaint initiated by the respondent, the vice-president for student services shall, upon request and when feasible, designate another person to fulfill any such disciplinary responsibilities relative to the complainant.

(2) The student conduct officer shall initiate disciplinary action by serving the respondent with written notice directing him or her to attend a disciplinary meeting. The notice shall briefly describe the factual allegations, the provision(s) of the conduct code the respondent is alleged to have violated, the range of possible sanctions for the alleged violation(s), and shall also specify the time and location of the meeting. At the meeting, the student conduct officer will present the allegations to the respondent and the respondent shall be afforded an opportunity to explain what took place. If the respondent fails to attend the meeting after proper service of notice, the student conduct officer may take disciplinary action based upon the available information.

(3) Within ten days of the initial disciplinary meeting, and after considering the evidence in the case, including any facts or argument presented by the respondent, the student conduct officer shall serve the respondent with a written decision setting forth the facts and conclusions supporting his or her decision, the specific student conduct code provisions found to have been violated, the discipline imposed, if any, and a notice of any appeal rights with an explanation of the consequences of failing to file a timely appeal.

(4) The student conduct officer may take any of the following disciplinary actions:

(a) Exonerate the respondent and terminate the proceedings; or

(b) Impose a disciplinary sanction(s), as described in WAC 132Y-125-001 (4) and (5).

(c) Refer the matter directly to the student conduct committee for such disciplinary action as the committee deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct committee, with a copy served on the respondent.

NEW SECTION**WAC 132Y-125-020 Appeal from disciplinary action.**

(1) The respondent may appeal a disciplinary action by filing a written notice of appeal with the conduct review officer within twenty-one days of service of the student conduct officer's decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the student conduct officer's decision shall be deemed final.

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

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

(4) A respondent, who timely appeals a disciplinary action or whose case is referred to the student conduct committee, has a right to a prompt, fair, and impartial hearing as provided for in these procedures.

(5) On appeal, the college bears the burden of establishing the evidentiary facts underlying the imposition of a disciplinary sanction by a preponderance of the evidence.

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

(7) The student conduct committee shall hear appeals from:

(a) The imposition of disciplinary suspensions in excess of ten instructional days;

(b) Dismissals; and

(c) Disciplinary cases referred to the committee by the student conduct officer, the conduct review officer, or the president.

(8) Student conduct appeals of the imposition of the following disciplinary sanctions shall be reviewed through a brief adjudicative proceeding:

(a) Suspensions of ten instructional days or less;

(b) Probation;

(c) Written reprimands; and

(d) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(9) Except as provided elsewhere in these rules, disciplinary verbal warnings and dismissals of disciplinary actions are final action and are not subject to appeal.

NEW SECTION**WAC 132Y-125-025 Brief adjudicative proceedings**

—**Initial hearing.** (1) Brief adjudicative proceedings shall be conducted by a conduct review officer designated by the vice-president for student services. The conduct review officer shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the agency's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon both the parties within ten days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within twenty-one days of service of the initial decision, the initial decision shall be deemed the final decision.

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

NEW SECTION**WAC 132Y-125-030 Brief adjudicative proceedings**

—**Review of an initial decision.** (1) An initial decision is subject to review by the president, provided the respondent

files a written request for review with the conduct review officer within twenty-one days of service of the initial decision.

(2) The president shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(3) During the review, the president shall give each party an opportunity to file written responses explaining their views of the matter and shall make any inquiries necessary to ascertain whether the sanctions should be modified or whether the proceedings should be referred to the student conduct committee for a formal adjudicative hearing.

(4) The decision on review must be in writing and must include a brief statement of the reasons for the decision and must be served on the parties within twenty days of the initial decision or of the request for review, whichever is later. The decision on review will contain a notice that judicial review may be available. A request for review may be deemed to have been denied if the president does not make a disposition of the matter within twenty days after the request is submitted.

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

NEW SECTION

WAC 132Y-125-035 Student conduct committee. (1)

The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government;

(b) Two faculty members appointed by the president;

(c) One administrator (other than an administrator serving as a student conduct or conduct review officer) appointed by the president at the beginning of the academic year.

(2) The administrative staff member appointed on a yearly basis shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness; in which they have direct or personal interest, prejudice, or bias; or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

NEW SECTION

WAC 132Y-125-040 Appeal—Student conduct committee. (1) Proceedings of the student conduct committee

shall be governed by the Administrative Procedure Act, chapter 34.05 RCW and by the Model Rules of Procedure, chapter 10-08 WAC. To the extent there is a conflict between these rules and chapter 10-08 WAC, these rules shall control.

(2) The student conduct committee chair shall serve all parties with written notice of any hearing not less than seven days in advance of the hearing date, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The chair may shorten this notice period if both parties agree, and may continue the hearing to a later time for good cause shown.

(3) The committee chair is authorized to conduct pre-hearing conferences and/or to make prehearing decisions concerning the extent and form of any discovery, issuance of protective decisions, and similar procedural matters.

(4) Upon request filed at least five days before the hearing by any party or at the direction of the committee chair, the parties shall exchange, no later than the third day prior to the hearing, lists of potential witnesses and copies of potential exhibits that they reasonably expect to present to the committee. Failure to participate in good faith in such a requested exchange may be cause for exclusion from the hearing of any witness or exhibit not disclosed, absent a showing of good cause for such failure.

