

WSR 15-11-006
PROPOSED RULES
HEALTH CARE AUTHORITY
(Washington Apple Health)
[Filed May 7, 2015, 2:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-04-035.

Title of Rule and Other Identifying Information: WAC 182-533-0710, 182-533-0720, and 182-533-0730, chemical-using pregnant (CUP) women services.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 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 June 23, 2015, at 10:00 a.m.

Date of Intended Adoption: Not sooner than June 24, 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 5:00 p.m. on June 23, 2015.

Assistance for Persons with Disabilities: Contact Kelly Richters by June 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 changing the hospital accreditation standards for CUP women program providers found in WAC 182-533-0720. Housekeeping changes were also made to WAC 182-533-0710, 182-533-0720, and 182-533-0730.

Reasons Supporting Proposal: The change will align this section with department of health hospital accreditation standards.

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: Sean Sullivan, Olympia, Washington 98504-2716, (360) 725-1344; Implementation and Enforcement: Heather Weiher, Olympia, Washington 98504-5253, (360) 725-1293.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

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.

May 7, 2015
Jason R. P. Crabbe
Rules Coordinator

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

WAC 182-533-0710 Chemical-using pregnant (CUP) women program—Client eligibility. (1) To be eligible for the chemical-using pregnant (CUP) women program, a woman must ~~((meet all of the following conditions))~~ be:

- (a) ~~((Be))~~ Pregnant; and
- (b) ~~((Be))~~ Eligible for medicaid.

(2) ~~A client((s meeting the eligibility criteria in WAC 388-533-0710(1) who are))~~ eligible under subsection (1) of this section who is enrolled in ((an MAA)) a medicaid agency managed care plan ((are)) is eligible for CUP services outside ((their)) her plan((, except Washington medicaid integration partnership clients)). CUP services and reimbursement are delivered outside ((the)) a managed care plan ((are reimbursed and subject to the same program rules as apply to non-managed care clients)) and are subject to fee-for-services rules.

(3) A client((s)) receiving three-day or five-day detoxification services through the ((department are)) agency is not eligible for the CUP women program.

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

WAC 182-533-0730 Chemical-using pregnant (CUP) women program—Covered services. (1) The ~~((medical assistance administration (MAA)))~~ medicaid agency pays for the following covered services for a pregnant client and her fetus under the chemical-using pregnant (CUP) women program:

- (a) Primary acute detoxification~~((/))~~ and medical stabilization;
- (b) Secondary subacute detoxification~~((/))~~ and medical stabilization; and
- (c) Rehabilitation treatment and services as determined by the provider.

(2) The maximum length of treatment per inpatient stay that ~~((MAA))~~ the agency will pay for is twenty-six days, unless additional days have been preauthorized by the ~~((MAA))~~ agency CUP women program manager.

(3) If a client's pregnancy ends before inpatient treatment is completed, a provider may continue ~~((the client's))~~ her treatment through the twenty-sixth day.

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

WAC 182-533-0720 Chemical-using pregnant (CUP) women program—Provider requirements. (1) The ~~((medical assistance administration (MAA)))~~ medicaid agency pays only those providers who:

- (a) Have been approved by ~~((MAA))~~ the agency to provide chemical-using pregnant (CUP) women program services;
- (b) Have been certified as chemical dependency service providers by the division of ~~((alcohol and substance abuse (DASA) as prescribed in chapter 388-805 WAC;~~
- ~~((e))~~ Meet the hospital standards prescribed by the Joint Commission on Accreditation of Healthcare Organizations

~~(JCACHO))~~ behavioral health and recovery (DBHR) under chapter 388-877 WAC;

(c) Meet the department of health hospital accreditation standards in chapter 246-320 WAC;

~~((388-502))~~ 182-502 WAC; and

(e) Are not licensed as an institution for mental disease (IMD) under Centers for Medicare and Medicaid Services (CMS) criteria.

(2) ~~((CUP women program service))~~ Providers ((are required to)) must:

(a) Report any changes in their certification, level of care, or program operations to the ~~((MAA))~~ agency CUP women program manager;

(b) Have written policies and procedures that include a working statement describing the purpose and methods of treatment for chemical-using ~~((abusing))~~ or chemical-dependent pregnant women;

(c) Provide guidelines and resources for current medical treatment methods by specific ~~((drug and/or alcohol))~~ chemical type;

(d) Have linkages with state and community providers to ensure a working knowledge exists of current medical and substance abuse resources; and

(e) Ensure that a chemical dependency assessment of the client has been completed:

(i) By a chemical dependency professional ~~((as defined in))~~ under chapter 246-811 WAC;

(ii) Using the latest criteria of the American Society of Addiction Medicine (ASAM); and

(iii) No earlier than six months before, and no later than five days after, the client's admission to the CUP women program.

WSR 15-11-011
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS
(Securities Division)

[Filed May 7, 2015, 4:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-07-070.

Title of Rule and Other Identifying Information: The securities division is proposing to amend WAC 460-80-140 Financial statements, to correct a reference to the Federal Trade Commission's franchise disclosure rule concerning financial statements.

Hearing Location(s): Department of Financial Institutions (DFI), 150 Israel Road S.W., Tumwater, WA 98501, on June 23, 2015, at 9:30 a.m.

Date of Intended Adoption: June 24, 2015.

Submit Written Comments to: Michelle Webster, Securities Division, P.O. Box 9033, Olympia, WA 98507-9033, e-mail michelle.webster@dfi.wa.gov, fax (360) 704-6491, by June 23, 2015.

Assistance for Persons with Disabilities: Contact Carolyn Hawkey by June 16, 2015, TTY (360) 664-8126 or (360) 902-8760.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: WAC 460-80-140 contains an incorrect citation to the financial statement requirements contained in the Federal Trade Commission's franchise rule. The proposed amendment would change the citation from 16 C.F.R. § 465.5(u) to 16 C.F.R. § 436.5. The proposed amendment would better coordinate the securities division's rules with other federal and state agencies.

Reasons Supporting Proposal: The proposed amendment affects the regulation of franchise offerings. Franchise offerings are also subject to regulation by the Federal Trade Commission under federal law, and subject to regulation by other jurisdictions that have adopted the Federal Trade Commission rules. As the amendments proposed by the division would correct a reference to Federal Trade Commission rules governing financial statement requirements, the amendments under consideration would better coordinate the securities division's rules with other federal and state agencies.

Statutory Authority for Adoption: RCW 19.100.250, 19.100.040.

Statute Being Implemented: RCW 19.100.040.

Rule is necessary because of federal law, 16 C.F.R. § 436.5.

Name of Proponent: DFI, 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) 902-8736.

No small business economic impact statement has been prepared under chapter 19.85 RCW. RCW 19.85.061 of the Regulatory Fairness Act provides that unless requested by a majority vote of the joint administrative rules [review] committee under RCW 19.85.030, an agency is not required to prepare a small business economic impact statement when adopting any rule solely for the purpose of conformity or compliance, or both, with federal statutes or regulations. The proposed updates merely seek to better coordinate the amended proposed rule with existing federal law by identifying the correct federal regulation promulgated by the Federal Trade Commission.

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

May 7, 2015

Scott Jarvis

Director

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

WAC 460-80-140 Financial statements. The Franchise Disclosure Document must include financial statements that comply with the instructions for Item 21 of the Franchise Disclosure Document, 16 C.F.R. ~~((§ 465.5(u)))~~ Sec. 436.5.

WSR 15-11-030
PROPOSED RULES
OLYMPIC COLLEGE

[Filed May 13, 2015, 8:31 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-19-065.

Title of Rule and Other Identifying Information: Revision of Olympic College grievance procedure—Discrimination and harassment.

Hearing Location(s): Olympic College, 1600 Chester Avenue, Humanities and Student Services Building, Room 119, Bremerton, WA, on July 7, 2015, at 2:00-3:00 p.m.

Date of Intended Adoption: July 14, 2015.

Submit Written Comments to: Laurie Harmon, Olympic College, CSC 210, 1600 Chester Avenue, Bremerton, WA 98337, e-mail lharmon@olympic.edu, fax (360) 475-7505, by July 2, 2015.

Assistance for Persons with Disabilities: Contact access services by phone (360) 475-7540 or e-mail accessservices@olympic.edu, by June 23, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This policy is proposed to condense, replace and update existing policies regarding the college's responsibility to prevent discrimination and harassment throughout the college community.

Reasons Supporting Proposal: This policy will meet federal and state laws as follows: Title VI of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, Sections 504 and 508 of the Rehabilitation Act of 1973, the Americans Reauthorization Act and Washington state's law against discrimination, chapter 49.60 RCS [RCW] and their implementing regulations.

Statutory Authority for Adoption: Chapter 28B.50 RCW.

Statute Being Implemented: Chapter 28B.50 RCW.

Rule is necessary because of federal law, see Reasons Supporting Proposal above.

Name of Proponent: David Slown, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: David Slown, CSC 528, 1600 Chester Avenue, Bremerton, WA 98337, (360) 475-7305.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There will be no impact on any entity other than Olympic College.

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

May 13, 2015
 Laurie Harmon
 Rules Coordinator

NEW SECTION

WAC 132C-285-100 Introduction. Olympic College recognizes its responsibility for investigation, resolution, implementation of corrective measures, and monitoring of the educational environment and workplace to stop, remediate, and prevent discrimination on the basis of race, color,

national origin, age, perceived or actual physical or mental disability, pregnancy, genetic information, sex, sexual orientation, gender identity, marital status, creed, religion, honorably discharged veteran or military status, or use of a trained guide dog or service animal, as required by Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, Sections 504 and 508 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and ADA Amendment Act, the Age Discrimination Act of 1975, the Violence Against Women Reauthorization Act and Washington state law against discrimination, chapter 49.60 RCW and their implementing regulations.

NEW SECTION

WAC 132C-285-110 Policy. Olympic College prohibits discrimination against and harassment of members of the protected classes named in the introduction to this policy. Any individual found to be in violation of these policies will be subject to disciplinary action up to and including dismissal from the college or from employment.

NEW SECTION

WAC 132C-285-120 Reporting procedure. Any employee, student, applicant, or visitor who believes that he or she has been the subject of discrimination or harassment should report the incident or incidents to the college's Title IX/EEO coordinator. If the complaint is against that coordinator, the complainant should report the matter to the president's office for referral to an alternate designee.

The Title IX/EEO coordinator or designee:

- (1) Will accept all complaints and referrals from college employees, applicants, students, and visitors;
- (2) Will make determinations regarding how to handle requests by complainants for confidentiality;
- (3) Will keep accurate records of all complaints and referrals for the required time period;
- (4) May conduct investigations or delegate and oversee investigations conducted by a designee;
- (5) May impose interim remedial measures to protect parties during investigations of discrimination or harassment;
- (6) Will issue written findings and recommendations upon completion of an investigation;
- (7) May recommend specific corrective measures to stop, remediate, and prevent the recurrence of inappropriate conduct;

The college encourages the timely reporting of any incidents of discrimination or harassment. Complaints may be submitted in writing or orally. For complainants who wish to submit a written complaint, an electronic formal complaint form is available on the web page for the Title IX/EEO coordinator. Hardcopies of the complaint form are available at the office of the Title IX/EEO coordinator and the office of the president.

NEW SECTION

WAC 132C-285-130 Definitions. (1) **Complainant:** Employee(s), applicant(s), student(s), or visitor(s) of Olympic College who alleges that she or he has been subjected to

discrimination or harassment due to his or her membership in a protected class.

(2) **Complaint:** A description of facts that allege violation of the college's policy against discrimination or harassment.

(3) **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.

(4) **Discrimination:** Unfavorable treatment of a person based on that person's membership or perceived membership in a protected class. Harassment is a form of discrimination.

(5) **Harassment:** A form of discrimination consisting of physical or verbal conduct that denigrates or shows hostility toward an individual because of their membership in a protected class or their perceived membership in a protected class. Harassment occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational and/or social programs (and/or student housing). Petty slights, annoyances, offensive utterances, and isolated incidents (unless extremely serious) typically do not qualify as harassment. Examples of conduct that could rise to the level of discriminatory harassment include, but are not limited to, the following:

(a) Epithets, "jokes," ridicule, mockery or other offensive or derogatory conduct focused upon an individual's membership in a protected class.

(b) Verbal or physical threats of violence or physical contact directed towards an individual based upon their membership in a protected class.

(c) 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.

(6) **Protected class:** Persons who are protected under state or federal civil rights laws, including laws that prohibit discrimination on the basis of race, color, national origin, age, perceived or actual physical or mental disability, pregnancy, genetic information, sex, sexual orientation, gender identity, marital status, creed, religion, honorably discharged veteran or military status, or use of a trained guide dog or service animal.

(7) **Resolution:** The means by which the complaint is finally addressed. This may be accomplished through infor-

mal or formal processes, including counseling, mediation, or the formal imposition of discipline sanction.

(8) **Respondent:** Person or persons who are members of the campus community who allegedly discriminated against or harassed another person or persons.

(9) **Sexual harassment:** A form of discrimination consisting of unwelcome, gender-based verbal, written, electronic and/or physical conduct. Sexual harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's gender. There are two types of sexual harassment.

(a) **Hostile environment sexual harassment** occurs when the conduct is sufficiently severe and/or pervasive and so objectively offensive that it has the effect of altering the terms or conditions of employment or substantially limiting the ability of a student to participate in or benefit from the college's educational and/or social programs (and/or student housing).

(b) **Quid pro quo sexual harassment** occurs when an individual in a position of real or perceived authority, conditions the receipt of a benefit 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.

(10) **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.

NEW SECTION

WAC 132C-285-140 Who may file a complaint. Any employee, applicant, student or visitor of the college may file a complaint. Complaints may be submitted in writing or verbally. The college encourages the timely reporting of any incidents of discrimination or harassment. For complainants who wish to submit a written complaint, an electronic formal complaint form is available online. Hardcopies of the complaint form are available at the office of the Title IX/EEO coordinator and the office of the president. Any person submitting a discrimination complaint shall be provided with a written copy of this policy.

NEW SECTION

WAC 132C-285-150 Confidentiality and right to privacy. Olympic College will seek to protect the privacy of the complainant to the fullest extent possible, consistent with the legal obligation to investigate, take appropriate remedial and/or disciplinary action, and comply with the federal and state law, as well as Olympic College policies and procedures. Although Olympic College will attempt to honor complainants' requests for confidentiality, it cannot guarantee complete confidentiality. Determinations regarding how to handle requests for confidentiality will be made by the Title IX/EEO coordinator.

Confidentiality requests and sexual violence complaints. The Title IX/EEO coordinator will inform and obtain consent from the complainant before commencing an investigation into a sexual violence complaint. If a sexual violence complainant asks that his or her name not be revealed to the respondent or that the college not investigate the allegation, the Title IX/EEO coordinator 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 his or her name not be disclosed or that the college not investigate, the Title IX/EEO coordinator 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 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 confidentiality, the Title IX/EEO coordinator 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 confidentiality, the Title IX/EEO coordinator 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.

NEW SECTION

WAC 132C-285-160 Investigation procedure. Upon receiving a discrimination or harassment complaint, the college shall commence an impartial investigation. The Title IX/EEO coordinator shall be responsible for overseeing all investigations. Investigations may be conducted by the Title IX/EEO coordinator or his or her designee. If the investigation is assigned to someone other than the Title IX/EEO coordinator, the Title IX/EEO coordinator shall inform the complainant and respondent(s) of the appointment of an investigator.

(1) **Interim measures.** The Title IX/EEO coordinator 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 no contact 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 conduct code or the college's employment policies and collective bargaining agreements.

(2) **Investigation.** Complaints shall be thoroughly and impartially investigated. The investigation shall include, but is not limited to, interviewing the complainant and the respondent, relevant witnesses, and reviewing relevant documents. The investigation shall be concluded within a reasonable time, normally sixty days barring exigent circumstances. At the conclusion of the investigation the investigator shall set forth his or her findings and recommendations in writing. If the investigator is a designee, the investigator shall send a copy of the findings and recommendations to the Title IX/EEO coordinator. The Title IX/EEO coordinator shall consider the findings and recommendations and determine, based on a preponderance of the evidence, whether a violation of the discrimination and harassment policy occurred, and if so, what steps will be taken to resolve the complaint,

remedy the effects on any victim(s), and prevent its recurrence. Possible remedial steps may include, but are not limited to, referral for voluntary training/counseling, development of a remediation plan, limited contact orders, and referral and recommendation for formal disciplinary action. Referrals for disciplinary action will be consistent with the student conduct code or college employment policies and collective bargaining agreements.

(3) **Written notice of decision.** The Title IX/EEO coordinator 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 to resolve the complaint, subject to the following limitations. The complainant shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint, if any, only to the extent that such findings, actions or recommendations directly relate to the complainant, such as a finding that the complaint is or is not meritorious or a recommendation that the accused 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.

(4) **Informal dispute resolution.** Informal dispute resolution processes, like 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.

(5) **Final decision/reconsideration.** Either the complainant or the respondent may seek reconsideration of the decision by the Title IX/EEO coordinator. Requests for reconsideration shall be submitted in writing to the Title IX/EEO coordinator 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 Title IX/EEO coordinator shall respond within fifteen business days. The Title IX/EEO coordinator shall either deny the request or, if the Title IX/EEO coordinator determines that the request for reconsideration has merit, issue an amended decision. Any amended decision is final and no further reconsideration is available.

NEW SECTION

WAC 132C-285-170 Publication of antidiscrimination policies and procedures. The policies and procedures regarding complaints of discrimination and harassment shall be published and distributed as determined by the president or president's designee. Any person who believes he or she has been subjected to discrimination in violation of college

policy will be provided a copy of this policy. Specific individual contact names and electronic links will be updated, as needed.

NEW SECTION

WAC 132C-285-180 Limits to authority. Nothing in this procedure shall prevent the college president or designee from taking immediate disciplinary action in accordance with Olympic College policies and procedures, and federal, state, and municipal laws and regulations.

NEW SECTION

WAC 132C-285-190 Nonretaliation, intimidation and coercion. Retaliation by, for or against any participant (including complainant, respondent, witness, Title IX/EEO coordinator, or investigator) is expressly prohibited. Retaliatory action of any kind taken against individuals as a result of seeking redress under the applicable procedures or serving as a witness in a subsequent investigation or any resulting disciplinary proceedings is prohibited and is conduct subject to discipline. Any person who thinks he/she has been the victim of retaliation should contact the Title IX/EEO coordinator immediately.

NEW SECTION

WAC 132C-285-200 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:

- (1) Kitsap County sheriff's department;
- (2) Bremerton police department;
- (3) Poulsbo police department;
- (4) Mason County sheriff's department;
- (5) Shelton police department; and/or
- (6) Washington state patrol office.

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.

NEW SECTION

WAC 132C-285-210 Other discrimination complaint options. Discrimination complaints may also be filed with the following federal and state agencies:

- (1) **Washington State Human Rights Commission**
<http://www.hum.wa.gov/index.html>
- (2) **U.S. Dept. of Education Office for Civil Rights**
<http://www2.ed.gov/about/offices/list/ocr/index.html>
- (3) **Equal Employment Opportunity Commission**
<http://www.eeoc.gov/>

NEW SECTION

WAC 132C-285-220 Complaint form.

**Discrimination/Harassment
Complaint Form***

This form 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 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; the name of any witnesses of which you are aware, if known; a description of the incident(s); and the remedy sought.

.....
Name filing the complaint	Date
.....
Signature	Date

You may use the back side of this sheet if needed.

* Please return this form to the Title IX/EEO coordinator.

NEW SECTION

WAC 132C-285-230 Adjudicative proceedings. Matters subject to brief adjudication. The provisions of RCW 34.05.482 through 34.05.494, (brief adjudication) are hereby adopted. Brief adjudicative proceedings shall be used in all matters related to:

- (1) Appeals from residency determinations under RCW 28B.15.013;
- (2) Appeals of student suspensions for a time period less than eleven academic days;
- (3) Challenges to contents of educational records;
- (4) Appeals of library charges;
- (5) Federal financial aid appeals;
- (6) Appeals of student debt collection decisions;
- (7) Appeals of employee debt collection not related to payroll;
- (8) Appeals of trespass orders; and
- (9) Appeals pursuant to any other formal policy adopted by the college which specifically provides for a brief adjudicative procedure.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 132C-285-010 Grievance procedure.

WAC 132C-285-020 Adjudicative proceedings.

**WSR 15-11-047
PROPOSED RULES
OLYMPIC REGION
CLEAN AIR AGENCY**

[Filed May 14, 2015, 4:06 p.m.]

Continuance of WSR 15-10-020.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: Olympic Region Clean Air Agency Regulations, Regulation 3, Rule 3.4 Outdoor Burning Permit Fees and Regulation 6, Rule 6.2.8.

Hearing Location(s): Olympic Region Clean Air Agency (ORCAA), 2940 Limited Lane N.W., Olympia, WA 98502, on July 8, 2015, at 10:00 a.m.

Date of Intended Adoption: July 8, 2015.

Submit Written Comments to: Robert Moody, 2940 Limited Lane N.W., Olympia, WA 98502, e-mail robert.moody@orcaa.org, fax (360) 491-6308, by July 7, 2015.

Assistance for Persons with Disabilities: Contact Dan Nelson by June 30, 2015, (360) 539-7610.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: ORCAA is proposing to require Residential burn permits in Thurston County and provide a mechanism to collect a fee. In the future, the ORCAA board of directors may specify a fee through passage of a Resolution. The ability to revoke a previously issued burn permit for causing a nuisance was added to Rule 6.2.8.

Reasons Supporting Proposal: The Thurston County Residential Burn permit program has been in place for more than a decade. The permit contains the conditions under which one may burn. Requiring the permit insures that everyone has the information needed for a safe and legal fire. If acted on in the future, the fee would allow cost recovery from a program that currently has no source of revenue.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Statute Being Implemented: Chapter 70.94 RCW.

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

Name of Proponent: ORCAA, governmental.

Name of Agency Personnel Responsible for Drafting: Robert Moody, 2940 Limited Lane N.W., Olympia, (360) 539-7610; Implementation and Enforcement: Fran McNair, 2940 Limited Lane N.W., Olympia, (360) 539-7610.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This agency is not subject to the small business economic impact provision of the Administrative Procedure Act, and the agency is not a school district.

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to local air agencies, per RCW 70.94.141.

May 14, 2015
Francea L. McNair
Executive Director

WSR 15-11-048
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed May 15, 2015, 7:41 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-08-005.

Title of Rule and Other Identifying Information: WAC 308-12-205 Architect fees.

Hearing Location(s): Department of Licensing, 405 Black Lake Boulevard, Conference Room 2105, Olympia, WA 98502, on June 23, 2015, at 11:00 a.m.

Date of Intended Adoption: June 24, 2015.

Submit Written Comments to: Grace Hamilton, P.O. Box 9012, Olympia, WA 98507, e-mail architects@dol.wa.gov, fax (360) 570-7098, by June 22, 2015.

Assistance for Persons with Disabilities: Contact Autumn Dryden by June 22, 2015, TTY (360) 664-0116 or (360) 664-6597.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rule change will extend a fee suspension in an effort to maintain a balanced budget for the architect licensing program. The current temporary suspension expires on July 1, 2015.

Reasons Supporting Proposal: This program is required to be self-supporting and operates out of a dedicated fund. Revenue currently being generated to cover the cost of the program is sufficient with the fee suspension in place. This trend is expected to continue over the next couple of years. The suspended fees would have a positive impact on new applicants and existing licensees. This proposed rule amendment is supported by industry.

Statutory Authority for Adoption: RCW 18.08.340.

Statute Being Implemented: RCW 43.24.086.

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

Name of Proponent: DOL, governmental.

Name of Agency Personnel Responsible for Drafting: Grace Hamilton, Olympia, (360) 664-6652; Implementation and Enforcement: Lorin Doyle, Olympia, (360) 664-1386.

No small business economic impact statement has been prepared under chapter 19.85 RCW. DOL is exempt from this requirement.

A cost-benefit analysis is not required under RCW 34.05.328. DOL is not one of the named agencies to which this rule applies. Agencies that are not named can apply this rule to themselves voluntarily. DOL has chosen not to do this.

May 15, 2015
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-16-018, filed 7/26/13, effective 8/26/13)

WAC 308-12-205 Architect fees. (1) Suspension of fees. Effective July 1, ~~((2013))~~ 2015, the listed fees shown in subsection (2) of this section are suspended and replaced with the following:

Title of Fee	Fee
Individuals:	
Examination application	\$50.00
Reciprocity application	250.00
Initial licensure	75.00
License renewal (2 years)	75.00
Late renewal penalty	25.00
Duplicate license	15.00
Business entities:	
Certificate of authorization	100.00
Certificate of authorization renewal	50.00

The fees set forth in this section shall revert back to the fee amounts shown in subsection (2) of this section on July 1, ~~((2015))~~ 2017.

(2) The following fees shall be charged by the business and professions division of the department of licensing:

Title of Fee	Fee
Examination application	\$100.00
Reciprocity application	390.00
Initial licensure	99.00
License renewal (2 years)	99.00
Late renewal penalty	33.00
Duplicate license	15.00
Business entities:	
Certificate of authorization	278.00
Certificate of authorization renewal	139.00

WSR 15-11-058
PROPOSED RULES
HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed May 18, 2015, 2:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-08-052.

Title of Rule and Other Identifying Information: WAC 182-502-0018, 182-502-0025, 182-502-0030, 182-502-0100, 182-502-0120, 182-502-0130, 182-502-0150, 182-502-0210, 182-502-0220 and 182-502-0260, Administration of medical program—Providers.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room CSP 106A, 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 June 23, 2015, at 10:00 a.m.

Date of Intended Adoption: Not sooner than June 24, 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 5:00 p.m. on June 23, 2015.

Assistance for Persons with Disabilities: Contact Kelly Richters by June 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 amending this chapter to correct outdated references and improve clarity.

Reasons Supporting Proposal: See Purpose above.

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, Implementation, and Enforcement: Sean Sullivan, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1344.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has determined that the proposed filing does not impose a disproportionate cost impact on small businesses or nonprofits.

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.

May 18, 2015
Jason R. P. Crabbe
Rules Coordinator

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

WAC 182-502-0018 Change of ownership. (1) A provider must notify the ~~((department))~~ medicaid agency in writing within seven calendar days of ownership or control changes of any kind. An entity is considered to have an ownership or control interest in another entity if it has direct or indirect ownership of five percent or more, or is a managing employee (e.g., a general manager, business manager, administrator, or director) who exercises operational or managerial control over the entity or who directly or indirectly conducts day-to-day operations of the entity. The ~~((department))~~ agency determines whether a new core provider agreement (CPA) must be completed for the new entity.

(2) When a provider obtains a new federal tax identification (ID) following a change of ownership, the ~~((department))~~ agency terminates the provider's CPA as of the date of the change in federal tax ID. The provider may reapply for a new CPA.

(3) All new ownership enrollments are subject to the requirements in WAC ~~((388-502-0010))~~ 182-502-0010. In addition to those requirements, the applicant must:

(a) Complete a change of ownership form;

(b) Provide the ~~((department))~~ agency with a copy of the contract of sale identifying previous and current owners; and

(c) Provide the ~~((department))~~ agency with a list of all provider numbers affected by the change of ownership.

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

WAC 182-502-0025 Electronic health records (EHR) incentive program. The purpose of this section is to establish the medicaid electronic health records (EHR) incentive program ~~((in accordance with))~~ under the American Recovery and Reinvestment Act of 2009 (ARRA). The medicaid EHR incentive program promotes the adoption and meaningful use of certified EHR technology by offering financial incentives to eligible professionals and hospitals. This program is administered by the ~~((department))~~ medicaid agency.

(1) The ~~((department))~~ agency provides incentive payments to eligible providers and hospitals that adopt and meaningfully use certified EHR technology ~~((in accordance with the provisions of))~~ under 42 C.F.R. Parts 412, 413, 422, and any other federal regulations that apply.

(2) Providers and hospitals eligible to participate in EHR incentive program are identified in 42 C.F.R. Part 495.304 and other applicable rules.

(3) As authorized by 42 C.F.R. Parts 412, 413, 422, chapters 43.20B and 74.09 RCW, and any other federal or state rules that apply, the ~~((department))~~ agency monitors and reviews all providers and hospitals participating in the EHR incentive program. By the same authority, the ~~((department))~~ agency reviews all practices, documentation, and ~~((/or))~~ data related to EHR technology to determine whether professionals and hospitals participating in the EHR incentive program are eligible and complying with state and federal rules and regulations.

(4) The ~~((department))~~ agency may determine that a participating professional or hospital has not met the eligibility or performance requirements to receive an EHR incentive payment, or should receive an incentive payment in an amount less than the amount anticipated by the provider or hospital. Areas of possible dispute in the EHR incentive program include, at a minimum, any of the following:

(a) Patient volume thresholds and calculations, as outlined in 42 C.F.R. Parts 495.304 and 495.306.

(b) Eligibility criteria and payment limitations, as outlined in 42 C.F.R. Parts 495.10, 495.304, 495.306, and 495.310.

(c) Attestations and compliance demonstrations including, at a minimum:

(i) Attestations that certified EHR technology has been adopted, implemented, or upgraded; and

(ii) Demonstrations of meaningful use, as outlined in 42 C.F.R. Parts 495.6, 495.8, 495.306, 495.310, and in any future published federal regulations and requirements, as applicable.

(d) The payment process and incentive payment amounts, as outlined in 42 C.F.R. Parts 495.310, 495.312, and 495.314.

(e) Additional issues regarding EHR incentive program eligibility, participation, documentation, and compliance as

outlined in 42 C.F.R. Parts 412, 413, 422 ~~((et al.))~~, and in any future published federal regulations and requirements, as applicable.

(5) All matters of dispute are subject to the Administrative Procedure Act (APA) appeal process ~~((per))~~ under chapter 34.05 RCW. A provider who disagrees with ~~((a department))~~ an agency action under this section may request a hearing. The hearing request must:

- (a) Be in writing;
- (b) Be received by the agency, at the address identified in the notice of action, within twenty-eight days of the date of the notice of action by certified mail (return receipt); and
- (c) State the reason~~((s))~~ or reasons why the provider thinks the action is incorrect.

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

WAC 182-502-0030 Termination of a provider agreement—For cause. (1) The ~~((department))~~ medicaid agency may immediately terminate a provider's core provider agreement (CPA) for any one or more of the following reasons, each of which constitutes cause:

(a) Provider exhibits significant risk factors that endanger client health ~~((and))~~ or safety. These factors include, but are not limited to:

- (i) Moral turpitude;
- (ii) Sexual misconduct as defined in WAC 246-934-100 or in profession specific rules of the department of health (DOH);
- (iii) A statement of allegations or statement of charges by DOH;
- (iv) Restrictions placed by DOH on provider's current practice such as chaperone required for rendering treatment, preceptor required to review practice, or prescriptive limitations;
- (v) Limitations, restrictions, or loss of hospital privileges or participation in any health care plan ~~((and))~~ or failure to disclose the reasons to the ~~((department))~~ agency;
- (vi) Negligence, incompetence, inadequate or inappropriate treatment, or lack of appropriate follow-up treatment;
- (vii) Patient drug mismanagement ~~((and/or))~~, failure to identify substance abuse~~((/))~~ or addiction, or failure to refer the patient for substance abuse treatment once abuse~~((/))~~ or addiction is identified;
- (viii) Use of health care providers or health care staff who are unlicensed to practice or who provide health care services ~~((which))~~ that are outside their recognized scope of practice or the standard of practice in the state of Washington;
- (ix) Failure of the health care provider to comply with the requirements of WAC ~~((388-502-0016))~~ 182-502-0016;
- (x) Failure of the health care practitioner with an alcohol or chemical dependency to furnish documentation or other assurances as determined by the ~~((department))~~ agency to adequately safeguard the health and safety of ~~((medical assistance))~~ Washington apple health clients that the provider:

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

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

- (xi) Infection control deficiencies;
- (xii) Failure to maintain adequate professional malpractice coverage;
- (xiii) Medical malpractice claims or professional liability claims that constitute a pattern of questionable or inadequate treatment, or contain any gross or flagrant incident of malpractice; or
- (xiv) Any other act ~~((which))~~ that the ~~((department))~~ agency determines is contrary to the health and safety of its clients.

(b) Provider exhibits significant risk factors that affect the provider's credibility or honesty. These factors include, but are not limited to:

- (i) Failure to meet the requirements in WAC ~~((388-502-0010 and WAC 388-502-0020))~~ 182-502-0010 and 182-502-0020;
- (ii) Dishonesty or other unprofessional conduct;
- (iii) Investigatory (e.g., audit, civil, or criminal finding of fraudulent or abusive billing practices);
- (iv) Exclusion from participation in medicare, medicaid, or any other federally~~((-))~~ funded health care program;
- (v) Any conviction, no contest plea, or guilty plea relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct;
- (vi) Any conviction, no contest plea, or guilty plea of a criminal offense;
- (vii) Failure to comply with a DOH request for information or an ~~((on-going))~~ ongoing DOH investigation;
- (viii) Noncompliance with a DOH or other state health care agency's stipulation to disposition, agreed order, final order, or other similar licensure restriction;
- (ix) Misrepresentation or failure to disclose information on the enrollment application for a core provider agreement (CPA), failure to supply requested information, or failure to update CPA as required;
- (x) Failure to comply with ~~((a department))~~ an agency request for information;
- (xi) Failure to cooperate with ~~((a department))~~ an agency investigation, audit, or review;
- (xii) Providing health care services ~~((which))~~ that are outside the provider's recognized scope of practice or the standard of practice in the state of Washington;
- (xiii) Unnecessary medical~~((/))~~, dental, or other health care procedures;
- (xiv) Discriminating in the furnishing of health care services, supplies, or equipment as prohibited by 42 U.S.C. § 2000d; and
- (xv) Any other dishonest or discreditable act ~~((which))~~ that the ~~((department))~~ agency determines is contrary to the interest of the ~~((department))~~ agency or its clients.

(2) If a provider is terminated for cause, the ~~((department))~~ agency pays for authorized services provided up to the date of termination only.

(3) If the ~~((department))~~ agency terminates a provider who is also a full or partial owner of a group practice, the ~~((department))~~ agency also terminates all providers linked to the group practice. The remaining practitioners in the group

practice may reapply for participation with the ~~((department))~~ agency subject to WAC ~~((388-502-0010(2)))~~ 182-502-0010(2).

(4) A provider who is terminated for cause may dispute ~~((a department))~~ an agency decision under the process in WAC ~~((388-502-0050))~~ 182-502-0050.

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

WAC 182-502-0100 General conditions of payment.

(1) The ~~((department))~~ medicaid agency reimburses for medical services furnished to an eligible client when all ~~((of))~~ the following apply:

(a) The service is within the scope of care of the client's ~~((medical assistance))~~ Washington apple health program;

(b) The service is medically or dentally necessary;

(c) The service is properly authorized;

(d) The provider bills within the time frame set in WAC ~~((388-502-0150))~~ 182-502-0150;

(e) The provider bills according to ~~((department))~~ agency rules and billing instructions; and

(f) The provider follows third-party payment procedures.

(2) The ~~((department))~~ agency is the payer of last resort, unless the other payer is:

(a) An Indian health service;

(b) A crime victims program through the department of labor and industries; or

(c) A school district for health services provided under the Individuals with Disabilities Education Act.

(3) The ~~((department))~~ agency does not reimburse providers for medical services identified by the ~~((department))~~ agency as client financial obligations, and deducts from the payment the costs of those services identified as client financial obligations. Client financial obligations include, but are not limited to, the following:

(a) Copayments ~~((to pay))~~ (copays) (unless the criteria in chapter ~~((388-517))~~ 182-517 WAC or WAC ~~((388-501-0200))~~ 182-501-0200 are met);

(b) Deductibles (unless the criteria in chapter ~~((388-517))~~ 182-517 WAC or WAC ~~((388-501-0200))~~ 182-501-0200 are met);

(c) Emergency medical expense requirements (EMER) ~~((see WAC 388-550-1050 and 388-865-0217))~~; and

~~((d))~~ (c) Spenddown (see WAC ~~((388-519-0110))~~ 182-519-0110).

(4) The provider must accept medicare assignment for claims involving clients eligible for both medicare and ~~((medical assistance))~~ Washington apple health before the ~~((department))~~ agency makes any payment.

(5) The provider is responsible for verifying whether a client has ~~((medical assistance))~~ Washington apple health coverage for the dates of service.

(6) The ~~((department))~~ agency may reimburse a provider for services provided to a person if it is later determined that the person was ineligible for the service ~~((at the time))~~ when it was provided if:

(a) The ~~((department))~~ agency considered the person eligible at the time of service;

(b) The service was not otherwise paid for; and

(c) The provider submits a request for payment to the ~~((department))~~ agency.

(7) The ~~((department))~~ agency does not pay on a fee-for-service basis for a service for a client who is enrolled in a managed care plan when the service is included in the plan's contract with the ~~((department))~~ agency.

(8) Information about medical care for jail inmates is found in RCW 70.48.130.

(9) The ~~((department))~~ agency pays for medically necessary services on the basis of usual and customary charges or the maximum allowable fee established by the ~~((department))~~ agency, whichever is lower.

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

WAC 182-502-0120 Payment for health care services provided outside the state of Washington.

(1) The ~~((department))~~ medicaid agency pays for health care services provided outside the state of Washington only when the service meets the provisions ~~((set forth))~~ described in WAC ~~((388-501-0180, 388-501-0182, 388-501-0184))~~ 182-501-0180, 182-501-0182, 182-501-0184, and specific program WAC.

(2) With the exception of hospital services and nursing facilities, the ~~((department))~~ agency pays the provider of service in designated bordering cities as if the care was provided within the state of Washington (see WAC ~~((388-501-0175))~~ 182-501-0175).

(3) With the exception of designated bordering cities, the ~~((department))~~ agency does not pay for health care services provided to clients in medical care services (MCS) programs outside the state of Washington ~~((see WAC 388-556-0500))~~.

(4) With the exception of hospital services (see subsection (5) of this section), the ~~((department))~~ agency pays for health care services provided outside the state of Washington at the lower of:

(a) The billed amount; or

(b) The rate established by the Washington ~~((state medical assistance))~~ apple health programs.

(5) The ~~((department))~~ agency pays for hospital services provided in designated bordering cities and outside the state of Washington ~~((in accordance with the provisions of WAC 388-550-3900, 388-550-4000, 388-550-4800 and 388-550-6700))~~ under WAC 182-550-3900, 182-550-4000, 182-550-4800, and 182-550-6700.

(6) The ~~((department))~~ agency pays nursing facilities located outside the state of Washington when approved by the aging and ~~((disability services administration (ADSA)))~~ long-term support administration (ALTSA) at the lower of the billed amount or the adjusted statewide average reimbursement rate for in-state nursing facility care, only in the following limited circumstances:

(a) Emergency situations; or

(b) When the client intends to return to Washington state and the out-of-state stay is for:

(i) Thirty days or less; or

(ii) More than thirty days if approved by ~~((ADSA))~~ ALTSA.

(7) To receive payment from the ~~((department))~~ agency, an out-of-state provider must:

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

(b) Meet the functionally equivalent licensing requirements of the state or province in which care is rendered;

(c) Meet the conditions in WAC ~~((388-502-0100 and 388-502-0150))~~ 182-502-0100 and 182-502-0150;

(d) Satisfy all medicaid conditions of participation;

(e) Accept the ~~((department's))~~ agency's payment as payment in full according to 42 C.F.R. 447.15; and

(f) If a Canadian provider, bill at the U.S. exchange rate in effect ~~((at the time))~~ when the service was provided.

(8) For covered services for eligible clients, the ~~((department))~~ agency reimburses other approved out-of-state providers at the lower of:

(a) The billed amount; or

(b) The rate paid by the Washington state Title XIX medicaid program.

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

WAC 182-502-0130 Interest penalties—Providers.

(1) Providers who are enrolled as contractors with the ~~((department's))~~ medicaid agency's medical care programs may be assessed interest on excess benefits or other inappropriate payments. Nursing home providers are governed by WAC 388-96-310 and are not subject to this section.

(2) The ~~((department))~~ agency assesses interest when:

(a) The excess benefits or other inappropriate payments were not the result of ~~((department))~~ agency error; and

(b) A provider is found liable for receipt of excess benefits or other payments under RCW 74.09.220; or

(c) A provider is notified by the ~~((department))~~ agency that repayment of excess benefits or other payments is due under RCW 74.09.220.

(3) The ~~((department))~~ agency assesses interest at the rate of one percent for each month the overpayment is not satisfied. Daily interest calculations and assessments are made for partial months.

(4) Interest is calculated beginning from the date the ~~((department))~~ agency receives payment from the provider. Interest ceases to be calculated and collected from the provider once the overpayment amount is received by the ~~((department))~~ agency.

(5) The ~~((department))~~ agency calculates interest and amounts, which are identified on all ~~((department))~~ agency collection notices and statements.

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

WAC 182-502-0150 Time limits for providers to bill the ~~((department))~~ agency. Providers must bill the ~~((department))~~ medicaid agency for covered services provided to eligible clients as follows:

(1) The ~~((department))~~ agency requires providers to submit initial claims and adjust prior claims in a timely manner. The ~~((department))~~ agency has three timeliness standards:

(a) For initial claims, see subsections (3), (4), (5), and (6) of this section;

(b) For resubmitted claims other than prescription drug claims and claims for major trauma services, see subsections (7) and (8) of this section;

(c) For resubmitted prescription drug claims, see subsections (9) and (10) of this section; and

(d) For resubmitting claims for major trauma services, see subsection (11) of this section.

(2) The provider must submit claims to the ~~((department))~~ agency as described in the ~~((department's))~~ agency's current published billing instructions.

(3) Providers must submit the initial claim to the ~~((department))~~ agency and have a transaction control number (TCN) assigned by the ~~((department))~~ agency within three hundred sixty-five calendar days from any of the following:

(a) The date the provider furnishes the service to the eligible client;

(b) The date a final fair hearing decision is entered that impacts the particular claim;

(c) The date a court orders the ~~((department))~~ agency to cover the service; or

(d) The date the ~~((department))~~ agency certifies a client eligible under delayed certification criteria.

(4) The ~~((department))~~ agency may grant exceptions to the time limit of three hundred sixty-five calendar days for initial claims when billing delays are caused by either of the following:

(a) The ~~((department's))~~ agency's certification of a client for a retroactive period; or

(b) The provider proves to the ~~((department's))~~ agency's satisfaction that there are other extenuating circumstances.