(5) The committee chair may provide to the committee members in advance of the hearing copies of:

(a) The conduct officer's notification of imposition of discipline (or referral to the committee); and

(b) The notice of appeal (or any response to referral) by the respondent. If doing so, however, the chair should remind the members that these "pleadings" are not evidence of any facts they may allege.

(6) The parties may agree before the hearing to designate specific exhibits as admissible without objection and, if they do so, whether the committee chair may provide copies of these admissible exhibits to the committee members before the hearing.

(7) The student conduct officer, upon request, shall provide reasonable assistance to the respondent in obtaining relevant and admissible evidence that is within the college's control.

(8) Communications between committee members and other hearing participants regarding any issue in the proceeding, other than procedural communications that are necessary to maintain an orderly process, are generally prohibited without notice and opportunity for all parties to participate. Any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(9) Each party may be accompanied at the hearing by a nonattorney assistant of his/her choice. A respondent may elect to be represented by an attorney at his or her own cost, but will be deemed to have waived that right unless, at least four business days before the hearing, written notice of the attorney's identity and participation is filed with the committee chair with a copy to the student conduct officer. The committee will ordinarily be advised by an assistant attorney general. If the respondent is represented by an attorney, the student conduct officer may also be represented by a second appropriately screened assistant attorney general.

NEW SECTION

WAC 132Y-125-045 Student conduct committee hearings—Presentations of evidence. (1) Upon the failure of any party to attend or participate in a hearing, the student conduct committee may either:

(a) Proceed with the hearing and issuance of its decision;
or

(b) Serve a decision of default in accordance with RCW 34.05.440.

(2) The hearing will ordinarily be closed to the public. However, if all parties agree on the record that some or all of the proceedings be open, the chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the chair may exclude that person from the hearing room.

(3) The chair shall cause the hearing to be recorded by a method that he/she selects, in accordance with RCW 34.05.449. That recording, or a copy, shall be made available to any party upon request. The chair shall assure maintenance of the record of the proceeding that is required by RCW 34.05.476, which shall also be available upon request for inspection and copying by any party. Other recording shall also be permitted, in accordance with WAC 10-08-190.

(4) The chair shall preside at the hearing and decide procedural questions that arise during the hearing, except as overridden by majority vote of the committee.

(5) The student conduct officer, unless represented by an assistant attorney general, shall present the case for imposing disciplinary sanctions.

(6) All testimony shall be given under oath or affirmation. Evidence shall be admitted or excluded in accordance with RCW 34.05.452.

NEW SECTION

WAC 132Y-125-050 Student conduct committee—Initial decision. (1) At the conclusion of the hearing, the student conduct committee shall permit the parties to make closing arguments in whatever form it wishes to receive them. The committee also may permit each party to propose findings, conclusions, and/or a proposed decision for its consideration.

(2) Within twenty days following the later of the conclusion of the hearing or the committee's receipt of closing arguments, the committee shall issue an initial decision in accordance with RCW 34.05.461 and WAC 10-08-210. The initial decision shall include findings on all material issues of fact and conclusions on all material issues of law, including which, if any, provisions of the student conduct code were violated. Any findings based substantially on the credibility of evidence or the demeanor of witnesses shall be so identified.

(3) The committee's initial order shall also include a determination on appropriate discipline, if any. If the matter was referred to the committee by the student conduct officer, the committee shall identify and impose disciplinary sanction(s) or conditions, if any, as authorized in the student code. If the matter is an appeal by the respondent, the committee may affirm, reverse, or modify the disciplinary sanction and/or conditions imposed by the student conduct officer and/or

impose additional disciplinary sanction(s) or conditions as authorized herein.

(4) The committee chair shall cause copies of the initial decision to be served on the parties and their legal counsel of record. The committee chair shall also promptly transmit a copy of the decision and the record of the committee's proceedings to the president.

NEW SECTION

WAC 132Y-125-055 Appeal from student conduct committee initial decision. (1) A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within twenty-one days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president shall provide a written decision to all parties within forty-five days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

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

NEW SECTION

WAC 132Y-125-060 Summary suspension. (1) Summary suspension is a temporary exclusion from specified college premises or denial of access to all activities or privileges for which a respondent might otherwise be eligible, while an investigation and/or formal disciplinary procedures are pending.

(2) The student conduct officer may impose a summary suspension if there is probable cause to believe that the respondent:

(a) Has violated any provision of the code of conduct; and

(b) Presents an immediate danger to the health, safety, or welfare of members of the college community; or

(c) Poses an ongoing threat of substantial disruption of, or interference with, the operations of the college.

(3) Notice. Any respondent who has been summarily suspended shall be served with oral or written notice of the summary suspension. If oral notice is given, a written notification shall be served on the respondent within two business days of the oral notice.