(5) The ~~((department))~~ agency requires providers to bill known third parties for services. See WAC ~~((388-501-0200))~~ 182-501-0200 for exceptions. Providers must meet the timely billing standards of the liable third parties in addition to the ~~((department's))~~ agency's billing limits.

(6) When a client is covered by both medicare and medicaid, the provider must bill medicare for the service before billing the initial claim to the ~~((department))~~ agency. If medicare:

(a) Pays the claim the provider must bill the ~~((department))~~ agency within six months of the date medicare processes the claim; or

(b) Denies payment of the claim, the ~~((department))~~ agency requires the provider to meet the three hundred sixty-five-day requirement for timely initial claims as described in subsection (3) of this section.

(7) ~~((The following applies to claims with a date of service or admission before July 1, 2009:~~

~~((a) Within thirty-six months of the date the service was provided to the client, a provider may resubmit, modify, or adjust any claim, other than a prescription drug claim or a claim for major trauma services, with a timely TCN. This applies to any claim, other than a prescription drug claim or a claim for major trauma services, that met the time limits for an initial claim, whether paid or denied. The department does not accept any claim for resubmission, modification, or adjustment after the thirty-six month period ends.~~

~~(b) After thirty-six months from the date the service was provided to the client, a provider cannot refund overpayments by claim adjustment; a provider must refund overpayments by a negotiable financial instrument, such as a bank check.~~

~~(8) The following applies to claims with a date of service or admission on or after July 1, 2009:~~

~~(a)) Within twenty-four months of the date the service was provided to the client, a provider may resubmit, modify, or adjust an initial claim, other than a prescription drug claim or a claim for major trauma services.~~

~~((b)) (8) After twenty-four months from the date the service was provided to the client, the ((department)) agency does not accept any claim for resubmission, modification, or adjustment. This twenty-four-month period does not apply to overpayments that a provider must refund to the ((department)) agency by a negotiable financial instrument, such as a bank check.~~

(9) The ((department)) agency allows providers to resubmit, modify, or adjust any prescription drug claim with a timely TCN within fifteen months of the date the service was provided to the client. After fifteen months, the ((department)) agency does not accept any prescription drug claim for resubmission, modification, or adjustment.

(10) The fifteen-month period described in subsection (9) of this section does not apply to overpayments that a prescription drug provider must refund to the ((department)) agency. After fifteen months a provider must refund overpayments by a negotiable financial instrument, such as a bank check.

(11) The ((department)) agency allows a provider of trauma care services to resubmit, modify, or adjust, within three hundred and sixty-five calendar days of the date of service, any trauma claim that meets the criteria specified in WAC ((388-531-2000)) 182-531-2000 (for physician claims) or WAC ((388-550-5450)) 182-550-5450 (for hospital claims) for the purpose of receiving payment from the trauma care fund (TCF).

(a) No increased payment from the TCF is allowed for an otherwise qualifying trauma claim that is resubmitted after three hundred sixty-five calendar days from the date of service.

(b) Resubmission of or any adjustments to a trauma claim for purposes other than receiving TCF payments are subject to the provisions of this section.

(12) The three hundred sixty-five-day period described in subsection (11) of this section does not apply to overpayments from the TCF that a trauma care provider must refund to the ((department)) agency. A provider must refund an overpayment for a trauma claim that received payment from TCF using a method specified by the ((department)) agency.

(13) If a provider fails to bill a claim according to the requirements of this section and the ((department)) agency denies payment of the claim, the provider or any provider's agent cannot bill the client or the client's estate. The client is not responsible for the payment.

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

WAC 182-502-0210 Statistical data-provider reports. (1) At the request of the ((department)) medicaid agency, all providers enrolled with ((department)) agency programs must submit full reports, as specified by the ((department)) agency, of goods and services furnished to eligible ((medical assistance)) Washington apple health clients. The ((department)) agency furnishes the provider with a standardized format to report these data.

(2) The ((department)) agency analyzes the data collected from the providers' reports to secure statistics on costs of goods and services furnished and makes a report of the analysis available to the ((department's)) agency's advisory committee, the state welfare medical care committee, representative organizations of provider groups enrolled with the ((department)) agency, and any other interested organizations or individuals.

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

WAC 182-502-0260 Appeals and dispute resolution for providers with contracts other than core provider agreements. (1) Providers of medical services who have a contract, other than a core provider agreement, with a dispute resolution provision must follow the dispute resolution process described in the contract.

(2) See WAC ((388-502-0220)) 182-502-0220 for disputes involving rates. See chapter 182-502A WAC ((388-502-0240)) for disputes involving audits. See WAC ((388-502-0230)) 182-502-0230 for disputes involving provider reviews and termination.

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

WAC 182-502-0220 Administrative appeal contractor~~(#)~~ or provider rate reimbursement. (1) Any enrolled contractor~~(#)~~ or provider of medical services has a right to an administrative appeal when the contractor~~(#)~~ or provider disagrees with the ((department)) medicaid agency reimbursement rate. The exception to this is nursing facilities governed by WAC 388-96-904.

(2) The first level of appeal. A contractor~~(#)~~ or provider who wants to contest a reimbursement rate must file a written appeal with the ((department)) agency.

(a) The appeal must include ~~((all of))~~ the following:

- (i) A statement of the specific issue being appealed;
- (ii) Supporting documentation; and
- (iii) A request for the ((department)) agency to recalculate the rate.

(b) When a contractor~~(#)~~ or provider appeals a portion of a rate, the ((department)) agency may review all components of the reimbursement rate.

(c) ~~((In order))~~ To complete a review of the appeal, the ((department)) agency may do one or both of the following:

- (i) Request additional information; and~~((or))~~
- (ii) Conduct an audit of the documentation provided.

(d) The ~~((department))~~ agency issues a decision or requests additional information within sixty calendar days of receiving the rate appeal request.

(i) When the ~~((department))~~ agency requests additional information, the contractor~~(/)~~ or provider has forty-five calendar days from the date of the ~~((department's))~~ agency's request to submit the additional information.

(ii) The ~~((department))~~ agency issues a decision within thirty calendar days of receipt of the completed information.

(e) The ~~((department))~~ agency may adjust rates retroactively to the effective date of a new rate or a rate change. In order for a rate increase to be retroactive, the contractor~~(/)~~ or provider must file the appeal within sixty calendar days of the date of the rate notification letter from the ~~((department))~~ agency. The ~~((department))~~ agency does not consider any appeal filed after the sixty-day period to be eligible for retroactive adjustment.

(f) The ~~((department))~~ agency may grant a time extension for the appeal period if the contractor~~(/)~~ or provider makes such a request within the sixty-day period ~~((referenced under))~~ described in (e) of this subsection.

(g) Any rate increase resulting from an appeal filed within the sixty-day period described in subsection (2)(e) of this section is effective retroactively to the rate effective date in the notification letter.

(h) Any rate increase resulting from an appeal filed after the sixty-day period described in subsection (2)(e) of this section is effective on the date the rate appeal is received by the ~~((department))~~ agency.

(i) Any rate decrease resulting from an appeal is effective on the date specified in the appeal decision letter.

(j) Any rate change that the ~~((department))~~ agency grants that is the result of fraudulent practices on the part of the contractor~~(/)~~ or provider as described under RCW 74.09.210 is exempt from the appeal provisions in this chapter.

(3) The second level of appeal. When the contractor~~(/)~~ or provider disagrees with a rate review decision, it may file a request for a dispute conference with the ~~((department))~~ agency. For this section "dispute conference" means an informal administrative hearing ~~((for the purpose of resolving))~~ to resolve contractor~~(/)~~ or provider disagreements with ~~((a department))~~ an agency action as described under subsection (1) of this section~~(/)~~ and not agreed upon at the first level of appeal. The dispute conference is not governed by the Administrative Procedure Act, chapter 34.05 RCW.

(a) If a contractor~~(/)~~ or provider files a request for a dispute conference, it must submit the request to the ~~((department))~~ agency within thirty calendar days after the contractor~~(/)~~ or provider receives the rate review decision. The ~~((department))~~ agency does not consider dispute conference requests submitted after the thirty-day period for the first level decision.

(b) The ~~((department))~~ agency conducts the dispute conference within ninety calendar days of receiving the request.

(c) ~~((A department-appointed))~~ An agency-appointed conference chairperson issues the final decision within thirty calendar days of the conference. Extensions of time for extenuating circumstances may be granted if all parties agree.

(d) Any rate increase or decrease resulting from a dispute conference decision is effective on the date specified in the dispute conference decision.

(e) The dispute conference is the final level of administrative appeal within the ~~((department))~~ agency and precedes judicial action.

(4) The ~~((department))~~ agency considers that a contractor~~(/)~~ or provider who fails to attempt to resolve disputed rates as provided in this section has abandoned the dispute.

WSR 15-11-059

PROPOSED RULES

HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed May 18, 2015, 2:28 p.m.]

Original Notice.

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

Title of Rule and Other Identifying Information: WAC 182-540-101, 182-540-105, 182-540-120, 182-540-130, 182-540-140, 182-540-150, 182-540-160, 182-540-170, 182-540-190, 182-540-200, and 182-540-210, kidney center services.

Hearing Location(s): Health Care Authority (HCA), Cherry Street Plaza Building, Sue Crystal Conference Room 106A, 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 June 23, 2015, at 10:00 a.m.

Date of Intended Adoption: Not sooner than June 24, 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 5:00 p.m. on June 23, 2015.

Assistance for Persons with Disabilities: Contact Kelly Richters by June 17, 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 updating these sections to fix outdated references and improve readability.

Reasons Supporting Proposal: See Purpose above.

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, Implementation, and Enforcement: Sean Sullivan, P.O. Box 42716, Olympia, WA 98504-2716, (360) 725-1344.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The agency has analyzed the proposed rules and concludes they do not impose more than minor costs for affected 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.

May 18, 2015
Jason R. P. Crabbe
Rules Coordinator

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

WAC 182-540-101 Purpose and scope. This section describes the ~~((medical assistance administration (MAA)))~~ medicaid agency reimbursement rules for free-standing kidney centers providing dialysis and end-stage renal disease services to ~~((MAA))~~ agency clients.

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

WAC 182-540-105 Definitions. The following definitions and those found in chapter 182-500 WAC ~~((388-500-0005))~~, apply to this chapter.

~~((**"Acute dialysis"** means dialysis given to patients who are not ESRD patients, but who require dialysis of temporary kidney failure due to a sudden trauma (e.g., traffic accident or ingestion of certain drugs, etc.))~~)

"Affiliate" means a facility, hospital, unit, business, or person having an agreement with a kidney center to provide specified services to end stage renal disease (ESRD) patients.

"Agreement" means a written document executed between an ESRD facility and another facility in which the other facility agrees to assume responsibility for furnishing specified services to patients and for obtaining reimbursement for those services.

~~((**"Back-up dialysis"** means dialysis given to a patient under special circumstances, in a situation other than the patient's usual dialysis environment. Examples are:~~)

~~((1) Dialysis of a home dialysis patient in a dialysis facility when patient's equipment fails;~~)

~~((2) Inhospital dialysis when the patient's illness requires more comprehensive care on an inpatient basis;~~)

~~((3) Pre and post operative dialysis provided to transplant patients.))~~)

"Composite rate" means a payment method in which all standard equipment, supplies, and services are calculated into a blended rate. All in-facility dialysis and all home dialysis treatments are billed under the composite rate system.

"Continuous ambulatory peritoneal dialysis (CAPD)" means a type of dialysis where the patient's peritoneal membrane is used as the dialyzer. The patient dialyzes at home, using special supplies, but without the need for a machine. (See "Peritoneal dialysis.")

"Continuous cycling peritoneal dialysis (CCPD)" means a type of peritoneal dialysis where the patient dialyzes at home and ~~((utilizes))~~ uses an automated peritoneal cycler for delivering dialysis.

"Dialysate" means an electrolyte solution~~((s))~~ used in dialysis containing elements such as potassium~~((s))~~ and sodium chloride~~((, etc., surrounding))~~. It surrounds the mem-

brane or fibers and ~~((allowing))~~ allows the exchange of substances with the patient's blood in the dialyzer.

"Dialysis" means a process by which dissolved substances are removed from a patient's body by diffusion from one fluid compartment to another across a semipermeable membrane.

"Dialysis session" means the period ~~((of time))~~ beginning when the patient arrives at the facility and ending when the patient departs from the facility. ~~((In the case of))~~ For home dialysis, ~~((the time))~~ it means the period beginning when the patient prepares for dialysis and ending when the patient is disconnected from the machine.

"Dialyzer" means the synthetic porous membrane or fibers~~((s))~~ contained in a supporting structure, through which blood flows ~~((for the purpose of eliminating))~~ to eliminate harmful substances~~((s))~~ and ~~((replacing))~~ replace them with useful ones.

~~((**"Drug-related supplies"** means nonpharmaceutical items necessary for administration or delivery of a drug.))~~)

"Durable medical equipment (DME)" means equipment that:

(1) Can withstand repeated use;

(2) Is primarily and customarily used to serve a medical purpose;

(3) Generally is not useful to a person in the absence of illness or injury; and

(4) Is appropriate for use in the client's place of residence.

"End-stage renal disease (ESRD)" means the stage of renal impairment that is irreversible and permanent~~((s))~~ and requires dialysis or kidney transplant to ameliorate uremic symptoms and maintain life.

"Epoetin alpha (EPO)" means the biologically engineered protein that stimulates the bone marrow to make new red blood cells. It is used in the treatment of anemia.

"Free-standing kidney center" means a limited care facility~~((s))~~ not operated by a hospital~~((s))~~ that is certified by the federal government to provide ESRD services.

~~((**"Hemodialysis"** means a method of dialysis in which blood from a patient's body is circulated through an external device or machine and then returned to the patient's bloodstream. Hemodialysis is usually done in a kidney center or facility. It can be done at home with a trained dialysis helper.))~~)

"Home dialysis" means any dialysis performed at home.

"Home dialysis helper" means a person trained to assist the client in home dialysis.

"In-facility dialysis~~((s))~~" - For the purpose of this chapter only, "in-facility dialysis" means dialysis of any type performed on the premises of a kidney center or other free-standing ESRD facility.

"Intermittent peritoneal dialysis (IPD)" means a type of peritoneal dialysis in which dialysis solution is infused into the peritoneal cavity~~((, allowed to remain there for a period of time.))~~ and then drained out. IPD is usually done in a kidney center or facility. It can be done at home with a trained home dialysis helper.

"Kidney center" means a facility as defined and certified by the federal government to:

- (1) Provide ESRD services;
- (2) Provide the services specified in this chapter; and
- (3) Promote and encourage home dialysis for a client when medically indicated.

~~("Maintenance dialysis" means the usual periodic dialysis treatments given to a client who has ESRD.)~~

"Peritoneal dialysis" means a procedure that introduces dialysate into the abdominal cavity to remove waste products through the peritoneum. Three forms of peritoneal dialysis are continuous ambulatory peritoneal dialysis, continuous cycling peritoneal dialysis, and intermittent peritoneal dialysis.

~~("Self dialysis unit" means a unit in a free standing kidney center where dialysis is performed by an ESRD client who has completed training in self dialysis.)~~

"Standard ESRD lab tests" means certain laboratory tests that the Centers for Medicare and Medicaid include in their composite rate calculations. These tests are identified in ((MAA's)) the agency kidney center services billing instructions.

~~("Take home drugs" means outpatient prescription drugs that are administered outside of a provider's office.)~~

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

WAC 182-540-120 Provider requirements. To receive reimbursement from the ~~((medical assistance administration (MAA)))~~ medicaid agency for providing care to ((MAA)) agency clients, a kidney center must:

- (1) Be a Medicare-certified end-stage renal disease (ESRD) facility and have a signed core provider agreement with ((MAA)) the agency (see chapter ((388-502)) 182-502 WAC);
- (2) Meet requirements found in chapter ((388-502)) 182-502 WAC;
- (3) Provide only those services within the scope of their provider's license; and
- (4) Provide, either directly or through an affiliate, all physical facilities, professional consultation, personal instructions, medical treatment, care, and all supplies necessary for carrying out an medically sound ESRD treatment program, including ~~((all of the following))~~:
 - (a) Dialysis for ESRD clients;
 - (b) Kidney transplant treatment, either directly or by referral, for ESRD clients when medically indicated;
 - (c) Treatment for conditions directly related to ESRD;
 - (d) Training and supervision of supporting personnel and clients for home dialysis, medical care, and treatment; and
 - (e) Supplies and equipment for home dialysis.

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

WAC 182-540-130 Covered services. (1) The ~~((department))~~ medicaid agency covers the following services and supplies subject to the restrictions and limitations in this section and other applicable published WAC:

- (a) In-facility dialysis;
- (b) Home dialysis;
- (c) Training for self-dialysis;

- (d) Home dialysis helpers;
- (e) Dialysis supplies;
- (f) Diagnostic lab work;
- (g) Treatment for anemia; and
- (h) Intravenous drugs.

(2) Covered services are subject to the limitations specified by the ~~((department))~~ agency. Providers must obtain prior authorization (PA) or expedited prior authorization (EPA) before providing services that exceed specified limits in quantity, frequency, or duration (refer to WAC ((388-501-0165 and 388-501-0169)) 182-501-0165 and 182-501-0169).

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

WAC 182-540-140 Noncovered services. (1) The ~~((department))~~ medicaid agency does not reimburse kidney centers for the following:

- (a) Blood and blood products (refer to WAC ((388-540-190)) 182-540-190);
- (b) Personal care items such as slippers~~((s))~~ and toothbrushes~~((s, etc.))~~; or
- (c) Additional staff time or personnel costs. Staff time is paid through the composite rate. Home dialysis helpers are the only personnel cost paid outside the composite rate (refer to WAC ((388-540-160)) 182-540-160).

(2) The ~~((department))~~ agency evaluates a request for any service listed as noncovered in this chapter under ~~((the provisions of WAC 388-501-0160))~~ WAC 182-501-0160.

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

WAC 182-540-150 Reimbursement—General. (1) Kidney center services described in this section are paid by one of two methods:

- (a) **Composite rate payments** - This is a payment method in which all standard equipment, supplies, and services are calculated into a blended rate.
 - (i) A single dialysis session and related services are reimbursed through a single composite rate payment (refer to WAC ((388-540-160)) 182-540-160).
 - (ii) Composite rate payments for continuous ambulatory peritoneal dialysis (CAPD) or continuous cycling peritoneal dialysis (CCPD) are limited to thirty-one per month for an individual client.
 - (iii) Composite rate payments for all other types of dialysis sessions are limited to fourteen per month for an individual client.

(b) **Noncomposite rate payments** - End-stage renal disease (ESRD) services and items covered by the ~~((department))~~ medicaid agency but not included in the composite rate are billed and paid separately (refer to WAC ((388-540-170)) 182-540-170).

(2) **Limitation extension request** - The ~~((department))~~ agency evaluates billings for covered services that are subject to limitations or other restrictions, and approves ~~((such))~~ the services beyond those limitations or restrictions when medically necessary under ~~((the provisions of WAC 388-501-0165 and 388-501-0169))~~ WAC 182-501-0165 and 182-501-0169.

(3) **Take-home drugs** - The ~~((department))~~ agency reimburses kidney centers for take-home drugs only when they meet the conditions described in WAC ~~((388-540-170))~~ 182-540-170(1). Other drugs for at-home use must be billed by a pharmacy and be subject to the ~~((department's))~~ agency's pharmacy rules.

(4) **Medical nutrition** - Medical nutrition products must be billed by a pharmacy or a durable medical equipment (DME) provider.

(5) **Medicare eligible clients** - The ~~((department))~~ agency does not reimburse kidney centers as a primary payer for Medicare eligible clients.

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

WAC 182-540-160 Items and services included in the composite rate. (1) The following equipment, supplies, and services for in-facility and home dialysis are included in the composite rate:

- (a) Medically necessary dialysis equipment;
- (b) All dialysis services furnished by the facility's staff;
- (c) Standard end-stage renal disease laboratory tests (refer to WAC ~~((388-540-180))~~ 182-540-180);
- (d) Home dialysis support services including delivery, installation, and maintenance of equipment;
- (e) Purchase and delivery of all necessary dialysis supplies;
- (f) Dec clotting of shunts and any supplies used to declo t shunts;
- (g) Oxygen and the administration of oxygen;
- (h) Staff time used to administer blood and nonroutine parenteral items;
- (i) Noninvasive vascular studies; and
- (j) Training for self-dialysis and home dialysis helpers.

(2) The ~~((medical assistance administration (MAA)))~~ medicaid agency issues a composite rate payment only when all ~~((of))~~ the ((above)) items and services in subsection (1) of this section are furnished or available at each dialysis session.

(3) If the facility fails to furnish or have available any of the ~~((above))~~ items((-MAA)) in subsection (1) of this section, the agency does not pay for any part of the items and services that were furnished.

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

WAC 182-540-170 Items and services not included in the composite rate. The following items and services are not included in the composite rate and must be billed separately, subject to the restrictions or limitations in this section and other applicable published WAC:

(1) Drugs related to treatment, including but not limited to epoetin alpha (EPO) and diazepam. The drug must:

- (a) Be prescribed by a physician;
- (b) Meet the rebate requirements described in WAC ~~((388-530-1125))~~ 182-530-7500; and
- (c) Meet the requirements of WAC 246-905-020 when provided for home use.

(2) Supplies used to administer drugs and blood;

(3) Blood processing fees charged by the blood bank (refer to WAC ~~((388-540-190))~~ 182-540-190); and

(4) Home dialysis helpers.

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

WAC 182-540-190 Blood products and services. (1) The ~~((medical assistance administration (MAA)))~~ medicaid agency reimburses free-standing kidney centers for:

(a) Blood processing and other fees assessed by non-profit blood centers that do not charge for the blood or blood products themselves; and

(b) Costs incurred by the center to administer its in-house blood procurement program.

(2) ~~((MAA))~~ The agency does not reimburse centers for blood or blood products (refer to WAC ~~((388-550-6500))~~ 182-550-6500).

(3) Staff time used to administer blood or blood products is reimbursed only through the composite rate (refer to WAC ~~((388-540-150 and 388-540-160))~~ 182-540-150 and 182-540-160).

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

WAC 182-540-200 Epoetin alpha (EPO) therapy. The ~~((medical assistance administration (MAA)))~~ medicaid agency reimburses the kidney center for EPO therapy when:

(1) Administered in the kidney center to a client:

(a) With a hematocrit less than thirty-three percent or a hemoglobin less than eleven when therapy is initiated;

(b) Continuing EPO therapy with a hematocrit between thirty and thirty-six percent; or

(c) Medical justification documented in the client's record is required for hematocrits ~~((greater))~~ more than thirty-six or ~~((hemoglobins greater than))~~ hemoglobins more than twelve. Medical justification includes:

(i) Documentation that the dose is being titrated downward to bring a patient's hematocrit back within target range; or

(ii) Documentation that it is medically necessary for the client to have a target hematocrit ~~((greater))~~ more than thirty-six percent.

(2) Provided to a home dialysis client:

(a) Under the same hematocrit~~((s))~~ and hemoglobin guidelines as stated in (1)(a) and (b) of this section; and

(b) When permitted by Washington board of pharmacy rules. (Refer to WAC 246-905-020 Home dialysis program—Legend drugs.)

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

WAC 182-540-210 Injectable drugs given in the kidney center. Injectable drugs administered in the kidney center are reimbursed up to the ~~((medical assistance administration's (MAA)))~~ medicaid agency published maximum fees.

WSR 15-11-065
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)

[Filed May 19, 2015, 8:24 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-06-036.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-408-0040 How does living in an institution affect my eligibility for Basic Food?, 388-474-0012 What is a state supplemental payment and who can get it?, and 388-460-0010 Do I have an authorized representative for Basic Food if I live in a treatment center or group home?

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 June 23, 2015, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 24, 2015.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, e-mail DSHS RPAU RulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5:00 p.m., June 23, 2015.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by June 9, 2015, phone (360) 664-6092 or TTY (360) 664-6178, e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend rules to update information and change references to the division of developmental disabilities (DDD) to the developmental disabilities administration (DDA), the new name as of 2013 for this administration of the department of social and health services (DSHS).

Reasons Supporting Proposal: DSHS underwent reorganization in 2013. This reorganization created the DDA. The community services division is coordinating this rule change with key staff in the DDA to make sure rule changes are consistent with that administration's regulations and state law.

Statutory Authority for Adoption: RCW 74.04.500, 74.04.510, and 74.08A.120.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ezra Paskus, 712 Pear Street S.E., Olympia, WA 98504, (360) 725-4611.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules do not have an economic impact on small businesses or nonprofits.

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, "This 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."

May 15, 2015
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-21-119, filed 10/17/14, effective 11/17/14)

WAC 388-408-0040 How does living in an institution affect my eligibility for Basic Food? (1) For Basic Food, an "institution" means a place where people live that provides residents more than half of three meals daily as a part of their normal services.

(2) Most residents of institutions are not eligible for Basic Food.

(3) If you live in one of the following institutions, you may be eligible for Basic Food even if the institution provides the majority of your meals:

(a) Federally subsidized housing for the elderly;

(b) Qualified drug and alcohol treatment centers when an employee of the treatment center is the authorized representative as described under WAC 388-460-0010;

(c) Qualified (~~(DDD)~~) developmental disabilities administration (DDA) group homes for persons with disabilities;

(d) A shelter for battered women and children when the resident left the home that included the abuser; or

(e) Nonprofit shelters for the homeless.

(4) A qualified (~~(DDD)~~) DDA group home is a nonprofit residential facility that:

(a) Houses sixteen or fewer persons with disabilities as defined under WAC 388-400-0040(~~(6)~~) (9); and

(b) Is certified by (~~(the division of developmental disabilities (DDD))~~) DDA.

(5) A qualified drug and alcohol treatment center is a residential facility that:

(a) Is authorized as a retailer by the U.S. Department of Agriculture, Food and Nutrition Service or operated by a private nonprofit organization; and

(b) Meets the division of behavioral health and recovery (DBHR) chemical dependency residential licensing and certification rules in WAC 388-877B-0200.

(6) The qualified drug and alcohol treatment center described in subsection (5) in this section must be:

(a) Receiving funds under part B of Title XIX of the Public Health Service Act;

(b) Eligible to receive funds under part B of Title XIX of the Public Health Service Act, but does not receive these funds; or

(c) Operating to further the purposes of part B of the Public Health Service Act to provide treatment and rehabilitation of drug addicts or alcoholics.

(7) Elderly or disabled individuals and their spouses may use Basic Food benefits to buy meals from the following meal providers if FNS has approved them to accept Basic Food benefits:

(a) Communal dining facility; or

(b) Nonprofit meal delivery service.

(8) If you are homeless, you may use your Basic Food benefits to buy prepared meals from nonprofit organizations

the department has certified as meal providers for the homeless.

AMENDATORY SECTION (Amending WSR 03-22-038, filed 10/28/03, effective 12/1/03)

WAC 388-460-0010 Do I have an authorized representative for Basic Food if I live in a treatment center or group home? (1) If you live in a qualified (~~(DDD)~~) developmental disabilities administration (DDA) group home under WAC 388-408-0040, you may choose to apply for Basic Food benefits:

- (a) On your own behalf;
 - (b) Through an authorized representative of your choice;
- or
- (c) Through the (~~(DDD)~~) DDA group home acting as your authorized representative.

(2) If you live in a qualified drug and alcohol treatment center under WAC 388-408-0040, you **must** have an employee of the facility as your authorized representative for Basic Food.

(3) The person acting as authorized representative for residents in a qualified drug and alcohol treatment facility or qualified (~~(DDD)~~) DDA group home must:

- (a) Be aware of the resident's circumstances;
- (b) Notify the department of any changes in income, resources or circumstances within ten days of the change;
- (c) Use the resident's Basic Food benefits for meals served to the resident; and
- (d) Keep enough benefits in the facility's account to transfer one-half of a client's monthly allotment to the client's own account. If the client leaves the facility on or before the fifteenth of the month, the facility must return one half of the client's Basic Food allotment for that month.

(4) When a facility assigns an employee as the authorized representative for residents, the facility accepts responsibility for:

- (a) Any misrepresentation or intentional program violation; and
- (b) Liability for Basic Food benefits held at the facility on behalf of the resident.

AMENDATORY SECTION (Amending WSR 05-07-031, filed 3/9/05, effective 4/9/05)

WAC 388-474-0012 What is a state supplemental payment and who can get it? (1) The state supplemental payment (SSP) is a state-funded cash assistance program for certain clients who the Social Security Administration determines are eligible for supplemental security income (SSI).

- (2) You can get an SSP if:
 - (a) You are a grandfathered SSI recipient under WAC 388-474-0001;
 - (b) You are an individual with an ineligible spouse under WAC 388-474-0001;
 - (c) You receive SSI because you are age sixty-five or older under WAC 388-474-0001;
 - (d) You receive SSI because you are blind under WAC 388-474-0001;
 - (e) You are determined eligible for SSP by the (~~(division of)~~) developmental disabilities administration; or

(f) You are eligible for and receive SSI as a foster child receiving specific services through children's administration behavior rehabilitation services (BRS) for part or all of a month, and not eligible for foster care reimbursement under Title IV-E of the Social Security Act.

WSR 15-11-067

PROPOSED RULES

DEPARTMENT OF CORRECTIONS

[Filed May 19, 2015, 9:13 a.m.]

Supplemental Notice to WSR 15-06-009.

Preproposal statement of inquiry was filed as WSR 14-21-090.

Title of Rule and Other Identifying Information: Chapter 137-80 WAC, Institutional industries, there are no changes to the rules from the previous filing.

Hearing Location(s): Edna Lucille Goodrich (ELG) Building, 7345 Linderson Way S.W., Room 1028 B/C, Tumwater, WA 98501, on June 23, 2015, at 2 p.m.

Date of Intended Adoption: June 29, 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 June 22, 2015.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To reflect changes to the department of corrections (DOC) institutional industries programs. Achieve more consistent operation of institutional industries programs.

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

Statutory Authority for Adoption: RCW 72.01.090.

Statute Being Implemented: RCW 72.09.100.

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

Name of Proponent: DOC, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Debra Eisen, Headquarters, (360) 725-8363.

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

Small Business Economic Impact Statement

A. INTRODUCTION: Under RCW 19.85.020 Definitions, subsection (3) "Small business" means any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees.

DOC did not include a "small business economic impact statement" (SBEIS) in its original February 20, 2015, publication of the CR-102 relating to chapter 137-80 WAC, Institutional industries, for two reasons:

1. Chapter 137-80 WAC relates to low-cost offender work crew services that are almost exclusively available to nonprofit corporations and government entities which are not generally referred to, thought of, or described as "small businesses"; and

2. Use of offender work crew services is voluntary. Businesses are not required to use the service. The changes proposed will only effect [affect] those eligible nonprofits and government entities that choose voluntarily to contract with DOC for low-cost labor provided by offenders. For-profit small businesses may not, by law, use Class IV or Class V offender work crew services.

Since publication of the CR-102, it was determined that the words, "other legal entity" in the definition of "small business" under RCW 19.85.020, may be construed to include nonprofit corporations and government entities. Therefore, DOC has filed a supplemental CR-102 to include an SBEIS and a cost-benefit analysis.

B. ECONOMIC IMPACT: An SBEIS requires a brief description of the fiscal impact on small businesses brought about by the compliance requirements in changes proposed to chapter 137-80 WAC. Specifically:

1. Recordkeeping: Each nonprofit and government entity (user) will be required to work with the department of labor and industries (L&I) to add the **L&I Risk Classification Code**, (4908 or 7203) for the type of offender services received, to its own account with L&I. Users will have to complete, sign and submit L&I "F213-112-000 application for elective coverage" to L&I to initiate the process. This will ensure the legality of the user paying the offender's L&I insurance premiums directly to L&I.

2. Reporting to L&I: Once each calendar quarter, users of work crew services must report the total number of hours during the previous quarter that offenders provided services to that user. At that same time, users must pay L&I the total cost of offender insurance premiums for each hour worked by an offender during the previous quarter.

Total hours = number of offenders X hours worked by offenders during the previous quarter.

Total cost = total offender hours worked during the previous quarter X L&I hourly premium.

Currently, DOC invoices users of offender work crew services for the total number of offender hours worked during each pay period. It is anticipated that such reporting will continue. Users should be able to add the number of hours invoiced during a quarter to obtain the data needed to submit their quarterly reports and payment to L&I.

For 2015: (a) **DOC Class IV Prison Work Crews = Risk Classification Code 4908, Inmates of Adult Honor Camps** - L&I coverage costs \$.3511 per offender/per hour. Offenders on Class IV work crews reside in Washington state prisons.

(b) **DOC Class V Community Service Crews = Risk Classification Code 7203, Community Service Workers** - L&I coverage costs \$.4278 per offender/per hour. Offenders on Class V crews reside in a work release facility or on their own in the community.

3. Other Compliance Requirements: (a) Provide relevant job-specific and site-specific safety training to offenders;

(b) Supervise the work for compliance with project requirements; and

(c) Conduct an advance hazardous conditions and materials assessment, in accordance with chapter 49.17 RCW, Washington Industrial Safety and Health Act, for each dis-

inct project and report the results, in writing, to DOC using form DOC 03-247 (Rev. 10/22/12) or other that requires the hazard location, the hazard type, the level of risk and seriousness of potential injury, and whether particular types of personal protective equipment are necessary.

L&I will, upon request and at no cost, perform workplace hazards inspections and report its findings. Users of offender services may have L&I perform the required workplace hazards inspections if and when the proposed changes to chapter 137-80 WAC are approved.

4. Professional Services That a Small Business Will Need to Comply: Probably none, however, the need for clerical or work project oversight services will depend upon the size and structure, capacity and ability of each nonprofit or government entity using offender services. It is therefore not possible for DOC to estimate what, if any, additional professional services a user may require.

5. Cost of Compliance:

(a) **Expenses:**

(1) Users of work crew services may experience an increase in the cost of general liability insurance. Insurance companies *may* charge more for such coverage because:

i. The payroll has increased with the addition of offender workers; and

ii. A rise of the possibility of tort claims resulting from the actions or omissions of offenders during the performance of services for the nonprofit or government entity.

(2) There may be increased costs associated with the three components of number 3, "Other compliance requirements:" above. However, such costs, if any, will be project dependent. This is because the capacity and ability of each nonprofit or government entity to perform those compliance requirements will differ depending upon the size and structure of the entity. The complexity of offender services will also differ depending upon the nature of each project. Therefore, it is not possible for DOC to estimate what, if any, additional costs may be incurred.

(b) **Saving:** L&I expects a downward cost adjustment for offender worker L&I coverage from those rates now paid, once offender risk classifications are added to users' L&I accounts.

(c) **Insurance Coverage:** While there *may* be a rise in the cost of general liability insurance premiums, the actual insurance *coverage* will be far greater. A claim resulting from an incident involving an offender, for which such involvement is not reported, would most likely not be covered by any insurer learning of the offender involvement. The nonprofit or government entity would bear the entire cost of incident related damages apportioned to it. Without openness about participation of offender workers, the nonprofit or government entity is effectively *not* insured and may be putting its financial solvency at risk.

6. Based on Input Received, Will Compliance Cause Business[es] to Lose Sales or Revenue? Possible revenue loss. A few users have told DOC that offender work crew services are used as their "matching contribution" to meet requirements of grants that they receive. Further, that they fear that the transfer of liability, brought about by adding offender risk classifications to user L&I accounts, may lead them to conclude that it is no longer advantageous to use

offender services. In which case, they will have to find other "matching contributions" or lose grant funding.

7. Disproportionate Cost Impact on Small Businesses? Whether large or small, nonprofit or government users of offender work crew services will pay the same rate for offender L&I coverage and be required to follow all of the same requirements. Except that those eligible for "good-will work projects" (see #8 below) may receive offender services at no charge.

8. Steps Taken by DOC to Reduce the Costs of the Rule on Small Businesses: Although users of offender work crew services do so voluntarily, the WAC changes proposed include the designation of Class IV "good-will work projects" for which DOC will pay offender wages and the cost of offender L&I insurance coverage. The eligibility criteria for good-will services will be established by the DOC secretary. Examples of possible eligibility criteria include: Altruistic projects to enhance quality of life in the community; economy of scale or scope; links to training or skill development for offender reentry; and project cost and complexity.

9. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: Based upon stakeholder public testimony and written comments DOC will consider revisions to its proposed WAC changes.

10. A List of Industries That Will Be Required to Comply with the Rule: Any public benefit nonprofit, local government entity or federally recognized Indian tribe in Washington state, that chooses to use offender work crew services, must comply. Use of offender work crews is voluntary.

11. An Estimate of the Number of Jobs That Will Be Created or Lost as the Result of Compliance with the Proposed Rule: Likely none, but impact on jobs must be attributed to each user's initial funding base or structure for positions whether operational, direct or indirect, matching, grant funded or other, all of which is unknown to DOC.

Preliminary Cost-Benefit Analysis Under RCW 34.05.328

ISSUE: Are the probable qualitative and quantitative benefits of the rule greater than its probable costs?

A. Please see economic impact statement (5), cost of compliance, above. Proposed changes to the WAC may result in users of offender services experiencing an increase in the amount paid for general liability insurance coverage. Exactly how much more is not known but, as with all insurance coverage, the amount will likely differ due to each nonprofit and government entity's own insurance claim history.

While a possible rise in the cost of general liability insurance coverage is a regrettable and unintended consequence, any such increase must be viewed in context:

1. Use of offender services is voluntary. Nonprofits and government entities are not required to use offender services. Use will remain voluntary, whether or not changes to the WAC are adopted.

2. Use of offender Class IV and Class V services is limited to public benefit nonprofits and government entities and made available to them at greatly reduced rates.

3. DOC risk management personnel expects that general liability insurance will remain available to users after insurers are informed that offenders are included. If such coverage is

not available from a user's current insurance company, then by another company willing to insure against that risk.

4. It costs approximately **\$148 per day, including payment of L&I premiums**, for eight hours of work from a crew of ten offender workers providing Class IV services. (Plus \$.56 per mile to transport the crew.)

For example:

- Offender gratuity = \$1.50/hour X 8 hours X 10 offenders = \$120 per day for 80 hours
- L&I coverage = \$.3511/hour X 8 hours X 10 offenders = \$28 per day for 80 hours

Offender crew total: \$148 per day

5. It costs **\$758 per day** for eight hours of work from a crew of ten nonoffender workers paid the Washington state minimum wage of \$9.47 per hour. Payment of **L&I premiums is not included** because the rate is unknown, but it will almost assuredly be higher than the rates established for offender risk classifications #4908 and #7203.

B. Department Conclusion: The economic benefits of using offender services outweigh any increase in direct costs due to changes in the controlling WAC.

A major concern expressed by stakeholders is the possibility of increased cost for general liability insurance coverage or of losing such coverage altogether. In response, DOC posits the following example:

If a user of offender services currently pays \$5,000 per year for liability insurance and that rate increases by twenty-five percent to \$6,250 per year, if and when the proposed WAC changes are adopted, it is more cost-effective for that user to continue to use Class IV offender services than [than] to obtain the same or similar services elsewhere.

The computations in Section A above show the difference in the cost of a day of work by ten offenders, (**\$148.00**) versus ten nonoffenders, (**\$758.00**) to be more than \$600 per day. Using the hypothetical example of a twenty-five [percent] increase in the cost of general liability insurance, a \$1,250 increase in the cost of such insurance could be offset by two days of offender vs. nonoffender services.

Finally, users of offender services that inform insurance providers that offenders are among those to be covered may be more certain that coverage will be in place if and when a claim is made. Not informing insurers, in advance, that offenders are among those to be covered may result in disagreement[s] over claim coverage at the time when such coverage is most needed.

A copy of the statement may be obtained by contacting Debra Eisen, P.O. Box 41114, Olympia, WA 98504-1114, phone (360) 725-8363, fax (360) 664-2009, e-mail debra.eisen@doc.wa.gov.

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

May 19, 2015
Dan Pacholke
for Bernard Warner
Secretary

Chapter 137-80 WAC

((INSTITUTIONAL)) CORRECTIONAL INDUSTRIES AND PROGRAMS

AMENDATORY SECTION (Amending WSR 03-21-088, filed 10/17/03, effective 11/17/03)

WAC 137-80-010 Purpose. These rules and regulations are adopted pursuant to and in accordance with chapter 34.05 RCW. The purpose is to provide standards and procedures ((for the operation of the division of institutional industries)) necessary to ensure the implementation of a comprehensive offender work program. (See RCW 72.09.015(32).) The headings and captions for the above classes are used for convenience only and do not constitute a part hereof. The use of the term "class" to identify a work program does not restrict the department to a singular description of an offender work program within that class or the use of other offender work programs authorized by separate statute. The secretary may adopt policies providing further guidance for establishing, among other things, offender participation eligibility and security requirements for each class of work program.

AMENDATORY SECTION (Amending WSR 07-12-073, filed 6/5/07, effective 7/6/07)

WAC 137-80-020 Definitions. ((1) "Secretary" means the secretary of the department of corrections or his/her designee.

(2) "Program administrator" means the administrator of the institutional industries program appointed by the secretary.

(3) "Institutional industries board of directors" means the board established by the authority of the Corrections Reform Act of 1981, RCW 72.09.070.

(4) "Free venture industries" means any industry producing goods or services for sale to both the public and private sector which is operated and managed in total or in part by any profit or nonprofit organization pursuant to an agreement between the organization and the department. Inmates shall be paid a wage by the organization of not less than sixty percent of the approximate prevailing wage within the state for the occupation, as determined by the director, or minimum wage, whichever is greater.

(5) "Tax reduction industries" means any state-owned and operated enterprises designed to reduce the cost for services and goods for tax-supported agencies and for nonprofit organizations which assist persons who are poor or infirm. Products of these enterprises may be sold to public agencies and to nonprofit organizations which assist persons who are poor or infirm. Inmates shall be paid for their work on a gratuity scale, approved by the director, which shall not exceed the federal minimum wage.

(6) "Institutional support industries" means any industry operated by the department of corrections designed and managed to provide basic work training and experience to the inmate. All able and eligible inmates who are assigned work and who are not working in other classes of industries are included in this class. Inmates shall be paid for their work in

accordance with an inmate gratuity scale adopted by the secretary.

(7) "Community work industries" means any industry operated by the department of corrections designed and managed to provide services in the inmate's resident community at a reduced cost. Services shall be provided to public agencies, to persons who are poor or infirm, or to nonprofit organizations which assist the poor or infirm. Inmates shall receive a gratuity from a unit of local government which shall not exceed the minimum wage.

(8) "Community restitution programs" means any program operated by the state, local unit of government, or a nonprofit agency which assists persons who are poor or infirm which is subject to supervision by the department of corrections which enables an offender, placed on probation, to work off all or part of a community service order as ordered by the sentencing court.

(9) "Department" means the department of corrections.

(10) "Institutional industries" means the program within the department of corrections charged with developing and managing comprehensive work programs to provide work skills, work experience and exposure to the work ethic for offenders under the jurisdiction of the department.) (1) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time, or imposed as part of a sentence, and served in the community subject to controls placed on the offender's movement and activities by the department. (See RCW 9.94A.030.)

(2) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(3) "Community supervision" means a period of time during which a convicted offender, while living in the community, is subject to crime-related prohibitions and other sentence conditions imposed by a court. (See RCW 9.94B.020 (2).)

(4) "Contracting entity" means a for-profit corporation, a public benefit nonprofit corporation, or public agency, as these terms are defined herein.

(5) "Correctional facility" means a facility, prison, or institution operated directly or by contract by the secretary for the purposes of incarcerating adults in total or partial confinement, as defined in RCW 9.94A.030.

(6) "Correctional industries advisory committee" or "committee" means the committee created under RCW 72.09.070 to make recommendations to the secretary regarding the implementation of RCW 72.09.100.

(7) "Crew supervisor" means a department or other public agency employee who provides security and custody supervision of offenders and coordinates offender transportation to offender work program sites.

(8) "Department" means the department of corrections.

(9) "DOSH" means the division of occupational safety and health, the part of the Washington state department of labor and industries (L&I) that develops and enforces safety and health rules.

(10) "For-profit corporation" means a corporation of two or more persons having a joint or common economic interest and is engaged in any lawful business under RCW 23B.03.-010.

(11) "Good-will project" means a type of Class IV project, the cost of which is paid by the department of corrections and the criteria for which is determined by the secretary or designee.

(12) "Gratuity" means the sum of money paid to an offender, in accordance with an hourly rate scale approved by the department, when the offender works in an eligible class industry.

(13) "Not-for-profit corporation" or "nonprofit corporation" means a corporation or organization, no part of the income of which is distributable to its members, directors, or officers.

(14) "Offender work programs" means comprehensive work programs designed to provide work skills, work experience and exposure to the work ethic for offenders.

(15) "Program director (director)" means the administrator of the correctional industries program appointed by the secretary.

(16) "Project agreement" means the written agreement required between a prison and a public benefit nonprofit corporation or a public agency for offenders to perform Class IV good-will projects.

(17) "Public agency" means any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi-municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state. (See RCW 39.34.020(1).)

(18) "Public benefit nonprofit corporation" means a corporation or an organization no part of the income of which is distributable to its members, directors, or officers and that holds a current tax exempt status as provided under 26 U.S.C. Sec. 501 (c)(3) or is specifically exempted from the requirement to apply for its tax exempt status under 26 U.S.C. Sec. 501 (c)(3). (See RCW 24.03.005.)

(19) "Secretary" means the secretary of the department of corrections or his/her designee.

(20) "Work location" means the location where offenders perform the services or create the products requested by the contracting entity; over which the contracting entity 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 adopted or hereafter amended.

(21) "Work project description" means a localized agreement that operates under a master Class IV or Class V contract to detail the responsibilities of each party for each distinct project.

(22) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school.

(23) "Worker" means an offender who provides his or her personal labor, whether manual labor or otherwise, to a contracting entity or the department, as permitted by law.

AMENDATORY SECTION (Amending WSR 82-18-042, filed 8/27/82)

WAC 137-80-030 Establishment of ~~((inmate))~~ offender programs. In order to provide a comprehensive work program the department, in following the recommendation of the legislature, has adopted the following classes of work programs ~~((are adopted))~~ and made variations thereof:

- (1) Class I: Free venture industries;
- (2) Class II: Tax reduction industries;
- (3) Class III: Institutional support industries;
- (4) Class IV: Community work ~~((industries))~~ crews; and
- (5) Class V: ~~((Community service programs))~~ Restitution, work release and community supervision or custody.

~~((The above listed classes of work programs are adopted as codified in RCW 72.09.100. The secretary shall set forth department policy for the establishment of each class of work program, regulating, among others, inmates participation and wages, space rental and contracts for inmate employment.))~~

NEW SECTION

WAC 137-80-031 Class I: Free venture industries.

(1) The employer model industries in this class shall be operated and managed in total or in part by any for-profit or nonprofit corporation pursuant to an agreement between the corporation and the department. The corporation shall produce goods or services for sale to both the public and private sector.

(2) The customer model industries in this class shall be operated and managed by the department to provide Washington state manufacturers or businesses with products or services currently produced or provided by out-of-state or foreign suppliers.

(3) The department shall review these proposed industries, including any potential new Class I industries work program or the significant expansion of an existing Class I industries work program, before the department contracts to provide such products or services. The review shall include the analysis required under RCW 72.09.115 to determine if the proposed correctional industries work program will compete with any Washington business. An agreement for a new Class I correctional industries work program, or an agreement for a significant expansion of an existing Class I correctional industries work program, that unfairly competes with any Washington business is prohibited.

(4) The department shall supply appropriate security and custody services without charge to the participating firms.

(5) Offenders who work in free venture industries shall do so at their own choice. They shall be paid a wage comparable to the wage paid for work of a similar nature in the locality in which the industry is located, as determined by the program director of correctional industries. If the program director cannot reasonably determine the comparable wage, then the pay shall not be less than the federal minimum wage.

(6) An offender who is employed in the Class I program of correctional industries shall not be eligible for unemployment compensation benefits pursuant to any of the provisions of Title 50 RCW until released on parole or discharged.

NEW SECTION

WAC 137-80-032 Class II: Tax reduction industries.

(1) The department may establish Class II industry work programs that are closely patterned after private sector industries but are designed primarily to reduce the cost of goods and services. Goods produced and services provided by Class II work programs shall be provided at a reduced cost and only be available to the department, other tax-supported agencies and nonprofit corporations.

(a) The industries selected for development within this class shall, as much as possible, match the available pool of offender work skills and aptitudes with the work opportunities in the free community. Offenders working in Class II work programs do so at their own free choice.

(b) Except as provided in RCW 39.26.251 and this section, the products and services of this class, including purchased products and services necessary for a complete product line, may be sold by the department to the following:

- (i) Public agencies;
- (ii) Nonprofit corporations;
- (iii) Private contractors when the goods purchased will be ultimately used by a public agency or a nonprofit corporation;
- (iv) An employee and immediate family members of an employee of the department;
- (v) A person under the supervision of the department and his or her immediate family members; and
- (vi) A licensed health professional for the sole purpose of providing eyeglasses to enrollees of the state medical program at no more than the health professional's cost of acquisition.

(c) The secretary may issue guidance governing the type and quantity of items that may be purchased for other than resale purpose and sold under (b)(iv) and (v) of this subsection.

(d) Clothing manufactured by an industry in this class may be donated to public benefit nonprofit corporations that provide clothing free of charge to low-income persons, but under no circumstance shall uniforms to be worn by correctional officers employed with the department be made or assembled by offenders under the custody of the department.

(2) Security and custody services shall be provided at state expense by the department.

(3) The department may establish Class II work programs operated and managed in partnership with a public benefit nonprofit corporation pursuant to a contract between the corporation and the department to provide goods and/or services. The work programs may provide job training to offenders and may allow those offenders who have successfully completed a public benefit nonprofit corporation's job training program to request work assignment to the work program.

NEW SECTION

WAC 137-80-033 Class III: Institutional work programs.

(1) Class III work programs are operated by the department to support operation and maintenance needs of the facility and if possible, offset tax and other public support costs. Offenders assigned to Class III industries work in the prison to support internal prison operations.

(2) A contract is not required for Class III programs.

(3) Each prison will determine its own Class III work programs.

(4) Whenever possible, Class III programs will provide forty hours per week of basic work, or work training and experience, to help offenders to qualify for better work both within institutional industries and in the community.

(5) With approval of the secretary, a facility may, by written contract, partner with a public benefit nonprofit corporation to provide job specific training and work to offenders within the prison. Work performed by the offenders must be designed to produce goods or services for public agencies and/or public benefit nonprofit corporations at a reduced cost.

After completion of training, offenders may request assignment to the Class III program in the prison in which they received job specific training. Offenders assigned to such Class III programs may be required by the program, to fulfill occasional job related work requirements outside of the prison. Offenders approved for such off-site Class III work will be:

(a) Approved, in advance, by the prison superintendent or designee, to leave the prison grounds;

(b) Escorted by, and under the supervision of, a correctional officer at all times;

(c) Required to return to the prison the same day. Overnight absences will not be permitted; and

(d) Covered by the department offender health plan in the event of illness or injury while away from the prison.

(6) The department will:

(a) Screen and select the offenders to work in Class III programs based upon eligibility criteria developed by the department;

(b) At state expense, provide the management, work supervision, security and custody services required for all Class III programs; and

(c) Compensate offenders for work in Class III programs.

(i) The compensation paid to offenders working under Class III job descriptions shall be the same across all prisons for work that utilizes the same or similar job descriptions; and

(ii) Compensation will be paid to offenders in accordance with the payment scale established by the department for Class III work.

(7) Offenders working in Class III work programs are not eligible for industrial insurance benefits. (See RCW 72.60.102.)

NEW SECTION

WAC 137-80-034 Class IV: Community work crews.

Offenders in Class IV work status reside in facilities contracted for, owned or licensed by the department and partici-

pate in programs that have both education and work components.

(1) Prisons may provide two types of Class IV services. The first or standard type (standard), will constitute the majority of Class IV work and be paid for by the recipient of the services. The second and far less frequent type of Class IV service, a "good-will project" (project), will be paid for by the department.

(2) The secretary or designee will determine the criteria for Class IV good-will projects.

(3) Class IV services may be initiated by the department or provided at the request of a public agency or a public benefit nonprofit corporation.

(4) Class IV services are performed in the community, generally in the county in which the prison is located.

(5) Offenders in the same facility, who perform Class IV work utilizing the same or similar job descriptions, shall be compensated equally for the services that they provide.

(6) Class IV services do not require skilled labor, are not performed on private property, unless owned or operated by a public benefit nonprofit corporation, and have minimal negative impact on existing private industries or the labor force in the county where the service is provided.

(7) For standard Class IV services:

(a) The department will require:

(i) A master contract, written with program input, in the department's office of contracts and legal affairs and signed by the department secretary or contracts administrator and an authorized representative of the public agency or public benefit nonprofit corporation requesting the work; and

(ii) The master contract is signed by both parties before a work project description, which operates under the master contract to detail the responsibilities of each party for each project, is signed and services may begin.

(b) The public agency or public benefit nonprofit corporation that requests/receives the services will:

(i) Sign a Class IV master contract and, for each distinct project, sign a work project description under that master contract;

(ii) Provide relevant job specific and site specific safety training to offenders so that they can safely perform the required work;

(iii) At no cost to the department, supervise the project and direct the work performed;

(iv) Pay the department directly:

(A) At the then current state mileage rate, for transporting offenders to and from the worksite each day; and

(B) Offender compensation for the work performed.

(v) Pay the cost of worker's compensation insurance coverage for each offender providing services, directly to the Washington state department of labor and industries.

(vi) At the start of each calendar quarter, report the total number of offender service hours received during the previous quarter, to the department of labor and industries.

(8) For good-will projects the department will:

(a) Require a written and signed "project agreement" before offenders may begin work. The project agreement template:

(i) Is available from DOC contracts and legal affairs for completion and signature at the facility;

(ii) Must be signed by the prison superintendent or designee and an authorized representative of the public benefit nonprofit or public agency; and

(iii) Sent to DOC contracts and legal affairs, within two calendar days after it is signed by both parties.

(b) At state expense, provide the management, work supervision, security and custody services required;

(c) Compensate offenders for work performed;

(d) Pay department of labor and industries directly for offender worker's compensation insurance coverage for each offender providing services.

(e) At the start of each calendar quarter, report the total hours of offender good-will project services provided during the previous quarter to department of labor and industries; and

(f) A facility may, at its own discretion for a specific project, conduct the advance hazardous conditions and/or materials inspection itself or waive the requirement. Any waiver of the requirement will be based upon facility experience with the project site or the work to be performed.

(9) For all Class IV services:

(a) The department will:

(i) Screen and select the offenders for work crews based upon eligibility criteria developed by the department;

(ii) Review the public agency or public benefit nonprofit's hazardous conditions/materials report to assess whether to provide the requested services or require site remediation by the property owner before offenders begin the work;

(iii) Provide offenders with the necessary job specific protective clothing, as needed;

(iv) Transport offenders to and from worksites;

(v) Provide custody and security supervision of the offenders; and

(vi) Provide or coordinate the educational components of the program.

(b) The public agency or public benefit nonprofit corporation that requests/receives the services will conduct an advance hazardous conditions and materials assessment, in accordance with chapter 49.17 RCW, Washington Industrial Safety and Health Act, for each distinct project and report the results, in writing, to the department;

(10) Class IV correctional industries programs operated in work camps established pursuant to RCW 72.64.050 are managed under separate intergovernmental and local agreements and are exempt from these requirements.

NEW SECTION

WAC 137-80-035 Class V: Restitution, work release, and community supervision or custody. (1) Participants in this class are offenders who are:

(a) In court ordered community restitution programs;

(b) In work release status; or

(c) Under community supervision or custody.

(2) Class V programs require a master contract, written in the department's office of contracts and legal affairs and signed by the department secretary or contracts administrator and an authorized representative of the public agency or public benefit nonprofit corporation requesting the work. The

master contract must be signed by both parties before a work project description, which operates under the master contract to detail the responsibilities of each party for each project, is signed and services may begin.

(3) Class V programs may be operated by the department or by another public agency. Services in this class may only be provided to public agencies or to public benefit nonprofit corporations. The department may, by written contract, operate Class V crews that include offenders under the jurisdiction of other governmental entities. The department's authority over offenders under the jurisdiction of other governmental entities will be limited to that which is necessary for those offenders to participate on department Class V crews.

(4) When Class V programs are operated by the department, the department will:

(a) Transport offenders to and from worksites;

(b) Provide custody and security supervision of the offenders;

(c) Review the hazardous conditions/materials report to assess whether to provide the requested services or require site remediation before offenders begin the work; and

(d) Provide offenders with job specific personal protection clothing, as needed.

(5) The public agency or public benefit nonprofit corporation that receives the services will:

(a) Conduct an advance hazardous conditions and materials assessment, in accordance with chapter 49.17 RCW, Washington Industrial Safety and Health Act, for each distinct project, and, in writing, report the results to the department;

(b) Provide relevant job specific and site specific safety training to offenders so that they can safely perform the required work;

(c) At no cost to the department, supervise the project and direct the work performed by the offenders;

(d) Pay the department, at the then current state mileage rate, for transporting offenders to and from the project site each day; and

(e) Pay the Washington state department of labor and industries directly for the cost of worker's compensation insurance coverage for every offender providing services. (See WAC 137-80-080 and RCW 51.12.045.)

AMENDATORY SECTION (Amending WSR 03-21-088, filed 10/17/03, effective 11/17/03)

WAC 137-80-040 Sale of goods. (1) The ~~((program administrator))~~ director or his/her designee may sell all articles, materials, and supplies authorized by statute to be produced or manufactured in correctional institutions to any state agency, political subdivision of the state or as otherwise authorized by statute.

(2) The secretary shall require those institutions under his/her direction to give preference to those articles, materials, and supplies produced or manufactured by ~~((institutional))~~ correctional industries when purchases are made for institution needs.

(3) The ~~((program administrator))~~ director may cause to be prepared annually, at such times he/she may determine, lists containing the descriptions of all articles and supplies

manufactured and produced in state correctional institutions; copies of such list shall be sent to the supervisor of purchasing and to all departments, institutions and agencies of the state of Washington.

AMENDATORY SECTION (Amending WSR 82-18-042, filed 8/27/82)

WAC 137-80-050 Proceeds of sale. Except for any sum recommended by the ~~((institutional industries board of directors))~~ committee to be returned to the state general fund, all net profits from institutional industries shall be placed in a special revolving fund (Class II account) and shall be used exclusively, without appropriation, in the expansion and improvement of Class II industries.

AMENDATORY SECTION (Amending WSR 03-21-088, filed 10/17/03, effective 11/17/03)

WAC 137-80-060 Inmate job opportunities. (See RCW 72.09.120.) The ~~((program administrator))~~ director shall cause to be periodically prepared and distributed to a central location in each institution a list of ~~((prison))~~ correctional industries' and programs' job opportunities. This list shall include, but not be limited to, job descriptions and the educational and skill requirements of each job and shall be made available to institution personnel ~~((of the institution))~~, institutional industries and ~~((to the inmates))~~ offenders.

NEW SECTION

WAC 137-80-070 Safety and health. (1) As required by the state division of occupational safety and health (DOSH), participants in offender work programs will be provided a safe and healthy workplace free from recognized hazards.

(2) All correctional industries and programs will adhere to relevant federal and state safety laws as well as to departmental safety policies and requirements.

(3) The department will determine whether or not offenders may perform the requested services in Classes IV and V. The department's determination will be based upon the written results of a hazardous conditions and materials assessment, performed in accordance with chapter 49.17 RCW, Washington Industrial Safety and Health Act, and conducted and provided to the department by the recipient of the offender services.

(4) Offenders in Classes I, IV, and V shall receive work and safety training and any necessary personal protective equipment (PPE), in accordance with the contract scope of work and/or the work project description.

(5) Offenders participating in Class III programs are not considered "employees" for DOSH purposes.

(6) For DOSH purposes, offenders participating in Class V programs may be considered "employees" of the public agency or public benefit nonprofit corporation for which the services were performed. (See RCW 51.12.045.)

NEW SECTION

WAC 137-80-080 Industrial insurance. (1) No inmate compensated for work in correctional industries shall be considered as an employee or to be employed by the state or the department.

(2) Offenders working in Classes I, II, and IV of correctional industries are eligible for industrial insurance benefits as provided by Title 51 RCW.

(3) Offenders working in Class III industries are ineligible for industrial insurance benefits.

(4) For offenders working in Class V, industrial insurance medical aid coverage will be purchased by the entity for which the offenders are performing the work. To initiate coverage, the contracting entity will complete, sign and submit directly to L&I, the L&I application for elective coverage of excluded employees (application), before the occurrence of an injury or contraction of an occupational disease, by an offender to be covered.

(a) For offenders performing community restitution work, the contracting entity will check box 10 (community service workers) of the application;

(b) For offenders in work release status or under community supervision or custody, the contracting entity will check box 9 (volunteer worker, 6901 - Community improvement project) of the application.

(5) Any premiums or assessments due under Title 51 RCW for an offender's coverage shall be the obligation of the contracting entity for which the offender is performing the work, and shall be paid directly to the department of labor and industries by the contracting entity. Except that, L&I premiums due for offenders performing Class IV good-will projects shall be paid directly to L&I by the department.

NEW SECTION

WAC 137-80-090 Work crew costs and responsibilities. (1) Nothing in this chapter shall be construed as limiting the regulatory authority of the department of labor and industries in determining health and safety compliance and employer status for purposes of DOSH and Title 51 RCW, the issuance or review of citations or corrective actions related to health and safety compliance in the workplace provided the offender crew, or in determining responsibility for payment of fees due under Title 51 RCW.

It is understood that the responsible divisions within the department of labor and industries shall act independently in any review of claims or citations. Public agencies and public benefit nonprofit corporations that contract with the department will be responsible for safety and health conditions at the worksite, have the responsibility and the authority for ensuring that any hazardous condition is corrected, and as applicable, pay the cost of each offender's industrial insurance coverage and gratuity.

(2) The department will provide security and custody supervision of offenders to fulfill its mission to improve public safety and to maintain custody as required by state law.

NEW SECTION

WAC 137-80-100 Application limited to this chapter. The powers and authority conferred by this chapter shall be construed as limited to this chapter and nothing herein shall be construed as applying to any other offender work programs authorized by federal law or Washington state law. Neither shall anything contained herein be construed as limiting any other powers or authority of any public agency.

WSR 15-11-070**WITHDRAWAL OF PROPOSED RULES
DEPARTMENT OF REVENUE**

(By the Code Reviser's Office)

[Filed May 19, 2015, 10:16 a.m.]

WAC 458-20-153 and 458-20-154, proposed by the department of revenue in WSR 14-22-085, appearing in issue 14-22 of the Washington State Register, which was distributed on November 19, 2014, is withdrawn by the office of the code reviser under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 15-11-072**PROPOSED RULES
DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**
(Developmental Disabilities Administration)

[Filed May 19, 2015, 11:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-18-086.

Title of Rule and Other Identifying Information: Chapter 388-829 WAC, Community residential service business training requirements.

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 July 7, 2015, at 10:00 a.m.

Date of Intended Adoption: Not earlier than July 8, 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., July 7, 2015.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by June 23, 2015, phone (360) 664-6092 or TTY (360) 664-6178, e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This new chapter of WAC is proposed to adopt rules as required per chapter 74.39A RCW related to training for supported living busi-

nesses and their staff in a separate chapter of developmental disabilities administration (DDA) rules. These new rules will help reduce confusion between the various requirements for supported living businesses and their staff, and those related to residential long term care contained in chapter 388-112 WAC.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120.

Statute Being Implemented: RCW 74.39A.074, 74.39A.-341, 74.39A.351, 18.88B.041.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jan Sprow, DDA, P.O. Box 45310, Olympia 98504-5310, (360) 725-3432.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The department has analyzed the proposed rules and determined that they do not impose more than minor costs on affected small businesses or small nonprofit organizations.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is not a significant rule, as defined in RCW 34.05.328 (5)(b)(iii), rules adopting or incorporating Washington state statutes by reference without material change.

May 15, 2015
Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 15-12 issue of the Register.

WSR 15-11-073
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)

[Filed May 19, 2015, 11:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-07-007.

Title of Rule and Other Identifying Information: WAC 388-825-145 Will my benefits continue if I request an administrative hearing?

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 June 23, 2015, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 24, 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., June 23, 2015.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by June 9, 2015, phone (360) 664-6092 or TTY (360) 664-6178, e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Federal regulation 42 C.F.R. §431.232(d) does not allow medicaid benefits to continue at their previous level following an evidentiary hearing decision to reduce or terminate those benefits. Therefore, this amended rule is proposed to ensure the administration has language in rule that conforms to the C.F.R. regarding continuing benefits.

Reasons Supporting Proposal: See Purpose above.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: 42 C.F.R. §431.232.

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

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Shannon Manion, Developmental Disabilities Administration, P.O. Box 45310, Olympia 98504-5310, (360) 725-3454.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule does not impact small business or nonprofits. It only impacts DSHS clients.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is exempt under RCW 34.05.-328 (5)(b)(vii) and relate only to client medical or financial eligibility.

May 15, 2015
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-04-072, filed 2/4/08, effective 3/6/08)

WAC 388-825-145 Will my benefits continue if I request an administrative hearing?

(1) If you request an administrative hearing regarding the department's decision to transfer you from a residential habilitation center to the community under RCW 71A.20.080, the rules in WAC 388-825-155 apply.

(2) If you request an administrative hearing (~~within the ten day notice period, as described in chapter 388-458 WAC, unless one or more of the conditions in WAC 388-825-150 applies, the department will take no action until there is a final decision on your appeal of the department's decision to:~~

~~(a) Terminate your eligibility for services;~~

~~(b) Reduce or terminate your services;~~

~~(c) Reduce or terminate the payment of SSP set forth in chapter 388-827 WAC; or~~

~~(d) Disenroll you from a DDD home and community based services waiver under WAC 388-845-0060, including a disenrollment from a waiver and enrollment in a different waiver)) regarding the department's decision to reduce or terminate your services, and you request the hearing before the~~

date specified on the notice of the action, and none of the conditions in WAC 388-825-150 applies, the department will not reduce or terminate those services unless and until an administrative law judge issues an initial order or a review judge issues a final order that reduces or terminates those services. This subsection also applies to the department's decision to disenroll you from a DDA home and community based services waiver under WAC 388-845-0060.

(3) The department will take no action until there is a final decision on your appeal of the department's decision to remove or transfer you to another residential service unless one or more of the conditions in WAC 388-825-150 applies.

(4) The department will take no action until there is a final decision on your appeal to terminate your provider of choice unless one or more of the circumstances described in WAC 388-825-150 applies.

(5) After the administrative hearing, you may have to pay back up to sixty days of the continued benefits you get (as described in chapter 388-410 WAC,) if the administrative hearing decision ((is in favor of the department)) determines your benefits should be less than the continued benefits you have received.

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

WSR 15-11-077
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION
[Filed May 19, 2015, 1:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-05-022.

Title of Rule and Other Identifying Information: Chapter 392-700 WAC, Dropout reengagement.

Hearing Location(s): Office of Superintendent of Public Instruction, Old Capitol Building, Brouillet Room, 600 South Washington, Olympia, WA, on July 1, 2015, at 9:30 a.m.

Date of Intended Adoption: July 2, 2015.

Submit Written Comments to: Becky McLean, Old Capitol Building, P.O. Box 47200, Olympia, WA 98504-7200, e-mail becky.mclean@k12.wa.us, fax (360) 664-3683, by June 24, 2015.

Assistance for Persons with Disabilities: Contact Kristin Murphy by June 24, 2015, TTY (360) 664-3631, or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Chapter 392-700 WAC requires updating to clarify student eligibility, program requirements, requirements for claiming students for state funding, and enrollment reporting processes for dropout reengagement programs.

Reasons Supporting Proposal: Changes to this WAC are needed to allow students that are enrolled in a Jobs for Washington's Graduates program to also be enrolled in dropout reengagement programs.

Additionally, a revision was made to address the district's requirement to award credit received through a dropout reengagement program.

After several programs were reviewed for compliance, issues with the current WAC were found and the need for better clarity was identified. Changes were made to provide this clarity.

Finally, the process for CEDARS and annual program performance reporting was updated to provide more accountability reporting for these programs.

Statutory Authority for Adoption: RCW 28A.175.115.

Statute Being Implemented: RCW 28A.175.100.

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

Name of Proponent: Office of superintendent of public instruction, governmental.

Name of Agency Personnel Responsible for Drafting: Becky McLean, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6306; Implementation: T. J. Kelly, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6301; and Enforcement: JoLynn Berge, Old Capitol Building, 600 South Washington, Olympia, WA, (360) 725-6292.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Not applicable - no small business impact; no school district fiscal impact.

A cost-benefit analysis is not required under RCW 34.05.328. The superintendent of public instruction is not subject to RCW 34.05.328 per subsection (5)(a)(i). Additionally, this rule is not a significant legislative rule per subsection (5)(c)(iii).

May 19, 2015
Randy Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 14-22-073, filed 11/3/14, effective 12/4/14)

WAC 392-700-015 Definitions. The following definitions in this section apply throughout this chapter:

(1) **"Agency"** means an educational service district, nonprofit community-based organization, or public entity other than a college.

(2) **"Annual average full-time equivalent (AAFTE)"** means the total ((~~student~~)) monthly full-time equivalent (FTE) reported for each enrolled student in a school year divided by ten.

(3) **"Attendance period requirement"** is defined as, at minimum, two hours of face-to-face interaction with a designated program staff for the purpose of instruction, academic counseling, career counseling, or case management contact aggregated over the prior month.

(4) **"CEDARS"** refers to comprehensive educational data and research system, the statewide longitudinal data system of educational data for K-12 student information.

(5) **"College"** means college or technical college pursuant to chapters 28B.20 through 28B.50 RCW.

(6) **"College level class"** is a class provided by a college that is one hundred level or above.

(7) **"Consortium"** means a regional group of organizations that will consist of districts, and agencies and/or colleges who agree to work together to create and operate a program that will serve students from multiple districts and reduce the administrative burden on districts.

((7)) (8) **"Consortium agreement"** means the agreement that is signed by the authorized consortium lead and all district superintendents or their authorized officials which are part of the consortium and agree to refer eligible students to the consortium's program. This agreement will clearly outline the responsibilities of the consortium lead and those of the referring districts.

((8)) (9) **"Consortium lead"** means the lead organization in a consortium that will assume the responsibilities outlined in WAC 392-700-042(3).

((9)) (10) **"Count day"** is the instructional day that is used to claim a program's enrollment for state funding pursuant to WAC 392-121-033. For September, the count day is the fourth instructional day. For the remaining months, the count day is the first instructional day.

((10)) (11) **"Credential"** is identified as one of the following:

- (a) High school equivalency certificate;
- (b) High school diploma;
- (c) College certificate received after completion of a college program requiring at least forty hours of instruction;
- (d) College degree; or
- (e) Industry recognized certificate of completion of training or licensing received after completion of a program requiring at least forty hours of instruction.

((11)) (12) **"Enrolled student"** is an eligible student whose enrollment and attendance meets the criteria (~~adopted by the office of superintendent of public instruction (OSPI) specifically for the program and~~) outlined in WAC 392-700-035 and 392-700-160, and is reported as an FTE for state funding.

((12)) (13) **"ERDC"** refers to education research and data center, which conducts analyses of early learning, K-12, and higher education programs and education issues across the P-20 system that collaborates with legislative evaluation and accountability program and other statutory partner agencies.

((13)) (14) **"Full-time equivalent (FTE)"** is the measurement of enrollment that an enrolled student can be claimed on a monthly basis with the maximum being 1.0 FTE per month for each student enrolled in a program.

((14)) (15) **"Indicator of academic progress"** means a standard academic benchmark(s) that (~~are measures of~~) demonstrates academic performance which (~~are~~) is attained by a reengagement student(s). These indicators will be tracked and reported by the program and district for each student and for programs as a whole using definitions and procedures outlined by OSPI. Indicators of academic progress will be reported when a student does one of the following:

- (a) Earns high school or college credit;
- (b) Passes one or more tests or benchmarks that would satisfy the state board of education's graduation requirements as provided in chapter 180-51 WAC;

(c) Passes one or more high school equivalency certificate measures (each measure may only be claimed once per enrolled student), or other state assessment;

~~((b) Earns high school credit or college credit;~~
~~((e)) (d) Makes a significant gain in ((math and/or reading skills level))~~ a core academic subject based on the assessment tool's determination of significant gain (may be claimed multiple times in a year per enrolled student);

~~((d)) (e) Successfully completes a grade level curriculum in a core academic subject that does not earn high school or college credit;~~

(f) Successfully completes approved college readiness course work with documentation of competency attainment;

~~((e)) (g) Successfully completes job search and job retention course work with documentation of competency attainment;~~

~~((f)) (h) Successfully completes a paid or unpaid cooperative work based learning experience of at least forty-five hours. This experience must meet the requirements of WAC 392-410-315(2);~~

~~((g)) (i) Enrolls in a college level class (~~other than adult basic education (ABE), high school equivalency certificate, or English as a second language (ESL) class; or~~~~

~~(h) Transitions from an ESL class to ABE or high school equivalency certificate class;~~

~~(i) Transitions from ABE or high school equivalency certificate class to a below one hundred level math or English class;~~

~~(j) Transitions from a below one hundred level math or English class to the next below one hundred level math or English class or from a below one hundred level math or English class to college level math or English class; and~~

~~(k) Transitions from ABE or high school equivalency certificate class to a college level class (other than English or math);~~

~~(15)) (l) for the first time (limited to be claimed once per enrolled student);~~

~~(j) Successfully completes an English as a second language (ESL) class;~~

~~(k) Successfully completes an adult basic education (ABE) class; or~~

~~(l) Successfully completes a series of short-term industry recognized certificates equaling at least forty hours.~~

(16) **"Instructional staff"** means the following:

(a) For programs operated by a district or agency, the instructional staff is a certificated instructional staff pursuant to WAC 392-121-205; and

(b) For programs operated by a college, the instructional staff is one who is employed or appointed by the college whose required credentials are established by the college(~~;~~ and

~~(e) For programs operated by an agency, the instructional staff is one who is employed or appointed by the agency whose required credentials are established by the agency).~~

((16)) (17) **"Letter of intent"** means the document signed by the district, college or lead agency authorized official that specifically outlines to OSPI the required elements of a program that the district, college, or agency agree to implement.

~~((17))~~ (18) **"Noninstructional staff"** is any person employed in a position that is not an instructional staff as defined under subsection (13) of this section.

~~((18))~~ (19) **"OSPI"** means the office of superintendent of public instruction.

~~((19))~~ (20) **"Program"** means a statewide dropout reengagement program approved by OSPI, pursuant to RCW 28A.175.105.

~~((20))~~ **"School week"** means any seven-day calendar period starting with Sunday and continuing through Saturday.)

(21) **"School year"** is the twelve-month period that begins September 1st and ends August 31st during which instruction is provided and FTE is reported.

(22) **"Scope of work"** means the document signed by district superintendent or their authorized official and the authorized official of a program to be included in a contracted services agreement when the program is operated by a provider on behalf of the district and will receive compensation in accordance with WAC 392-700-165. The scope of work will specifically outline all the required elements of a program that the provider and the district agree to implement.

(23) **"Weekly status check"** means individual communication from a designated program staff to a student. Weekly status check:

(a) Can be accomplished in person or through the use of telephone, e-mail, instant messaging, interactive video communication, or other means of digital communication;

(b) Must be for the purposes of instruction, academic counseling, career counseling, or case management;

(c) Must be documented; and

(d) Must occur at least once ~~((during a school week))~~ every week that has at least three days of instruction.

AMENDATORY SECTION (Amending WSR 14-22-073, filed 11/3/14, effective 12/4/14)

WAC 392-700-035 Student eligibility. (1) ~~A student((s are))~~ is eligible to enroll in a program when they meet the following criteria:

(a) Under twenty-one years of age, but at least sixteen years of age, as of September 1st;

(b) ~~((Have))~~ Has not yet met the high school graduation requirements of either the district, or the college under RCW 28B.50.535; and

(c) ~~((Are significantly behind in credit as outlined below:~~

~~(i) Students who, based on their expected graduation date, participated or could have participated in up to two full years of high school must have an earned to attempted credit ratio that is sixty-five percent or less; or~~

~~(ii) Students who, based on their expected graduation date, participated or could have participated in more than two full years of high school must have an earned to attempted ratio that is seventy-five percent or less))~~ At the time the student enrolls, is significantly behind in credits based on the student's cohort graduation date. The cohort graduation date is established as the end of the fourth school year after a student first enrolls in the ninth grade.

(i) A student who is more than twenty-four months from their cohort graduation date and has earned less than sixty-

five percent of the high school credits expected to be earned by their cohort. A cohort is the group of district students that enter the ninth grade in the same school year;

(ii) A student who is between twelve and twenty-four months from their cohort graduation date and has earned less than seventy percent of the high school credits expected to be earned by their cohort;

(iii) A student who is less than twelve months from their cohort graduation date or who has passed their cohort graduation date by less than twelve months and has earned less than seventy-five percent of the high school credits expected to be earned by their cohort;

(iv) A student who is passed their cohort graduation date by twelve months or more and has not met their district graduation requirements; or

(v) A student who has never attended the ninth grade and has earned zero high school credits.

~~((2))~~ (d) If determined not to be credit deficient as outlined in subsection (1)(c) of this section, ~~((have))~~ has been~~((=~~ ~~(a)))~~ recommended for enrollment by case managers from the department of social and health services, the juvenile justice system, district ~~((approved))~~ designated school personnel, or staff from community agencies which provide educational advocacy services;

~~((b))~~ (e) Are not currently enrolled in any high school or other educational program, excluding an approved skill center program, a Jobs for Washington's Graduates program, or running start program, receiving state basic education funding; and

~~((c))~~ (f) Released from their district of residence and accepted by the serving district, if the program is operated by a different district.

~~((3))~~ (2) Once determined eligible for enrolling in the program, a student will retain eligibility, regardless of breaks in enrollment, until the student does one of the following:

(a) Earns a high school diploma;

(b) Earns an associate degree;

(c) Becomes ineligible because of age which occurs when a student is twenty-one years of age as of September 1st.

~~((4))~~ (3) A student's eligibility does not guarantee enrollment or continued enrollment in specific programs if the program determines that the student does not meet the program's enrollment criteria or if, after enrollment, a student's academic performance or conduct does not meet established program guidelines.

AMENDATORY SECTION (Amending WSR 14-22-073, filed 11/3/14, effective 12/4/14)

WAC 392-700-042 Program operating agreements and OSPI approval. (1) Districts, agencies, and colleges are encouraged to work together to design programs and collaborations that will best serve students. Many models of operation are authorized as part of the statewide dropout reengagement system.

(a) In each of these models, the necessary agreement(s) will address whether the program will only serve students who are residents of the district or whether the program will also serve students who are not residents of the district but

who petition for release from the resident district, pursuant to RCW 28A.225.220 through 28A.225.230, in order to attend the program. If the resident district does not participate in an OSPI approved program, another district, agency, or college may petition a district other than the resident district to enroll the eligible students under RCW 28A.225.220 through 28A.225.230 with the petitioning entity to provide a program for the eligible students.

(b) Regardless of the model of operation, the state funding is allocated to the district or direct funded technical college that is reporting the student's enrollment for the program.

(2) A district may enter into one of the following models of operations through the OSPI approval process:

(a) Directly operate a program where the services are provided by the district resources; or

(b) Enter into a partnership with an agency or college that will provide the services through a defined scope of work or contracted services agreement; or

(c) Become part of a consortium with other districts, colleges, and/or agencies by executing a consortium agreement that is signed by all member districts.

(3) The purpose of the consortium will be to create and operate a program that will serve students enrolled in multiple districts and reduce the administrative burden on districts. If such a regional reengagement consortium is implemented, a consortium lead agency will be identified and assume the following responsibilities:

(a) Take the lead in organizing and managing the regional consortium;

(b) Provide information and technical assistance to districts interested in participating in the consortium and providing the opportunity for students from their district to enroll;

(c) Advance scopes of work with agencies and colleges to operate the programs;

(d) Provide oversight and technical assistance to the program to align with all requirements of this chapter and the delivery of quality programming;

(e) Assist the program with the preparation of required reports, enrollment data, and course records needed by each district to enroll students, award credit, and report FTE and performance to OSPI;

(f) Facilitate data entry of required student data into each district's statewide student information system related to enrollment; and

(g) Work with the districts to facilitate the provision of special education and accommodations under Section 504 of the Rehabilitation Act of 1973.

(4) A technical college receiving direct funding and authorized to enroll students under WAC 392-121-187 may directly operate a program and serve students referred from multiple districts. The technical college will assume the responsibilities of operating the program as described in this chapter and will meet all responsibilities outlined in WAC 392-121-187.

(5) All programs must be approved by OSPI as follows:

(a) If the program is run by a district, agency or college, the program must be approved.

(b) If the program is run by a consortium, both the program and participating districts must be approved.

(c) Any program which meets the definition of an online school program in RCW 28A.250.010 must be approved as an online provider, pursuant to RCW 28A.250.060(2).

(6) Dependent on the model of operations, OSPI will specify the necessary documentation required for approval.

(7) OSPI will provide model documents that can be modified to include district/college/agency specific language and will indicate which elements of these standard documents must be submitted to OSPI for review and approval.

(8) Upon initial approval, OSPI will specify the duration of the approval and indicate the necessary criteria to obtain reapproval.

(9) After receiving a notice of approval, ~~((each district must request from OSPI the assignment of a school code through the EDS system following current protocol. The school code will be used to uniquely identify this program and all))~~ OSPI will assign a code to be used when reporting students enrolled in the program ((in the district's/college's student data system and in CEDARS)).

(10) This chapter does not affect the authority of districts, under RCW 28A.150.305 and 28A.320.035, to contract for educational services other than reengagement programs as defined by WAC 392-700-015~~((+9))~~ (20).

AMENDATORY SECTION (Amending WSR 13-13-005, filed 6/6/13, effective 7/7/13)

WAC 392-700-065 Instruction. (1) All program instruction will meet the following criteria:

(a) Instruction will be designed to help students acquire high school credits, acquire at least high school level skills, and be academically prepared for success in college and/or work.

(b) Instruction will be provided in accordance with the skills level and learning needs of individual students and not the student's chronological age or associated grade level. Therefore:

(i) Instruction that is at the ninth grade level or higher shall generate credits that can be applied to a high school diploma; and

(ii) Instruction that is below the ninth grade level shall not generate high school credits but will be counted as part of the program's instructional programming for the purposes of calculating FTE and will be designed to prepare students for course work that is at the ninth grade level or higher.

(c) Instruction in which each student is enrolled will not be limited to only those courses or subject areas in which they are deficient in high school credits.

(d) The program will administer standardized tests within one month of enrollment or secure test results from no more than six months prior to enrollment in order to determine a student's initial math and reading level upon entering the program.

(e) The ~~((district, agency or college))~~ program will provide all instruction, tuition, and required academic skills assessments at no cost to the students, but may collect mandatory fees as established by each program.

(i) Consumable supplies, textbooks, and other materials that are retained by the student do not constitute tuition or a fee.

(ii) Programs are encouraged to offer a waiver or scholarship process.

(2) Instruction for students enrolled in programs operated by a district or agency will meet the following criteria:

(a) Instruction must include:

(i) Academic skills instruction and high school equivalency certificate preparation course work with curriculum and instruction appropriate to each student's skills levels and academic goals; and

(ii) College readiness and work readiness preparation course work.

(b) Instruction may include:

(i) Competency based vocational training;

(ii) College preparation math or writing instruction;

(iii) Subject specific high school credit recovery instruction;

(iv) English as a second language instruction (ESL); and

(v) Other course work approved by the district, including cooperative work experience.

(c) Instruction will be scheduled so that enrolled students have the opportunity to attend and work with instructional staff during the hours of the program's standard instructional day.

(d) The program will maintain an instructor to student ratio as follows:

(i) The scheduled teaching hours of an instructional staff will equal or exceed the hours of the program's standard instructional day plus one additional hour per every five teaching hours for planning, curriculum development, recordkeeping, and required coordination of services with case management staff.

(ii) For any one instructional session, the program will assign instructional staff as needed to maintain an instructional staff ((FTE)) to student ratio that does not exceed 1:25.

(iii) For programs that use noninstructional staff as part of the calculated instructional staff ((FTE)) to student ratio, the following conditions must be met:

(A) Noninstructional staff may not be a replacement for the instructional staff and must work under the guidance and direct supervision of the instructional staff; and

(B) The ratio of total instructional and noninstructional staff ((FTE)) to students may not exceed ((1:50)) 2:50.

(3) Instruction for students enrolled in programs operated by a college will meet the following criteria:

(a) Instruction will be provided through courses approved by the college, identifiable by course title, course number, quarter, number of credits, and, for vocational course, the classification of instructional program (CIP) code number assigned by OSPI to the approved career and technical education (CTE) course.