(4) The written notification shall be entitled "Notice of Summary Suspension" and shall include:

(a) The reasons for imposing the summary suspension, including a description of the conduct giving rise to the summary suspension and reference to the provisions of the student conduct code or the law allegedly violated;

(b) The date, time, and location when the respondent must appear before the conduct review officer for a hearing on the summary suspension; and

(c) The conditions, if any, under which the respondent may physically access the campus or communicate with members of the campus community. If the respondent has been trespassed from the campus, a notice against trespass shall be included that warns the student that his or her privilege to enter into or remain on college premises has been withdrawn, that the respondent shall be considered trespassing and subject to arrest for criminal trespass if the respondent enters the college campus other than to meet with the student conduct officer or conduct review officer, or to attend a disciplinary hearing.

(5) If the respondent chooses to appeal the summary suspension, the conduct review officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension.

(a) During the summary suspension hearing, the issue before the conduct review officer is whether there is probable cause to believe that the summary suspension should be continued pending the conclusion of disciplinary proceedings and/or whether the summary suspension should be less restrictive in scope;

(b) The respondent shall be afforded an opportunity to explain why summary suspension should not be continued while disciplinary proceedings are pending or why the summary suspension should be less restrictive in scope;

(c) If the student fails to appear at the designated hearing time, the conduct review officer may order that the summary suspension remain in place pending the conclusion of the disciplinary proceedings;

(d) As soon as practicable following the hearing, the conduct review officer shall issue a written decision, which shall include a brief explanation for any decision continuing and/or modifying the summary suspension and notice of any right to appeal; and

(e) To the extent permissible under applicable law, the conduct review officer shall provide a copy of the decision to all persons or offices, who may be bound or protected by it.

DISCIPLINE PROCEDURES FOR CASES INVOLVING ALLEGATIONS OF SEXUAL MISCONDUCT

NEW SECTION

WAC 132Y-125-100 Supplemental sexual misconduct procedures. Both the respondent and the complainant in cases involving allegations of sexual misconduct shall be provided the same procedural rights to participate in student discipline matters, including the right to participate in the initial disciplinary decision making process and to appeal any disciplinary decision.

Application of the following procedures is limited to student conduct code proceedings involving allegations of sexual misconduct by a student. In such cases, these procedures

shall supplement the student disciplinary procedures in WAC 132Y-125-005 through 132Y-125-060. In the event of conflict between the sexual misconduct procedures and the student disciplinary procedures, the sexual misconduct policy and procedures, including investigation, findings, and recommendations shall prevail.

NEW SECTION

WAC 132Y-125-105 Supplemental definitions. The following supplemental definitions shall apply for purposes of student conduct code proceedings involving allegations of sexual misconduct by a student:

(1) A "complainant" is an alleged victim of sexual misconduct, as defined in subsection (2) of this section.

(2) "Sexual misconduct" has the meaning ascribed to this term in WAC 132Y-125-001 (3)(p).

NEW SECTION

WAC 132Y-125-110 Supplemental complaint process. The following supplemental procedures shall apply with respect to complaints or other reports of alleged sexual misconduct by a student.

(1) The college's Title IX coordinator or designee shall investigate complaints or other reports of alleged sexual misconduct by a student. Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(2) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent. In no event shall mediation be used to resolve complaints involving allegations of sexual violence. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time.

(3) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety, and welfare of the complainant or other members of the college community or compromising the college's duty to investigate and process sexual harassment and sexual violence complaints.

(4) The student conduct officer, prior to initiating disciplinary action, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(5) The student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt

notice of the protective disciplinary sanctions and/or conditions.

NEW SECTION

WAC 132Y-125-115 Supplemental appeal rights. (1) The following actions by the student conduct officer may be appealed by the complainant:

(a) The dismissal of a sexual misconduct complaint; or
 (b) Any disciplinary sanction(s) and conditions imposed against a respondent for a sexual misconduct violation, including a disciplinary verbal warning.

(2) A complainant may appeal a disciplinary decision by filing a notice of appeal with the conduct review officer within twenty-one days of service of the notice of the discipline decision provided for in WAC 132Y-125-110(5). The notice of appeal may include a written statement setting forth the grounds of appeal. Failure to file a timely notice of appeal constitutes a waiver of this right and the disciplinary decision shall be deemed final.

(3) If the respondent timely appeals a decision imposing discipline for a sexual misconduct violation, the college shall notify the complainant of the appeal and provide the complainant an opportunity to intervene as a party to the appeal.

(4) Except as otherwise specified in this supplemental procedure, a complainant who timely appeals a disciplinary decision or who intervenes as a party to respondent's appeal of a disciplinary decision shall be afforded the same procedural rights as are afforded the respondent.

(5) An appeal by a complainant from the following disciplinary actions involving allegations of sexual misconduct against a student shall be handled as a brief adjudicative proceeding:

(a) Exoneration and dismissal of the proceedings;
 (b) Verbal warning;
 (c) Written reprimand;
 (d) Probation;
 (e) Suspensions of ten instructional days or less; and/or
 (f) Any conditions or terms imposed in conjunction with one of the foregoing disciplinary actions.

(6) An appeal by a complainant from disciplinary action imposing a suspension in excess of ten instructional days or an expulsion shall be reviewed by the student conduct committee.

(7) In proceedings before the student conduct committee, respondent and complainant shall have the right to be accompanied by a nonattorney assistant of their choosing during the appeal process. Complainant may choose to be represented at the hearing by an attorney at his or her own expense, but will be deemed to have waived that right unless, at least four business days before the hearing, he or she files a written notice of the attorney's identity and participation with the committee chair, and with copies to the respondent and the student conduct officer.