(b) The following instruction will be offered to all students, as appropriate for their goals, skills levels, and completion of prerequisites:

(i) Basic skills remediation courses and high school equivalency certificate preparation courses;

(ii) Courses that will lead to a postsecondary degree or certificate;

(iii) Course work that will lead to a high school diploma; and

(iv) College and work readiness preparation course work.

(c) The program will maintain an instructor to student ratio as follows:

(i) Instructor to student ratio for any course open to both program students and nonprogram students will be determined by the college; and

(ii) Instructor to student ratio for classes designed exclusively for program students will not exceed 1:35.

AMENDATORY SECTION (Amending WSR 13-13-005, filed 6/6/13, effective 7/7/13)

WAC 392-700-085 Case management and student support. (1) Case management staff will be employed or assigned to the program to provide accessible, consistent support to students, as well as, academic advising, career guidance information, employment assistance or referrals, and referrals to social and health services.

(2) The program will maintain a case management staff to student ratio not to exceed 1:75 (one case manager ((FTE)) to seventy-five enrolled students) on a full-time continuous basis throughout the school year.

(3) Only the percent of each staff member's time that is allocated to fulfilling case management responsibilities for reengagement students will be included in the calculation of a program's case management staff ((FTE)) to student ratio.

(4) Even though the provision of case management services may require case management staff to work in the community to meet client needs, case management staff will be primarily based at the program's instructional site(s).

(5) The ((~~district, agency, or college~~)) program will ensure that case management services and instruction are integrated and coordinated and that procedures are in place that facilitate timely relevant communication about student progress.

(6) Case management staff will be assigned to provide services to students on a continuous basis throughout the school year.

(7) All case management staff will have at least a bachelor's degree in social work, counseling, education, or a related field **or** at least two years' experience providing case management, counseling, or related direct services to at-risk individuals or sixteen to twenty-one year old youth.

AMENDATORY SECTION (Amending WSR 14-22-073, filed 11/3/14, effective 12/4/14)

WAC 392-700-137 Award of credit. (1) For programs operated by districts and agencies, high school credit will be awarded for all course work in which students are enrolled, including high school equivalency certificate preparation, in accordance with the following:

(a) Determination of credit will take place on a quarterly basis with quarters defined as follows:

(i) September through November;

(ii) December through February;

(iii) March through May; and

(iv) June through August.

(b) Credit will be awarded at the end of each quarter, in accordance with the following guidelines, if the student has been enrolled for at least one month of the quarter:

(i) A maximum of 0.5 high school elective credits will be awarded when a student passes one or more standardized high school equivalency certificate pretests during the quarter and the instructional staff has assessed student learning and determined that a course of study has been successfully completed.

(ii) A 0.5 high school elective credit will be awarded when a student makes a statistically significant standardized assessment post-test gain in a specific subject area during the quarter and the following conditions are met:

(A) The student's standardized skills assessment score at the beginning of the quarter demonstrated high school level skills; and

(B) The instructional staff has assessed student learning and determined that a course of study has been successfully completed. A maximum of 1.0 credit may be awarded for such subject gains in a quarter.

(iii) High school elective credit ranging from at least 0.1 credits to no more than 0.25 credits will be awarded for completion of a work readiness or college readiness curriculum in which the student has demonstrated mastery of specific competencies. The district and the agency will determine the amount of credit to be awarded for each course of study based on the competencies to be attained.

(iv) For students taking part in district approved subject-specific credit recovery course work, the amount and type of credit to be awarded will be defined by the district.

(v) The district (~~(may elect to)~~) must award credit for other course work provided by the agency with amount of credit to be awarded determined in advance, based on the agency's instructional staff's recommendation and on a district review of the curriculum and intended learning outcomes. Credit will only be awarded when:

(A) The student's standardized skills assessment score at the start of the quarter demonstrates high school level skills; and

(B) The instructional staff has assessed student learning and determined that the course of study has been successfully completed.

(2) For programs operated by colleges, high school credit will be awarded for course work in which students are enrolled, in accordance with the following:

(a) The district and the college will determine whether the high school diploma will be awarded by the district or by the college as part of the college's high school completion program.

(b) If the college is awarding the diploma:

(i) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of college course work at or above the one hundred level. The college will determine the type of credit;

(ii) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of below one hundred level course work at a college but has been determined by the college to be at the ninth grade level or higher. The college will determine the type of credit. Col-

lege based high school equivalency certificate and adult basic education (ABE) classes will not be included in this category;

(ii) 0.5 elective credits will be awarded for successful completion of every five quarter or three semester hours of high school equivalency certificate course work; and

(iv) ABE courses or other college courses that have been determined to be below the ninth grade level that does not generate high school credit will be counted as part of the program's instructional programming for the purposes of calculating FTE.

(c) If the district is awarding the diploma:

(i) 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of below one hundred level course work at a college. The district will determine the type of credit;

(ii) 0.5 or 1.0 high school credit will be awarded for successful completion of every five quarter or three semester hours of below one hundred level course work at a college but has been determined by the district to be at the ninth grade level or higher. The district will determine the type and amount of credit for each class. College based high school equivalency certificate and ABE classes will not be included in this category;

(iii) 0.5 elective credits will be awarded for successful completion of every five quarter or three semester hours of high school equivalency certificate course work; and

(iv) ABE courses or other college courses that have been determined to be below the ninth grade level will not generate high school credit but the college credits associated with these courses will be included in the total credit count used to calculate and report student FTE.

(3) The district is responsible for reporting all high school credits earned by students in accordance with OSPI regulations. College transcripts and other student records requested by the district will be provided by the college or agency as needed to facilitate this process.

(4) The district will ensure that the process for awarding high school credits under this scope of work is implemented as part of the district's policy regarding award of credits per WAC 180-51-050 (5) and (6).

AMENDATORY SECTION (Amending WSR 13-13-005, filed 6/6/13, effective 7/7/13)

WAC 392-700-152 Statewide student assessment. (1)

All reengagement programs will ensure that students (~~(have the opportunity to)~~) participate in the statewide assessment of student learning to fulfill the minimum requirements for high school graduation and comply with state and federal school and district accountability requirements.

(2) (~~The district will include program students when calculating district-wide statistics in relation to the statewide assessments.~~

(3)) The program staff is not required to be direct test administrators (students can access the tests through the reporting district) but may act in this capacity with the approval of the reporting district which will be responsible for the appropriate training of agency or college staff. The reporting district will submit the proposed test site information to OSPI if a program is operating in adult jail, adult insti-

tution, hospital care, home care, library, group home, or church.

(3) Program students will be included when calculating school and state statistics in relation to the statewide assessments.

AMENDATORY SECTION (Amending WSR 14-22-073, filed 11/3/14, effective 12/4/14)

WAC 392-700-155 Annual reporting calendar. (1)

For programs operated by district and agencies and for below one hundred level classes offered in a college operated program, the following requirements will be met in relation to the school calendar:

(a) A school year begins September 1st and ends August 31st.

(b) The program will provide the reporting district a calendar of the school year prior to the beginning of the program's start date for that school year.

(c) The school year calendar must meet the following criteria:

(i) The specific planned days of instruction will be identified; and

(ii) There must be a minimum of ten instructional months.

(d) The number of hours of instruction as defined in WAC 392-700-065 must meet the following criteria:

(i) The calculation for standard instructional day may not exceed six hours per day even when instruction is provided for more than six hours per day; and

(ii) The standard instructional day may not be less than two hours per day.

(e) The total planned hours of instruction for the school year:

(i) Is the sum of the instructional hours for all instructional months of the school year; and

(ii) Must ~~((be))~~ have at a minimum of nine hundred planned hours of instruction for the school year.

(2) For programs operated by colleges and for college level classes, the school year calendar shall meet the following criteria:

(a) The specific planned days of instruction will be identified; and

(b) There must be a minimum of ten instructional months.

AMENDATORY SECTION (Amending WSR 14-22-073, filed 11/3/14, effective 12/4/14)

WAC 392-700-160 Reporting of student enrollment. (1)

For all programs, the following will apply when reporting student enrollment for each monthly count day:

(a) Met all eligibility criteria pursuant to WAC 392-700-035;

(b) Been accepted for enrollment by the reporting district or the direct funded technical college;

(c) Enrolled in an approved program pursuant to WAC 392-700-042;

(d) Met the attendance period requirement pursuant to WAC 392-700-015(3);

(e) Met the weekly status check requirement pursuant to WAC 392-700-015(23);

(f) Has not withdrawn or been dropped prior to the monthly count day;

(g) Is not enrolled in course work that has been reported by a college for postsecondary funding;

(h) Is not ~~((enrolled at a state institution on count day and reported))~~ eligible to be claimed by a state institution ~~((for funding-))~~ pursuant to WAC 392-122-221:

(i) Is not enrolled in a high school program, including alternative learning experience ~~((or))~~ college in the high school, or another reengagement program ~~((-))~~, excluding Jobs for Washington's Graduates program;

(j) If concurrently enrolled in a skills center program or running start program, does not exceed the FTE limitation pursuant to WAC 392-121-136;

(k) Is not suspended pursuant to WAC 392-400-260 or expelled pursuant to WAC 392-400-275 or 392-400-295 by the program; and

(l) A student's enrollment in the program is limited to the following:

(i) May not exceed 1.0 FTE in any month (including nonvocational and vocational FTE). If concurrently enrolled in Jobs for Washington's Graduates program, the combined FTE does not exceed 1.0 FTE in any month.

(ii) May not exceed 1.00 AAFTE in any school year as defined in WAC 392-700-015(2). If concurrently enrolled in Jobs for Washington's Graduates program, the combined AAFTE does not exceed 1.0 AAFTE for the school year.

(2) For all below one hundred level classes, the student enrollment is dependent upon attaining satisfactory progress ~~((during any three month period that a student is reported as 1.0 FTE)).~~

(a) Satisfactory progress is defined as the documented attainment of at least one credential identified in WAC 392-700-015~~((10))~~ (11) and/or of at least one indicator of academic progress identified in WAC 392-700-015~~((14))~~ (15).

(b) A student who after ~~((any))~~ three months ~~((period))~~ of being ~~((counted for a 1.0 FTE))~~ claimed for state funding has not attained a credential or an indicator of academic progress cannot be ~~((counted))~~ claimed for state funding until a credential or an indicator of academic progress is earned.

(i) During this reporting funding exclusion period, the program may ~~((elect to))~~ permit the student to continue to attend;

(ii) When the student achieves a credential or an indicator of academic progress, the student ~~((enrollment))~~ may ~~((resume to be reported))~~ be claimed for state funding ~~((-A new three month period for attaining a credential or an indicator of academic progress begins))~~ for the following month; and

(iii) Rules governing the calculation of the three months ~~((period))~~ are:

(A) The three months ~~((period))~~ may occur in two different school years, if the student is enrolled in consecutive school years; and

(B) The three months ~~((period is))~~ are not limited to consecutive months, if there is a break in the ~~((student's enrollment))~~ student being claimed for state funding.

(3) For below one hundred level classes, student enrollment will be reported as follows:

(a) When the program's total planned hours of instruction pursuant to WAC 392-700-155 for the school year equals or exceeds nine hundred hours:

(i) The program is considered a full-time program; and
(ii) An enrolled student is a full-time student and is reported as 1.0 FTE on each monthly count day.

(b) Enrollment in below one hundred level classes is limited to nonvocational funding and the FTE cannot be claimed as vocational.

(4) For college level classes, student enrollment will be reported as follows:

(a) The FTE is determined by the student's enrolled credits on each monthly count day.

(i) Fifteen college credits equal 1.0 FTE;
(ii) A student enrolled in more than fifteen college credits is limited to be reported as 1.0 FTE for that month; and
(iii) If a student is enrolled for less than fifteen college credits, the FTE is calculated by dividing the enrolled college credits by fifteen.

(b) Enrollment in state approved vocational college level classes and taught by a certified vocational instructor can be claimed for enhanced vocational funding as a vocational FTE.

AMENDATORY SECTION (Amending WSR 14-22-073, filed 11/3/14, effective 12/4/14)

WAC 392-700-165 Funding and reimbursement. (1) OSPI shall apportion funding for an approved program to district or direct funded technical colleges based upon the reported nonvocational and vocational FTE enrollment and the standard reimbursement rates. The standard reimbursement rates are the statewide average annual nonvocational and vocational rates as determined by OSPI pursuant to WAC 392-169-095.

(a) The basic education allocation funded to districts will be as follows:

(i) Monthly payments for the months September through December ~~((is))~~ are based on estimated student enrollment projected by the district.

(ii) Beginning in January, monthly payments shall be adjusted to reflect actual student enrollment.

(b) Direct funded technical colleges will be paid quarterly pursuant to WAC 392-121-187 (7)(c).

(2) Distribution of state funding for programs is as follows:

(a) For programs directly operated by a district, the district will retain one hundred percent of the basic education allocation.

(b) For programs directly operated by a direct funded technical college pursuant to WAC 392-121-187, the technical college will retain one hundred percent of the basic education allocation.

(c) For programs operated by a college or agency under a scope of work or contracted services agreement with a district:

(i) The district may retain up to seven percent of the basic education allocation; and

(ii) The agency or college will receive the remaining basic education allocation.

(d) For programs operated as part of a consortium with a consortium lead agency:

(i) The district may retain up to five percent of the basic education allocation;

(ii) The consortium lead may retain up to seven percent of the basic education allocation; and

(iii) The operating agency or college will receive the remaining basic education allocation.

~~(3) ((In the event that the program closes prior to the end of the school year, the following will occur:~~

~~(a) If the planned days of instruction, as provided on the school year calendar are not provided, the program may make up the scheduled days, as long as the replacement days occur during the school year;~~

~~(b) At the end of the school year, prior to the final monthly count day, the program will report to the district the actual total hours of instruction provided; and~~

~~(c) If the program was a full-time program and total hours of instruction provided is less than nine hundred hours of instruction, the amount of basic education funding received by the district and program will be adjusted retroactively on a proportional status and will be reflected on the final enrollment count.~~

~~(4))~~ Programs and districts may provide transportation for students but additional funds are not generated or provided.

~~((5))~~ (4) Reengagement students enrolled in a state-approved K-12 transitional bilingual instructional program pursuant to chapter 392-160 WAC can be claimed by the district for bilingual enhanced funding.

AMENDATORY SECTION (Amending WSR 14-22-073, filed 11/3/14, effective 12/4/14)

WAC 392-700-175 Required documentation and reporting. (1) Student documentation:

(a) The program shall submit to the reporting district or direct funded technical college monthly the program's enrollment and maintain and make available upon request the following documentation to support the monthly enrollment claimed:

(i) Each student's eligibility pursuant to WAC 392-700-035;

(ii) Evidence of each student's enrollment requirements under WAC 392-700-160 to include:

(A) Enrollment in district or direct funded technical college;

(B) Evidence of minimum attendance period; and

(C) Earned credentials or attained an indicator of progress.

(D) Evidence of weekly status check.

(iii) Case management support pursuant to WAC 392-700-085.

(b) The district, agency, or college operating the program shall comply with all state and federal laws related to the privacy, sharing, and retention of student records.

(c) Access to all student records will be provided in accordance with the Family Educational Rights and Privacy Act (FERPA).

(2) ~~Monthly student reporting~~(:

~~(a) The district, agency, or college to which the school code is assigned will ensure that there is accurate and timely data entry of all program student information into its student data system.~~

~~(b) The district, agency, or college to which the school code is assigned will transmit student data to CEDARS in accordance with OSPI standards and procedures for reengagement programs). Approved programs are responsible for submitting all required student information to OSPI in accordance with the CEDARS reporting guidance and reengagement operational instructions. If the program's model of operation is a partnership or consortium, the agreement must identify who is responsible for providing the information.~~

~~(3) Annual reporting ((in addition to meeting CEDARS requirements:)).~~

~~(a) The program will prepare and submit an annual performance report to the district, agency, or college ((to which the school code is assigned)) under which the program is operating no later than October 1st.~~

~~(b) The district, agency, or college ((to which the school code is assigned)) will review and submit the program's annual performance report to OSPI no later than November 1st.~~

~~(c) The annual report will include the following:~~

~~(i) ((Program's total number of students by gender, age, and race/ethnicity who were enrolled, who were dismissed by program, and who voluntarily withdrew.~~

~~((ii)) Program's total number of students by gender, age, race/ethnicity, and credential type who earned a credential as defined in WAC 392-700-015((10)) (11).~~

~~((iii)) (ii) Program's total number of students by gender, age, race/ethnicity, and indicator of academic progress types who attained an indicator of academic progress as defined in WAC 392-700-015((14)) (15). For high school and college credit, detail the subject area.~~

~~((iv) Total AAFTE and average annual headcount by program reported for the school year.~~

~~((v)) (iii) Total number of instructional staff ((FTE)).~~

~~(A) For programs operated by a district or agency, report total number of instructional staff assigned to the program.~~

~~(B) For programs operated by a college, report the number of instructional staff teaching students for the program.~~

AMENDATORY SECTION (Amending WSR 13-13-005, filed 6/6/13, effective 7/7/13)

WAC 392-700-195 Longitudinal performance goals.

(1) Longitudinal performance data for the program and the statewide reengagement system as a whole will be reported through the Washington's P-20 (preschool to postsecondary and workforce) longitudinal data system maintained by the ERDC.

(2) The district will work with the agency or college to collect and report student data requested by the ERDC in order to accomplish the longitudinal follow-up of reengagement students. ~~((Specifically, the following unique identifier~~

~~data points will be collected, to the extent possible, by the program, reported by the agency, and verified by the district, for each enrolled reengagement student:~~

~~(a) Full legal name;~~

~~(b) Birth date;~~

~~(c) State student identifier (SSID);~~

~~(d) Social Security number; and~~

~~(e) College student identification number (SID), if applicable.~~

~~(3) While reengagement students will be encouraged to provide the data needed for longitudinal follow-up, the program will ensure that a student's unwillingness or inability to provide the requested data will not be a barrier to enrollment.~~

~~(4) Appropriate district and/or agency, college, or consortium lead staff will participate in ERDC or OSPI training related longitudinal follow-up and a specific district staff or district designated program staff will be responsible for ensuring that accurate and complete student identifier data points are entered into the district's student information system in accordance with this training.~~

~~((5)) (3) At the end of each school year, the ERDC will identify the cohort of students for each program for whom longitudinal tracking will be done. Standard criteria to determine when students will be included in a longitudinal study cohort will be developed by the ERDC, with input from OSPI, district and program representatives and will apply to all programs.~~

~~((6)) (4) The ERDC will collect longitudinal data for each specific program cohort on an annual basis for five years. The ERDC will work with the OSPI administrator responsible for programs to prepare annual program specific reports for each cohort and an annual system-wide report for the entire reengagement system including data for the cohorts of all programs.~~

~~((7)) (5) The ERDC and OSPI will work with the district so that the district and the agency or college will have the opportunity to review data about the program prior to the release of the annual reports in December of each year. The ERDC and OSPI will develop procedures by which the district or agency can provide supplemental information and backup documentation for review and inclusion as it relates to postsecondary or workforce engagement of specific students in the cohort.~~

~~((8) In relation to postsecondary engagement, the ERDC will collect the following longitudinal data for students included in each program's follow-up cohort:~~

~~(a) Total number of AAFTE originally reported by the program during targeted school year for which follow-up data is being collected;~~

~~(b) Quarters of enrollment in postsecondary programming or other advanced training during the follow-up year and since the targeted school year ended;~~

~~(c) Enrolled credits per quarter during the follow-up year and total enrolled credits since the targeted school year ended;~~

~~(d) Earned credits per quarter during the follow-up year and total earned credits since the targeted school year ended; and~~

~~(e) Credentials earned during the follow-up year and total credentials earned since the targeted school year.~~

~~(9) In relation to labor market engagement, the ERDC will collect the following longitudinal data for students included in each program's follow-up cohort:~~

~~(a) Total number of AAFTE originally reported by the program during targeted school year for which follow-up data is being collected;~~

~~(b) Number of quarters with employment during the follow-up year and since the targeted school year ended;~~

~~(c) Average hours worked per week for any employment reported during the follow-up year and since the targeted school year ended;~~

~~(d) Average pay per hour for any employment reported during the follow-up year and since the targeted school year ended; and~~

~~(e) Total earnings during the follow-up year and since the targeted school year ended.))~~

WSR 15-11-078
PROPOSED RULES
SUPERINTENDENT OF
PUBLIC INSTRUCTION

[Filed May 19, 2015, 1:17 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-08-084.

Title of Rule and Other Identifying Information: WAC 392-502-030 Approval assurances, criteria, and performance targets.

Hearing Location(s): Office of the Superintendent of Public Instruction (OSPI), Old Capitol Building, 600 Washington S.E., Policy Room, Olympia, WA 98504-7200, on June 25, 2015, at 2:00 p.m.

Date of Intended Adoption: June 26, 2015.

Submit Written Comments to: Karl Nelson, 4507 University Way N.E., Suite 204, Seattle, WA 98105, e-mail karl.nelson@k12.wa.us, fax (206) 616-4595, by June 18, 2015.

Assistance for Persons with Disabilities: Contact Kristin Murphy by June 18, 2015, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: OSPI is proposing changes to WAC 392-502-030 to adjust the effective date of the online provider performance targets that rely on the percentage of students meeting standard on the state assessment. The 2015 administration of the smarter balanced assessments will provide a new baseline score. OSPI will adjust the performance targets based on the 2015 results prior to September 1, 2016.

Statutory Authority for Adoption: RCW 28A.150.290 and 28A.250.020.

Statute Being Implemented: Chapter 28A.250 RCW.

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

Name of Agency Personnel Responsible for Drafting and Implementation: Karl Nelson, 4507 University Way N.E., Suite 204, Seattle, WA 98105, (206) 616-9940; and

Enforcement: Peter Tamayo, 600 Washington Street S.E., Olympia, WA 98504-7200, (360) 664-3631.

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

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

May 19, 2015

Randy Dorn
Superintendent of
Public Instruction

AMENDATORY SECTION (Amending WSR 14-21-187, filed 10/22/14, effective 11/22/14)

WAC 392-502-030 Approval assurances, criteria, and performance targets. (1) This section sets forth the assurances, criteria, and performance targets that online providers must meet to be approved under this chapter.

(a) To be approved, online providers must provide the following assurances to the superintendent of public instruction:

(i) The online provider is accredited through an accrediting body as defined in WAC 392-502-010 and agrees to maintain accredited status for the duration of the approval period. Online providers may be candidates for accreditation at the time of application for approval provided that the provider earns full accreditation on the standard timeline.

(ii) Each course and program the online provider offers is aligned with at least eighty percent of the current applicable grade/subject area of Washington state standards. For courses with content that is not included in state standards, the online provider's courses are aligned with at least eighty percent of nationally accepted content standards set for the relevant subjects. Online providers must submit information to the superintendent regarding the standards alignment and the standards aligned.

(iii) All instruction delivered to Washington state students is delivered by Washington state certificated teachers who:

(A) Are assigned to instruct courses in a manner which meets the "highly qualified" definition under the No Child Left Behind Act and in a manner which meets the requirements set forth in chapter 181-82 WAC; and

(B) Are evaluated annually using the revised evaluative criteria and four-level rating system established in RCW 28A.405.100.

(iv) For online providers that offer high school courses, the courses offered by the online provider must be eligible for high school credit pursuant to WAC 180-51-050.

(v) All of the online provider's current and future courses in the applicable areas meet the credit/content requirements in chapter 392-410 WAC.

(vi) All advanced placement courses offered by the online provider have been approved in accordance with the college board advanced placement course audit. For advanced placement courses not yet offered at the time of application, the online provider must assure that those courses will be approved by the college board prior to offering those courses to students.

(vii) The online provider's data management systems ensure all student information remains confidential, as required by the Family Educational Rights and Privacy Act of 1974, as amended.

(viii) The online provider's web systems and content meet accessibility conformance levels specified in the list of approved provider assurances on the office of superintendent of public instruction's web site.

(ix) The online provider provides all information as directed or as requested by the office of superintendent of public instruction, the secretary for the department of education, and other federal officials for audit, program evaluation compliance, monitoring, and other purposes and to maintain all records for the current year and three previous years.

(x) The online provider informs the office of superintendent of public instruction in writing of any significant changes to the program including, but not limited to, changes in assurances, program description, fiscal status, or ownership.

(xi) The online provider upholds any pertinent federal or state laws, rules or regulations, in the delivery of the online courses or programs.

(xii) The online provider retains responsibility for the quality of courses, web systems, and content offered, regardless of any third-party contractual arrangements, partnerships or consortia, contributing to the content or delivery of the online courses or programs.

(xiii) The online school program complies with the state assessment requirements including, but not limited to, the requirements of chapter 28A.655 RCW and WAC 392-121-182, as applicable.

(xiv) All of the provider's current and future career and technical education (CTE) courses are aligned to Washington state CTE program standards and have been approved by the office of superintendent of public instruction's CTE office. CTE courses must be taught by a Washington certificated teacher who is also CTE-certificated in the subject area of the course.

(xv) The online provider agrees to abide by any additional assurances required by the superintendent of public instruction.

(xvi) The online school program agrees that all programs delivered as alternative learning experiences comply with the requirements of WAC 392-121-182. The online course provider agrees to disclose to OSPI the manner in which it supports the requirements of WAC 392-121-182 for online courses delivered outside of an online school program.

(xvii) Instructional materials used by online school programs in online courses or course work must be approved pursuant to school board policies adopted in accordance with RCW 28A.320.230.

(b) Multidistrict online providers must meet the following initial approval criteria by a preponderance of evidence submitted with the online provider's application:

(i) Course content and instructional design incorporating course goals and outcomes, materials and content organization, and student engagement.

(ii) Classroom management incorporating grading and privacy policies, internet etiquette, and expectations for communications.

(ii) Student assessment incorporating various types, frequent feedback, and appropriateness for the online learning environment.

(iv) Course evaluation and management incorporating strategies for obtaining feedback about the courses/programs and processes for quality assurance and updating content.

(v) Student support incorporating policies and systems to enhance the students' learning experience and their success.

(vi) School-based support incorporating strategies and systems to allow school-based staff to support student success.

(vii) Technology elements, requirements and support including descriptions and ease of navigation.

(viii) Staff development and support including training and online instructor performance reviews conducted on a planned and regularly scheduled basis.

(ix) Program management including timeliness and quality of teachers' responses to students, handling of fees, prompt distribution of materials and processing of enrollments, and handling fees and payments.

(x) The superintendent may require additional approval criteria pursuant to WAC 392-502-080.

(c) Beginning September 1, 2015, the online school ~~((programs must meet or exceed each of the following annual performance targets:~~

~~(i) The online school))~~ program's course success rate must be greater than seventy percent. Programs with fewer than twenty online enrollments are not subject to this performance target.

~~((ii))~~ (d) Beginning September 1, 2016, online school programs must meet or exceed each of the following annual performance targets:

(i) The online school program's percentage of students taking online math courses who meet standard on the state math assessments must be greater than forty percent. A program is not subject to this performance target if it has fewer than twenty students who have both taken an online math course and taken the state math assessment.

~~((iii))~~ (ii) The online school program's percentage of students taking online English language arts courses who meet standard on the state English language arts assessments must be greater than fifty percent. A program is not subject to this performance target if it has fewer than twenty students who have both taken an online English language arts course and taken the state English language arts assessment.

~~((d) Beginning September 1, 2016, online school programs must meet or exceed each of the following annual performance targets:~~

~~((i))~~ (iii) The online school program's median math student growth percentile for students taking an online math course must be greater than the thirtieth percentile. A program is not subject to this performance target if it has fewer than twenty students who have both taken an online math course and have a math student growth percentile.

~~((ii))~~ (iv) The online school program's median English language arts student growth percentile for students taking an online English language arts course must be greater than the fortieth percentile. A program is not subject to this performance target if it has fewer than twenty students who have

both taken an online English language arts course and have an English language arts student growth percentile.

(e) Beginning September 1, 2015, online course providers' course success rate must be greater than seventy percent. Online providers must supply OSPI with student-level enrollment and performance information. Online course providers must also supply OSPI with a list of each district in the state that they served. An online course provider is not subject to this performance target if they have fewer than twenty online course enrollments.

(2) After review by the online learning advisory committee, the approval criteria with explanations and suggested supporting evidence will be posted on the superintendent of public instruction web site on or before the date the application is made available.

(3) Online provider's application will be reviewed by reviewers selected by the superintendent of public instruction for their experience and expertise. The reviewers will be provided orientations and training to review and score the online provider applications using the approval criteria and scoring protocols.

(4) Single-district provider online programs must incorporate the approval criteria developed by the superintendent of public instruction into the program design.

WSR 15-11-080

PROPOSED RULES

RECREATION AND CONSERVATION OFFICE

(Recreation and Conservation Funding Board)

[Filed May 19, 2015, 1:32 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-08-076.

Title of Rule and Other Identifying Information: Amendments to chapter 286-04 WAC, General.

Hearing Location(s): Natural Resources Building, Room 172, 1111 Washington Street S.E., Olympia, WA 98504, on June 25, 2015, at 11:30 a.m.

Date of Intended Adoption: June 25, 2015.

Submit Written Comments to: Leslie Connelly, 1111 Washington Avenue South, P.O. Box 40917, Olympia, WA 98504-0917, e-mail leslie.connelly@rco.wa.gov, fax (360) 902-3026, by June 23, 2015.

Assistance for Persons with Disabilities: Contact Cindy Gower by June 25, 2015, TTY (360) 902-1996 or (360) 902-3013.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to revise existing definitions; add new definitions; update agency contact information; revise the mission, goals and duties of the recreation and conservation funding board; revise the process the board uses to adopt policies and hear petitions; revise the authorities of the director of the recreation and conservation office; and revise section titles. The anticipated effects of the changes are to clarify the roles and responsibilities of the recreation and conservation funding

board and the director of the recreation and conservation office. The changes also address definitions applicable to Title 286 WAC and agreements made to sponsors who receive grant funds.

Reasons Supporting Proposal: To bring alignment among:

(1) Statutory direction and the recreation and conservation funding board's mission, goals, and duties;

(2) Statutory direction and the duties of the director of the recreation and conservation office; and

(3) Administrative rules and project agreements issued to sponsors who receive grant funds from the recreation and conservation funding board.

Statutory Authority for Adoption: RCW 34.05.220, 42.56.040, 46.09.530, 79A.15.030, 79A.15.060, 79A.15.070, 79A.15.120, 79A.15.130, 79A.25.210.

Statute Being Implemented: Chapters 79A.15 and 79A.25 RCW, RCW 46.09.530.

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

Name of Proponent: Recreation and conservation office, governmental.

Name of Agency Personnel Responsible for Drafting: Leslie Connelly, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-3080; Implementation and Enforcement: Kaleen Cottingham, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-3000.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule making does not meet the definition of a "minor cost" in RCW 19.85.020(2) nor would it affect "small businesses" as defined in RCW 19.85.020(3).

A cost-benefit analysis is not required under RCW 34.05.328. The recreation and conservation office is not listed as an agency required to complete a cost-benefit analysis under RCW 34.05.328 (5)(a)(i).

May 19, 2015

Leslie Connelly

Rules Coordinator

Natural Resources Policy Specialist

AMENDATORY SECTION (Amending WSR 14-09-074, filed 4/18/14, effective 5/19/14)

WAC 286-04-010 (~~What definitions apply to this chapter?~~) **Definitions.** For purposes of Title 286 WAC, unless the context clearly indicates otherwise the following definitions apply:

(1) "Acquisition" means the (~~gaining of rights of public ownership by~~) purchase(~~, negotiation, or other means,~~) of fee or less than fee interests in real property. These interests include, but are not limited to, conservation easements, access or trail easements, covenants, water rights, leases, and mineral rights.

(2) "Agreement" or "project agreement" means the accord accepted by the office and the sponsor for the project and includes any supplemental agreements, any amendments to the agreement and any intergovernmental agreements.

(3) "Applicant" means any (~~agency or organization~~) party that meets qualifying standards, including deadlines,

for submission of an application soliciting a grant of funds from the board (~~(Generally, a federal, state, local, tribal or special purpose government is an applicant).~~).

(4) "Application" means the ~~((form, including project information form, approved by the director for use by applicants in soliciting project funds administered by the board))~~ documents and other materials that an applicant submits to the office to support the applicant's request for grant funds.

(5) "Board" means the recreation and conservation funding board as described in RCW 79A.25.110.

(6) "Chair" means the chair of the board as described in RCW 79A.25.110.

(7) "Development project" means a project that results in the construction ~~((and/or restoration))~~ of or work resulting in new elements including, but not limited to, structures, facilities and materials to enhance outdoor recreation ~~((or habitat conservation))~~ resources.

(8) "Director" means the director of the office or that person's designee as described in RCW 79A.25.150.

~~((Nonhighway and off-road vehicle activities (NOVA) program" means the grants and planning program administered by the board under chapter 46.09 RCW.))~~ (9) "Education and enforcement project" means a project that provides information, education, and outreach programs; encourages responsible recreational behaviors; and may provide law enforcement for the benefit of outdoor recreationists.

(10) "Education project" means a project that provides information, education, and outreach programs for the benefit of outdoor recreationists.

(11) "Maintenance project" means a project that maintains existing areas and facilities through repairs and upkeep for the benefit of outdoor recreationists.

(12) "Maintenance and operation project" means a project that maintains existing areas and facilities through repairs, upkeep, and routine servicing for the benefit of outdoor recreationists.

(13) "Manual(s)" means a compilation of state and federal laws; board rules, policies, and procedures ~~((rules)); and director procedures, forms, and instructions ((that have been))~~ assembled in manual form ~~((and which have been approved by the board or director))~~ for dissemination to ~~((agencies and organizations that may wish to))~~ parties that participate in the board's or office's grant program(s).

(14) "Match" or "matching share" means the portion of the total project cost in the project agreement provided by the project sponsor.

(15) "Office" means the recreation and conservation office ~~((or the office of recreation and conservation))~~ as described in RCW 79A.25.010.

(16) "Planning project" means a project that results in one or more of the following: A study, a plan, construction plans and specifications, and permits to increase the availability of outdoor recreational resources.

(17) "~~((Preliminary expense))~~ Preagreement cost" means a project cost ~~((s))~~ incurred ~~((prior to board or director approval, other than site preparation/development costs, necessary for the preparation of a development project))~~ before the period of performance identified in an agreement.

(18) "Project" means the undertaking which is, or may be, funded in whole or in part with funds administered by the office on behalf of the board.

~~((Project agreement" means a project agreement, supplemental agreement, intergovernmental agreement, or project contract between the office and a sponsor.))~~ (19) "Reimbursement" means the payment of funds from the office to the sponsor for eligible and allowable project costs that have already been paid by the sponsor per the terms of an agreement.

(20) "Renovation project" means a project that improves an existing site or structure in order to increase its service life or functions.

(21) "Restoration project" means a project that brings a site back to its historic function as part of a natural ecosystem or improving the ecological functionality of the site.

(22) "Sponsor" means an eligible applicant who has been awarded a grant of funds ~~((;))~~ and ~~((has))~~ is bound by an executed ~~((project))~~ agreement; includes its officers, employees, agents, and successors.

AMENDATORY SECTION (Amending WSR 14-09-074, filed 4/18/14, effective 5/19/14)

WAC 286-04-015 Address. All communications with the board, office, director and staff shall be directed to the recreation and conservation office at the Natural Resources Building, 1111 Washington Street S.E., P.O. Box 40917, Olympia, Washington 98504-0917, telephone 360-902-3000, fax 360-902-3026, web site www.rco.wa.gov.

AMENDATORY SECTION (Amending WSR 14-09-074, filed 4/18/14, effective 5/19/14)

WAC 286-04-020 ~~((Organization and operations:))~~ Duties of the board. ~~((The board:~~

~~(1) Is an unsalaried body consisting of the (a) commissioner of public lands, (b) director of the department of fish and wildlife, (c) director of the parks and recreation commission, (or the designees of these individuals) and five citizens appointed by the governor from the public at large, with the consent of the senate, for a term of three years each. The chair of the board is a voting member, appointed by the governor from among the five citizen members.~~

~~(2) Was))~~ (1) The board was created by Initiative 215 ~~((Marine Recreation Land Act of 1964 ~~((It))~~))~~ (section 11, chapter 5, Laws of 1965) codified in chapter 79A.25 RCW.

(2) Membership of the board is defined in RCW 79A.25.110.

(3) The board is authorized to ~~((allocate and administer funds to agencies and organizations from the state's outdoor recreation and other such accounts as may now or hereafter be established.~~

~~(3) Is authorized and obligated to prepare;))~~

(a) Prepare, maintain and update statewide plans, including:

~~((a))~~ (i) A strategic recreation resource and open space or assessment and policy plan ~~((and state trails plan))~~ (RCW 79A.25.020) and a state trails plan (79A.35.040); ~~((and~~

~~((b))~~ (ii) A nonhighway and off-road vehicle plan (RCW 46.09.370); and

(iii) Create and maintain data, studies, research, and other information relating to community outdoor athletic fields (RCW 79A.25.820);

(b) Administer funds from the outdoor recreation account (RCW 79A.25.060), recreation resources account (RCW 79A.25.190 and 79A.25.200), habitat conservation account (RCW 79A.15.020), riparian protection account (RCW 79A.15.120), farmland preservation account (RCW 79A.15.130), nonhighway and off-road vehicles activities program account (RCW 46.09.510), and other such accounts as may now or hereafter be established by the legislature;

(c) Establish acquisition policies and procedures for distributions from the habitat conservation account (RCW 79A.15.060), outdoor recreation account (RCW 79A.15.070), riparian protection account (RCW 79A.15.120), and farmland preservation account (RCW 79A.15.130);

(d) Recommend to the governor a prioritized list of applications for funding and make grant awards from the habitat conservation account (RCW 79A.15.060), outdoor recreation account (RCW 79A.15.070), riparian protection account (RCW 79A.15.120), and farmland preservation account (RCW 79A.15.130);

(e) Submit letters received as described in RCW 79A.15.110 to the governor and legislature;

(f) Establish a nonhighway and off-road vehicle advisory committee as described in RCW 46.09.340 and report to the committee once per year on the expenditure of off-road vehicle funds and refunds from the motor vehicle fund;

(g) Distribute funds received from the off-road vehicle funds and refunds from the motor vehicle fund at least once per year as described in RCW 46.09.530;

(h) Determine the eligibility of applicants for the youth athletic facilities account as described in RCW 79A.25.820;

(i) Prescribe the terms and conditions for the making of grants in chapter 79A.25 RCW;

(j) Approve a conversion of use as described in RCW 79A.25.100 and 79A.15.030(8); and

(k) Recommend to the governor potential candidates for the position of the director as described in RCW 79A.25.150.

(4) The board does not own or operate any outdoor recreation or resource facilities.

(5) ((Performs and accomplishes work by a staff)) The office, under the supervision of a director appointed by the governor, performs and accomplishes work on behalf of the board.

(6) The board:

(a) Conducts regular meetings, pursuant to RCW 42.30.075, according to a schedule it adopts in an open public meeting((-);

(b) May conduct special meetings at any time, pursuant to RCW 42.30.080, if called by the chair((-);

(c) Maintains an official record of its meetings in a recorded audio format, unless written minutes are otherwise indicated for logistical reasons((-;

(7) ~~Members who have been appointed from the public-at-large shall be reimbursed at the rate established by the office of financial management in accordance with RCW 43.03.050(1) for each day or portion thereof spent on official business and shall be entitled to receive all necessary travel~~

~~expenses on the same basis as is provided by law for state officials and employees generally.~~

~~(8));~~

~~(d) Defines a quorum as five of its members((-;~~

~~(9));~~

~~(e) Adopts parliamentary meeting procedure generally as described in *Robert's Rules of Order*.~~

AMENDATORY SECTION (Amending WSR 14-09-074, filed 4/18/14, effective 5/19/14)

WAC 286-04-030 ((Goals)) ~~Mission and goals of the board.~~ ((The general)) (1) The mission of the board as described in RCW 79A.25.005 is to:

(a) Create and work actively for the implementation of a unified statewide strategy for meeting the recreational needs of Washington's citizens;

(b) Represent and promote the interests of the state on recreational issues in concert with other state and local agencies and the governor;

(c) Encourage and provide interagency and regional coordination, and interaction between public and private organizations;

(d) Administer recreational grant-in-aid programs and provide technical assistance; and

(e) Serve as a repository for information, studies, research, and other data relating to recreation.

(2) To achieve the mission of the board as described in subsection (1) of this section the goals of the board and office are to:

((1) Provide funds and planning assistance for acquisition and development and use of outdoor recreation and habitat conservation resources to maximize protection of the natural quality of the environment;

(2) Provide funds and planning assistance for a system of public recreational facilities and opportunities for state residents and visitors;

(3) Aid organizations and local government, with funds and planning assistance, in providing the type of facilities and resources which, under their jurisdiction, will best serve their needs for outdoor recreation and habitat conservation; and

(4) Encourage programs which promote outdoor education, skill development, participation opportunity and proper stewardship of recreation and natural resources. See also RCW 79A.25.005-;)

(a) Develop a unified statewide strategy for recreational needs as described in RCW 79A.25.005 (1)(a) in conjunction with a strategic plan for the acquisition, renovation, and development of recreational resources and the preservation and conservation of open space as required by RCW 79A.25.020(3). The strategic plan shall address the statutory policy of the state and its agencies to preserve, conserve, and enhance recreational resources and open space as described in RCW 79A.25.005(1). The board shall actively work with other state agencies to implement the strategic plan;

(b) Utilize the board's open public meetings as a forum to discuss and address recreation and conservation issues of interest to the state and foster interagency and regional coordination between public and private organizations to address such issues;

(c) As members of the board, represent the interests of the state on recreational issues and provide consultation and recommendations to the governor as appropriate.

(d) Provide planning technical assistance, project technical assistance, and grant funding with a high level of accountability that is demonstrated by performance based management standards; and

(e) Serve as a repository for data and information related to recreation and conservation for inclusion in the strategic plan as described in subsection (2)(a) of this section and for use by other interested parties.

AMENDATORY SECTION (Amending WSR 14-09-074, filed 4/18/14, effective 5/19/14)

WAC 286-04-050 Compliance with State Environmental Policy Act ~~((guidelines)) and other laws.~~ (1) The ~~((board has determined that all of its))~~ board's and office's activities and programs in effect as of and after December 12, 1975, or pursuant to WAC 197-11-800, are exempt from threshold determinations and environmental impact statement requirements under the provisions of WAC 197-11-875.