(8) In proceedings before the student conduct committee, complainant and respondent shall not directly question or cross examine one another. All questions shall be directed to the committee chair, who will act as an intermediary and pose questions on behalf of both parties.

(9) Student conduct hearings involving sexual misconduct allegations shall be closed to the public, unless respondent and complainant both waive this requirement in writing and request that the hearing be open to the public. Complainant, respondent and their respective nonattorney assistants and/or attorneys may attend portions of the hearing where argument, testimony, and/or evidence are presented to the student conduct committee.

(10) The chair of the student conduct committee, on the same date as the initial decision is served on the respondent, will serve a written notice upon complainant informing the complainant whether the allegations of sexual misconduct were found to have merit and describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights.

(11) Complainant may appeal the student conduct committee's initial decision to the president subject to the same procedures and deadlines applicable to other parties.

(12) The president or designee, on the same date that the final decision is served upon the respondent, shall serve a written notice informing the complainant of the final decision. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including suspension or dismissal of the respondent.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132Y-125-004 Disciplinary procedures.

WSR 15-05-080

PROPOSED RULES

EDMONDS COMMUNITY COLLEGE

[Filed February 18, 2015, 9:49 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-14-110.

Title of Rule and Other Identifying Information: Repeal existing chapter 132Y-300 WAC, Grievance procedure for sex discrimination, replace with amended chapter 132Y-300 WAC, Nondiscrimination and harassment policy.

Hearing Location(s): Edmonds Community College, Clearview Building, Room 121, 7030 196th Street S.W., Lynnwood, WA 98036, on Friday, April 10, 2015, at 11:00 a.m. to 1:00 p.m.

Date of Intended Adoption: Tuesday, May 19, 2015.

Submit Written Comments to: Mark Cassidy, Vice-President for Human Resources, 20000 68th Avenue West, Lynnwood, WA 98036, e-mail mark.cassidy@email.edcc.edu, fax (425) 640-1359, by Thursday, April 9, 2015.

Assistance for Persons with Disabilities: Contact Patty Michajla, assistant to president, by Thursday, April 2, 2015, (425) 640-1516.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The existing non-discrimination policy WAC has not been updated since 1989. In order to establish an updated nondiscrimination policy WAC that reflects current state and federal laws, including compliance with Title IX and the Violence Against Women Reauthorization Act (VAWA), attorneys representing the Washington state community and technical college system drafted a WAC for schools to adopt as written or to customize to address the needs of their respective campus populations. The proposed new WAC accomplishes the following: (1) Updates our protections for students and employees from discrimination and harassment; (2) clarifies the complaint and appeal procedures for investigations; and (3) conforms with recent federal mandates for compliance under Title IX.

Reasons Supporting Proposal: The new WAC was vetted to various constituencies across the college to gather input and feedback. Overall updating is needed to remain current with best practices and proper legal language. Centralizing investigatory and disciplinary functions will provide more consistency in the process. Clarifying specific conduct that is prohibited will provide better accountability and notification to students and employees. The changed procedures and appeal rights will better comply with Title IX and VAWA.

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

Statute Being Implemented: 20 U.S.C. § 1681 et seq.; 42 U.S.C. § 13925.

Rule is necessary because of federal law, Title IX, 20 U.S.C. § 1681 et seq.; VAWA, 42 U.S.C. § 13925.

Name of Proponent: Edmonds Community College, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Mark Cassidy, Vice-President, Human Resources, Clearview Building, Room 122C, (425) 640-1647.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A statement is not required for these college rules under RCW 19.85.030.

A cost-benefit analysis is not required under RCW 34.05.328. The cost-benefit analysis in RCW 34.05.328 does not apply to these college rules.

February 18, 2015
Mark Cassidy
Rules Coordinator
Vice-President
for Human Resources

Chapter 132Y-300 WAC

~~((GRIEVANCE PROCEDURE FOR SEX DISCRIMINATION))~~ NONDISCRIMINATION AND HARASSMENT POLICY

NEW SECTION

WAC 132Y-300-005 Statement of policy. Edmonds Community College provides equal opportunity in education and employment and does not discriminate on the basis of protected classes as required by state and federal law. Prohibited discrimination and/or harassment of protected classes includes sexual harassment.

(1) Harassment is defined, for the purpose of this policy, as unwelcome and unauthorized incidents and/or patterns of conduct or speech that are:

(a) Persistent, pervasive, or severe; and

(b) Based on an association or perceived association with a protected class and which:

(i) The respondent either knows, or should know, will have the effect of making the college environment hostile, intimidating, or demeaning to the complainant; and

(ii) Renders the college environment (including the environment for employees, students, and visitors) hostile, intimidating, or demeaning for the complainant.

(2) Sexual harassment is a form of sex discrimination. Sexual harassment is defined, for the purpose of this policy, as unwelcome sexual advances, requests, and other unwelcome conduct of a sexual nature where:

(a) Submission to such conduct is made, either expressly or implicitly, a term or condition of an individual's employment or education; or

(b) Submission or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting any individual; or

(c) Such unwelcome conduct is sufficiently persistent, pervasive, or severe to have the effect of substantially interfering with any individual's academic or professional performance.