(2) To the extent applicable, it is the responsibility of ~~((applicants and))~~ sponsors to comply with the provisions of chapter 197-11 WAC, the State Environmental Policy Act rules ~~((for acquisition or development of projects, the National Environmental Protection Act, and to obtain associated land-use permits))~~ and comply with all applicable federal, state, and local laws and regulations regardless of whether the sponsor is a public or private organization.

AMENDATORY SECTION (Amending WSR 14-09-074, filed 4/18/14, effective 5/19/14)

WAC 286-04-060 ~~((Manuals and waivers—Guidance)) Policies and procedures.~~ (1) The board ~~((or director shall adopt manuals that describe its general administrative policies for use by applicants, potential applicants, sponsors, and others. These manuals shall not have the force or effect of administrative code rules))~~ shall adopt plans, policies, and procedures per the duties of the board as described in WAC 286-04-020.

~~((2))~~ Board policies ~~((, including those in the manuals))~~ shall be considered and approved by the board in an open public meeting. Notice of such considerations will be given by distribution of the agenda for the meeting, press releases, formal meeting notice in the Washington State Register, or other such means as appropriate.

(2) The director shall approve administrative procedures to implement the board's policies and general grant administration per the duties of the director in WAC 286-04-070.

(3) The office shall publish the policies and the administrative procedures and make them available to applicants, sponsors and other interested parties.

~~((3-Project))~~ (4) Applicants, sponsors, or other interested parties may petition the director for a waiver or waivers of those items dealing with ~~((general))~~ administrative ~~((matters and))~~ procedures ~~((within the manuals)).~~ The director may refer any petition on an administrative procedure to the board for determination. Determinations on petitions for

waivers made by the director are subject to review by the board at the request of the petitioner.

~~((4))~~ (5) Applicants, sponsors, or other interested parties may petition the board for a waiver or waivers of those items dealing with policy and procedures. Petitions for waivers of subjects dealing with board policy and procedures, ~~((and))~~ those petitions ~~((that in the judgment of))~~ referred by the director ~~((require))~~ to the board ~~((review))~~, and determinations made in subsection (4) of this section at the request of the petitioner shall be ~~((referred to))~~ considered by the board ~~((for deliberation. Such waivers may be granted after consideration by the board))~~ at an open public meeting.

AMENDATORY SECTION (Amending WSR 14-09-074, filed 4/18/14, effective 5/19/14)

WAC 286-04-070 Director's authority. (1) Consistent with RCW 79A.25.020, and other applicable laws, the director is delegated the authority and responsibility to carry out policies and administrative functions of the board. This includes, but is not limited to the authority to:

~~((1) Administer programs; employ, discipline, and terminate staff, consistent with applicable merit system and personnel rules))~~ (a) Supervise the administrative operations of the board, office, and their staff (RCW 79A.25.020(1));

(b) Administer recreation and conservation grant-in-aid programs and contracts, and provide technical assistance to state and local agencies (RCW 79A.25.020(2));

(c) Prepare and update a strategic plan for the acquisition, renovation, and development of recreational resources and the preservation and conservation of open space (RCW 79A.25.020(3));

(d) Represent and promote the interests of the state on recreational issues and further the mission of the board and office (RCW 79A.25.020(4));

(e) Upon approval of the board, enter into contracts and agreements with private nonprofit corporations to further state goals of preserving, conserving, and enhancing recreational resources and open space for the public benefit and use (RCW 79A.25.020(5));

(f) Appoint such technical and other committees as may be necessary to carry out the purposes of chapter 79A.25 RCW (RCW 79A.25.020(6));

(g) Create and maintain a repository for data, studies, research, and other information relating to recreation and conservation resources in the state, and to encourage the interchange of such information (RCW 79A.25.020(7));

(h) Encourage and provide opportunities for interagency and regional coordination and cooperative efforts between public agencies and between public and private entities involved in the development and preservation of recreational and conservation resources (RCW 79A.25.020(8));

(i) Prepare the state trails plan, as required by RCW 79A.35.040 (RCW 79A.25.020(9));

~~((2))~~ (j) Administer all applicable rules, regulations and requirements established by the board or reflected in the laws of the state; ~~((and~~

~~((3))~~ (k) Approve certain cost increases or waiver requests as determined by board policy; and

(l) Approve the format for receiving grant applications.

(2) The director may waive the board's administrative rules or policies only after the board has delegated such authority at one of its public meetings.

AMENDATORY SECTION (Amending WSR 14-09-074, filed 4/18/14, effective 5/19/14)

WAC 286-04-085 (~~Declaratory order~~ ~~Petition requisites~~ ~~Consideration~~ ~~Disposition~~)) Petitions for declaratory order of a rule, order, or statute. (1) Any person may submit a petition for a declaratory order in accordance with RCW 34.05.240 in any form so long as it:

(a) Clearly states the question the declaratory order is to answer; and

(b) Provides a statement of the facts which raise the question.

(2) The director may conduct an independent investigation in order to fully develop the relevant facts.

(3) The director will present the petition to the board at the first meeting when it is practical to do so and will provide the petitioner with at least five days notice of the time and place of such meeting. Such notice may be waived by the petitioner.

(4) The petitioner may present additional material and/or argument at any time prior to the issuance of the declaratory order.

(5) The board may decide that a public hearing would assist its deliberations and decisions. If such a hearing is ordered, it will be placed on the agenda of a meeting and at least five days notice of such meeting shall be provided to the petitioner.

NEW SECTION

WAC 286-04-095 Petition for adoption, amendment or repeal of a rule. Any person may submit a petition requesting the adoption, amendment or repeal of any rule by the board, pursuant to RCW 34.05.330 and the uniform rules adopted by the office of financial management that are set forth in chapter 82-05 WAC.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 286-04-090 What is the history of the board's fund sources?

WSR 15-11-081

PROPOSED RULES

DEPARTMENT OF CORRECTIONS

[Filed May 19, 2015, 3:05 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-08-096.

Title of Rule and Other Identifying Information: Amendments to WAC 137-30-080 Earned release/good time for offenders.

Hearing Location(s): Edna Lucille Goodrich (ELG) Building, 7345 Linderson Way S.W., Room 1028 B/C, Tumwater, WA 98501, on June 23, 2015, at 4:00 p.m.

Date of Intended Adoption: June 24, 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 June 17, 2015.

Reasons Supporting Proposal: References to the department of corrections (DOC) policy should be accurate.

Statutory Authority for Adoption: RCW 72.01.090, 72.65.100.

Statute Being Implemented: RCW 72.09.130.

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

Name of Proponent: DOC, governmental.

Name of Agency Personnel Responsible for Drafting: Autumn Witten, Headquarters, (360) 725-8831; Implementation: Michele Walker, Headquarters, (360) 725-8732; and Enforcement: Same.

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.

May 19, 2015

Dan Pacholle

for Bernard Warner

Secretary

AMENDATORY SECTION (Amending WSR 11-11-018, filed 5/9/11, effective 6/9/11)

WAC 137-30-080 Community custody. (1) Offenders with orders of community custody per RCW 9.94A.701 may have their sentences reduced by ERT.

(2) ~~((Community custody violators confined in a department facility for sanction time are eligible for ERT good time credits at the rate of one-third of the sanction.~~

~~(3))~~ Community custody returns/terminates: During community custody, if an offender has not completed his/her maximum term of total confinement and is subject to a third violation hearing for any violation of community custody and is found to have committed the violation, the department may return the offender to total confinement to serve the remainder of the prison term.

(a) This applies solely to offenders who were not held to their maximum expiration date prior to release to community custody.

(b) All jail ERT and DOC ERT applied to the sentence before early release becomes return time.

(c) When determining the length of return time, the department must credit the offender with all community custody time successfully served and with all periods of prehearing time spent in confinement pending all prior and current community custody violation hearings for that cause.

(d) The date the offender was placed in jail on the most recent violation will be the return start date.

(e) The offender is not entitled to any ERT during the return time.

(f) Upon release from total confinement, after serving the return time the offender will resume serving the community custody portion of the sentence for any time remaining on community custody.

WSR 15-11-085

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Behavioral Health and Service Integration Administration)

[Filed May 19, 2015, 4:23 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-22-016.

Title of Rule and Other Identifying Information: Amending WAC 388-865-0526 Single bed certification.

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 June 23, 2015, at 10:00 a.m.

Date of Intended Adoption: Not earlier than June 24, 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., June 23, 2015.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by June 9, 2015, phone (360) 664-6092 or 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: The proposed rule implements Washington supreme court decision in *In re the Detention of D.W., et.al*, No. 90110-4. WAC 388-865-0526 contains the department's rules for single bed certification which allows for the inpatient treatment of adults and children in facilities that are not certified as inpatient evaluation and treatment facilities. The amendment: (1) Allows residential treatment facilities, psychiatric hospitals, hospitals with a psychiatric unit, and hospitals that can provide timely and appropriate mental health treatment to be recognized for single bed certification; (2) requires that any facility which is the site of a proposed single bed certification confirm that it is willing to provide treatment services; (3) articulates standards that facilities must meet while operating under a single bed certification; and (4) clarifies that the regional support networks retain responsibility for ensuring that the rights of patients are protected while in single bed certifications. The permanent rule will replace the current emergency rule filed under WSR 15-09-122 and effective April 21, 2015.

Reasons Supporting Proposal: The department is adopting this rule to meet the requirements of the Washington supreme court decision in *In re the Detention of D.W., et.al*, No. 90110-4 and E2SSB 5649 Section 2.

Statutory Authority for Adoption: RCW 71.05.560, 71.24.035, 71.34.380, and chapter 71.05 RCW.

Statute Being Implemented: RCW 71.05.560, 71.24.035, 71.34.380, and chapter 71.05 RCW.

Rule is necessary because of state court decision, *In re the Detention of D.W., et.al*, No. 90110-4.

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

Name of Agency Personnel Responsible for Drafting: Kathy Sayre, P.O. Box 45330, Olympia, WA 98504-5330, (360) 725-1342; Implementation and Enforcement: Dennis Malmer, P.O. Box 45330, Olympia, WA 98504-5330, (360) 725-3747.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The preparation of a small business economic impact statement is not required, as no new costs will be imposed on small businesses or nonprofits as a result of this rule amendment.

A cost-benefit analysis is not required under RCW 34.05.328. Rule is exempt per RCW 34.05.328 (5)(b)(v), a rule the content of which is explicitly and specifically dictated by statute.

May 15, 2015

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-02-030, filed 12/30/08, effective 1/30/09)

WAC 388-865-0526 Single bed certification. At the discretion of the ~~((mental health division))~~ department, an exception may be granted to allow timely and appropriate treatment to an adult on a seventy-two hour detention or fourteen-day commitment in a facility that is not certified under WAC 388-865-0500; or for a maximum of thirty days to allow a community facility to provide treatment to an adult on a ninety- or one hundred eighty-day inpatient involuntary commitment order. For involuntarily detained or committed children, the exception may be granted to allow timely and appropriate treatment in a facility not certified under WAC 388-865-0500 until the child's discharge from that setting to the community, or until they transfer to a bed in a children's long-term inpatient program (CLIP).

(1) The regional support network (RSN) or its designee must submit a written request for a single bed certification to the ~~((mental health division prior to the commencement of the order))~~ department. In the case of a child, the facility must submit the written request ~~((directly))~~ to the ~~((mental health division))~~ department. The request must be submitted and approved by the department for a facility to accept an individual for timely and appropriate treatment under this section. If the ~~((DSHS secretary))~~ department has assumed the duties assigned to a nonparticipating ~~((regional support network))~~ RSN, ~~((a single bed certification may be requested by a mental health division designee contracted to provide inpatient authorization or designated crisis response services))~~ an entity designated by the department will perform the functions described in this section.

~~(2) ((The facility receiving the single bed certification must meet all requirements of this section unless specifically waived by the mental health division.))~~

~~(3) A single bed certification may be issued to the facility for timely and appropriate mental health treatment when the following requirements are met in each instance where such certification is sought for an individual:~~

~~(a) The facility that is the site of the proposed single bed certification confirms that it is willing and able to provide directly, or by direct arrangement with other public or private agencies, timely and appropriate mental health treatment to the consumer for whom the single bed certification is sought; and~~

~~(b) The request for single bed certification ((must describe)) describes why the consumer meets at least one of the following criteria:~~

~~((a)) (i) ((The consumer requires medical services that are not available at a facility certified under this chapter or a state psychiatric hospital; or~~

~~(b)) The consumer is expected to be ready for discharge from inpatient services within the next thirty days and being at a community facility would facilitate continuity of care, consistent with the consumer's individual treatment needs(-);~~

~~(ii) The consumer can receive appropriate mental health treatment in a residential treatment facility, as defined in WAC 246-337-005, and the single bed certification will be only to that facility; or~~

~~(iii) The consumer can receive appropriate mental health treatment in a hospital with a psychiatric unit, or a hospital that is willing and able to provide timely and appropriate mental health treatment, or a psychiatric hospital, and the single bed certification will apply only to that facility.~~

~~(3) In order to provide timely and appropriate mental health treatment, the facility receiving the single bed certification, or the public or private agency the facility has a direct arrangement with to provide mental health treatment, must:~~

~~(a) Implement standards for administration that include written procedures to assure that a mental health professional, as defined in RCW 71.05.020 or WAC 388-865-0150, and licensed physicians are available for consultation and communication with both the consumer and the direct patient care staff;~~

~~(b) Use a plan of care/treatment. The medical or clinical record must contain documentation that:~~

~~(i) An individualized mental health treatment plan was developed, when possible, collaboratively with the consumer. If the consumer is unwilling or unable to participate in development of the plan, documentation must be made in the record. Development of this plan may include participation of a multidisciplinary team, a mental health professional, as defined in RCW 71.05.020 or WAC 388-865-0150, or collaboration with members of the consumer's support system as identified by the consumer.~~

~~(ii) A mental health professional, as defined in RCW 71.05.020 or WAC 388-865-0150, has had contact with each involuntarily detained consumer at least daily for the purposes of:~~

~~(A) Observation and evaluation; and~~

~~(B) Assessing whether the consumer is appropriate for release from involuntary commitment to accept treatment on a voluntary basis.~~

~~(c) Have standards for administration and monitoring of medication, including psychiatric medications. Consumers have a right to make an informed decision regarding the use of antipsychotic medication consistent with RCW 71.05.215.~~

~~(4) If a consumer requires medical services that are not generally available at a facility certified under this chapter, or at a state psychiatric hospital when a court has ordered a ninety- or one hundred eighty-day inpatient commitment, or at a facility that meets the requirements of subsections (2) and (3) of this section, a single bed certification may be issued to that facility for the consumer as follows:~~

~~(a) The single bed certification request must adequately describe why the consumer requires medical services that are not available at a facility certified under this chapter, or at a state psychiatric hospital when a court has ordered a ninety- or one hundred eighty-day inpatient commitment, or at a facility that meets the requirements of subsections (2) and (3) of this section;~~

~~(b) The facility that is the site of the requested single bed certification must confirm that it is willing and able to provide the medical services; and~~

~~(c) The facility has documented that one of the following has been met:~~

~~(i) With the authorization of the hospital, and consistent with any applicable hospital policies and procedures, the RSN assigns a mental health professional to provide the consumer appropriate mental health treatment at the facility, including observation and evaluation, during the period of time the consumer is provided medical services; or~~

~~(ii) The hospital provides medical services and a plan that addresses the consumer's mental health treatment needs until the consumer is medically stable and the RSN or its designee identifies an appropriate facility for the consumer that is one of the following:~~

~~(A) The hospital providing services;~~

~~(B) A facility that is certified as an evaluation and treatment (E & T) facility; or~~

~~(C) A facility that can meet the consumer's needs under the single bed certification criteria in this section.~~

~~(d) If a qualified medical professional determines that mental health treatment for the consumer is not clinically indicated, the requirements in (c) of this subsection do not apply. When the consumer is determined to be medically stable, the facility must ensure the requirements in (c) of this subsection are met.~~

~~(5) The ((mental health division director or the director's designee)) department makes the decision and gives written notification to the requesting entity in the form of a single bed certification. The single bed certification must not contradict a specific provision of federal ((law)) or state ((statute)) law.~~

~~((5)) (6) A consumer who receives services under a single bed certification under this section must be transferred to an evaluation and treatment facility if on a seventy-two hour detention or fourteen-day commitment, or to a state hospital if on a ninety- or one hundred eighty-day inpatient commitment, as soon as the attending physician considers the consumer medically stable and a bed becomes available, unless~~

the treating facility consents to continue treatment and continued treatment in the current setting is consistent with the best clinical interests of the consumer.

(7) The ~~((mental health division))~~ department may make site visits at any time to verify that the terms of the single bed certification are being met. Failure to comply with any term of this exception may result in corrective action. If the ~~((mental health division))~~ department determines that the violation places consumers in imminent jeopardy, immediate revocation of this exception can occur.

~~((6))~~ (8) The RSN retains the responsibility for ensuring due process required by RCW 71.24.300 (6)(b).

(9) Neither consumers nor facilities have fair hearing rights as defined under chapter 388-02 WAC regarding single bed certification decisions by ~~((mental health division))~~ department staff.

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

WSR 15-11-087

PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed May 20, 2015, 8:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-07-022.

Title of Rule and Other Identifying Information: Revising chapter 172-64 WAC, Alcohol policy at Eastern Washington University, to update rules and associated procedures related to the use of alcohol on property owned or controlled by Eastern Washington University.

Hearing Location(s): Eastern Washington University, Main Campus, Showalter Hall, Room 201, Cheney, Washington 99004, on June 23, 2015, at 2:00 p.m.

Date of Intended Adoption: June 26, 2015.

Submit Written Comments to: University Policy Administrator, 214 Showalter Hall, Cheney, WA 99004, e-mail tlutey@ewu.edu, fax (509) 359-7036, by June 22, 2015.

Assistance for Persons with Disabilities: Contact Trent Lutey by June 22, 2015, (509) 359-6322.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These revisions are needed to update university standards and processes concerning the use of alcohol on property owned or controlled by Eastern Washington University.

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

Statute Being Implemented: Not applicable.

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

Name of Agency Personnel Responsible for Drafting: Trent Lutey, 214 Showalter, Cheney, WA 99004, (509) 359-6322; Implementation and Enforcement: Laurie Connelly, 214 Showalter, Cheney, WA 99004, (509) 359-2371.

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

A cost-benefit analysis is not required under RCW 34.05.328. Chapter 172-121 WAC is not considered a significant legislative rule by Eastern Washington University.

May 20, 2015

Trent Lutey

University Policy Administrator

AMENDATORY SECTION (Amending WSR 14-24-037, filed 11/24/14, effective 12/25/14)

WAC 172-64-020 Alcohol use in university residence halls. (1) Applicability. This section establishes rules for alcoholic beverages in residence halls that are owned or operated by Eastern Washington University.

(2) General policy. Persons, who are at least twenty-one years old, may possess and consume alcoholic beverages in the privacy of individual residence hall rooms subject to the requirements of this section.

(3) Restrictions.

(a) Consumption of alcoholic beverages is prohibited in any areas of residence halls outside of individual rooms including, but not limited to, hallways, entrances, corridors, lounges, and reception areas.

(b) Doors to individual residence hall rooms must remain closed while alcohol is being consumed.

(c) Kegs, common source containers, and nonalcoholic brews such as "near beer" are prohibited.

(d) Selling or providing alcohol to minors is prohibited.

(e) Alcohol is prohibited in any residence hall room where any student living in the room is under twenty-one years old, regardless of whether the under-age student is present or not.

(f) Alcohol may not be consumed in any room where any person present is under twenty-one years old.

(g) Alcohol may not be consumed in any area designated as alcohol-free housing.

(h) Residents in Brewster Hall, who are at least twenty-one years old, may have alcohol in their individual room but not in their common room areas if any of their suitemates are under twenty-one.

(i) Vendors may not deliver alcohol to residence halls or any other campus area except as provided for in WAC 172-64-090.

(j) Alcohol must not be visible to the public when carried into a residence hall.

(k) Alcohol containers may not be used as decorative pieces in residence halls.

(l) Students shall comply with reasonable requests by university staff to provide identification, proof of age, and/or show contents of a container when requested.

(m) Possession and consumption of alcohol in the privacy of individual residence hall rooms must not infringe on the privacy and peace of other individuals.

(n) Residence hall or housing funds may not be used to purchase alcoholic beverages.

(4) ~~((Roommate preference. A student planning to live in a residence hall may indicate their preference for a roommate~~

~~who drinks alcohol or one who does not. Whenever possible, such requests will be honored by university housing officials.~~

~~(5))~~ Alcohol-free housing. Per RCW 28B.10.575, the university shall notify all students applying for student housing of the availability of housing where all alcoholic beverage use is prohibited. The university shall accommodate student requests for alcohol-free housing.

~~((6))~~ (5) Awareness.

~~((a) Each residence hall will hold a quarterly meeting for hall residents for the express purpose of discussing university rules regarding possession and consumption of alcohol.~~

~~(b) These rules, and related laws, ordinances, and university policies, will be conspicuously posted in each residence hall.)~~ The university shall distribute to students in university residence halls the process for reporting violations and complaints of alcohol and illegal drug use, the policies and procedures for investigating such complaints, and sanctions that may be applied for violations of the institution's alcohol and illegal drug use policies.

AMENDATORY SECTION (Amending WSR 14-24-037, filed 11/24/14, effective 12/25/14)

WAC 172-64-040 Alcohol use at ~~((on or off campus))~~ on-campus events and events off-campus that are sponsored by the university. (1) Applicability. This section establishes rules for possessing, consuming, selling, and/or serving alcoholic beverages:

(a) At events on university-owned or operated property, regardless of whether the event is sponsored by the university and regardless of whether event sponsors are affiliated with the university; and

(b) At off-campus events that are sponsored, in whole or in part, by the university.

(2) An event is considered to be sponsored by the university when the event is organized and/or staffed by university students or employees or when the event is funded, in whole or in part, by the university.

(3) Sponsor requirements. Sponsors of an event, as described in subsection (1) of this section, where alcohol is to be possessed, sold, served and/or consumed, must comply with the following requirements:

(a) Obtain written permission from the appropriate official(s):

(i) Student clubs and organizations must obtain permission from the student activities office;

(ii) For all other requests, sponsors must obtain permission from the vice-president for business and finance or designee;

(b) Contact event planning to request a banquet permit or a special occasion license per WAC 172-64-070;

(c) Comply with all Washington state laws, chapter 172-64 WAC, all other university rules and policies; and any additional instructions provided to the event/activity sponsor as a condition of approval;

(d) Ensure Washington state alcohol serving requirements are enforced:

(i) Event sponsors must ensure that all persons designated to serve alcohol are at least twenty-one years old and have received alcohol server training.

(ii) Event sponsors must ensure that servers check ID and do not serve alcohol to any person who is under twenty-one years old or who appears intoxicated;

(e) Prohibit serving alcohol during normal, university business hours unless an exception has been granted as part of the request under (a) of this subsection;

(f) Prohibit persons from bringing alcoholic beverages into the event unless specifically authorized by the banquet permit or special occasion license;

(g) Prohibit persons from taking alcoholic beverages outside of the approved alcohol use area, except for beer/wine in the original unopened container that is sold or auctioned for off-premises consumption as specifically authorized by a special occasion license;

(h) Provide food or snacks and nonalcoholic beverages at the same place as alcoholic beverages and feature nonalcoholic beverages at least as prominently as alcoholic beverages; and

(i) For an event on university owned or operated property, inform university police of the event and consult with the university police about appropriate security measures as provided for in subsection (5) of this section.

~~((3))~~ (4) Publicity and advertising.

(a) Events conducted under a banquet permit are by invitation only and may not be advertised to the public.

(b) All announcements and advertisements concerning an event including, but not limited to, flyers, notices, posters, banners, tee-shirts and newspaper and radio announcements, must:

(i) Note the availability of nonalcoholic beverages at least as prominently as the availability of alcoholic beverages;

(ii) State that proper identification is required in order to be served or sold alcoholic beverages; and

(iii) Not make reference to the amount of alcoholic beverages available at the event.

(c) All announcements and advertisements, as well as any promotions of specific alcoholic beverage brands at the event:

(i) Must not make reference to any form of drinking contest. Drinking contests and similar activities which encourage the rapid and/or excessive consumption of alcoholic beverages are prohibited;

(ii) Must not portray drinking as a solution to personal or academic problems or as necessary to social, sexual, or academic success; and

(iii) Must not encourage any form of alcohol abuse or place emphasis on quantity or frequency of consumption.

~~((4))~~ (5) Gifts, awards, and rewards. Alcoholic beverages may not be provided as gifts or awards to any person as part of any event conducted under a special occasion license.

~~((5))~~ (6) Security measures. The university police shall determine appropriate security measures to be taken for on-campus events where alcohol is to be possessed, consumed, sold, and/or served. University police shall coordinate with the events' sponsor and appropriate university personnel to assist in compliance with state laws and university rules.

AMENDATORY SECTION (Amending WSR 14-24-037, filed 11/24/14, effective 12/25/14)

WAC 172-64-050 Alcohol use during group ((field)) trips. (1) This section applies to the possession and consumption of alcoholic beverages by university employees and/or students when participating in a university sponsored or supported group ((field)) trip including, but not limited to, group attendance at conferences, conventions, seminars, training, field trips, etc.

(2) ~~((During a field trip,))~~ Unless an exception has been granted per subsection (3) of this section, during supervised periods of a group trip (e.g., when work, instruction, or official business is being conducted) employees and students shall not((=

(a)) possess or consume alcohol((=

(b) ~~Transport alcoholic beverages in any vehicle, including personal and rental vehicles, used in support of a field trip)).~~

(3) Exceptions may be granted if the ((field)) trip involves attending a ((social)) function where the consumption of alcohol is a cultural or social expectation. Examples of such functions include, but are not limited to, receptions, cultural exchanges, and professional gatherings. Requests for exceptions must be made to the ~~((provost (for academic related events), or to the vice-president for business and finance (for all other events)))~~ appropriate vice-president. For approved requests, participants must:

(a) Comply with all applicable local laws; and

(b) Comply with all additional requirements and/or instructions provided as a condition of the approval.

(4) Notwithstanding any other rules or exceptions under this policy, university employees and students shall not:

(a) Consume alcohol during any period of time when they are responsible for the care and/or transportation of other group members;

(b) Transport alcoholic beverages in any vehicle, including personal and rental vehicles, used in support of a group trip.

WSR 15-11-088

PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed May 20, 2015, 8:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-04-105.

Title of Rule and Other Identifying Information: Revising chapter 172-90 WAC, Student academic integrity at Eastern Washington University, to update rules and associated procedures related to academic integrity violations by students at Eastern Washington University.

Hearing Location(s): Eastern Washington University, Main Campus, Showalter Hall, Room 201, Cheney, Washington 99004, on June 23, 2015, at 2:00 p.m.

Date of Intended Adoption: June 26, 2015.

Submit Written Comments to: University Policy Administrator, 214 Showalter Hall, Cheney, WA 99004, e-mail tlutey@ewu.edu, fax (509) 359-7036, by June 22, 2015.

Assistance for Persons with Disabilities: Contact Trent Lutey by June 22, 2015, (509) 359-6322.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These revisions are needed to update university standards and processes concerning the administration of academic integrity processes.

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

Statute Being Implemented: Not applicable.

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

Name of Agency Personnel Responsible for Drafting: Trent Lutey, 214 Showalter, Cheney, WA 99004, (509) 359-6322; Implementation and Enforcement: Laurie Connelly, 214 Showalter, Cheney, WA 99004, (509) 359-2371.

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

A cost-benefit analysis is not required under RCW 34.05.328. Chapter 172-121 WAC is not considered a significant legislative rule by Eastern Washington University.

May 20, 2015

Trent Lutey

University Policy Administrator

AMENDATORY SECTION (Amending WSR 14-20-082, filed 9/29/14, effective 10/30/14)

WAC 172-90-010 General. These rules establish standards for student academic integrity at Eastern Washington University (EWU). EWU expects the highest standards of academic integrity of its students. Academic integrity is the responsibility of both students and instructors. The university supports the instructor in setting and maintaining standards of academic integrity. Academic integrity is the foundation of a fair and supportive learning environment for all students. Personal responsibility for academic performance is essential for equitable assessment of student accomplishments. Charges of violations of academic integrity are reviewed through a process that allows for student learning and impartial review.

These rules apply to all EWU instructors, staff, and students admitted to the university, including conditional or probationary admittance, and to all departments and programs, in all locations, including online. These rules provide procedures for resolving alleged violations by students. All academic integrity ((review)) proceedings are brief adjudicative proceedings and shall be conducted in an informal manner.

AMENDATORY SECTION (Amending WSR 14-20-082, filed 9/29/14, effective 10/30/14)

WAC 172-90-020 Responsibilities. (1) Vice-provosts: The vice-provosts responsible for undergraduate and graduate education, or their designees, have primary responsibility for the university academic integrity program. The vice-provosts shall:

(a) Oversee the academic integrity program;

(b) Appoint the chair and members of the academic integrity board (AIB);

(c) Maintain a system for academic integrity reporting and recordkeeping;

(d) Serve as the final authority in administering the academic integrity program;

(e) Maintain all academic integrity records per Washington state records retention standards;

(f) Coordinate academic integrity training for instructors and students, as needed or requested; and

(g) Develop and/or facilitate development of academic integrity program support resources, including guides, procedures, web presence, training materials, presentations, and similar resources.

Throughout this chapter and unless otherwise stated, the term "vice-provost," when used in the singular, shall mean the vice-provost who is handling the academic integrity case or their designee.

(2) Academic integrity board (AIB): The academic integrity board is a standing committee of the faculty organization. The academic integrity board is responsible for administering and managing academic integrity functions.

(a) The AIB shall:

(i) Promote academic integrity at EWU;

(ii) Review academic integrity cases, make determinations as to whether a violation occurred, and impose academic and/or institutional sanctions;

(iii) Conduct academic integrity board hearings;

(iv) Assist vice-provosts in development of academic integrity program support resources;

~~((iv))~~ (v) Respond, as appropriate, to campus needs related to the academic integrity program;

~~((v))~~ (vi) Coordinate AIB activities with the vice-provosts; and

~~((vi))~~ (vii) Continually assess academic integrity process outcomes to ensure equitability of sanctions vis-à-vis violations.

(b) The AIB is appointed by the vice-provosts (jointly), based on recommendations from represented groups (e.g., colleges, library, ASEWU). Board composition or membership may be modified to support university needs with the consent of the vice-provosts and approval of the provost. At a minimum, AIB membership will include:

(i) Two members from each college, one primary and one alternate. Both must hold or have held instructor rank. The primary and alternate must be from different academic departments. The alternate shall serve when a case involves an instructor in the primary member's own department. The alternate may also serve when the primary member is not available. One of the primary members shall also be designated as vice-chair.

(ii) One member representing EWU libraries.

(iii) One student member representing ASEWU.

(iv) One chair (does not vote except to break a tie).

(c) The AIB holds regular meetings every two weeks at fixed times and reviews cases at these meetings. The AIB also conducts AIB hearings, as needed, for academic integrity cases involving possible sanctions of suspension or expulsion. AIB reviews and hearings are held in abeyance during holidays, academic breaks, and other times when no

classes are scheduled. AIB reviews and hearings may be canceled in other circumstances with the consent of the AIB chair. Any member who is unavailable shall inform the AIB chair who will arrange for a replacement.

(d) A quorum shall consist of three voting members plus the chair(~~(f)~~) or vice-chair.

(3) Instructors shall:

(a) Know and follow the academic integrity rules and policies of the university;

(b) Include, in each course syllabus, a reference to university academic integrity standards and a clear statement that suspected violations will be handled in accordance with those standards;

(c) Hold students responsible for knowing these rules;

(d) Foster an environment where academic integrity is expected and respected;

(e) Endeavor to detect and properly handle violations of academic integrity; and

(f) Support and comply with the determinations of the AIB and the vice-provost.

(4) Students shall:

(a) Demonstrate behavior that is honest and ethical in their academic work; and

(b) Know and follow the academic integrity rules and policies of the university.

AMENDATORY SECTION (Amending WSR 14-20-082, filed 9/29/14, effective 10/30/14)

WAC 172-90-060 Continuation in course. A student ~~((may))~~ is expected to continue to attend and perform all expected ~~((functions))~~ course work within a course (take tests, submit papers, participate in discussions, and labs, etc.) while a charge of a violation of academic integrity is under review, even if the instructor's recommendation is a failing grade in the course, suspension or expulsion. Full status as an enrollee in a course ~~((may))~~ is expected to continue until a final sanction is imposed. A student may not continue to attend any course in which a final sanction of a failing grade, suspension, or expulsion has been imposed.

AMENDATORY SECTION (Amending WSR 14-20-082, filed 9/29/14, effective 10/30/14)

WAC 172-90-100 Violations and sanctions. (1) **Violations:** Violations of academic integrity involve the use or attempted use of any method or technique enabling a student to misrepresent the quality or integrity of any of his or her work. Violations of academic integrity include, but are not limited to:

(a) Plagiarism: Representing the work of another as one's own work;

(b) Preparing work for another that is to be used as that person's own work;

(c) Cheating by any method or means;

(d) Knowingly and willfully falsifying or manufacturing scientific or educational data and representing the same to be the result of scientific or scholarly experiment or research; or

(e) Knowingly furnishing false information to a university official relative to academic matters.

(2) Classes of violations:

(a) Class I violations are acts that are mostly due to ignorance, confusion and/or poor communication between instructor and class, such as an unintentional violation of the class rules on collaboration. Sanctions for class I offenses typically include a reprimand, educational opportunity, and/or a grade penalty on the assignment/test.

(b) Class II violations are acts involving a deliberate failure to comply with assignment directions, some conspiracy and/or intent to deceive, such as use of the internet when prohibited, fabricated endnotes or data, or copying answers from another student's test. Sanctions for class II offenses typically include similar sanctions as described for class I violations, as well as a course grade penalty or course failure.

(c) Class III violations are acts of violation of academic integrity standards that involve significant premeditation, conspiracy and/or intent to deceive, such as purchasing or selling a research paper. Sanctions for class III violations typically include similar sanctions as given for class I and II violations, as well as possible removal from the academic program and/or suspension or expulsion.

(3) **Sanctions:** A variety of sanctions may be applied in the event that a violation of academic integrity is found to have occurred. Sanctions are assigned based primarily on the class of the violation and whether or not the student has previously violated academic integrity rules. ~~((Suspension for violation of academic integrity standards will ordinarily take place immediately-))~~ Absent extenuating circumstances, assigned sanctions are imposed without delay and are not held in abeyance during appeal actions. Sanctions may be combined and may include, but are not limited to:

- (a) Verbal or written reprimand;
- (b) Educational opportunity, such as an assignment, research or taking a course or tutorial on academic integrity;
- (c) Grade penalty for the assignment/test;
- (d) Course grade penalty;
- (e) Course failure;
- (f) Removal from the academic program;
- (g) Suspension for a definite period of time; and
- (h) Expulsion from the university.

If a student was previously found to have violated an academic integrity standard, the sanction imposed for any subsequent violations should take into account the student's previous behavior. ~~((A subsequent violation may result in either suspension for one or two full terms, excluding summer terms, or permanent expulsion from the university-))~~

(4) Sanctioning authorities:

(a) Instructors may impose reprimands, educational opportunities, grade penalties, and/or course failure sanctions and may recommend more severe sanctions.

(b) The academic integrity board has the authority to impose the same sanctions as an instructor, or to modify any sanctions imposed by the instructor. In addition, the AIB may remove a student from ~~((the))~~ an academic program, with the concurrence of the instructor and the department chair. The AIB may also refer the ~~((student to student rights and responsibilities with a recommendation for suspension or expulsion under the student conduct code-))~~

~~((e) The student disciplinary council may impose suspension or expulsion, subject to the approval of the dean of stu-~~

~~ents and the vice-president for student affairs))~~ case for an AIB hearing per WAC 172-90-170 for cases where possible sanctions include suspension or expulsion.

(c) In response to an AIB hearing panel's recommendation to suspend or expel a student, the vice-provost may concur with such recommendations and impose the suspension or expulsion, or may impose one or more lesser sanctions.

(d) In all cases, suspension and expulsion sanctions must also be approved by the provost before such sanction is imposed.

AMENDATORY SECTION (Amending WSR 14-20-082, filed 9/29/14, effective 10/30/14)

WAC 172-90-120 Initiation. (1) **Reporting:** Each member of the university community is responsible for supporting academic integrity standards. Any person who suspects a violation of these rules is expected to report their suspicion to the course instructor or other appropriate university official. Students are strongly encouraged to report suspected violations to the course instructor, the vice-provost, or other university official.

Throughout this chapter, the term "instructor" shall refer to the instructor or other university official who reports a suspected violation under this chapter.

A person who knowingly makes a false allegation that a violation of these rules has occurred, will be subject to disciplinary action as appropriate.

(2) **Authority:** The primary responsibility for bringing a charge of violating academic integrity standards rests with the instructor. Graduate assistants, teaching assistants, research assistants, student workers, exam proctors, online coordinators and any other persons who assist or support an instructor in teaching should report suspected violations of academic integrity standards to the instructor of record.

Instructors may be represented by their academic department chair in cases where the instructor is unavailable or otherwise unable to actively participate in the process.

(3) **Contact student:** If an instructor suspects that a violation has occurred, the instructor may elect to discuss the matter with the student prior to taking any other action.

(4) **Instructor action:** In response to a report or suspicion of violation of academic integrity standards, the instructor has the following options:

(a) Dismiss the matter: If the instructor concludes that there is no violation of these rules, the matter is over.

(b) Resolve internally (internal resolution): If the instructor believes that the student committed a class I violation of academic rules, the instructor may take one or more of the following actions without entering an official violation per subsection (5) of this section:

(i) Instruct the student on academic integrity standards and explain how the student failed to comply with those standards;

(ii) Allow the student to modify or redo the assignment; and/or

(iii) Provide the student with an educational opportunity to reiterate academic integrity (such as an assignment, research, course or tutorial on academic integrity).

Note: If an instructor intends to impose any sanction that will affect the student's course grade, he/she must initiate the academic integrity process; internal resolution may not be used in such cases.

If the student does not cooperate with the internal resolution, the instructor should initiate the formal academic integrity process by reporting the violation as described in subsection (5) of this section.

(c) Initiate the academic integrity process: If the instructor believes that the student violated academic integrity standards and internal resolution is not appropriate, the instructor shall initiate the academic integrity process by reporting the violation to the vice-provost per institutional practice.

(5) **Report violation:** To initiate an academic integrity action, the instructor provides information regarding the violation to the vice-provost, including:

- (a) A description of the alleged violation;
- (b) A summary of any conversations the instructor has had with the student regarding the violation;
- (c) The sanction(s) imposed and/or recommended by the instructor; and
- (d) The method of resolution (~~(chosen)~~) desired by the instructor (i.e., summary process (~~(or)~~), AIB review, or AIB hearing).

When reporting the violation, the instructor may also submit documents (e.g., syllabus, test, essay, etc.) that are pertinent to the violation being reported. Alternatively, the instructor may elect to defer providing such documents unless or until the materials are later requested by the student, vice-provost, or the AIB.

Instructors (~~(must)~~) should initiate this process within seven calendar days after becoming aware of the suspected violation. In cases where the student has agreed to certain conditions to resolve the matter internally, per subsection (4)(b) of this section, and the student has failed to comply with those conditions, the instructor may initiate the process up to seven calendar days after the student has failed to meet a resolution condition.

(6) **Vice-provost review.** After a violation has been reported, the vice-provost will determine whether the summary process (~~(or the)~~), AIB review process, or AIB hearing process will be used.

In cases where the student has any prior violation, the vice-provost must process the case for AIB review under WAC 172-90-160, or AIB hearing under WAC 172-90-170.

AMENDATORY SECTION (Amending WSR 14-20-082, filed 9/29/14, effective 10/30/14)

WAC 172-90-140 Summary process. (1) Initiation: The summary process may be initiated when:

- (a) The instructor and student both agree to the summary process; (~~(and)~~)
- (b) The vice-provost agrees that the summary process is appropriate to the circumstances;
- (c) The student has no prior violations of academic integrity; and
- (d) The alleged behavior would most likely not warrant a sanction of suspension or expulsion.

(2) **Student notification:** The vice-provost will notify the student of the violation, proposed sanctions, and of their response options. Notification will be made to the student's official university e-mail address. If the student is no longer enrolled in the university, the vice-provost shall send the notification to the student's last known address. Notification will include:

(a) All information (~~(and documents)~~) provided by the instructor when the violation was reported and all documents related to the alleged violation. However, information and documents should be redacted to the extent their release would compromise test or examination contents or if the documents include other student's education records;

(b) Documents related to the alleged violation;

(c) A description of the university's academic integrity rules and processes, including a list of possible sanctions;
~~((e))~~ (d) A description of the student's options; and
~~((f))~~ (e) Contact information for the vice-provost's office where the student can request further information and assistance.

(3) **Student response options:**

(a) Concur: The student may accept responsibility for the stated violation and accept all sanctions imposed and/or recommended by the instructor. The student indicates their acceptance by following the instructions provided with the notification. The vice-provost will coordinate sanctioning with the instructor and/or the AIB as needed.

(b) Conference: If a conference had not already occurred, the student may (~~(agree)~~) request to meet with the instructor in order to discuss the alleged violation and/or proposed sanction(s). If the instructor declines the request, the matter will be referred to the AIB for further review and action. The instructor and student may discuss the matter by any means that is agreeable to both (e.g., in-person, telephonically, or via e-mail). The student shall contact the instructor to arrange a discussion time/method.

(i) In arranging a conference, the instructor shall make a reasonable effort to accommodate the student's preferences, but is not obligated to meet with the student outside of normal "office" hours. If the student and instructor cannot agree on a date/time to meet, the instructor or student may refer the matter to the AIB for review and (~~(board)~~) action.

(ii) During a conference, the instructor and student will attempt to reach an agreement regarding the allegation and sanction(s).

(iii) If the student and instructor come to an agreement, the instructor will inform the vice-provost of the outcome. The vice-provost will coordinate sanctioning with the instructor and/or the AIB as needed.

(iv) If the student and the instructor cannot come to an agreement within seven instruction days, the instructor will inform the vice-provost and the matter will then be referred for AIB review and action.

(c) AIB review: The student may request that the matter be referred to the AIB for review and further action.

(d) Failure to respond: If the student does not respond to the notification within three instruction days, the vice-provost will send another notification to the student. Failure of the student to respond to the second notification within three instruction days will be treated as an admission of responsi-

bility and acceptance of the proposed sanctions. The vice-provost will coordinate with the instructor to impose the appropriate sanction(s).