(3) Sexual harassment conduct includes, but is not limited to, engaging in unwelcome sexual advances; requesting sexual favors; engaging in other sexual behaviors including verbal, nonverbal, electronic or social media communication; or physically touching that would create an intimidating, hostile, or offensive educational environment or substantially interfere with a reasonable person's work or educational performance.

NEW SECTION

WAC 132Y-300-010 Procedures. (1) Introduction. Edmonds Community College, hereinafter referred to as "the college," recognizes its responsibility for investigating and resolving incidents; implementing corrective measures; monitoring the educational environment and workplace; and implementing regulations to stop, remediate, and prevent discrimination and harassment based on an individual's association or perceived association with protected classes as required by law. To this end, the college has enacted a policy prohibiting discrimination against and harassment of mem-

bers of these protected classes and procedures that deal with complaints and violations of the policy. Any individual found to be in violation of the policy will be subject to disciplinary action up to and including expulsion from the college or dismissal from employment.

Any employee, student, or visitor who is the alleged subject of discrimination or harassment should report the incident or incidents to the EO/AA office, Title IX coordinator identified below. If the complaint is against that officer, the complainant should report the matter to the president's office for referral to an alternate designee.

Civil Rights: Equal Opportunity/Affirmative Action (EO/AA).

Title IX: Gender Discrimination, Sexual Harassment, and Sexual Violence.

Title: EO/AA Office, Title IX Coordinator

Office: Edmonds Community College

20000 - 68th Ave. W.

Clearview Building, Room 122

Lynnwood, WA 98036

The EO/AA office, Title IX coordinator or designee:

- Will accept all complaints and referrals from college employees, students, and visitors.
- Will make determinations regarding how to handle requests by complainants for privacy.
- Will keep accurate records of all complaints and referrals for the required time period.
- May conduct investigations or assign and oversee investigations conducted by others.
- May impose interim remedial measures to protect parties during investigations of discrimination or harassment.
- Will issue written findings of fact on completed investigations.
- May recommend specific corrective measures to stop, remediate, and prevent the recurrence of inappropriate action.

(2) Definitions.

(a) Complainant. Any employee, student, or visitor of the college who is the alleged subject of discrimination or harassment due to an association or perceived association with a protected class.

(b) Complaint. A description of facts that allege violation of the college's nondiscrimination and harassment policy.

(c) Consent. Knowing, voluntary, and clear permission, by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

Individuals cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. An individual who engages in sexual activity when that person knows, or should know, that the other individual is physically or mentally incapacitated has engaged in nonconsensual conduct. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct.

(d) Discrimination. The unfavorable treatment of a person based on an individual's association or perceived association with a protected class. Harassment is a form of discrimination.

(e) Harassment. Unwelcome and unauthorized incidents and/or patterns of conduct or speech that are persistent, pervasive, or severe and based on an association or perceived association with a protected class; and which the respondent either knows, or should know, will have the effect of making the college environment hostile, intimidating, or demeaning to the complainant, and renders the college environment (including the environment for employees, students, and visitors) hostile, intimidating, or demeaning for the complainant. Examples of conduct that could rise to the level of discriminatory harassment include, but are not limited to, the following:

- Epithets, "jokes," ridicule, mockery, or other offensive or derogatory conduct focused upon an individual's membership in a protected class.
- Verbal or physical threats of violence or physical contact directed towards an individual based upon their membership in a protected class.
- Making, posting, e-mailing, texting, or otherwise circulating demeaning or offensive pictures, cartoons, graffiti, notes or other materials that relate to race, ethnic origin, gender, or any other protected class.

(f) Protected class. A group of individuals who are protected under state or federal laws, including laws that prohibit discrimination on the basis of age, citizenship, color, creed, disability, gender identity or expression, genetic information, marital status, national origin, pregnancy, race, religion, sex, sexual orientation, use of service animal, or veteran/military status.

(g) Resolution. The means by which the complaint is finally addressed. This may be accomplished through informal or formal processes, including counseling, mediation, or the formal imposition of discipline.

(h) Respondent. An individual who is a member of the campus community who allegedly discriminates against or harasses another person.

(i) Sexual harassment. Unwelcome sexual advances, requests, and other unwelcome conduct of a sexual nature where submission to such conduct is made, either expressly or implicitly, a term or condition of an individual's employment or education; or submission or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting any individual; or such unwelcome conduct is sufficiently persistent, pervasive, or severe to have the effect of substantially interfering with any individual's academic or professional performance. Two types of sexual harassment include:

(i) Hostile environment sexual harassment. A form of harassment that occurs when the conduct is sufficiently persistent, pervasive, or severe and so objectively offensive that it has the effect of altering the terms or conditions of an employee's employment or substantially limiting the ability of a student to participate in or benefit from the college's educational programs, social programs, and/or student housing.

(ii) Quid pro quo sexual harassment. A form of harassment that occurs when an individual in a position of real or

perceived authority makes receiving a benefit conditional upon granting of sexual favors.

Examples of conduct that may qualify as sexual harassment include:

- Persistent comments or questions of a sexual nature.
- A supervisor who gives an employee a raise in exchange for submitting to sexual advances.
- An instructor who promises a student a better grade in exchange for sexual favors.
- Sexually explicit statements, questions, jokes, or anecdotes.
- Unwelcome touching, patting, hugging, kissing, or brushing against an individual's body.
- Remarks of a sexual nature about an individual's clothing, body, or speculations about previous sexual experiences.
- Persistent, unwanted attempts to change a professional relationship to an amorous relationship.
- Direct or indirect propositions for sexual activity.
- Unwelcome letters, e-mails, texts, telephone calls, or other communications referring to or depicting sexual activities.

(j) Sexual violence. A type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(iv) Dating violence is violence by a person who has been in a romantic or intimate relationship with the complainant. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

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

(3) **Filing a complaint.** The college encourages the timely reporting of any incidents of alleged discrimination or harassment. Any employee of, student of, or visitor to the college may file a complaint. Complaints may be submitted in writing or verbally.

For complainants who wish to submit a written complaint, a formal complaint form is available online at www.edcc.edu/titleix/. Hardcopies of the complaint form are available at the following locations on campus: Human resources office, and vice-president for student services office. Any person submitting a discrimination or harassment complaint shall be provided with a written copy of the college's nondiscrimination and harassment policy and procedures.

(4) **Confidentiality and right to privacy.** The college will seek to protect the privacy of the individuals involved to the fullest extent possible, consistent with the legal obligation to investigate, take appropriate remedial and/or disciplinary action, comply with the state and federal laws, and follow the college's policy and procedures. The college cannot guarantee complete confidentiality. The EO/AA office, Title IX coordinator or designee will determine how to handle requests for privacy.

The EO/AA office, Title IX coordinator or designee will inform and obtain consent from the complainant before commencing an investigation into a sexual violence complaint. If a sexual violence complainant asks for their name to not be revealed to the respondent or that the college not investigate the allegation, the EO/AA office, Title IX coordinator or designee will inform the complainant that maintaining confidentiality may limit the college's ability to fully respond to the allegations and that retaliation by the respondent and/or others is prohibited. If the complainant still insists that their name not be disclosed or that the college not investigate, the EO/AA office, Title IX coordinator or designee will determine whether the college can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the college community, including the complainant. Factors to be weighed during this determination may include, but are not limited to:

- The seriousness of the alleged sexual violence;
- The age of the complainant;
- Whether the sexual violence was perpetrated with a weapon;
- Whether the respondent has a history of committing acts of sexual violence or has been the subject of other sexual violence complaints;
- Whether the respondent threatened to commit additional acts of sexual violence against the complainant or others; and
- Whether relevant evidence can be obtained through other means (e.g., security cameras, other witnesses, physical evidence).

If the college is unable to honor a complainant's request for privacy, the EO/AA office, Title IX coordinator or designee will notify the complainant of the decision and ensure that complainant's identity is disclosed only to the extent reasonably necessary to effectively conduct and complete the investigation.

If the college decides not to conduct an investigation or take disciplinary action because of a request for privacy, the EO/AA office, Title IX coordinator or designee will evaluate whether other measures are available to limit the effects of the harassment and prevent its recurrence and implement such measures if reasonably feasible.

(5) **Investigation procedure.** Upon receiving a complaint, the college shall commence an impartial investigation. The EO/AA office, Title IX coordinator or designee shall be responsible for overseeing all investigations. The EO/AA office, Title IX coordinator or designee may conduct investigations. If the investigation is assigned to someone other than the EO/AA office, Title IX coordinator or designee then the complainant and respondent shall be notified of the appointment of an investigator.

(a) **Interim measures.** The EO/AA office, Title IX coordinator or designee may impose interim measures to protect the complainant and/or respondent pending the conclusion of the investigation. Interim measures may include, but are not limited to, imposition of noncontact orders, rescheduling classes, temporary work reassignments, referrals for counseling or medical assistance, and imposition of summary discipline on the respondent consistent with the college's student code of conduct or the college's employment policies and collective bargaining agreements.

(b) **Investigation.** Complaints shall be thoroughly and impartially investigated. The investigation shall include, but will not be limited to, interviewing the complainant and the respondent, interviewing relevant witnesses, and reviewing relevant documents. The investigation shall be concluded within a reasonable time, normally sixty days barring urgent circumstances. At the conclusion of the investigation, the investigator(s) shall set forth findings and recommendations in writing. If the investigator(s) is a designee, the investigator(s) shall send a copy of the findings and recommendations to the EO/AA office, Title IX coordinator or designee. The EO/AA office, Title IX coordinator or designee shall consider the findings and recommendations and determine, based on a preponderance of evidence, whether a violation of the nondiscrimination and harassment policy occurred, and, if so, what steps will be taken to resolve the complaint, remedy the effects of the violation on the complainant, and prevent the violation's recurrence. Possible remedial steps may include, but will not be limited to, referral for voluntary training/counseling, development of a remediation plan, a non-contact order, and referral and recommendation for formal disciplinary action. Referrals for disciplinary action will be consistent with the college's student code of conduct or the college's employment policies and collective bargaining agreements.