AMENDATORY SECTION (Amending WSR 14-20-082, filed 9/29/14, effective 10/30/14)

WAC 172-90-160 ((AIB)) Academic integrity board review process. (1) **Initiation:** The AIB review process will be initiated when:

(a) The instructor or student requests AIB review;
 (b) The instructor refers the matter to the AIB because the instructor and student could not agree to a conference date/time or did not reach an agreement during a conference; or

(c) The vice-provost ~~((initiates a violation process against a student for repeated violations of academic integrity standards))~~ determines that the AIB review process is appropriate to the circumstances.

(2) **Scheduling:** Within five instruction days of determining that an AIB review is in order, the vice-provost shall schedule a review for the next available meeting of the AIB.

(3) **Notification:** The vice-provost will notify the student, instructor, and AIB ~~((members))~~ chair. Notification will include:

(a) All information ~~((and documents))~~ provided by the instructor when the violation was reported and all documents related to the alleged violation. However, any such information and documents that were previously provided to the student are not required to be included in this notification. Also, information and documents should be redacted to the extent their release would compromise test or examination contents or if the documents include other student's education records;

(b) The date/time of the AIB review;

(c) Instructions on how to submit documents, statements, and other materials for consideration by the AIB;

(d) A clear statement that the AIB review is a closed process (no student, instructor or person other than the board is present at the review);

(e) A description of the specific rules governing the AIB review process;

(f) A description of the university's academic integrity rules and processes; and

(g) Contact information for the vice-provost's office where the student and/or instructor can request further information and assistance. Notifications will strongly encourage the student to contact the vice-provost to ensure that the student understands the process, the violation, and the potential sanctions.

(4) **Student and instructor response:** The student must ~~((respond to the AIB review notice within three instructional days. The student responds by submitting a written statement to the review board. The student may also))~~ prepare a written statement and submit the statement to the vice-provost's office within three instruction days after receiving the AIB review notice. The student may include any relevant written documentation, written third-party statements, or other evidence deemed relevant to the student's interests. ((The student may submit materials by submitting them to the vice-provost.

~~The instructor also submits materials to the AIB by providing the materials to the vice-provost. If the instructor has not already done so,))~~ Unless already provided, the instructor should submit the syllabus, the relevant test/assignment, and other materials that are pertinent to the violation to the vice-provost's office.

~~((Neither the student nor the instructor is permitted to attend the AIB review.))~~

(5) **Failure to respond:** If the student does not respond to the notification of the AIB review within three instructional days, the vice-provost will send another notification to the student. Failure of the student to respond to the second notification within three instruction days will be treated as an admission of responsibility and acceptance of the proposed sanctions. The vice-provost will coordinate sanctioning with the instructor and/or the AIB as needed. If a recommended sanction requires ~~((AIB or))~~ higher level authority to impose, the AIB will proceed with a ~~((review))~~ hearing.

(6) **Proceedings:** The board's responsibility is to review the statements and other materials provided by each party, review other relevant records, information, or materials, and make a determination as to whether the alleged academic integrity violation occurred. The board primarily reviews written evidence. Neither the student nor the instructor is permitted to attend the AIB review. The board may, at its discretion, consult with the instructor, the student or others as deemed appropriate or necessary. All evidence collected in this process will be made available to the student and/or instructor upon request.

(7) **Sanctions:** The board will determine what, if any, sanctions will be imposed. The board may impose the same sanctions assigned and/or recommended by the instructor, or may impose greater or lesser sanctions. If the student has any previous violation(s) of academic integrity standards, the AIB may increase the sanction imposed to account for repeat offenses. ~~((The board may also refer the student to student rights and responsibilities with a recommendation for suspension or expulsion under the student conduct code.))~~ If the board decides to pursue sanctions that include suspension or expulsion, the board shall initiate an AIB hearing per WAC 172-90-170.

(8) **Conclusion:** The board should conclude its review and issue a decision within thirty days after the violation was initially reported. The vice-provost shall notify the student and instructor of the board's decisions, along with the right to request reconsideration.

(9) **Requests for review:** Either the student or the instructor may request reconsideration by the vice-provost by submitting a request in writing to the vice-provost within twenty-one days after the board issues its written decision. The vice-provost shall allow the student and the instructor an opportunity to respond in writing to the ~~((student's))~~ request for review. The student and instructor's responses, if any, must be submitted within five instructional days of the request for review. After reviewing the responses and materials considered by the board, the vice-provost shall issue a decision in writing within twenty days of receipt of the request for review. The decision must include a brief statement of the reasons for the vice-provost's decision and notice

that judicial review may be available. All decisions of the vice-provost are final and no appeals are permitted.

NEW SECTION

WAC 172-90-170 Academic integrity board hearing.

AIB hearings will only be conducted when the institution is pursuing sanctions that include either suspension or expulsion. The AIB hearing provides the instructor and the student with the opportunity to present evidence and witnesses.

(1) Scheduling and notification:

(a) Initiation: The AIB hearing process will be initiated when the vice-provost or the AIB determines that the alleged violation may involve a possible sanction of suspension or expulsion.

(b) Scheduling: Within five instruction days of determining that an AIB hearing is in order, the vice-provost shall schedule the hearing. The student must receive at least seventy-two hours' notice as to the time and place of the hearing. The vice-provost may coordinate with the parties to facilitate scheduling, but is not required to do so.

(c) Notification: The vice-provost will notify the student, instructor, and AIB hearing panel members. Notification will include:

(i) All information provided by the instructor when the violation was reported and all documents related to the alleged violation. However, any such information and documents that were previously provided to the student are not required to be included in the notification sent to the student. Also, information and documents should be redacted to the extent their release would compromise test or examination contents or if the documents include other students' education records;

(ii) A description of the university's academic integrity rules and processes, including any possible sanctions;

(iii) The date, time, and place of the AIB hearing;

(iv) Instructions on how to submit documents, statements, and other materials for consideration by the AIB hearing panel;

(v) A description of the specific rules governing the AIB hearing process;

(vi) A description of the student's options; and

(vii) Contact information for the vice-provost's office where the student and/or instructor can request further information and assistance. Notifications will strongly encourage the student to contact the vice-provost to ensure that the student understands the process, the violation, and the potential sanctions.

(2) General provisions:

(a) All academic integrity board hearings are brief adjudicative proceedings in accordance with WAC 172-108-010 and shall be conducted in an informal manner.

(b) Nonjudicial proceedings: Formal rules of procedure, evidence, and/or technical rules, such as are applied in criminal or civil courts, do not apply to AIB hearings.

(c) Hearing authority: When scheduling an AIB hearing, a member of the AIB will be designated as hearing authority. The hearing authority exercises control over hearing proceedings. All procedural questions are subject to the final decision of the hearing authority.

(d) Hearing panel composition: In addition to the hearing authority, an AIB hearing panel shall consist of three voting members of the AIB.

(e) Closed hearings: All AIB hearings will be closed. Admission of any person, other than the instructor and the student involved, to an AIB hearing shall be at the discretion of the hearing authority.

(f) Consolidation of hearings: In the event that one or more students are charged with an academic integrity violation arising from the same occurrence, the university may conduct separate hearings for each student or consolidate the hearings as practical, as long as consolidation does not impinge on the rights of any student.

(3) Appearance:

(a) Failure to appear: The student is expected to attend the AIB hearing. In cases where proper notice has been given but the student fails to attend an AIB hearing, the hearing panel shall decide the case based on the information available.

(b) Disruption of proceedings: Any person, including the student, who disrupts a hearing, may be excluded from the proceedings.

(c) Alternative methods of appearance. In the interest of fairness and expedience, the hearing authority may permit any person to appear by telephone, written statement, or other means, as appropriate.

(d) The instructor may attend the hearing but is not required to do so. The instructor's report of the violation and all associated evidence shall constitute the appearance of the instructor.

(4) **Advisors:** The instructor and the student may be assisted by one advisor of their choice, subject to the following provisions:

(a) Any fees or expenses associated with the services of an advisor are the responsibility of the instructor or the student that employed the advisor;

(b) The advisor may be an attorney;

(c) The instructor and the student are responsible for presenting their own case and, therefore, advisors may not speak or participate directly in any AIB hearing proceeding. The instructor and/or the student may, however, speak quietly with their advisor during such proceedings; and

(d) If an attorney is used as an advisor, the person using the attorney shall inform the AIB hearing authority of their intent to do so at least two business days prior to the hearing.

(5) **Review of evidence:** The student and the instructor may request to view material related to the case prior to a scheduled hearing by contacting the vice-provost. To facilitate this process, the party should contact the vice-provost as early as possible prior to the scheduled hearing. The vice-provost shall make a reasonable effort to support the request to the extent allowable by state and federal law.

(6) Evidence:

(a) Evidence: Pertinent records, exhibits and written statements may be accepted as information for consideration by the hearing panel. However, AIB hearings are not bound by the rules of evidence observed by courts. The hearing authority may exclude incompetent, irrelevant, immaterial or unduly repetitious material.

(b) The student and the instructor have the right to view all material presented during the course of the hearing.

(7) **Standard of proof:** The hearing panel shall determine whether the student violated student academic integrity standards, as charged, based on a preponderance of the evidence.

A preponderance means, based on the evidence admitted, whether it is more probable than not that the student violated academic integrity standards.

(8) **Witnesses:**

(a) The instructor, student, and hearing authority may present witnesses at AIB hearings.

(b) The party who wishes to call a witness is responsible for ensuring that the witness is available and present at the time of the hearing.

(c) The hearing authority may exclude witnesses from the hearing room when they are not testifying. The hearing authority is not required to take the testimony of all witnesses called by the parties if such testimony may be inappropriate, irrelevant, immaterial, or unduly repetitious.

(d) All parties have the right to hear all testimony provided by witnesses during the hearing.

(9) **Questioning:**

(a) The instructor and the student may submit questions to be asked of each other or of any witnesses. Questions shall be submitted, in writing, to the hearing authority. The hearing authority may ask such questions, but is not required to do so. The hearing authority may reject any question which it considers inappropriate, irrelevant, immaterial or unduly repetitious. The hearing authority has complete discretion in determining what questions will be asked during the hearing.

(b) During an AIB hearing, only the hearing authority may pose questions to persons appearing before them.

(c) The hearing authority may ask their own questions of any witness called before them.

(10) **Deliberations and sanctions:**

(a) Within seven days after the hearing, the AIB hearing panel shall meet in closed session, without either of the parties present, and determine by majority vote whether, by a preponderance of the evidence, the accused violated academic integrity standards. If the hearing panel determines that the accused violated academic integrity standards, the panel shall then determine, by majority vote, what sanctions shall be imposed. This session may take place immediately following the hearing or at another time within the seven days following the hearing.

(b) In determining what sanctions shall be imposed, the hearing panel may consider the evidence presented at the hearing as well as any information contained in the student's records.

(11) **Notification:** If the panel determines that suspension or expulsion is appropriate, they will forward that recommendation to the vice-provost. If the panel is not recommending suspension or expulsion, they shall notify the vice-provost of the sanctions to be imposed.

(12) **Vice-provost:**

(a) If the AIB panel recommends suspension or expulsion, the vice-provost may approve the recommendation, subject to the approval of the provost, or may impose lesser sanctions. If the AIB panel does not recommend suspension

or expulsion, the vice-provost shall impose the sanctions determined by the AIB panel.

(b) The vice-provost shall notify the student and the instructor of the hearing panel's decision, the sanctions to be imposed, and of the right to appeal.

(13) **Appeals of AIB hearing determinations:** Either the student or the instructor may request reconsideration by the provost by submitting a request in writing to the provost within twenty-one days after the hearing panel issues its decision. The provost shall allow the student and the instructor an opportunity to respond in writing to the request for review. The student and instructor's responses, if any, must be submitted within five instructional days of the request for review. After reviewing the responses and materials considered by the hearing panel, the provost shall issue a decision in writing within twenty days of receipt of the request for review. The decision must include a brief statement of the reasons for the provost's decision and notice that judicial review may be available. All decisions of the provost are final and no appeals are permitted.

WSR 15-11-089

PROPOSED RULES

EASTERN WASHINGTON UNIVERSITY

[Filed May 20, 2015, 8:22 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-08-061.

Title of Rule and Other Identifying Information: Amending chapter 172-121 WAC, Eastern Washington University student conduct code.

Hearing Location(s): Eastern Washington University, Main Campus, Showalter Hall, Room 201, Cheney, Washington 99004, on June 23, 2015, at 2:00 p.m.

Date of Intended Adoption: June 26, 2015.

Submit Written Comments to: University Policy Administrator, 214 Showalter Hall, Cheney, WA 99004, e-mail tlutey@ewu.edu, fax (509) 359-7036, by June 22, 2015.

Assistance for Persons with Disabilities: Contact Trent Lutey by June 22, 2015, (509) 359-6322.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This revision modifies the violations covered under this rule to exclude acts of academic dishonesty which shall be subsequently governed by chapter 172-90 WAC, Student academic integrity.

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

Statute Being Implemented: Not applicable.

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

Name of Agency Personnel Responsible for Drafting: Trent Lutey, 214 Showalter, Cheney, WA 99004, (509) 359-6322; Implementation and Enforcement: Laurie Connelly, 214 Showalter, Cheney, WA 99004, (509) 359-2371.

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

A cost-benefit analysis is not required under RCW 34.05.328. Chapter 172-121 WAC is not considered a significant legislative rule by Eastern Washington University.

May 20, 2015
Trent Lutey
University Policy Administrator

AMENDATORY SECTION (Amending WSR 14-24-039, filed 11/24/14, effective 12/25/14)

WAC 172-121-200 Violations. The following are defined as offenses which are subject to disciplinary action by the university.

(1) Acts of academic dishonesty. University policy regarding academic dishonesty is governed by the university academic integrity policy. ~~((However, repeated violations, as described in the academic integrity policy, are subject to action under the student conduct code. Academic dishonesty includes, but is not limited to, any of the following activities:~~

~~(a) Plagiarism: Representing the work of another as one's own work;~~

~~(b) Preparing work for another that is to be used as that person's own work;~~

~~(c) Cheating by any method or means;~~

~~(d) Knowingly and willfully falsifying or manufacturing scientific or educational data and representing the same to be the result of scientific or scholarly experiment or research; or~~

~~(e) Knowingly furnishing false information to a university official relative to academic matters.))~~

(2) Acts of social misconduct.

(a) Abuse. Physical abuse, verbal abuse, and/or other conduct which threatens or endangers the health or safety of any person.

(b) Bullying. Bullying is behavior that is:

(i) Intentional;

(ii) Targeted at an individual or group;

(iii) Repeated;

(iv) Objectively hostile or offensive; and

(v) Creates an intimidating and/or threatening environment which produces a risk of psychological and/or physical harm.

(c) Domestic violence and dating violence.

(i) Domestic violence means:

(A) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members;

(B) Sexual assault of one family or household member by another; or

(C) Stalking of one family or household member by another family or household member.

(ii) Dating violence is a type of domestic violence, except the acts specified above are committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. In determining whether such a relationship exists, the following factors are considered:

(A) The length of time the relationship has existed;

(B) The nature of the relationship; and

(C) The frequency of interaction between the parties involved in the relationship.

(d) Harassment, gender-based harassment, and sexual harassment.

(i) Harassment is conduct by any means that is sufficiently severe, pervasive, or persistent, and objectively offensive so as to threaten an individual or limit the individual's ability to work, study, participate in, or benefit from the university's programs or activities.

(ii) Gender-based harassment includes nonsexual acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on a person's gender or nonconformity with gender stereotypes. Gender-based harassment violates this code and Title IX when it is sufficiently severe, pervasive, or persistent such that it denies or limits another's ability to work, study, participate in, or benefit from the university's programs or activities.

(iii) Sexual harassment is unwelcome conduct of a sexual nature and may include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment violates this code and Title IX when it is sufficiently severe, pervasive, or persistent such that it denies or limits another's ability to work, study, participate in, or benefit from the university's programs or activities.

In determining whether any of the above-listed types of harassment are severe, pervasive, or persistent, the university shall consider all relevant circumstances from both an objective and subjective perspective, including the type of harassment (verbal or physical); the frequency and severity of the conduct; the age, sex, and relationship of the individuals involved; the degree to which the conduct affected the victim; the setting and context in which the harassment occurred; whether other incidents have occurred at the university; and other relevant factors.

(e) Retaliation. Any actual or threatened retaliation or any act of intimidation intended to prevent or otherwise obstruct the reporting of a violation of this code is prohibited and is a separate violation of this code. Any actual or threatened retaliation or act of intimidation directed towards a person who participates in an investigation or disciplinary process under this code is prohibited and is a separate violation of this code.

(f) Sexual misconduct. Sexual violence, such as rape, sexual assault, sexual battery, and sexual coercion, are types of sexual misconduct. Sexual violence is sexual intercourse or sexual contact with a person without his or her consent or when the person is incapable of giving consent. Consent means actual words or conduct indicating freely given agreement to the sexual act. Consent cannot be inferred from silence, passivity, or lack of active resistance. There is no consent where there is a threat of force or violence or any other form of coercion or intimidation, physical or psychological. Sexual activity is nonconsensual when the victim is incapable of consent by reason of mental incapacity, drug/alcohol use, illness, unconsciousness, or physical condition. Sexual misconduct also includes, but is not limited to, indecent liberties, indecent exposure, sexual exhibitionism, sex-based cyber-harassment, prostitution or the solicitation of a prostitute, peeping or other voyeurism, or going beyond the boundaries of consent, such as by allowing others to view

consensual sex or the nonconsensual recording of sexual activity.

(g) Stalking. Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

(i) Fear for their health and/or safety or the health/safety of others; or

(ii) Suffer substantial emotional distress.

(h) Unauthorized use of electronic or other devices: Making an audio or video recording of any person while on university premises without the person's prior knowledge or without their effective consent, when such a recording is of a private conversation or of images taken of a person(s) at a time and place where the person would reasonably expect privacy and where such recordings are likely to cause injury or distress. This includes, but is not limited to, surreptitiously taking pictures of another person in a gym, locker room, or restroom, but does not include taking pictures of persons in areas which are considered by the reasonable person to be open to public view.

(3) Property violations. Theft of, damage to, or misuse of another person's or entity's property.

(4) Weapons. Possession, carrying, discharge or other use of any weapon is prohibited on property owned or controlled by Eastern Washington University, except as permitted in (a) through (d) of this subsection. Examples of weapons under this section include, but are not limited to: Explosives, chemical weapons, shotguns, rifles, pistols, air guns, BB guns, pellet guns, longbows, hunting bows, throwing weapons, stun guns, electroshock weapons, and any item that can be used as an object of intimidation and/or threat, such as replica or look-a-like weapons.

(a) Commissioned law enforcement officers may carry weapons, which have been issued by their respective law enforcement agencies, while on campus or other university controlled property, including residence halls. Law enforcement officers must notify the university police of their presence on campus upon arrival.

(b) A person may possess a personal protection spray device, as authorized by RCW 9.91.160, while on property owned or controlled by Eastern Washington University.

(c) A person may bring a weapon onto campus for display or demonstration purposes directly related to a class or other educational activity, provided that they obtain prior authorization from the university police department. The university police department shall review any such request and may establish conditions to the authorization.

(d) Weapons that are owned by the institution for use in organized recreational activities or by special groups, such as EWU ROTC or university-sponsored clubs or teams, must be stored in a location approved by the university police department. These weapons must be checked out by the advisor or coach and are to be used only in organized recreational activities or by legitimate members of the club or team in the normal course of the club or team's related activity.

(5) Failure to comply.

(a) Failure to comply with lawful and/or reasonable directions of university officials or law enforcement officers acting in performance of their duties on campus or affecting conduct on campus;

(b) Failure to identify oneself to university officials in their course of duty, refusal or failure to appear before university officials or disciplinary bodies when directed to do so;

(c) Failure to attend any medical treatment or evaluation program when directed to do so by the dean of students or other authorized university official.

(6) Trespassing/unauthorized use of keys.

(a) Trespass. Entering or remaining on university property without authorization.

(b) Unauthorized use of keys. Unauthorized possession, duplication, or use of university keys or access cards.

(7) Deception, forgery, fraud, unauthorized representation.

(a) Knowingly furnishing false information to the university.

(b) Forgery, alteration, or misuse of university documents, records, or instruments of identification. This includes situations of identity theft where a person knowingly uses or transfers another person's identification for any purpose.

(c) Forgery or issuing a bad check with intent to defraud.

(d) Unauthorized representation. The unauthorized use of the name of the university or the names of members or organizations in the university community.

(8) Safety.

(a) Intentionally activating a false fire alarm.

(b) Making a bomb threat.

(c) Tampering with fire extinguishers, alarms, or safety equipment.

(d) Tampering with elevator controls and/or equipment.

(e) Failure to evacuate during a fire, fire drill, or false alarm.

(9) Alcohol, drugs, and controlled substances.

(a) Alcohol and substance violations. Use, possession, distribution, or sale of alcoholic beverages (except as permitted by university policy and state law) is prohibited. Under no circumstances may individuals under the age of twenty-one use, possess, distribute, manufacture or sell alcoholic beverages. Public intoxication is prohibited.

(b) Drugs and paraphernalia.

(i) Use, possession, distribution, manufacture, or sale of marijuana, drug paraphernalia and/or illegal drugs, narcotics or controlled substances, is prohibited.

(ii) Being under the influence of marijuana or an illegal substance, while on property owned or operated by the university, is prohibited. Being under the influence of a controlled substance, except when legally prescribed by a licensed medical practitioner, is also prohibited while on property owned or operated by the university.

(10) Hazing. Any act which, for the purpose of initiation, admission into, affiliation with, or as a condition for continued membership in, a group or organization:

(a) Endangers the mental or physical health or safety of any student or other person;

(b) Destroys or removes public or private property; or

(c) Compels an individual to participate in any activity which is illegal or contrary to university rules, regulations or policies.

The express or implied consent of any participant is not a defense. A person who is apathetic or acquiesces in the presence of hazing violates this rule.

(11) Disruptive conduct/obstruction.

(a) Disruptive conduct. Conduct which unreasonably interferes with any person's ability to work or study, or obstructs university operations or campus activities.

(b) Disorderly conduct. Conduct that is disorderly, lewd, indecent or a breach of peace.

(c) Obstruction. Obstruction of the free flow of pedestrian or vehicular traffic on university premises or at university-sponsored or university-supervised events.

(d) Demonstration. Participation in a campus demonstration which violates university regulations.

(12) Violations of other laws, regulations and policies.

(a) Violation of a local, county, state, or federal law.

(b) Violation of other university policies, regulations, or handbook provisions.

(13) Assisting/attempts. Soliciting, aiding, abetting, concealing, or attempting conduct in violation of this code.

(14) Acts against the administration of this code.

(a) Initiation of a complaint or charge knowing that the charge was false or with reckless disregard of its truth.

(b) Interference with or attempt to interfere with the enforcement of this code, including but not limited to, intimidation or bribery of hearing participants, acceptance of bribes, dishonesty, or disruption of proceedings and hearings held under this code.

(c) Knowing violation of the terms of any disciplinary sanction or attached conditions imposed in accordance with this code.

(15) Other responsibilities:

(a) Guests. A student, student group or student organization is responsible for the conduct of guests on or in university property and at functions sponsored by the university or sponsored by any recognized university organization.

(b) Students studying abroad. Students who participate in any university sponsored or sanctioned foreign country study program shall observe the following rules and regulations:

(i) The laws of the host country;

(ii) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying;

(iii) Any other agreements related to the student's study program in the foreign country; and

(iv) The student conduct code.

(16) Student organization and/or group offenses. Clubs, organizations, societies or similarly organized groups in or recognized by the university and/or ASEWU are subject to the same standards as are individuals in the university community. The commission of any of the offenses in this section by such groups or the knowing failure of any organized group to exercise preventive measures relative to violations of the code by their members shall constitute a group offense.

Preproposal statement of inquiry was filed as WSR 15-07-063.

Title of Rule and Other Identifying Information: WAC 458-20-240, new employee B&O tax credit, this rule provides guidance regarding the criteria of eligibility for businesses applying for a B&O tax credit under chapter 82.62 RCW.

Hearing Location(s): Capital Plaza Building, 4th Floor Executive Large Conference Room, 1025 Union Avenue S.E., Olympia, WA, on July 1, 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: July 8, 2015.

Submit Written Comments to: Joseph Vidal, Department of Revenue, P.O. Box 47453, Olympia, WA 98504-7453, e-mail JosephV@DOR.WA.GOV, by July 1, 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 hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amending WAC 458-20-240 will update the rule to reflect current statutory language. The proposed amendments to the rule clarify several areas of the program, including but not limited to: The application and procedure requirements, hiring requirements, criteria for qualifying, reporting requirements, and how to claim approved credits.

Reasons Supporting Proposal: Amending the rule is needed to reflect current statutory language, which includes RCW 82.62.010, 82.62.020, 82.62.030, 82.62.045, and 82.62.050.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: Chapter 82.62 RCW.

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

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Joseph Vidal, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1579; 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.

WSR 15-11-093
PROPOSED RULES
DEPARTMENT OF REVENUE

[Filed May 20, 2015, 8:54 a.m.]

Original Notice.

May 20, 2015
Dylan Waits
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-23-035, filed 11/9/10, effective 12/10/10)

WAC 458-20-240 Manufacturer's new employee tax credits—Applications filed after June 30, 2010. (1) **Introduction.** Chapter 82.62 RCW provides business and occupation (B&O) tax credits to certain persons engaged in manufacturing and research and development activities. These credits are intended to stimulate the economy by creating employment opportunities in specific rural counties and community empowerment zones of this state. The credits are as much as \$4,000 per qualified employment position. This rule explains the eligibility requirements and application procedures for this program. It is important to note that an application for the tax credits must be submitted to the department of revenue ~~((before the actual hiring of qualified employment positions))~~ (department) within ninety consecutive days after the first qualified employment position is filled. See subsection (6) of this rule for additional information regarding this application requirement. ~~((This tax credit program is a companion to the tax deferral program under chapter 82.60 RCW; however, the eligible geographic areas in the two programs are not identical.~~

~~The department of employment security and the department of commerce administer programs for rural counties and job training. These agencies should be contacted directly for information concerning those programs.))~~

(2) **Who is eligible for these tax credits?** Subject to certain qualifications, an applicant (person applying for a tax credit under chapter 82.62 RCW) who is engaged in an eligible business project is entitled to the tax credits provided by chapter 82.62 RCW.

(a) **What is an eligible business project?** An "eligible business project" means:

(i) Manufacturing, commercial testing, or research and development activities conducted by an applicant;

~~(ii) In an eligible area at a specific facility~~~~((subject to the restriction noted in the following paragraph. An "eligible business project"));~~

(iii) Where employment increases as described under subsection (3) of this rule; and

(iv) Does not include any portion of a business project undertaken by a light and power business or any portion of a business project creating employment positions outside an eligible area.

To be considered an "eligible business project," the applicant's number of average full-time qualified employment positions at the specific facility must ~~((be at least))~~ increase by fifteen percent ~~((greater))~~ in the ~~((calendar year for which credit is being sought than the number of positions at the same facility in the immediately preceding calendar year))~~ four consecutive full calendar quarters after the calendar quarter during which the first qualified employment position is filled. Subsection (4) of this rule explains how to determine whether this threshold is satisfied.

New businesses meeting all requirement of the program, whether new to Washington or newly formed, are eligible for all qualified employment positions filled during the four consecutive full calendar quarters immediately preceding the quarter during which the first qualified employment position is filled.

~~(b) What is an eligible area? ((As noted above, the facility must be located in an eligible area to be considered an eligible business project.)) An "eligible area" is:~~

(i) A rural county, which is a county with fewer than one hundred persons per square mile or, a county smaller than two hundred twenty-five square miles, as determined annually by the office of financial management and published by the department ~~((of revenue))~~ effective for the period of July 1st through June 30th (see RCW 82.14.370); or

(ii) A community empowerment zone (CEZ). CEZ means an area meeting the requirements of RCW 43.31C.020 and officially designated by the director of the department of commerce. For a business located in a CEZ, credit is only earned for those employees, who at the time of hire, are residents of the CEZ in which the project is located.

(iii) **How to determine whether an area is an eligible area.** Rural county designation information can be obtained from the office of financial management internet web site at ~~((www.ofm.wa.gov/popden/rural.htm))~~ www.ofm.wa.gov/pop/popden/rural.asp. The department has instituted a geographic information system (GIS), referred to as the Tax Rate Lookup Tool, to assist taxpayers in determining taxing jurisdiction boundaries, local tax rates, and a mapping and address lookup system to determine whether a specific address is within a CEZ. The system is available on the department's internet web site at ~~((www.dor.wa.gov))~~ dor.wa.gov.

~~(c) What are manufacturing and research and development activities? ((Manufacturing or research and development activities must be conducted at the facility to be considered an eligible business project.))~~

(i) **Manufacturing.** "Manufacturing" has the meaning given in RCW 82.04.120. In addition, for the purposes of chapter 82.62 RCW, "manufacturing" also includes the activities performed by research and development laboratories and commercial testing laboratories.

(ii) **Research and development.** "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun, but only when such activities are intended to ultimately result in the production of a new, different, or useful substance or article of tangible personal property for sale. "Commercial sales" does not include sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(3) **What are the hiring requirements?** The average full-time qualified employment positions at the specific facility ~~((during the calendar year for which credits are claimed must be at least fifteen percent greater than the average full-time qualified employment positions at the same facility for the preceding calendar year))~~ will be at least fifteen percent greater in the four consecutive full calendar quarters after the calendar quarter during which the first qualified employment position is filled than the applicant's average qualified employment positions at the same facility in the four consecutive full calendar quarters immediately preceding the calendar quarter during which the first qualified employment position is filled.

(a) **What is a qualified employment position?** A "qualified employment position" means a position filled by a permanent full-time employee employed at an eligible business project for ~~((twelve consecutive months))~~ four consecutive full calendar quarters. Once a full-time position is established and filled it will continue to ~~((qualify for twelve consecutive periods so long as any person fills the position. The position is))~~ be considered "filled" even during periods of vacancy, provided ((these periods do not exceed thirty consecutive days and the employer is training or actively recruiting a replacement employee)) the cumulative period of any vacancies in that position is not more than one hundred twenty days in the four quarter period and the employer is training or actively recruiting a permanent replacement, full-time employee for the position.

(b) **What is a "permanent full-time employee"?** A "permanent full-time employee" is a position that is filled by an employee who satisfies any one of the following minimum thresholds:

(i) Works thirty-five hours per week for fifty-two consecutive weeks;

(ii) Works four hundred fifty-five hours, excluding overtime, each quarter for four consecutive quarters; or

(iii) Works one thousand eight hundred twenty hours, excluding overtime, during a period of twelve consecutive months.

(c) **"Permanent full-time employee" - Seasonal operations.** For applicants that regularly operate on a seasonal basis only and that employ more than fifty percent of their employees ~~((for less than a full twelve month continuous period))~~ to work on a seasonal basis, a "permanent full-time employee" is a permanent full-time employee as described above or an employee(s) that works the equivalent ((in full time equivalent (FTE) work)) amount of hours on a seasonal basis.

(4) **How to determine if the fifteen percent employment increase requirement is met.** ~~((Qualification for tax credits depends upon whether the applicant hires enough new positions to meet the fifteen percent average increase requirement.))~~ The credit is only available to applicants who satisfy the fifteen percent employment increase.

(a) **Determining the fifteen percent increase.** To determine the projected number of permanent full-time qualified employment positions necessary to satisfy the fifteen percent employment increase requirement:

(i) Determine the average number of permanent full-time qualified employment positions that existed at the facility during the ~~((calendar year prior to the year in which tax credit is being claimed))~~ four consecutive full calendar quarters immediately preceding the calendar quarter for which the first qualified employment position is filled.

(ii) Multiply the average number of full-time positions from subsection (i) by .15 or fifteen percent. The resulting number equals the number of new positions that must be filled to meet the fifteen percent increase. Numbers are rounded ~~((up))~~ down to the nearest whole number ~~((at point five (.5))).~~

(b) **When does hiring have to occur?** All hiring increases must occur during the ~~((calendar year for which credits are being sought))~~ four consecutive full calendar quar-

ters after the calendar quarter during which the first qualified employment position is filled for purposes of meeting the fifteen percent threshold test. Positions hired in ~~((a calendar year prior to making an application))~~ the four consecutive full calendar quarters prior to the first qualified employment position being filled are not eligible for a credit but the positions are used ~~((to calculate))~~ as a base when calculating whether the fifteen percent threshold has been met.

(c) **The department will assist applicants to determine their hiring requirements.** Accompanying the tax credit application is a worksheet to assist the applicant in determining if the fifteen percent qualified employment threshold is satisfied. Based upon the information provided in the application, the department will advise applicants of their minimum number of hiring needs for which credits are being sought.

(d) **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 tax status of each situation must be determined after a review of all of the facts and circumstances.

(i) ABC Company anticipates increasing employment ~~((during the 2001 calendar year))~~ at a manufacturing facility by an average of 15 full-time qualified employment positions for a total of 113 positions. The average number of full-time qualified employment positions ~~((during the 2000 calendar year))~~ for the four consecutive full calendar quarters immediately preceding the calendar quarter for which the first qualified employment position is filled was 98. To qualify for the tax credit program, the minimum average number of full-time qualified employment positions required for the ~~((2001 calendar year))~~ four consecutive full calendar quarters after the calendar quarter for which the first qualified positions is filled is $98 \times .15 = 14.7$ (rounding ~~((up to 15))~~ down to 14 positions). Therefore, ABC Company's plan to hire 15 full-time qualified ~~((employment positions for 2001 meets))~~ employees satisfies the 15% employment increase requirement.

(ii) ABC anticipates increasing employment positions at this same manufacturing facility by an average of 15 additional full-time qualified employment positions during ~~((the 2002 calendar year to))~~ the following four consecutive full calendar quarters for a total of 128 positions. To qualify for the tax credit program, the minimum average number of full-time qualified employment positions required for ~~((the 2002 calendar year is 17))~~ these four consecutive full calendar quarters is 16 ($113 \times .15 = 16.95$, rounding ~~((up to 17))~~ down to 16). Therefore, ABC Company's plan to hire 15 full-time qualified ~~((employment positions for 2002))~~ employees does not ~~((meet))~~ satisfy the 15% employment increase requirement.

(5) **Restriction against displacing existing jobs within Washington.** The law provides that no recipient may use tax credits approved under this program to decertify a union or to displace existing jobs in any community of the state. Thus, the average expected increase of employment positions at the specific facility for which application is made must reflect a gross increase in the applicant's employment of persons at all locations in this state. Transfers of personnel from existing positions outside of an eligible area to new positions at the

specific facility within an eligible area will not be allowed for purposes of approving tax credits. Also, layoffs or terminations of employment by the recipient at other locations in Washington but outside an eligible area for the purpose of hiring new positions within an eligible area will result in the withdrawal of any credits taken or approved.

(6) **Application procedures.** A taxpayer must file an application with and obtain approval from the department ~~((of revenue))~~ to receive tax credits under this program. A ~~((separate))~~ new application must be submitted ~~((for each calendar year for which credits are claimed))~~ after each group of four consecutive full calendar quarters that you project employment to increase over 15%. RCW 82.62.020 requires that application for the tax credits be ~~((made prior to the actual hiring of qualified employment positions))~~ filed within the first ninety days after the first qualified employment position is filled. Applications failing to satisfy this statutory requirement will be disapproved.

(a) **How to obtain and file applications.** Application forms will be provided by the department upon request either by calling 360-902-7175 or ~~((via))~~ from the department's internet web site at ~~((www.dor.wa.gov))~~ dor.wa.gov under the option for forms. The completed application may be sent by fax to 360-586-0527 or mailed to the following address:

Taxpayer Account Administration
Department of Revenue
 State of Washington
~~((Department of Revenue~~
~~Taxpayer Account Administration))~~
 P.O. Box 47476
 Olympia, WA 98504-7476

The U.S. Post Office postmark or fax date will be used as the date of application.

(b) **Confidentiality.** Applications, reports, or any other information received by the department in connection with this tax credit program, except applications not approved by the department, are not confidential and are subject to disclosure. All other taxpayer information is subject to the confidentiality provisions in RCW 82.32.330.

(c) **Department to act upon application within sixty days.** The department will determine if the applicant qualifies for tax credits on the basis of the information provided in the application and will approve or disapprove the application within sixty days. If approved, the department will issue a credit approval notice containing the dollar amount of tax credits available for use and the procedures for taking the credit. If disapproved, the department will notify the applicant in writing of the specific reasons for disapproval. The applicant may seek administrative review of the department's disapproval of an application by filing a petition for review with the department. The petition must be filed within thirty days from the date of notice of the disallowance pursuant to the provisions of WAC 458-20-100, Appeals~~((small claims and settlements))~~.

(d) **No adjustment of credit after approval.** After an application is approved and tax credits are granted, no upward adjustment ~~((or amendments))~~ of the application will be made for ~~((that calendar year))~~ the four calendar quarters for which the application was approved.

(7) **How much is the tax credit?** The amount of tax credit is based on the number of qualified employment positions created and the wages and benefits paid to ~~((qualified employment positions created))~~ these qualified employees.

(a) **How much tax credit may I claim for each qualified employment position?** The amount of tax credit that may be claimed for each position created is as follows:

(i) Two thousand dollars for each qualified employment position that pays forty thousand dollars or less in wages and benefits annually and is employed in an eligible business project; and

(ii) Four thousand dollars for each qualified employment position that pays more than forty thousand dollars in wages and benefits annually and is employed in an eligible business project.

(b) **What qualifies as wages and benefits?** For the purposes of chapter 82.62 RCW, "wages" means compensation paid to an individual for personal services, whether denominated as wages, salary, commission, bonus, or otherwise. "Benefits" means compensation not paid as wages and includes Social Security, retirement, health care, life insurance, industrial insurance, unemployment compensation, vacation, holiday, sick leave, military leave, and jury duty. "Benefits" does not include any amount reported as wages.

(8) **How to claim approved credits.** The recipients must take the tax credits approved under this program on ~~((their regular combined excise tax return for their regular assigned tax reporting period))~~ excise tax returns filed using the department's Efile system. These tax credits may not exceed the B&O tax liability. ~~((The amount of credit taken should be entered into the "credit" section of the return form, with a copy of the credit approval notice issued to the recipient attached to the return.))~~

(a) **When can credits be used?** The credits ~~((may be used as soon as hiring of the projected qualified employment positions begins or may accrue until they are most beneficial for the recipient's use. For example, if a recipient has been approved for \$12,000 of tax credits based upon projections to hire five new positions, that recipient may use))~~ cannot be used until the department has approved the application. After approval, a recipient may use \$2,000 or \$4,000 of tax credit at the time it hires each new employee, depending on the wage/benefit level of the position filled.

(b) **No refunds for unused credits.** No tax refunds will be made for any tax credits which exceed tax liability during the life of this program. If tax credits derived from qualified hiring exceed the recipients' business and occupation tax liability in any one calendar year under this program, they may be carried forward to the next ~~((calendar year(s)))~~ reporting period(s), until used.

(9) **Report to be filed by recipient.** A recipient of tax credits under this program must complete and submit a report of employment activities to substantiate that he or she has complied with the hiring and retention requirements for approved credits. RCW 82.62.050. This report must be filed with the department by the last day of the month immediately following the end of the four consecutive full calendar quarter period for which a credit is earned. Based upon this report, the department will verify that the recipient is entitled to the tax credits approved by the department when the application

was reviewed. The completed report may be sent by fax to 360-586-0527 or mailed to the following address:

Taxpayer Account Administration
Department of Revenue
 State of Washington
 ((Department of Revenue
 Taxpayer Account Administration))
 P.O. Box 47476
 Olympia, WA 98504-7476

The U.S. Post Office postmark or fax date will be used as the date of filing.

(a) **Verification of report.** The department will use the same report the recipient provides to the department of employment security, which is known as the quarterly employment security report, to verify the recipient's eligibility for tax credits. The recipient must maintain copies of the quarterly employment report for the ((year)) four consecutive full calendar quarters prior to the ((year for which credits are claimed, the year)) quarter for which the first qualified employment position is filled, the five calendar quarters for which the credits are claimed (this includes the quarter for which the first qualified employment position is filled), and ((for)) the four consecutive full calendar quarters following the hiring of persons to fill the qualified employment positions. (The recipient does not have to forward copies of the quarterly employment report to the department each quarter.) The department may use other wage information provided to the department by the department of employment security. The taxpayer must provide additional information to the department, as the department finds necessary to calculate and verify wage eligibility.

(b) **Failure to file report.** The law provides that if any recipient fails to submit a report or submits an inadequate report, the department may declare the amount of taxes for which credit has been used to be immediately due and payable. An inadequate report is one which fails to provide information necessary to confirm that the requisite number of employment positions has been created and maintained for ((twelve consecutive months)) four consecutive full calendar quarters.

(10) **What if the required number of positions is not created?** The law provides that if the department finds that a recipient is not eligible for tax credits for any reason, other than failure to create the required number of qualified employment positions, the amount of taxes for which any credit has been used will be immediately due. No interest or penalty will be assessed in such cases. However, if the department finds that a recipient has failed to create the specified number of qualified employment positions, the department will assess interest, but not penalties, on the taxes against which the credit has been used. This interest on the assessment is mandatory and will be assessed at the statutory rate under RCW 82.32.050, retroactively to the date the tax credit was used. The interest will accrue until the taxes for which the credit was used are fully repaid. RCW 82.32.050. The interest rates under RCW 82.32.050 can be obtained from the department's ((internet)) web site at ((www.dor.wa.gov)) dor.wa.gov or by calling the department's information center at 1-800-647-7706.

(11) **Program thresholds.** The department cannot approve any credits that will cause the total credits approved to exceed seven million five hundred thousand dollars in any fiscal year. RCW 82.62.030. A "fiscal year" is the twelve-month period of July 1st through June 30th. If all or part of an application for credit is disallowed due to cap limitations, the disallowed portion will be carried over for approval the next fiscal year. However, the applicant's carryover into the next fiscal year is only permitted if the total credits approved for the next fiscal year does not exceed the cap for that fiscal year as of the date on which the department has disallowed the application.

WSR 15-11-096
PROPOSED RULES
COMMUNITY COLLEGES
OF SPOKANE

[Filed May 20, 2015, 9:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-05-082.

Title of Rule and Other Identifying Information: Repeal chapter 132Q-30 WAC, Standards of conduct for students and replace with new chapter 132Q-10 WAC, Standards of conduct for students.

Hearing Location(s): CCS Board of Trustees Meeting, The Lodge Building, 3305 West Fort George Wright Drive, Spokane, WA, on July 21, 2015, at 8:30 a.m.

Date of Intended Adoption: July 21, 2015.