(c) **Written notice of decision.** The EO/AA office, Title IX coordinator or designee will provide each party and the appropriate student services administrator or appointing authority with written notice of the investigative findings and of actions taken or recommended in an effort to resolve the complaint, subject to the following limitations. The complainant shall be informed in writing of the findings and of actions taken or recommendations in an effort to resolve the complaint, such as a finding that the complaint is or is not meritorious or a recommendation that the respondent not contact the complainant. The complainant may be notified generally that the matter has been referred for disciplinary action. The respondent shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint and shall be notified of referrals for disciplinary action. Both the complainant and the respondent are entitled

to review any final findings, conclusions, and recommendations, subject to any FERPA confidentiality requirements.

(d) **Informal dispute resolution.** Informal dispute resolution processes, such as mediation, may be used to resolve complaints, when appropriate. Informal dispute resolution shall not be used to resolve sexual discrimination complaints without written permission from both the complainant and the respondent. If the parties elect to mediate a dispute, either party shall be free to discontinue mediation at any time. In no event shall mediation be used to resolve complaints involving allegations of sexual violence.

(e) **Final decision/reconsideration.** Either the complainant or the respondent may seek reconsideration of the decision by the EO/AA office, Title IX coordinator or designee. Requests for reconsideration must be submitted in writing to the EO/AA office, Title IX coordinator or designee within seven days of receiving the decision. Requests must specify which portion of the decision should be reconsidered and the basis for reconsideration. If no request for reconsideration is received within seven days, the decision becomes final. If a request for reconsideration is received, the EO/AA office, Title IX coordinator or designee shall respond within 14 days. The EO/AA office, Title IX coordinator or designee shall either deny the request or will issue an amended decision. Any amended decision is final and no further reconsideration is available.

(6) **Publication of nondiscrimination and harassment policy and procedures.** The policy and procedures regarding complaints of discrimination and harassment shall be published and distributed as determined by the president or designee. Individuals who believe they have been subjected to discrimination or harassment will be provided a copy of the policy and procedures.

(7) **Limits to authority.** Nothing in these procedures shall prevent the president or designee from taking immediate disciplinary action in accordance with the college's policies and procedures, and federal, state, and/or municipal rules and regulations.

(8) **Retaliation, intimidation, and coercion.** Retaliation by, for, or against any participant (including complainant, respondent, witness, investigator, or EO/AA office, Title IX coordinator or designee) is expressly prohibited. Retaliatory action of any kind taken against a participant who is seeking redress under the nondiscrimination and harassment policy and using these procedures is prohibited and is subject to discipline. Individuals who think they have been retaliated against, intimidated, or coerced should contact the EO/AA office, Title IX coordinator or designee immediately.

NEW SECTION

WAC 132Y-300-015 Other remedies. (1) Criminal complaints. Discriminatory or harassing conduct may also be, or occur in conjunction with, criminal conduct. Criminal complaints may be filed with the following law enforcement authorities:

City of Edmonds Police Department

<http://www.edmondswa.gov/government/departments/police.html>

City of Lynnwood Police Department
<http://www.ci.lynnwood.wa.us/Public-Safety/Police-Department>

Snohomish County Sheriff's Department
<http://snohomishcountywa.gov/210/Sheriff>

The college will proceed with an investigation of harassment and discrimination complaints regardless of whether the underlying conduct is subject to civil or criminal prosecution.

(2) **Other discrimination complaint options.** Discrimination complaints may also be filed with the following federal and state agencies:

Washington State Human Rights Commission
www.hum.wa.gov/index.html

U.S. Department of Education Office for Civil Rights
<http://www2.ed.gov/about/offices/list/ocr/index.html>

Equal Employment Opportunity Commission
www.eeoc.gov

NEW SECTION

WAC 132Y-300-020 Complaint content. The proposed content is designed to assist you with filing a discrimination and/or harassment complaint. Please write clearly and focus on the alleged discriminatory and/or harassing conduct. The complaint should include as much information regarding the incident(s) giving rise to the complaint as possible, including the location, date, and time of the alleged incident(s); the name of the individual or group whom the complaint is against, if known; a description of the incident(s); and the remedy sought.

You may attach additional documents if needed. Please include your contact information (phone, e-mail, mailing address), sign, and return your complaint to the EO/AA office, Title IX coordinator or designee. A link to an online reporting form is located at <http://www.edcc.edu/titleix/>.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132Y-300-002 Informal procedure.

WAC 132Y-300-003 Formal procedure.

WAC 132Y-300-004 Other remedies.

WSR 15-05-089
PROPOSED RULES
PARKS AND RECREATION
COMMISSION

[Filed February 18, 2015, 11:56 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-19-108.

Title of Rule and Other Identifying Information: Revision of chapter 352-37 WAC, Ocean beaches, to allow for the

use of wind/sand sailers subject to certain conditions and restrictions.

Hearing Location(s): Washington State Parks and Recreation Commission Meeting, Better Business Bureau Office, 1000 Station Drive, Suite 222, Dupont, WA 98327, on March 26, 2015, between 9:00 a.m. and 5:00 p.m.

Date of Intended Adoption: March 26, 2015.

Submit Written Comments to: Washington State Parks and Recreation Commission, Randy Kline, Park Planner, P.O. Box 42650, Olympia, WA 98504-2650, e-mail randy.kline@parks.wa.gov, fax (360) 586-6647, by March 13, 2015.

Assistance for Persons with Disabilities: Contact Becki Ellison by March 13, 2015, TTY (800) 833-6388 or (360) 902-8502.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Pursuant to WAC 352-37-190 wind/sand sailers are prohibited on the ocean beaches within the seashore conservation area. This proposal would revise existing language to allow wind/sand sailers on the ocean beaches subject to certain conditions and restrictions. This revision to chapter 352-37 WAC will permit the use of wind/sand sailers including blo-karts, kite buggies and kite boards at Long Beach, South Beach and North Beach in Pacific and Grays Harbor counties.

Reasons Supporting Proposal: In 2010, 2011, 2012 and 2013 state parks conducted demonstration events allowing wind/sand sailer use on portions of the ocean beaches. These events occurred without significant conflicts or incidents.

Statutory Authority for Adoption: RCW 79A.05.610.

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

Name of Proponent: Washington state parks and recreation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Randy Kline, 1111 Israel Road S.W., Olympia, WA 98504-2650, (360) 902-8632; Implementation: Ryan Layton, 1111 Israel Road S.W., Olympia, WA 98504-2650, (360) 725-9761; and Enforcement: Robert Ingram, 1111 Israel Road S.W., Olympia, WA 98504-2650, (360) 902-8615.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Per RCW 19.85.030, it is not anticipated that the proposed rule revision will impose more than minor costs on businesses in an industry.

A cost-benefit analysis is not required under RCW 34.05.328. Not applicable for the parks and recreation commission pursuant to RCW 34.05.328 (5)(a)(i).

February 18, 2015

Valeria Evans
 Management Analyst

NEW SECTION

WAC 352-37-085 Wind/sand sailer traffic. (1) Wind/sand sailers will be allowed on the ocean beaches within the seashore conservation area only as authorized in this section:

- (a) In areas specifically identified by the director;
- (b) On the driveable portion of the ocean beaches;
- (c) Subject to safety measures or other restrictions determined by the director;

(d) From sunrise to sunset only unless, otherwise restricted by the director;

(e) Not during recreational razor clam digging seasons;

(f) Wind/sand sailers shall yield the right of way to all pedestrian, equestrian or vehicular traffic and observe all regulations that restrict the operation of wind/sand sailers;

(g) A person shall not operate a wind/sand sailer in a reckless manner, including recklessly weaving through congested pedestrian, equestrian or vehicular traffic, operating unnecessarily close, or recklessly swerving at the last possible moment to avoid collision;

(h) Notwithstanding the speed limitation set forth in WAC 352-37-130, the director may authorize higher speeds for specific events.

(2) Except as provided in WAC 352-37-330, any violation of this section is an infraction under chapter 7.84 RCW.

NEW SECTION

WAC 352-37-086 Requirements to operate wind/sand sailers. (1) No person shall operate or permit the operation of wind/sand sailers unless the person:

(a) Is at least sixteen years of age; or

(b) Is accompanied by and is under the supervision of a person sixteen years of age or older.

(2) Except as provided in WAC 352-37-330, any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 07-03-121, filed 1/22/07, effective 2/22/07)

WAC 352-37-130 Speed limits. (1) No person shall operate any motor vehicle or wind/sand sailer on or along any ocean beach at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. In every event speed shall be so controlled as may be necessary to avoid colliding with any person, animal, vehicle or other conveyance on or entering the driveable beach in compliance with legal requirements in the duty of all persons to use due care.

(2) Except when a special hazard exists that requires lower speed for compliance with subsection (1) of this section, the maximum speed limit for operation of motor vehicles or wind/sand sailers on the ocean beaches shall be twenty-five miles per hour.

(3) The driver of every motor vehicle or wind/sand sailer operating on the ocean beaches shall, consistent with the requirements of subsection (1) of this section, drive at an appropriate reduced speed when approaching and crossing a beach access road, when approaching one or more parked vehicles, when approaching or traveling past or in the vicinity of a pedestrian or group of pedestrians, and when special hazard exists with respect to pedestrians or other traffic or by reason of weather or beach conditions.

(4) Except as provided in WAC 352-37-330, any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 07-03-121, filed 1/22/07, effective 2/22/07)

WAC 352-37-190 Excluded/limited recreation activities. The following forms of public outdoor recreation activities or devices are prohibited on the ocean beaches unless specifically designated therefore or authorized by the director or designee as a special recreation event.

(1) Vehicles not licensed and certificated pursuant to chapters 46.12 and 46.16 RCW.

(2) ~~((Wind/sand sailers.~~

~~((3)))~~ Parasails.

~~((4)))~~ (3) Hovercraft.

~~((5)))~~ (4) Powered parasail.

~~((6)))~~ (5) Ultra-light aircraft.

~~((7)))~~ (6) Powered hang gliders.

~~((8)))~~ Any violation of this section is an infraction under chapter 7.84 RCW.

AMENDATORY SECTION (Amending WSR 13-17-037, filed 8/13/13, effective 9/13/13)

WAC 352-37-325 Seashore conservation area closures. (1) The director or designee may, for a specified period or periods of time, close any portion of the seashore conservation area to public access if the director or designee concludes that such a closure is necessary for the protection of the health, safety and welfare of the public, park visitors or staff, or park resources.

(2) Any violation of this section is an infraction under chapter 7.84 RCW.