Submit Written Comments to: Kathleen Roberson, Community Colleges of Spokane (CCS), Mailstop 1006, P.O. Box 6000, Spokane, WA 99217-6000, e-mail kathleen.roberson@ccs.spokane.edu, fax (509) 434-5279, by July 7, 2015.

Assistance for Persons with Disabilities: Contact Kathleen Roberson, (509) 434-5275.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Repeal the previous chapter on student code of conduct and replace it with a chapter to reflect compliance with the Violence Against Women Act (VAWA), Campus SaVE Act, and Title IX guidance from the Office for Civil Rights, as well as changes in the law regarding bullying, harassment, discrimination, sexual violence, educational records and personal use of marijuana. The new chapter includes the following substantive changes:

- Clarifies and adds new definitions. Renames section titles to clarify content and aid in determination of correct section.
- Adds that the chief student services officer may grant a stay of decision during the appeal process and the student must identify if they are seeking a stay of decision in their appeal.
- Expands the jurisdiction of the standards of conduct to include activities funded by associated students, online education, study abroad programs and/or foreign or domestic travel associated with any of the activities

- listed. Clarifies that CCS policies, procedures, rules and regulations apply to students studying abroad.
- Clarifies that student organizations include student clubs and athletics and these groups are expected to comply with the code while on college premises and at college-sponsored activities. Clarifies that off campus misconduct of group members may be subject to appropriate sanctions.
 - Updates the section on disciplinary records to allow disclosure of the outcomes of disciplinary proceedings involving a crime of violence, nonforcible sex offense, burglary, criminal homicide, destruction/damage/vandalism of property, kidnapping/abduction, robbery or forcible sex offenses to the complainant and expands the exceptions for communicating a student's disciplinary record.
 - Updates language to clarify the disciplinary proceedings specified for general misconduct and adds disciplinary proceedings specified for sexually violent conduct.
 - Adds tampering with an election conducted by or for CCS students and the breach of published code of ethics or standards that govern a particular profession for which the student is taking a course or pursuing as an educational goal as ethical violations.
 - Clarifies what constitutes a disruptive atmosphere.
 - Removes the abuse of others from the abuse of self or others section and adds a new section on assault, intimidation, bullying and verbal threats.
 - Expands the definition of theft or damage to property and the definition of unauthorized access to campus property.
 - Adds the violation of a behavioral contract as a conduct violation.
 - Clarifies the types of drugs that are impermissible and adds being observably under the influence of such drugs as a violation. Adds that while recreational marijuana use is permitted by state law, in accordance with federal law, it is still prohibited on college premises or in conjunction with college activities. Adds being under the influence of alcohol as a violation.
 - Expands the prohibition of tobacco to include related products and expands the definition of lighted tobacco products.
 - Clarifies the definition of disorderly conduct.
 - Clarifies what constitutes misuse of information technology and applies to access to e-mail and other electronic items.
 - Clarifies language in the abuse of the student conduct system section and adds prohibitions regarding destroying or altering evidence; intimidating or improperly influencing witnesses, potential witnesses or anyone involved in a disciplinary proceeding; and harassing any student, faculty or staff member involved in a disciplinary proceeding.
 - Adds new protected classifications from discrimination and expands the definition of what constitutes discrimination.
 - Adds a section prohibiting sexual harassment.
 - Revises the section on sexual misconduct to encompass the types of sexually violent conduct and define[s] consent.
 - Clarifies the definition of harassment.
 - Removes the section on stalking and adds stalking to the section on sexually violent conduct.
 - Clarifies the definition of reckless endangerment.
 - Adds a section prohibiting aiding another individual in acts of misconduct.
 - Clarifies the process to file general student misconduct complaints and outlines the process to file sexually violent conduct complaints. Identifies the college's Title IX coordinator.
 - Adds a section regarding how general misconduct and sexually violent conduct complaints are reviewed.
 - Adds a process to allow general misconduct complaints to be handled by brief adjudicative proceedings. The student has twenty calendar days to appeal the decision.
 - Adds a section for a student conduct administrative panel to conduct disciplinary proceedings in cases of sexually violent conduct or in the cases of general misconduct, where if the allegation is true, dismissal of more than ten instructional days might be the result.
 - Adds interim sanctions other than suspension that may be imposed prior to the disciplinary proceeding and how the student will be provided with notice.
 - Clarifies the procedures for disciplinary proceedings conducted by the student conduct board.
 - Changes the length of time for a student to appeal a student conduct board decision from twenty-one to twenty calendar days.
 - Adds a section outlining the procedure for disciplinary proceedings conducted by a student conduct administrative panel.
 - Adds a section outlining the procedure for student conduct administrative panels to reach a decision using the preponderance of evidence standard and how the panel will notify the student of the decision. A student has twenty calendar days to appeal the panel's decision.
 - Clarifies the review process for written appeals of decisions resulting from disciplinary proceedings and retains review of disciplinary decisions and sanctions by the appeals board.
 - Updates and clarifies disciplinary sanctions terms and conditions that the college can impose against students who are found to have violated the standards of conduct for students.
 - Adds additional protected status classifications as aggravating factors in determining sanctions for conduct if the student's misconduct was motivated by another's membership in that protected status.
 - Adds additional procedural requirements and supplemental procedures for allegations of sexually violent conduct matters and makes available the same procedural rights to alleged victims of sexually violent conduct as are available to student respondents accused of sexually violent conduct.
- Reasons Supporting Proposal: The revised code will enhance the colleges' compliance with VAWA, Campus SaVE Act, and Title IX guidance from the Office for Civil

Rights, as well as changes in the law regarding bullying, harassment, discrimination, sexual violence, educational records and personal use of marijuana.

Statutory Authority for Adoption: RCW 28B.50.140.

Statute Being Implemented: RCW 28B.50.140.

Rule is necessary because of federal law, VAWA's SaVE Act provision § 304 amending § 485(f) of the Clery Act (P.L. 113-4) 20 U.S.C. 1092(f). DOE's OCR April 4, 2011, Dear Colleague on Sexual Violence and April 29, 2014, Q & A on Title IX and Sexual Violence re: Title IX 20 U.S.C. §1681 et.seq.

Name of Proponent: CCS, governmental.

Name of Agency Personnel Responsible for Drafting: Kathleen Roberson, 501 North Riverpoint Boulevard, Suite 204, Spokane, WA 99202, (509) 434-5275; Implementation and Enforcement: CCS, 501 North Riverpoint Boulevard, Suite 204, Spokane, WA 99202, (509) 434-5275.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact 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. CCS is not a listed agency under RCW 34.05.328 and is therefore exempt from this provision.

May 20, 2015
Kathleen Roberson
Executive Assistant to the
Chief Financial Officer

NEW SECTION

WAC 132Q-10-101 Standards of conduct for students—Preamble. (1) Community Colleges of Spokane (CCS), a multicollege district, provides its community and students with education and services of the highest quality. We do this in a manner which exhibits concern and sensitivity to students, faculty, staff and others who utilize our services and facilities. It is essential that members of CCS exhibit appropriate and conscientious behavior in dealing with others.

(2) CCS expects all students to conduct themselves in a manner consistent with its high standards of scholarship and conduct. Student conduct, which distracts from or interferes with accomplishment of these purposes, is not acceptable. Students are expected to comply with these standards of conduct for students both on and off campus and acknowledge the college's authority to take disciplinary action.

(3) Admission to a college within CCS carries with it the presumption that students will conduct themselves as responsible members of the academic community. This includes an expectation that students will obey the law, comply with policies, procedures and rules of the district, the colleges and their departments, maintain a high standard of integrity and honesty and respect the rights, privileges and property of other members of CCS.

(4) Students are responsible for their conduct. These standards of conduct for students promote CCS's educational purposes and provide students a full understanding of their rights and responsibilities. Sanctions for violations of the standards of conduct for students will be administered under

this chapter. When violations of laws of the state of Washington and/or the United States are also involved, the college may refer such matters to proper authorities and in the case of minors, this conduct may be referred to parents or legal guardians consistent with the provisions of FERPA.

(5) This chapter, chapter 132Q-10 WAC, constitutes the Community Colleges of Spokane standards of conduct for students. This chapter may also be referred to as the CCS student code of conduct.

NEW SECTION

WAC 132Q-10-105 Definitions. For the purposes of this chapter, the following terms shall mean:

(1) "Accused student" means any student accused of violating the standards of conduct for students.

(2) "Appeals board" is a district-wide board composed of one administrator from each college appointed by the chief executive of that college. The appeals board considers appeals from a student conduct board's determination or from the sanctions imposed by the student conduct officer. The appeals board is convened by the student conduct officer.

(3) The "chief student services officer" is the vice-president of student services of Spokane Community College or of Spokane Falls Community College, or a person designated by the college president to be responsible for the administration of the standards of conduct for students. The chief student services officer also serves as the Title IX coordinator for matters regarding conduct of Community Colleges of Spokane (CCS) students.

(4) "College" means Spokane Community College, Spokane Falls Community College, and all locations of CCS.

(5) "College official" includes any person employed by the college performing assigned duties with the exception of work study students.

(6) "College premises" includes all land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the Community Colleges of Spokane (including adjacent streets and sidewalks).

(7) "College president" includes the president of Spokane Falls Community College and the president of Spokane Community College. Each president is authorized to designate a chief student service officer on behalf of his or her respective institutions.

(8) "Complainant" means any member of CCS, including employee(s), contractor(s), visitor(s), or guest(s) who submits a report alleging that a student violated the standards of conduct for students. When students believe they have been victimized by another student's misconduct, they have the same rights under these standards as are provided to the complainant, even if another member of CCS submitted the charge itself. For the purposes of complaints involving sexual misconduct, the "complainant" is the alleged victim of sexual misconduct even if the complaint is filed by a third party including, but not limited to, complaints filed by CCS, SFCC, or SCC.

(9) "Disciplinary action" is the process by which discipline is imposed against a student, members of a student organization, or a student organization for a violation of the standards of conduct for students by a student conduct offi-

cer, the student conduct board, the student conduct administrative panel, the appeals board, or a faculty member.

(10) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the chief student services officer, the student conduct officer, the student conduct board, or the student conduct administrative panel. Appeals of all appealable disciplinary action shall be determined by the appeals board.

(11) "Disciplinary hearing" is the process during which an accused student has the opportunity to respond to a complaint alleging a violation(s) of the standards of conduct for students. The accused student has the opportunity to explain what he or she did and to provide evidence that is relevant to the complaint. Alleged misconduct that would not result in suspension in excess of ten instructional days or an expulsion shall be reviewed through a brief adjudicative proceeding held by the student conduct officer or the student conduct board.

(12) "Faculty member" means a teacher, counselor, or librarian or person who is otherwise considered by the college to be a member of its faculty.

(13) "Filing" is the process by which a document is officially delivered to a school official responsible for facilitating a disciplinary review. Unless expressly specified otherwise, filing shall be accomplished by:

(a) Hand delivery of the document to the school official or school official's assistant; or

(b) By sending the document by e-mail and first class mail to the recipient's college e-mail and office address. Papers required to be filed with the college shall be deemed filed upon actual receipt during office hours at the office of the specified official.

(14) "Instructional day" means Monday through Friday, except for federal or state holidays, when students are in attendance for instructional purposes.

(15) "Member of CCS" includes any person who is a student, faculty member, college official, guest, contractor, or visitor of CCS. A person's status in a particular situation is determined by the chief student services officer.

(16) "Notice" or "service" is the process by which a document is officially delivered to a party. Unless expressly specified otherwise, service upon a party shall be accomplished by:

(a) Hand delivery of the document to the party; or

(b) By 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 document or upon the date the document is e-mailed and deposited into mail.

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

(18) "Sexually violent conduct" is a sexual or gender-based violation of the standards of conduct for students including, but not limited to:

(a) Nonconsensual sexual activity including sexual activity for which clear and voluntary consent has not been given in advance; and sexual activity with someone who is incapable of giving valid consent because, for example, she or he is underage, sleeping, incapacitated due to alcohol or drugs, has an intellectual or other disability that prevents the

individual from having the capacity to give consent, or is subject to duress, threat, coercion or force.

(b) Sexual assault, domestic violence, dating violence, and sexual or gender-based stalking;

(c) Nonphysical conduct such as indecent liberties, sexual exploitation, indecent exposure, sexual exhibitionism, sex or gender-based digital media stalking, sexual or gender-based online harassment, sexual or gender-based cyberbullying, nonconsensual posting or recording of a sexual activity, and nonconsensual distribution of a recording of a sexual activity.

(19) "Student" includes a person taking courses at or through the college, either full time or part time. For the purposes of the standards of conduct for students, the term applies from the time of application for admission through the actual receipt of a degree or certificate, even though conduct may occur before classes begin or after classes end. The term also applies during the academic year, during periods between terms of actual enrollment and includes individuals who are not officially enrolled for a particular quarter but have a continuing relationship with the college (including suspended students), and students participating in study abroad programs. "Student" also includes "student organization" and persons who withdraw after allegedly violating the standards of conduct for students.

(20) "Student organization" means any number of persons who have complied with the formal requirements for college recognition, such as clubs and associations, and are recognized by the college as such.

(21) "Student conduct administrative panel" is a panel appointed by the president of the college to hear initial complaints referred by the student conduct officer involving allegations of sexual misconduct or other misconduct which may result in a suspension of more than ten instructional days or dismissal/expulsion from the college. The panel shall consist of three faculty members appointed by the president and two members of the administration, but not the vice-president of student services, appointed by the president at the beginning of the academic year. One of the members of the administration shall serve as the chair of the committee. If that individual is not available for a hearing or has a conflict of interest, the other member of the administration shall chair the individual hearing. The chairs shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct. The student conduct officer convenes the board and appoints the chair for each hearing. Hearings may be held by a quorum of three members of the committee so long as one faculty member and one administrator are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(22) "Student conduct board" is a board appointed by the president of the college to hear initial complaints referred by the student conduct officer to determine whether a student has violated the general standards of conduct for students, and to impose sanctions when a violation has been committed for misconduct that would result in discipline involving an academic suspension of ten instructional days or less or a discipline not involving dismissal or expulsion from the college. The board shall have at least one member from the respective

groups: Faculty, students, and administration. The student conduct officer convenes the board and appoints the chair. Hearings may be held 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 the committee members attending the hearing.

(23) "Student conduct officer" means the individual or individuals designated by the college president to facilitate and coordinate student conduct matters pursuant to these standards of conduct for students.

(24) "Title IX coordinator" means the vice-president of student services for the college or his/her designee who is responsible for coordinating Title IX matters regarding students of CCS who is also known as the chief student services officer.

NEW SECTION

WAC 132Q-10-110 Interpretations. Any question of interpretation or application of the standards of conduct for students shall be determined by the chief student services officer.

NEW SECTION

WAC 132Q-10-112 Records. (1) Disciplinary records are maintained in accordance with the records retention schedule.

(2) The disciplinary record is generally considered confidential pursuant to the Family Educational Rights and Privacy Act (FERPA).

(3) Students may request a copy of their own disciplinary record at their own reasonable expense by making a written request to the chief student services officer.

(4) Personally identifiable student information is redacted to protect another student's privacy consistent with FERPA.

(5) Students may authorize release of their own disciplinary record to a third party in compliance with the FERPA by making a written request to the chief student services officer.

(6) Pursuant to FERPA, the college may inform the complainant of the outcome of any disciplinary proceeding involving a crime of violence or nonforcible sex offense as defined by FERPA including: Arson; assault offenses (aggravated assault, simple assault, intimidation, and stalking); burglary, criminal homicide (manslaughter by negligence, murder, and nonnegligent manslaughter); destruction/damage/vandalism of property; kidnapping/abduction; robbery; forcible sex offenses (rape, sodomy, assault with an object, fondling, indecent liberties, and child molestation); and nonforcible sex offenses (incest and statutory rape).

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

(a) The student's parents or legal guardians may review these records if the student is a minor or a dependent for tax purposes as permitted by FERPA.

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

(c) In response to a lawfully issued subpoena.

(d) In response to a court order.

NEW SECTION

WAC 132Q-10-115 Decisions and appeals. Decisions made by a student conduct board, the student conduct officer, or chief student services officer shall remain in effect during the appeal processes provided in this chapter unless an order of stay is granted by the chief student services officer. Students must identify if they are seeking a stay of a decision by the student conduct board, the student conduct officer or chief student services officer in their appeal. Appeals will comply with this chapter.

NEW SECTION

WAC 132Q-10-120 Jurisdiction of the standards of conduct for students. The standards of conduct for students apply to conduct that occurs on college premises, at college-sponsored activities, and to off-campus conduct that adversely affects CCS's educational environment and/or the pursuit of its objectives as set forth in its mission. Jurisdiction extends to locations in which students are engaged in official college activities including, but not limited to, athletic events, activities funded by associated students, training internships, cooperative and distance education, online education, study abroad programs, practicums, supervised work experiences, any other college-sanctioned social or club activities, and/or foreign or domestic travel associated with any of these events or 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 to determine what conduct occurring off campus adversely impacts the college and/or the pursuit of its objectives.

NEW SECTION

WAC 132Q-10-125 Violation of law and standards of student conduct. (1) College disciplinary proceedings may be instituted against a student charged with conduct that potentially violates both the criminal law and the standards of conduct for students without regard to pending criminal litigation in court or criminal arrest and prosecution. Proceedings under these standards of conduct may be carried out prior to, simultaneously with, or following civil or criminal proceedings at the discretion of the chief student services officer. Determinations made or sanctions imposed under these standards of conduct are not subject to change because criminal charges were dismissed, reduced or resolved in favor of or against the criminal law defendant. Students in this circumstance who remain silent should recognize that they give up their opportunity to explain their side of the

story and that a decision will be made based on the information presented.

(2) When a student is charged by federal, state or local authorities with a violation of law, the college does not request or agree to special consideration for that student because he or she is a student. If the alleged offense also is being processed under the standards of conduct for students, the college may advise off-campus authorities of the existence of the standards and of how such matters are typically handled within CCS. The college cooperates with law enforcement and other agencies in the enforcement of criminal law on campus and in the conditions imposed by criminal courts for the rehabilitation of student violators provided that the conditions do not conflict with college rules or sanctions. Members of CCS, acting in their personal capacities, remain free to interact with governmental representatives as they deem appropriate.

NEW SECTION

WAC 132Q-10-130 Responsibility for guests. A student or student organization is responsible for the conduct of guests on or in college premises and at functions sponsored by the college or sponsored by a recognized student organization. Bringing any person including children to a teaching environment without the express approval of the faculty member or other authorized official is prohibited.

NEW SECTION

WAC 132Q-10-135 Students studying abroad. Students who participate in any college-sponsored or sanctioned international study program shall observe the following:

- (1) The laws of the host country;
- (2) The academic and disciplinary regulations of the educational institution or residential housing program where the student is studying;
- (3) The policies, procedures, rules, and regulations of CCS, its colleges and departments and any behavioral contracts between CCS, SFCC, or SCC with a student;
- (4) Any other agreements related to the student's study program in another country; and
- (5) The CCS standards of conduct for students.

NEW SECTION

WAC 132Q-10-140 Group conduct. Student organizations, including student clubs and athletics, are expected to comply with the standards of conduct for students and with CCS policies and procedures when engaging in conduct that occurs on college premises and at college-sponsored activities. When a member or members of a student organization violates the standards of conduct for students or CCS policies or procedures, including engaging in off-campus conduct that adversely affects CCS's educational environment and/or the pursuit of its objectives as set forth in its mission, the student organization and/or individual members may be subject to appropriate sanctions.

NEW SECTION

WAC 132Q-10-200 Misconduct—Violations of the standards of conduct for students. (1) General misconduct - Any student or student organization alleged to have committed or to have attempted to commit misconduct specified in this chapter is subject to the disciplinary proceedings as described in WAC 132Q-10-310 and to the disciplinary sanctions in WAC 132Q-10-320 and 132Q-10-400, except sexually violent conduct as defined in WAC 132Q-10-105(18) and further detailed in WAC 132Q-10-244.

(2) Sexually violent conduct - Any student or student organization alleged to have committed or to have attempted to commit sexually violent conduct as defined in WAC 132Q-10-105(18) and further detailed in WAC 132Q-10-244 is subject to the disciplinary process provided in WAC 132Q-10-332 is subject to the disciplinary sanctions in WAC 132Q-10-320 and 132Q-10-400.

NEW SECTION

WAC 132Q-10-210 Academic dishonesty and ethical violations. (1) Acts of academic dishonesty will be reported to the student conduct officer and include the following:

- (a) Cheating which includes:
 - (i) Use of unauthorized assistance in taking quizzes, tests, or examinations.
 - (ii) Acquisition, without permission, of tests or other academic material belonging to a member of the college faculty or staff.
 - (iii) Fabrication, which is the intentional invention or counterfeiting of information in the course of an academic activity. Fabrication includes:
 - Counterfeiting data, research results, information, or procedures with inadequate foundation in fact;
 - Counterfeiting a record of internship or practicum experiences;
 - Submitting a false excuse for absence or tardiness;
 - Unauthorized multiple submission of the same work; sabotage of others' work.
 - (iv) Engaging in any behavior specifically prohibited by a faculty member in the course syllabus or class discussion.
 - (v) Plagiarism which includes the use, by paraphrase or direct quotation, of the published or unpublished work of another person without full and clear acknowledgment. It also includes the unacknowledged use of materials prepared by another person or agency engaged in the selling of term papers or other academic materials.

(vi) Facilitation of dishonesty, including not challenging academic dishonesty.

(b) Knowingly furnishing false information to any college official, faculty member, or office including submission of fraudulent transcripts from other institutions.

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

(d) Tampering with an election conducted by or for CCS college students.

(2) Acts of ethical violations will be reported to the student conduct officer and include the following: The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of

a particular profession for which the student is taking a course or is pursuing as an educational goal.

NEW SECTION

WAC 132Q-10-211 Competence to profit from curriculum offerings. Students must demonstrate a competence to profit from the curriculum offerings of the college to retain the ability to attend college pursuant to RCW 28B.50.090.

NEW SECTION

WAC 132Q-10-212 Disruption or obstruction. Students have the right to freedom of speech, including the right to dissent or protest, but this expression may not interfere with the rights of other members of CCS or disrupt college activities. Student behavior that creates a disruptive atmosphere not consistent with the purposes of the college including teaching, administration, research, disciplinary proceedings, other college activities, or any college authorized activities, whether conducted or sponsored by the college is prohibited pursuant to RCW 28B.50.090. Obstructing the free flow of pedestrian or vehicular traffic on college premises or at college-sponsored events is prohibited.

NEW SECTION

WAC 132Q-10-214 Abuse of self. Physical abuse, threats, intimidation and/or other conduct, which threatens or endangers the health or safety of one's self.

NEW SECTION

WAC 132Q-10-215 Assault, intimidation, bullying, verbal threats. Assault, physical abuse, verbal abuse, threat(s), intimidation, bullying, 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 paragraph:

(1) Assault involves one person causing or attempting to cause bodily harm to another person: With a firearm; with a deadly weapon; with a weapon or other instrument or thing likely to produce bodily harm; with force that is likely to produce bodily harm or death; through the administration, exposure or transmission of poison, a destructive or noxious substance, or the human immunodeficiency virus; by strangulation or suffocation. It also includes actions which are intended to prevent or resist the execution of any lawful process, apprehension or detention of a person by a security officer or law enforcement.

(2) Bullying and intimidation - Any intentional written, verbal, or physical act including, but not limited to, one shown to be motivated by the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical or sensory disability, or other distinguishing characteristics, when the intentional electronic, written, verbal, or physical act is so severe, persistent or pervasive that it creates an intimidating or threatening educational environment and:

(a) Physically harms a student or damages the student's property;

(b) Has the effect of substantially interfering with a student's education; or

(c) Has the effect of substantially disrupting the orderly operation of the school.

Nothing in this section requires the affected student to actually possess a characteristic that is a basis for the bullying or intimidation.

(3) Cyberbullying - Is bullying conducted using electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites.

(4) Verbal threats - Include threats against a specific person or group of persons and places that person, or members of the specific group of persons, in reasonable fear of harm to person or property. The fear must be a fear that a reasonable person would have under all circumstances. If the threats are because of a person's perception of a victim's race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical or sensory disability, the fear must be fear that a reasonable person who is a member of the victim's race, color, religion, ancestry, national origin, gender, or sexual orientation, or who has the same mental, physical, or sensory disability as the victim would have. Words alone do not constitute malicious harassment unless the context or circumstances surrounding the words indicate the words are a threat.

NEW SECTION

WAC 132Q-10-216 Theft or damage to property. Theft of, possession after it has been stolen, or misuse of, and/or actual or attempted damage to, real or personal property or money on or off campus of:

- (1) The college or state;
- (2) Any student, college officer, employee or organization; or
- (3) Any other person or organization.

NEW SECTION

WAC 132Q-10-218 Hazing. (1) Conspiring to engage in hazing or participating in hazing of another.

(a) Hazing means any activity expected of someone joining a group (or maintaining full status in a group) that causes or is likely to cause a risk of mental, emotional and/or physical harm, regardless of the person's willingness to participate.

(b) Hazing activities may include the following: Abuse of alcohol during new member activities; striking another person whether by use of any object or one's body; creation of excessive fatigue; physical and/or psychological shock; and morally degrading or humiliating games or activities that create a risk of bodily, emotional, or mental harm.

(c) Hazing does not include practice, training, conditioning and eligibility requirements for customary athletic events such as intramural or club sports and intercollegiate athletics, or other similar contests or competitions, but gratuitous hazing activities occurring as part of such customary athletic event or contest are prohibited.

(2) Washington state law prohibits hazing which may subject violators to criminal prosecution under RCW 28B.10.901.

(3) Washington state law (RCW 28B.10.901) provides sanctions for hazing.

NEW SECTION

WAC 132Q-10-220 Failure to comply with college officials. Failure to comply with directions of college officials acting in performance of their duties, including failure to identify oneself to these persons when requested to do so.

NEW SECTION

WAC 132Q-10-222 Unauthorized keys or unauthorized entry. Unauthorized possession, duplication, or use of a key, keycard or other restricted means of access to any college premises, or unauthorized entry to or use of college premises.

NEW SECTION

WAC 132Q-10-224 Violation of CCS policy, procedure, rule, regulation, or behavioral contract. Violation of policies, procedures, rules, or regulations of CCS, its colleges and departments and/or violation of a behavioral contract entered into with CCS, its colleges or departments.

NEW SECTION

WAC 132Q-10-226 Violation of law. Violation of any federal, state, or local law.

NEW SECTION

WAC 132Q-10-228 Drugs, controlled substances, and marijuana. (1) Legend drugs, narcotic drugs, controlled substances: Being observably under the influence of any legend drug, narcotic drug or controlled substance as defined in chapters 69.41 and 69.50 RCW, or otherwise using, possessing, delivering, manufacturing, or seeking any such drug or substance, except in accordance with a lawful prescription for that student by a licensed health care professional or as otherwise expressly permitted by federal, state, or local law, is prohibited. Use, possession and distribution of drug paraphernalia for the drugs and substances identified in this section is prohibited.

(2) Marijuana: While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities. Being observably under the influence of marijuana or the psychoactive compounds found in marijuana, or otherwise using, possessing, selling or delivering any product containing marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form, is prohibited.

NEW SECTION

WAC 132Q-10-230 Alcohol. Being under the influence of any alcoholic beverage or otherwise using, possessing, manufacturing, selling, distributing any alcoholic beverages, or public intoxication (except as expressly permitted by law

and college rules) are prohibited. Alcoholic beverages may not, in any circumstance, be used by, possessed by, sold, or distributed to any person under twenty-one years of age.

NEW SECTION

WAC 132Q-10-231 Use of tobacco, electronic cigarettes and related products. Use of tobacco, electronic cigarettes and related products are prohibited in all Community Colleges of Spokane facilities and motor pool vehicles with no exception.

(1) Smoking and tobacco use are also prohibited:

(a) Within twenty-five feet of entrances, exits, windows that open, and ventilation intakes that serve an enclosed area where smoking and tobacco use are prohibited; and

(b) Where designated on college premises.

(2) "Smoking" means:

(a) Inhaling, exhaling, burning, carrying or possessing any lighted tobacco product, including cigarettes, cigars, bidi, clove cigarettes, pipe tobacco, and any other lit tobacco products; or

(b) Use of electronic nicotine delivery devices and related products including, but not limited to, electronic cigarettes, vapor cigarettes, hookahs, waterpipes or similar products.

(3) "Tobacco use" means the personal use of:

(a) Any tobacco product, which shall include smoking, as defined in subsection (2) of this section, as well as use of an electronic cigarette or any other device intended to simulate smoking;

(b) Smokeless tobacco, including snuff, chewing tobacco, smokeless pouches, or any other form of loose-leaf, smokeless tobacco.

(4) "Facilities" means a district owned or controlled property, building, or component of that property/building.

(5) "Motor pool vehicles" means vehicles assigned to specific college departments or programs; vehicles used for instructional purposes; vehicles dispatched to staff and students on a reserved, single-use basis; and vehicles assigned to specific faculty and staff.

NEW SECTION

WAC 132Q-10-232 Firearms and dangerous weapons. No student may carry, possess, or use any firearm, explosive (including fireworks), dangerous chemical, or any dangerous weapon on college premises. Paintball guns, air guns, and any other items that shoot projectiles are not permitted on college premises.

NEW SECTION

WAC 132Q-10-234 Disorderly conduct. Participation in any activity which unreasonably disrupts the operations of the college or infringes on the rights of another member of the college community, or leads or incites another person to engage in such an activity. This includes, but is not limited to, conduct that is disorderly, lewd, or indecent, disturbs the peace, or assists or encourages another person to disturb the peace.

NEW SECTION

WAC 132Q-10-236 Unauthorized use of electronic or other devices. Making an audio or video record of any person while on college premises without his/her prior knowledge or without his/her effective consent, when such a recording is likely to cause injury or distress. This includes surreptitiously taking pictures of another person in a gym, locker room, or restroom.

NEW SECTION

WAC 132Q-10-238 Abuse or theft of CCS information technology. Theft or misuse of computer facilities, equipment and information technology resources including:

- (1) Unauthorized entry into a file, message, or other item to use, read, or change the contents, or for any other purpose.
- (2) Unauthorized duplication, transfer, or distribution of a file, message, or other item.
- (3) Unauthorized use of another individual's identification and/or password.
- (4) Unauthorized monitoring of another's e-mail communications directly or through spyware.
- (5) Sending false messages to third parties using another's e-mail identity.
- (6) Use of computing facilities and resources to interfere with the work of another student, faculty member, college official, or others outside of CCS.
- (7) Use of computing facilities and resources to send, display, or print an obscene, harassing, or threatening message, text or image.
- (8) Use of computing facilities and resources to interfere with normal operation of the college computing system, including disrupting electronic communications with spam or by sending a computer virus.
- (9) Use of computing facilities and resources in violation of copyright laws.
- (10) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization.
- (11) Any violation of the CCS acceptable use of information technology resources policy.

NEW SECTION

WAC 132Q-10-240 Abuse of the student conduct system. Abuse of the student conduct system, including:

- (1) Failure to obey the notice from a student conduct officer, student conduct board, student conduct administrative panel or college official to appear for a meeting or hearing as part of the student conduct system.
- (2) Falsification, distortion, or misrepresentation of information before a chief student services officer, student conduct officer, student conduct board, student conduct administrative panel or college official during an interview, meeting or hearing.
- (3) Disruption or interference with the orderly conduct of a proceeding before a chief student services officer, student conduct officer, student conduct board, or student conduct administrative panel proceeding.

(4) Filing a fraudulent complaint or initiating a student conduct proceeding in bad faith.

(5) Attempting to discourage or interfere with an individual's proper participation in, or use of, the student conduct system.

(6) Attempting to destroy or alter potential evidence.

(7) Attempting to intimidate or improperly influence or pressure a witness or a potential witness.

(8) Attempting to influence the impartiality of any hearing officer, including the chief student services officer, the student conduct officer, any member of a student conduct board, any member of a student conduct administrative panel, any appeals board member, and/or any faculty or staff prior to or during the course of the student conduct board proceeding.

(9) Harassment (verbal or physical) or intimidation of any hearing officer, including the chief student services officer, the student conduct officer, any member of a student conduct board, any member of a student conduct administrative panel, any appeals board member, and/or any faculty member or staff prior to, during, or after a student conduct code proceeding.

(10) Failure to comply with the sanction(s) imposed under the standards of conduct for students.

(11) Influencing or attempting to influence another person to commit an abuse of the student conduct code system.

NEW SECTION

WAC 132Q-10-242 Discrimination. Discrimination on the basis of race, creed, color, religion, national or ethnic origin, age, sex, marital status, pregnancy, parental status or families with children, status as a mother breastfeeding her child, AIDS/HIV or hepatitis C, honorably discharged veteran status, sexual orientation, gender identity or expression, disability, use of guide dog or service animal by a person with a disability, genetic information, or other legally protected classifications is prohibited in conformity with federal and state laws. Discrimination includes physical, verbal, written conduct (including conduct via social and electronic media), or other conduct that is sufficiently severe, persistent or pervasive, and objectively offensive as to substantially interfere with a reasonable person's ability to study, participate in or benefit from CCS's educational programs, educational opportunities, and/or employment benefits and opportunities such that the person or group is effectively denied equal access/opportunities based on protected status.

NEW SECTION

WAC 132Q-10-243 Sexual harassment. Sexual harassment is conduct which includes, but is not limited to, engaging in unwelcome gender-based conduct. It may be between members of the opposite sex or between members of the same sex and does not necessarily have to be of a sexual nature if it is based on gender. Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic communications. It includes sexual advances, requests for sexual favors, or other conduct of a sexual nature where:

(1) Submission to such conduct is made, either expressly or implicitly a term or condition of an individual's education or employment; or

(2) Submission or rejection of such conduct by an individual is used as the basis for employment or educational decisions affecting any individual; or

(3) Such conduct is sufficiently severe, persistent or pervasive, and objectively offensive as to substantially interfere with, disrupt, limit, undermine or deprive a person the ability to participate in or to receive the benefits, services or opportunities of Community Colleges of Spokane's educational programs and activities and/or employment benefits and opportunities.

In determining whether sexual harassment exists, it is immaterial whether the victim resists and suffers the threatened harm or submits and thus avoids the threatened harm.

NEW SECTION

WAC 132Q-10-244 Sexually violent conduct. Sexually violent conduct includes the following: Domestic violence, dating violence, stalking, nonconsensual sexual intercourse, and nonconsensual sexual contact. This conduct also includes, but is not limited to, indecent liberties, sexual exploitation, indecent exposure, sexual exhibitionism, sex-based cyberharassment, prostitution or the solicitation of a prostitute, peeping or other voyeurism, or exceeding the boundaries of consent including allowing others to view consensual sex, the nonconsensual posting or recording of sexual activity, domestic violence, dating violence, and stalking.

(1) **Domestic violence:** (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent body harm, bodily injury or assault, between family or household members; (b) sexual assault of one family or household member by another; or (c) stalking of one family or household member by another family or household member. Pursuant to chapter 10.99 RCW, it also includes, but is not limited to, the following crimes when committed by one family or household member against another: Assault; drive-by shooting; reckless endangerment; coercion; burglary; criminal trespass, malicious mischief; kidnapping; unlawful imprisonment; and violation of a restraining order, no-contact order or protection order.

(2) **Dating violence** (aka relationship violence) is a type of domestic violence, except the acts are committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

(3) **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.

(4) **Cyberstalking** is when a person, with the intent to harass, intimidate, torment or embarrass any other person makes an electronic communication including, but not limited to, electronic mail, internet-based communications (social media sites and electronic bill boards), pager service,

or instant messaging using (a) any lewd, lascivious, indecent, or obscene words, images or language, or suggesting the commission of any lewd or lascivious act; (b) anonymously or repeatedly whether or not conversation occurs; or (c) threatening to inflict injury on the person or property of the person called or any member of his or her family or household.

(5) **Nonconsensual sexual intercourse** means any penetration; of the vagina or anus however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes; and any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex without consent and/or by force.

(6) **Nonconsensual sexual contact** means any intentional touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party, however slight, 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 bodily contact in a sexual manner.

(7) **Indecent liberties** means knowingly causing sexual contact with a person by forcible compulsion or when the person is incapable of consent by reason of mental defect, mental incapacitation, or physical helplessness. Sexual contact is defined as any nonconsensual touching of the sexual or other intimate parts of a person done for the purpose of gratifying the sexual desire of either party.

(8) **Consent** means the affirmative, unambiguous, and voluntary agreement to engage in a specific sexual activity during a sexual encounter. Any 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. Consent cannot be given by an individual who is: (a) Asleep or mentally or physically incapacitated, either through the effect of drugs, alcohol, or for any other reason; or (b) under the lawful age to provide legal consent; or (c) has an intellectual or other disability which prevents him or her from having the capacity to consent; or (d) under duress, threat, coercion or force. Intoxication is not a defense against allegations that an individual has engaged in nonconsensual conduct.

(9) **Voyeurism** is arousing or gratifying sexual desire by viewing, photographing, or filming another person without that person's knowledge and consent and/or while the person being viewed, photographed, or filmed is in a place where he or she has a reasonable expectation of privacy. It also includes the distribution of a recording of sexual activity.

NEW SECTION

WAC 132Q-10-246 Harassment. Conduct by any means that is unwelcome, sufficiently severe, pervasive or persistent, and objectively offensive as to substantially interfere, undermine or deprive a reasonable person the ability to work, study, or participate in the activities of the college. Harassing conduct may include physical conduct, verbal,

nonverbal, written, social media, and electronic communications.

NEW SECTION

WAC 132Q-10-250 Reckless endangerment. Engaging in conduct that creates an unreasonable risk of harm to another person or property including operation of any motor vehicle on college property in an unsafe manner or in a manner which is reasonably perceived as threatening the health or safety of another person or property.

NEW SECTION

WAC 132Q-10-252 Trespassing. Any person who has been given written notice, served by a college official, excluding him or her from college property is not licensed, invited, or otherwise privileged to enter or remain on college property, unless given explicit written permission by a college official.

NEW SECTION

WAC 132Q-10-254 Violation of a disciplinary sanction. Violation of any term or condition of any disciplinary sanction constitutes a new violation and may subject the student to additional sanctions.

NEW SECTION

WAC 132Q-10-255 Aiding others. Aiding, abetting, inciting, encouraging, or assisting another person to commit any of the foregoing acts of misconduct.

NEW SECTION

WAC 132Q-10-305 Process to file complaints. (1) General complaints - Individuals may file with the student conduct officer a written complaint, a student conduct incident report (SCIR), against a student or student organization for alleged violation(s) of the standards of conduct for students specified in WAC 132Q-10-130 through 132Q-10-240, 132Q-10-246 and 132Q-10-250 through 132Q-10-255. Complaints are to be submitted as soon as possible after the event takes place, preferably within thirty calendar days after the event. A copy of an SCIR can be obtained from the office of student conduct, the office of the Title IX coordinator, or the office of campus safety, on both the SCC and SFCC campuses. The SCIR is also available online at <http://www.ccs.spokane.edu/Forms/SCC-Forms/Student-Svcs/ccs-5761.aspx>. SCIRs must be submitted to:

Student Conduct Officer SCC

Spokane Community College
1810 N. Greene St., MS 2061
Room 125
Bldg. 6, Lair Student Center
Phone: 509-533-8657

Student Conduct Officer SFCC

Spokane Falls Community College
3410 W. Fort George Wright Dr., MS 3010
Room 140
Bldg. 17, Student Union Building
Phone: 509-533-3570

Title IX Coordinator SCC

Spokane Community College
1810 N. Greene St., MS 2061
Room 218
Lair, Building 6
Fax: 509-533-8444
Phone: 509-533-7015

Title IX Coordinator SFCC

Spokane Falls Community College
3410 W. Fort George Wright Dr., MS 3010
Administration Offices Room 225
Falls Gateway Building, Building 30
Fax: 509-533-3225
Phone: 509-533-3514

Office of Campus Safety SCC

1810 N. Greene St., MS 2010
Room 149A
Main Building, Building 1
Phone: 509-533-7287

Office of Campus Safety SFCC

3410 W. Fort George Wright Dr., MS 3174
Room 127
Student Union Building, Building 17
Phone: 509-533-3407

(2) Sexually violent conduct, discrimination, and sexual harassment complaints. Individuals may file complaints of sexually violent conduct as defined in WAC 132Q-10-105(18) and further detailed in WAC 132Q-10-244; complaints of discrimination as set forth in WAC 132Q-10-242; and sexual harassment as set forth in WAC 132Q-10-243 to the Title IX coordinator at the appropriate address listed below. Complaints are to be submitted as soon as possible after the event takes place, preferably within thirty calendar days after the event. Complaints may be submitted by using a Student Conduct Incident Report (SCIR) form. If the complaint is against the Title IX coordinator, the complainant should report the matter to the Spokane Community College president's office or Spokane Falls Community College president's office for referral to an alternate designee. A copy of the SCIR can be obtained from the office of student conduct, the office of the Title IX coordinator, or the office of campus safety, on both the SCC and SFCC campuses. A copy of the SCIR form is also available online at <http://www.ccs.spokane.edu/Forms/SCC-Forms/Student-Svcs/ccs-5761.aspx>.

Student Conduct Officer SCC

Spokane Community College
1810 N. Greene St., MS 2061
Room 125
Bldg. 6, Lair Student Center
Phone: 509-533-8657

Student Conduct Officer SFCC

Spokane Falls Community College
3410 W. Fort George Wright Dr., MS 3010
Room 140
Bldg. 17, Student Union Building
Phone: 509-533-3570

Title IX Coordinator SCC

Spokane Community College
1810 N. Greene St., MS 2061
Room 218
Lair, Building 6
Fax: 509-533-8444
Phone: 509-533-7015

Title IX Coordinator SFCC

Spokane Falls Community College
3410 W. Fort George Wright Dr., MS 3010
Administration Offices Room 225
Falls Gateway Building, Building 30
Fax: 509-533-3225
Phone: 509-533-3514

Office of Campus Safety SCC

1810 N. Greene St., MS 2010
Room 149A
Main Building, Building 1
Phone: 509-533-7287

Office of Campus Safety SFCC

3410 W. Fort George Wright Dr., MS 3174
Room 127
Student Union Building, Building 17
Phone: 509-533-3407

President

Spokane Community College
1810 N. Greene St., MS 2150
Spokane, WA 99217-5399
Fax: 509-533-7321

President

Spokane Falls Community College
3410 W. Fort George Wright Dr., MS 3010
Spokane, WA 99224-5288
Fax: 509-533-3225

NEW SECTION**WAC 132Q-10-306 Initial review of complaints.** (1)

General conduct complaints. The student conduct officer or his/her designee will conduct an initial assessment of a complaint to determine whether it alleges conduct that may be prohibited by the standards of conduct for students. If the initial assessment indicates that the matter involves sexual misconduct, the student conduct officer will forward the complaint to a chief student services officer/Title IX coordinator for review or if the student conduct officer believes he/she has a conflict of interest or is the subject of the complaint, the student conduct officer will forward the complaint to the chief student services officer who will conduct the initial assessment or designate another person to serve as the student conduct officer relative to that complaint. The student

conduct officer reviews general conduct complaints and determines whether the complaint, if as alleged were true would constitute a violation of any of the standards of conduct for students. If the student conduct officer determines the alleged conduct would constitute a violation, it is deemed to have merit warranting further review. If the complaint does not have merit the student conduct officer will dismiss the complaint. If the complaint is deemed to have merit, the student conduct officer then would conduct a further assessment pursuant to WAC 132Q-10-320 to determine if an interim suspension is warranted.

(2) Sexually violent conduct, discrimination and sexual harassment complaints. The chief student services officer/Title IX coordinator will conduct an initial assessment of the complaint to determine whether it alleges conduct that may be prohibited in WAC 132Q-10-242 through 132Q-10-244 of the standards of conduct for students, CCS policies, and/or CCS procedures. If the chief student services officer/Title IX coordinator has a conflict of interest or is the subject of the complaint, the college president, shall upon request and when feasible designate another person to serve as the chief student services officer/Title IX coordinator relative to that complaint. If the alleged conduct would constitute a violation, it is deemed to have merit warranting further review. If the complaint does not have merit the chief student services officer/Title IX coordinator will dismiss the complaint. If the complaint is deemed to have merit, the chief student services officer/Title IX coordinator will conduct a further assessment pursuant to WAC 132Q-10-320 to determine if an interim suspension or other interim measures are warranted. Interim measures may include, but are not limited to, notice to complainant of his or her options to avoid contact with the accused student, to receive options for and available assistance in changing academic and extracurricular activities, and/or modification of complainant's transportation, working, and dining situation, as appropriate.

NEW SECTION**WAC 132Q-10-310 Disposition of misconduct complaints by the student conduct officer.**

If a student conduct officer determines a complaint of general misconduct may have merit, the student conduct officer will schedule an initial meeting with the student to discuss the content of the complaint, the range of potential sanctions, and the applicable CCS code of conduct hearing procedures.

(1) If the student fails to appear for the meeting and the range of sanctions for the alleged general misconduct do not include a suspension in excess of ten instructional days or a dismissal, the matter will be heard as a brief adjudicative proceeding and the student conduct officer may:

- (a) Retain the matter for a brief adjudicative proceeding, determination of findings, conclusions, and sanctions; or
- (b) Send the matter to the student conduct board for a brief adjudicative proceeding and determination of findings, conclusions, and sanctions.

(2) If an agreed upon resolution cannot be reached or if the student fails to appear for the meeting and the range of sanctions for the alleged general misconduct include a suspension in excess of ten instructional days or a dismissal, the

student conduct officer will send the matter to the student conduct administrative panel for a full adjudicative proceeding including a hearing, determination of findings, conclusions, and sanctions.

NEW SECTION

WAC 132Q-10-315 Notice to the accused student of complaint. (1) All general misconduct and sexual misconduct complaints deemed by the chief student service officer/ Title IX coordinator or student conduct officer to have merit are presented by the student conduct officer to the accused student in written form, in person, by regular mail or electronic mail. Notice by mail is sent to the student's last known local address. If the student no longer is enrolled at the time notice is sent, the notice is sent to the student's permanent address. The student is responsible for providing and keeping the college updated of his/her current address.

(2) The written notice shall include:

(a) The factual details of the complaint, the policy, procedure, rule or standard of conduct allegedly violated.

(b) The approximate time and place of the alleged act.

(c) The range of possible sanctions for the alleged act.

(d) The date, time, and place of the proceeding. A time for the disciplinary proceeding is set seven to ten instructional days after the student has been notified unless waived by all parties. If the chair of the student conduct board, the chair of the student administrative panel or the accused student wish to alter the notice requirements, he/she must submit a written request to the student conduct officer. Time limits for notice may be shortened by the student conduct officer if the parties to the proceeding agree and also may be continued to a later time for good cause.

(e) Notification as to whether the student conduct officer, the student conduct board or the student administrative panel was assigned the case.

NEW SECTION

WAC 132Q-10-318 Student conduct officer disciplinary proceedings. Brief adjudicative disciplinary proceedings with the student conduct officer are conducted as follows:

(1) Meetings will not be conducted in public.

(2) Admission of any other person to the hearing is at the discretion of the student conduct officer.

(3) Respondents have the right to be assisted by an advisor they choose, at their own expense. The respondents are responsible for presenting their own information. Advisors are not permitted to address the student conduct officer or participate directly in the meeting. An advisor may communicate only with the person they are advising. The student conduct officer may call recesses to facilitate this communication. A respondent should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the hearing. Delays are not normally allowed due to the scheduling conflicts of an advisor.

(4) The respondent may provide sworn written statements from witnesses and other documents or information that he/she believes is relevant to the case. Forms for the writ-

ten statements are available from the student conduct officer or online.

(5) The student conduct officer determines which records, exhibits and written statements may be accepted as information for consideration.

(6) There is a single verbatim record, such as a recording or transcript, of the information gathering portion of hearings. The record is the property of the college.

(7) If the student does not appear for the hearing after proper notice has been provided, the student conduct officer will consider the complaint, absent the student, and enter a decision regarding the complaint including appropriate disciplinary sanctions.

(8) The student conduct officer will notify the student in writing, in person, by mail or electronic mail of his or her decision. Notice of the decision is sent within ten instructional days from the hearing date. If the college is not in session, this period may be reasonably extended.

(9) The written notice of the decision will include the reasons for the decision, the sanctions, and information about the appeal process. The student conduct officer may notify the student prior to receipt of the formal written notice. The notice is sent to the student's last known mailing address or e-mail address.

(10) The burden of proof that guides the student conduct officer's decision is a preponderance of evidence, which is whether it is more likely than not the accused student violated the standards of conduct for students. The student conduct officer includes in his/her written notice of the decision the findings and conclusions of all material issues of law, including which, if any, provision of the standards of conduct for students were violated. Findings based substantially on the credibility of evidence shall be so identified.

(11) The student conduct officer may take any of the following actions:

(a) Terminate the proceeding, exonerating the student;

(b) Dismiss the case after providing appropriate counseling and admonishment to the student. Such action is final and is not subject to review on appeal;

(c) Issue a verbal warning to the student directly. Such action is final and is not subject to review on appeal;

(d) Impose sanctions provided for in WAC 132Q-10-400 such as probation, loss of privileges, restitution or compensation, fines, college suspension of ten instructional days or less, and revocation of admission. Such actions are subject to review on appeal as provided in this chapter;

(e) Refer the matter directly to the student conduct board or the student conduct administrative panel for such action as the panel deems appropriate. Such referral shall be in writing, to the attention of the chair of the student conduct board or the chair of the student conduct administrative panel, with a copy served on the accused student.

(12) A referral to the student conduct board may be used in instances where the alleged misconduct is novel or controversial and the student conduct officer believes input from the larger campus community would be beneficial. A referral to the student administrative panel should be used in instances where new evidence comes forth suggesting that discipline of more than ten instructional days or dismissal/expulsion is appropriate or new evidence comes forth sug-

gesting evidence of sexual misconduct. It may also be warranted when the immediate alleged misconduct, by itself, is not severe enough to warrant an expulsion or suspension in excess of ten instructional days, but may trigger a deferred suspension or expulsion that was imposed during an earlier disciplinary proceeding.

(13) The written decision is the college's initial order. Appeals are governed by WAC 132Q-10-335. A referral of a matter directly to the student conduct board or to the administrative panel does not constitute a written decision.

(14) If the respondent does not appeal the student conduct officer's decision within twenty calendar days from the date of the decision, it becomes the college's final order after twenty-one calendar days.

NEW SECTION

WAC 132Q-10-320 Interim suspension and other sanctions. (1) In certain circumstances, the chief student services officer/Title IX coordinator, or his/her designee may impose an interim suspension from college or other sanctions prior to the proceeding with the student conduct officer being conducted pursuant to WAC 132Q-10-310. Interim suspension or other sanctions may be imposed only if there is reasonable cause to believe that the accused student:

(a) Has violated a provision of the standards of conduct for students;

(b) In situations involving an immediate danger to the health, safety, or welfare of members of CCS or the public at large;

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

(d) If the student poses an ongoing threat of disruption to, or interference with, the operations of the college.

(2) During the interim period, a student may be denied access to classes, activities and privileges, as the student conduct officer determines while an investigation and/or formal disciplinary procedures are pending.

(3) Notice. Any student who has been suspended on an interim basis shall be served with written notice or oral notice of the summary suspension by the chief student services officer/Title IX coordinator, or his/her designee. If oral notice is given, a written notification shall be provided to the student within two business days of the oral notice in person, by regular mail or electronic mail. Notice by mail is sent to the student's last known address. If the student no longer is enrolled at the time notice is sent, the notice is sent to the student's permanent address. The student is responsible for providing the college the current address. The notice shall be entitled "Notice of Summary Suspension" and shall include the reasons for imposing the interim suspension, including reference to the provisions of the standards of conduct for students that have been allegedly violated, the date, time and location where student must appear for a hearing on the interim suspension; and the conditions, if any, under which the student may physically access the campus or communicate with members of the campus community. The student conduct officer shall conduct a hearing on the summary suspension as soon as practicable after imposition of the summary suspension. If the student 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 accused student shall be considered trespassing and subject to arrest for criminal trespass if the accused student enters the college campus other than to meet with the student conduct officer, or to attend a disciplinary hearing.

(4) The issue before the student conduct officer during the interim suspension hearing is whether there is probable cause to believe that interim suspension is necessary and/or whether other less restrictive interim disciplinary action is appropriate. For the purpose of this section, probable cause means sufficient facts to lead a reasonable person to believe that the elements necessary for imposing a summary suspension have been satisfied. The student shall be given an opportunity to explain why summary suspension is not necessary either through oral testimony or written statement.

(5) If the notice of summary suspension proceedings has been served upon the accused student in accordance with these rules and the student fails to appear at the designated hearing time, the student conduct officer may order that the summary suspension remain in place pending imposition of final disciplinary action.

(6) The student conduct officer shall issue a written order within two instructional days of the hearing, which shall include a brief statement of findings of fact and conclusions of law, the policy reasons justifying imposition of the summary suspension, and setting forth the student conduct officer's decision in the matter. If the summary suspension is upheld and/or other discipline imposed, the order shall inform the student of the duration of the summary suspension or the nature of the disciplinary action(s), conditions under which the summary suspension may be terminated or modified, and procedures by which the order may be appealed.

(7) To the extent permissible under law, the student conduct officer shall provide a copy of the order to all persons or offices that may be bound or protected by it.

(8) The interim suspension shall not replace the regular discipline process, which shall proceed as quickly as feasible in light of the interim suspension. If a full hearing before the student conduct officer, the student conduct board or the student conduct administrative panel can be convened in a timely manner, the hearing on the interim suspension can be consolidated with the hearing on the merits.

NEW SECTION

WAC 132Q-10-325 Student conduct board proceedings. In cases in which the student conduct officer determines to refer a matter directly to the student conduct board for a hearing, the following procedures apply:

(1) The student conduct officer shall serve all parties, and student conduct board members with written notice of the hearing seven to ten days prior to the hearing date, time and location, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The student conduct officer may shorten this notice period if all parties agree, and also may continue the hearing to a later time for good cause.

(2) The student conduct officer is authorized to conduct prehearing conferences and/or to make prehearing decisions

concerning the extent and forms of any discovery, issuance of protective orders, and similar procedural matters.

(3) The student conduct officer shall provide assistance to parties, upon request, in obtaining relevant and admissible evidence that is within the college's control.

(4) The student conduct officer may provide to the board members in advance of the hearing copies of: (a) The student conduct officer's notice of complaint and referral; and (b) any documents provided by the accused student. If doing so, however, the student conduct officer should remind the committee members that these documents are not evidence of any facts they may allege.

(5) 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, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(6) Hearings are ordinarily 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.

(7) The complainant, the accused student, and their respective advisors may attend the portion of the hearing at which information is received, but may not attend the board's deliberations. Admission of any other person to the hearing is at the discretion of the student conduct board chair.

(8) In circumstances involving more than one accused student, the student conduct officer may permit joint or separate hearings.

(9) The accused student has the right to be assisted by an advisor they choose, at their own expense. The accused student is responsible for presenting his/her own information. Advisors are not permitted to address the board or participate directly in the hearing. An advisor may communicate only with the person they are advising. The board chair may call recesses to facilitate this communication. A student should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the hearing. Delays are not normally allowed due to the scheduling conflicts of an advisor.

(10) The accused student, the student conduct officer, and the board chair may arrange for witnesses to present pertinent information to the student conduct board. Witnesses may provide written statements in lieu of their attendance at the hearing. The accused student is responsible for informing his/her witnesses of the time and place of the hearing. Witnesses provide information to, and answer questions from, the student conduct board. To preserve the educational tone of the hearing and to avoid an adversarial environment, questions are directed to the chair, rather than to the witness directly. Questions concerning whether potential information may be received are resolved by the chair. All testimony and written statements shall be given under oath or affirmation.

(11) The board chair determines which records, exhibits and written statements may be accepted as information for consideration by the board, except as overridden by majority vote of the board.

(12) Formal rules of process, procedure and technical rules of evidence, such as are applied in criminal or civil court, are not used in board proceedings.

(13) Questions related to the order of the proceedings are determined by the board chair.

(14) If an accused student, with notice, does not appear before a student conduct board hearing, the information in support of the complaint is presented and considered in the absence of the accused student.

(15) The board chair shall cause the hearing to be recorded by a method that he/she selects in accordance with RCW 34.05.449. Board deliberations are not recorded. The record or transcript is the property of the college. That recording, transcript or a copy, shall be made available to the parties upon request. The board chair shall ensure 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 the respondent. Other recording shall also be permitted in accordance with WAC 10-08-190.

(16) The board chair may accommodate concerns for the personal safety, well-being or fears of confrontation during the hearing by providing separate facilities, or by permitting participation by telephone, audio tape, written statement, or other means.

(17) The student conduct officer (unless represented by an assistant attorney general) shall present the case for disciplinary action. The facts justifying any such action must be established by a preponderance of the evidence.

(18) At the conclusion of the hearing, the board shall permit the parties to make closing arguments in whatever form it wishes to receive them. The board may also permit each party to propose findings, conclusions, and/or an order for its consideration.

NEW SECTION

WAC 132Q-10-330 Student conduct board decision and notification. Procedures for student conduct board proceedings:

(1) At the conclusion of the hearings on conduct matters, including closing arguments and deliberations, the student conduct board determines by majority vote whether the accused student has violated the standards of conduct for students. If so, the board determines and imposes the appropriate sanctions from WAC 132Q-10-400.

(2) The burden of proof that guides the board's decision is the preponderance of evidence, whether it is more likely than not that the accused student violated the standards of conduct for students.

(3) The student conduct officer notifies the parties, in writing, in person, by mail or electronic mail of the board's decision. Written notice is sent within ten instructional days from the hearing date. If the college is not in session, this period may be reasonably extended. The student conduct board includes in the written notice of the decision the findings 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 identi-

fied, the disciplinary sanctions, and information about the appeal process. The board's initial order shall also include a determination on appropriate discipline, if any. The student conduct officer may notify the student prior to receipt of the formal written notice. The notice, if sent by mail, is sent to the student's last known address.

(4) The written decision is the college's initial order. Appeals are governed by WAC 132Q-10-335.

(5) If the student does not appeal the board's decision within twenty calendar days from the date of the decision, it becomes the college's final order after twenty-one calendar days.

(6) The committee chair shall promptly transmit a copy of the order and the record of the board's proceedings to the appeals board.

NEW SECTION

WAC 132Q-10-332 Student conduct administrative panel proceedings. In cases in which the student conduct officer refers a matter to the student conduct administrative panel for a hearing, the following procedures apply:

(1) The student conduct officer shall serve all parties, and student conduct administrative panel members with written notice of the hearing not less than seven calendar days or more than ten calendar days prior to the hearing date, time and location, as further specified in RCW 34.05.434 and WAC 10-08-040 and 10-08-045. The student conduct officer may shorten this notice period if all parties agree, and also may continue the hearing to a later time for good cause.

(2) The student conduct officer may provide to the panel members in advance of the hearing copies of: (a) The student conduct officers' notice of complaint and referral; and (b) documents provided by the accused student. If doing so, however, the chair should remind the panel members that these documents are not evidence of any facts they may allege.

(3) Communications between panel 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, and any improper "ex parte" communication shall be placed on the record, as further provided in RCW 34.05.455.

(4) An accused student 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 both the panel chair with a copy to the student conduct officer. The panel may 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.

(5) 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 panel chair shall determine any extent to which the hearing will be open. If any person disrupts the proceedings, the panel chair may exclude that person from the hearing room.

(6) In circumstances involving more than one accused student, the student conduct officer may permit joint or separate hearings.

(7) The accused student and the student conduct officer may arrange for witnesses to present pertinent information to the student conduct administrative panel. The accused student is responsible for informing his/her witnesses of the time and place of the hearing. Questions concerning whether potential information may be received are resolved by the panel chair. All testimony and written statements shall be given under oath or affirmation.

(8) The panel chair determines which records, exhibits and written statements may be accepted as information for consideration by the panel consistent with RCW 34.05.452.

(9) Questions related to the order of the proceedings are determined by the panel chair.

(10) If an accused student, with notice, does not appear before a student conduct administrative panel hearing, the information in support of the complaint is presented and considered in the absence of the accused student.

(11) The panel chair may accommodate concerns for the personal safety, well-being or fears of confrontation during the hearing by providing separate facilities, or by permitting participation by telephone, audio tape, written statement, or other means. In making such accommodations, the rights of the other parties must not be prejudiced and must have the opportunity to participate effectively in, to hear, and, if technically economically feasible, to see the entire proceeding while it is taking place.

(12) The panel chair shall cause the hearing to be recorded by a method that he/she selects in accordance with RCW 34.05.449. Panel deliberations are not recorded. The record or transcript is the property of the college. That recording, transcript or a copy, shall be made available to the parties upon request. The panel chair shall ensure 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 the respondent. Other recording shall also be permitted in accordance with WAC 10-08-190.

(13) The student conduct officer (unless represented by an assistant attorney general) shall present the case for disciplinary action. The facts justifying any such action must be established by a preponderance of the evidence.

(14) At the conclusion of the hearing, the panel shall permit the parties to make closing arguments in whatever form it wishes to receive them. The panel may also permit each party to propose findings, conclusions, and/or an order for its consideration.

(15) Conduct matters that involve allegations of sexually violent conduct as defined in WAC 132Q-10-105(18) and further detailed in WAC 132Q-10-244 shall also utilize the supplemental hearing procedures of WAC 132Q-10-501 through 132Q-10-503. The terms of the supplemental procedures will prevail in the event of any discrepancy between this provision and the provisions of the supplemental procedures.

NEW SECTION

WAC 132Q-10-333 Student conduct administrative panel decision and notification. (1) At the conclusion of the hearings on conduct matters, including closing arguments, and deliberations, the student conduct administrative panel determines by majority vote whether the accused student has violated the standards of conduct for students. If so, the board determines and imposes the appropriate sanctions from WAC 132Q-10-400.

(2) The burden of proof that guides the panel's decision is the preponderance of evidence, whether it is more likely than not that the accused student violated the standards of conduct for students.

(3) The student conduct officer notifies the parties, and advisors who have appeared, in writing, in person, by mail or electronic mail of the panel's decision. Written notice is sent within ten calendar days from the hearing date. If the college is not in session, this period may be reasonably extended. The board includes in the written notice of the decision the findings and conclusions on all material issues of law, including which, if any, provision 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, the disciplinary sanctions, and information about the appeal process. The board's initial order shall also include a determination on appropriate discipline, if any. The student conduct officer may notify the student prior to receipt of the formal written notice. The notice, if sent by mail, is sent to the student's last known address.

(4) The written decision is the college's initial order. Appeals are governed by WAC 132Q-10-335.

(5) If the student does not appeal the board's decision within twenty calendar days from the date of the decision, it becomes the college's final order after twenty-one calendar days.

(6) The committee chair shall promptly transmit a copy of the order and the record of the panel's proceedings to the appeals board.

NEW SECTION

WAC 132Q-10-335 Appeals of misconduct—Review of decision. (1) An initial decision reached by the student conduct board, the student conduct officer, or the student conduct administrative panel may be appealed by the accused student to the appeals board. The written appeal shall be filed with the chief student services officer within twenty calendar days of the date of the decision. Failure to timely file a notice of appeal constitutes a waiver of the right to appeal and the initial decision of student conduct officer, the student conduct board, or the student conduct administrative panel shall be deemed final. The student's written appeal must include a brief statement explaining why he/she is seeking review. The statement should identify whether any of the specific findings of fact and/or conclusions of law in the initial order are wrong and must contain argument regarding why the appeal should be granted.

(2) The parties to an appeal shall be the respondent and either the student conduct officer, the student conduct board, or the student conduct administrative panel.

(3) An accused student, who timely appeals a disciplinary action, has a right to a prompt, fair, and impartial hearing as provided in these procedures.

(4) Appeals of disciplinary matters involving allegations of sexually violent conduct as defined in WAC 132Q-10-105(18) and further detailed in WAC 132Q-10-244 shall also include the supplemental appeal procedures set forth in WAC 132Q-10-501 through 132Q-10-503.

(5) Appeals are reviewed by the appeals board. Except as required to explain the basis of new information, an appeal is limited to a review of the student's written appeal which includes his/her written argument, a verbatim record of the hearing record with the student conduct officer, the student conduct board, or the student conduct administrative panel and supporting documents for one or more of the following purposes:

(a) Determine whether the initial disciplinary hearing was conducted fairly in light of the charges, and whether information was presented in conformity with prescribed procedures 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 is evident.

(b) Determine whether the decision is supported by the evidence.

(c) Determine whether the sanctions imposed are appropriate for the violation which the student was found to have committed.

(d) Consider new information, sufficient to alter a decision, or other relevant facts not disclosed in the original hearing, because such information and/or facts were not known to the student appealing at the time of hearing with the student conduct officer, the student conduct board, or the student conduct administrative panel.

(6) The appeal board shall not engage in "ex parte" communication with any of the parties regarding an appeal.

(7) The appeal board shall review the record and make one of the following determinations:

(a) Affirm the decision and uphold sanctions; or

(b) Reverse the decision and dismiss; or

(c) Affirm the decision and modify the sanctions imposed; or

(d) Remand for a full hearing before the student conduct administrative panel.

(8) The student is notified of the appeal board's decision within twenty calendar days from the date of the appeal letter. If the college is not in session, this period may be reasonably extended. The appeal board's decision, unless it is a decision to remand for a full hearing before the student conduct administrative panel, is the college's final order.

NEW SECTION

WAC 132Q-10-400 Disciplinary sanctions. (1) The following sanctions may be imposed by the chief student services officer, student conduct officer, the student conduct board, the student conduct administrative panel, or the appeals board on a student found to have violated the standards of conduct for students.

(a) Warning. An oral statement to a student that there is a violation and that continued violation may be cause for further discipline. Warnings are not subject to appeal.

(b) Reprimand. A notice in writing to the student that the student has violated one or more provisions of the standards of conduct for students, a disciplinary record has been created, 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 depending upon the seriousness of the violation and which may include a deferred disciplinary sanction. If the student subject to a deferred disciplinary sanction is found in violation of any college rule during the time of disciplinary probation, the deferred disciplinary sanction, which may include, but is not limited to, a suspension or a dismissal from the college, shall take effect immediately without further review. Any such sanction shall be in addition to any sanction or conditions arising from the new violation. Probation may be for a limited period of time or may be for the duration of the student's attendance at the college. A student who is on disciplinary probation may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

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

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

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

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

(f) Education. The college may require the student to complete an educational project or attend sessions, at the student's expense, which address the student's behavior such as anger management or counseling.

(g) Fines may be imposed by the college.

(h) College suspension for a period not to exceed ten instructional days. Separation of the student from the college for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified. There will be no refund of tuition or fees for the quarter in which the action is taken.

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

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

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

(l) Assessment. The student may be required to have an assessment, such as alcohol/drug or anger management, by a

certified professional, and complete the recommended treatment.

(m) Loss of recognition. A student organization's recognition may be withheld permanently or for a specific period of time. Loss of recognition is defined as withholding college services or administrative approval from a student organization. Services and approval to be withdrawn include intramural sports, information technology services, college facility use and rental, and involvement in organizational activities.

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

(o) No contact order. A prohibition of direct or indirect physical, verbal, and/or written contact with another individual or group.

(2) The following additional sanctions may be issued by the chief student services officer, student conduct officer, the student conduct administrative panel, or the appeals board on a student found to have violated the standards of conduct for students:

(a) College suspension for a period that exceeds ten academic days. Separation of the student from the college for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified. There will be no refund of tuition or fees for the quarter in which the action is taken.

(b) College expulsion. Permanent separation of the student from the college. The revocation of all rights and privileges of membership in the college community and exclusion from the campus, CCS-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which action is taken.

(3) A sanction may be made effective for the entire district or the student's college. If only to the student's college, the chief student services officer at the other colleges may enforce the disciplinary action at their respective college.

(4) More than one of the sanctions listed in subsection (1) of this section may be imposed for any single violation.

(5) Other than college expulsion or revocation or withholding of a degree, disciplinary sanctions are not made part of the student's academic record, but are part of the student's disciplinary record.

(6) If a student's behavior is found to have been motivated by another's race, creed, color, religion, national or ethnic origin, age, sex, gender identity or expression, or disability, use of a guide dog or service animal by a person with a disability, veteran's status, or genetic information, such finding is considered an aggravating factor in determining a sanction for such conduct.

NEW SECTION

WAC 132Q-10-500 Classroom misconduct and authority to suspend for up to three days. (1) Faculty members have the authority to take appropriate action to maintain order and proper conduct in the classroom and to maintain the effective cooperation of students in fulfilling the objectives of the course.

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

(3) Faculty members or college administrators have the right to suspend any student from any single class or program, up to three instructional days, if the student's misconduct creates disruption to the point that it is difficult or impossible to maintain the decorum of the class, program or the learning and teaching environment. The faculty member or college administrator shall report this suspension to the student conduct officer who may set conditions for the student upon return to the class or program.

(4) The student may appeal the classroom suspension to the chief student services officer who may authorize an earlier return by the student only after consultation with the faculty member or appropriate administrator. The chief student services officer's decision is final.

NEW SECTION

WAC 132Q-10-501 Additional procedural requirements for sexually violent conduct matters. In the event the alleged misconduct involves claims of sexually violent conduct, additional procedures are required by federal law. Both the accused student 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 disciplinary proceeding process and to appeal the chief student services officer's or student conduct administrative panel's disciplinary order.

Application of the supplemental procedures for allegations of sexually violent conduct is limited to student conduct code proceedings involving allegations of sexually violent conduct. In such cases, these procedures shall supplement the student disciplinary procedures in WAC 132Q-10-305 through 132Q-10-335. In the event of conflict between the supplemental sexually violent conduct procedures and the student disciplinary procedures, the sexually violent conduct procedures shall prevail.

NEW SECTION

WAC 132Q-10-502 Supplemental procedures for allegations of sexually violent conduct. (1) Complaints of alleged sexually violent conduct by a student submitted pursuant to WAC 132Q-10-305(2) shall be referred to the Title IX coordinator for an initial assessment. If an investigation is deemed warranted it shall be completed in a timely manner as defined by administrative procedure 3.30.01. If after a review, the Title IX coordinator determines that the facts as alleged would not constitute a violation of Title IX, the Title IX coordinator may close the file. If after an initial review, the Title IX coordinator determines that the facts as alleged may constitute a violation of Title IX, the coordinator or his or her designee will conduct an investigation. If after an initial review, the Title IX coordinator determines that the facts as alleged would not constitute a violation of Title IX, but may constitute a violation of other provisions of the student conduct code, the coordinator may refer the matter to the student conduct officer to review and process. If the Title IX

coordinator determines an investigation is not warranted on a sexually violent conduct report, the student conduct officer will make reasonable efforts to meet with the complainant and accused student individually to discuss the outcome. If an investigation is conducted based on a sexually violent conduct complaint, the Title IX coordinator will make a reasonable effort to meet with the complainant and accused student separately to discuss the results of the investigation and possible protective sanctions or conditions that may be imposed on the accused student.

(2) If the Title IX coordinator or his/her designee determines that the investigative report contains facts that demonstrate a violation of the standards of conduct for students, but not a violation of the sexually violent conduct provisions, then he/she will refer the matter to the appropriate student conduct officer for disciplinary proceedings under these regulations.

(3) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the accused student. 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.

(4) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety and welfare of the complainant or other members of the college community or its legal duty to investigate and process sexual harassment and sexual violence complaints.

(5) Accused student 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 copy the chief student services officer. The chief student services officer will provide a copy of the notice to the accused student.

(6) During the proceedings, complainant and accused student shall not directly question or cross examine one another. All questions shall be directed to the chair, who will act as an intermediary and pose questions on the parties' behalf.

(7) Hearings involving sexual misconduct allegations shall be closed to the public, unless accused student and complainant both waive this requirement in writing and request that the hearing be open to the public. Complainant, accused student and their respective attorney representatives may attend portions of the hearing where argument, testimony and/or evidence are presented to the student conduct administrative panel.

(8) The chair of the student conduct administrative panel will coordinate with the chief student services officer/Title IX coordinator to serve complainant a written notice indicating that the complaint has been resolved on the same date that the discipline order is served upon the accused student. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any

sanctions and/or conditions imposed upon the accused student for the complainant's protection, including suspension or dismissal of the accused student. The notice shall also provide directions on how the complainant can appeal the decision.

NEW SECTION

WAC 132Q-10-503 Supplemental appeal rights for alleged sexually violent conduct. (1) The following actions by the chief student services officer/Title IX coordinator and the student conduct administrative panel may be appealed by the complainant:

(a) The dismissal of a sexually violent misconduct complaint; or

(b) The disciplinary sanction(s) and conditions imposed against an accused student for a sexually violent misconduct violation.

(2) Appeals:

(a) A discipline order which includes findings of sexually violent misconduct may be appealed by filing a written notice of appeal with the chief student services officer within twenty calendar days of receiving notice of the discipline order. The notice of appeal may include a written statement setting forth the grounds of appeal.

(b) The dismissal of a sexually violent misconduct complaint by the Title IX coordinator may be appealed by filing a notice of appeal with the college president within twenty calendar days of receiving notice of the complaint dismissal. The notice of appeal must include a brief written statement explaining why the complainant is seeking review of the dismissal and why the appeal should be granted.

(3) Notice of appeal:

(a) If an order imposing discipline for a sexual misconduct violation is appealed, the college shall notify the nonappealing complainant/respondent of the appeal. The nonappealing complainant/respondent will be provided the option to be named as a party to the appeal.

(b) If the dismissal of a sexually violent misconduct complaint by the Title IX coordinator is appealed, the college shall notify the nonappealing complainant/respondent of the appeal. The nonappealing complainant/respondent will be provided the option to be named as a party to the appeal.

(4) A complainant/respondent who chooses to appeal a discipline order or who chooses to appear as a party to the appeal of a discipline order or the dismissal of a complaint shall be afforded the same procedural rights as are afforded to the other party.

(5) Review of appeals:

(a) Appeals of orders imposing discipline for a sexual misconduct violation shall be reviewed by the appeals board consistent with WAC 132Q-10-335 (5) through (6).

(b) Appeals of dismissal of complaints of sexual misconduct violation shall be reviewed by a college president. If the college president's decision is to affirm the dismissal of the original complaint that serves as the college's final order regarding the original complaint dismissal. If the college president determines that the dismissal should be reversed, the matter shall be investigated pursuant to WAC 132Q-10-502. If the matter involves sexually violent misconduct, it

will be investigated pursuant to WAC 132Q-10-502 and processed consistent with this chapter applicable to sexually violent misconduct. If the matter involves misconduct that does not include sexually violent misconduct, it will be processed consistent with the provisions of this chapter applicable to general misconduct.

(6) The chief student services officer/Title IX coordinator will serve complainant a written notice indicating that the appeal has been resolved on the same date that the final order is served upon the accused student. This notice shall inform the complainant whether the sexual misconduct allegation was found to have merit and describe any sanctions and/or conditions imposed upon the accused student for the complainant's protection, including suspension or dismissal of the accused student.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 132Q-30-101	Standards of conduct for students—Preamble.
WAC 132Q-30-105	Definitions.
WAC 132Q-30-110	Interpretations.
WAC 132Q-30-115	Decisions and appeals.
WAC 132Q-30-120	Jurisdiction of the standards of conduct for students.
WAC 132Q-30-125	Violation of law and standards of student conduct.
WAC 132Q-30-130	Responsibility for guests.
WAC 132Q-30-135	Students studying abroad.
WAC 132Q-30-140	Group conduct.
WAC 132Q-30-145	Records.
WAC 132Q-30-200	Misconduct—Violations of the standards of conduct for students.
WAC 132Q-30-210	Academic dishonesty.
WAC 132Q-30-212	Disruption or obstruction.
WAC 132Q-30-214	Abuse of self or others.
WAC 132Q-30-216	Theft or damage to property.
WAC 132Q-30-218	Hazing.
WAC 132Q-30-220	Failure to comply with college officials.
WAC 132Q-30-222	Unauthorized keys or unauthorized entry.
WAC 132Q-30-224	Violation of CCS policy, procedure, rule, or regulation.
WAC 132Q-30-226	Violation of law.
WAC 132Q-30-228	Drugs and drug paraphernalia.
WAC 132Q-30-230	Alcohol.
WAC 132Q-30-231	Smoking and tobacco use.
WAC 132Q-30-232	Firearms and dangerous weapons.

- WAC 132Q-30-234 Disorderly conduct.
- WAC 132Q-30-236 Unauthorized use of electronic or other devices.
- WAC 132Q-30-238 Abuse or theft of CCS information technology.
- WAC 132Q-30-240 Abuse of the student conduct system.
- WAC 132Q-30-242 Discrimination.
- WAC 132Q-30-244 Sexual misconduct.
- WAC 132Q-30-246 Harassment.
- WAC 132Q-30-248 Stalking.
- WAC 132Q-30-250 Reckless endangerment.
- WAC 132Q-30-252 Trespassing.
- WAC 132Q-30-254 Violation of a disciplinary sanction.
- WAC 132Q-30-305 Complaints.
- WAC 132Q-30-310 Disposition of complaints by the chief student services officer.
- WAC 132Q-30-315 Notice to the accused student of complaint.
- WAC 132Q-30-320 Interim suspension.
- WAC 132Q-30-325 Student conduct board hearings.
- WAC 132Q-30-330 Student conduct board decision and notification.
- WAC 132Q-30-335 Appeals—Review of decision.
- WAC 132Q-30-400 Disciplinary sanctions.
- WAC 132Q-30-500 Classroom misconduct and authority to suspend for up to three days.

WSR 15-11-101
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Filed May 20, 2015, 9:48 a.m.]

Supplemental Notice to WSR 15-06-068.

Preproposal statement of inquiry was filed as WSR 15-01-195 on December 24, 2014.

Title of Rule and Other Identifying Information: WAC 220-47-307 Closed areas—Puget Sound salmon, 220-47-311 Purse seine—Open periods, 220-47-401 Reef net—Open periods, 220-47-411 Gillnet—Open periods, and 220-47-428 Beach seine—Open periods.

Hearing Location(s): Natural Resources Building, Room 635, 1111 Washington Street S.E., Olympia, WA 98504, on Tuesday, June 23, 2015, at 1:00 p.m. to 2:00 p.m.

Date of Intended Adoption: On or after Wednesday, June 24, 2015.

Submit Written Comments to: Joanna Eide, Washington Department of Fish and Wildlife (WDFW), Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, e-mail Rules.Coordinator@dfw.wa.gov, fax (360) 902-2155, by June 19, 2015.

Assistance for Persons with Disabilities: Contact Tami Lininger by June 19, 2015, (360) 902-2207 or TTY 1-800-833-6388.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal includes rule changes to the Puget Sound commercial salmon fishery needed as a result of the recommendations from the North of Falcon subgroup of the Pacific Fisheries Management Council. This proposal reflects additional changes to WAC 220-47-307, 220-47-311, 220-47-401, 220-47-411, and 220-47-428 from what was proposed in WSR 15-06-068, filed on March 4, 2015. This summarizes changes made since the filing of the original CR-102 that was filed as WSR 15-06-068. These changes were made based on public input received and negotiations with tribal comanagers.

For Puget Sound salmon closed areas, WAC 220-47-307, changes include:

Closure of Hale Pass portion of Area 7B September 1-21 for gillnets and release of coho from purse seines fishing within the closure area.

Closure during chum directed fisheries of that portion of Area 10 east of a line from Alki Point to Fourmile Rock.

Addition of purse seine closure in Area 12 in those waters within two miles of the Hood Canal Bridge on October 26 and November 2.

Season Structure Changes:

For purse seine open periods, WAC 220-47-311, changes include:

Areas 7 and 7A chum:

Adjustment to open days during the chum fishery, per tribal agreement.

Area[s] 8 and 8A pink:

Adjustment to days scheduled, including removal of 2 days of fishing.

Areas 10 and 11 chum:

Adjustment to days scheduled in weeks 42-45, including removal of 2nd day of fishing in week 44 and adding 1 day of fishing in week 42.

Areas 12 and 12B chum:

Adjustment to days scheduled in weeks 42-45, including removal of 2nd day of fishing in week 44 and adding 1 day of fishing in week 42.

For gillnet open periods, WAC 220-47-411, changes include:

Areas 6D and 9A coho:

Adjustment to open days, per tribal agreement.

Areas 7 and 7A chum:

Adjustment to open days during the chum fishery, per tribal agreement.

Area[s] 8 and 8A pink:

Adjustment to days scheduled, including removal of 2 days of fishing.

Areas 10 and 11 chum:

Addition of fishing days in week 42.

Areas 12 and 12B chum:

Addition of fishing days in week 42.

For beach seine open periods, WAC 220-47-428, changes include:

Area 6D pink:

Opening pink fishery in Dungeness Bay.

Reasons Supporting Proposal: To protect species of fish listed as endangered while supporting commercial salmon fishing in Puget Sound. These rule proposals incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.013, 77.04.020, 77.12.045, and 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.013, 77.04.020, 77.12.045, and 77.12.047.

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

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Kendall Henry, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2717; Implementation: Jim Scott, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2651; and Enforcement: Steven Crown, 1111 Washington Street S.E., Olympia, WA 98504, (360) 902-2373.

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

Small Business Economic Impact Statement

1. Description of the Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule:

These rules will incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council to take harvestable salmon in Puget Sound while protecting species of fish, marine mammals, and sea birds listed as endangered. The rules include legal gear requirements, area restrictions, and open periods for commercial salmon fisheries occurring in Puget Sound.

2. Kinds of Professional Services That a Small Business is Likely to Need in Order to Comply With Such Requirements: These rule changes clarify dates for anticipated open periods and areas for full-fleet and limited-participation salmon fisheries, and legal gear requirements for those fisheries. There are no anticipated professional services required to comply.

3. Costs of Compliance for Businesses, Including Costs of Equipment, Supplies, Labor, and Increased Administrative Costs: The proposed rules adjust opening and closing dates. The proposed rules do not require any additional equipment, supplies, labor, or administrative costs. Therefore, there is no additional cost to comply with the proposed rules.

4. Will Compliance with the Rule Cause Businesses to Lose Sales or Revenue? The proposed rules do not affect the harvestable numbers of salmon available to nontreaty fleets. Therefore, the proposed rules should not cause any businesses to lose sales or revenue.

5. Cost of Compliance for Small Businesses Compared with the Cost of Compliance for the Ten Percent of Businesses That are the Largest Businesses Required to Comply with the Proposed Rules Using One or More of the Following as a Basis for Comparing Costs:

1. Cost per employee;
2. Cost per hour of labor; or
3. Cost per one hundred dollars of sales.

None - The proposed rules do not require any additional equipment, supplies, labor, or administrative costs.

6. Steps Taken by the Agency to Reduce the Costs of the Rule on Small Businesses, or Reasonable Justification for Not Doing So: Most businesses affected by these rules are small businesses. As indicated above, all of the gear restrictions proposed by the rules are identical to gear restrictions WDFW has required in past salmon fishery seasons. Therefore, the gear restrictions will not impose new costs on small businesses.

7. A Description of How the Agency Will Involve Small Businesses in the Development of the Rule: As in previous years, WDFW interacts with and receives input from affected businesses through the North of Falcon process, which is a series of public meetings occurring from February through April each year. These meetings allow small businesses to participate in formulating these rules.

8. A List of Industries That Will Be Required to Comply with the Rule: All licensed fishers attempting to harvest salmon in the all-citizen commercial salmon fisheries occurring in Puget Sound will be required to comply with these rules.

9. An Estimate of the Number of Jobs That Will Be Created or Lost as a Result of Compliance with the Proposed Rule: As explained above, these rules impose similar requirements to those used in the previous years' commercial salmon fisheries. Compliance with the rules will not result in the creation or loss of jobs.

A copy of the statement may be obtained by contacting Joanna Eide, WDFW Rules Coordinator, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2403, fax (360) 902-2155, e-mail Rules.Coordinator@dfw.wa.gov.

A cost-benefit analysis is not required under RCW 34.05.328. These proposals do not affect hydraulics.

May 20, 2015

Joanna M. Eide
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-14-011, filed 6/19/14, effective 7/20/14)

WAC 220-47-307 Closed areas—Puget Sound salmon. It is unlawful at any time, unless otherwise provided, to take, fish for, or possess salmon taken for commercial purposes with any type of gear from the following portions of Puget Sound Salmon Management and Catch Reporting Areas, except that closures listed in this section do not apply to reef net fishing areas listed in RCW 77.50.050:

Areas 4B, 5, 6, 6B, and 6C - The Strait of Juan de Fuca Preserve as defined in WAC 220-47-266.

Area 6D - That portion within 1/4-mile of each mouth of the Dungeness River.

Area 7 -

(1) The San Juan Island Preserve as defined in WAC 220-47-262.

(2) Those waters within 1,500 feet of shore on Orcas Island from Deer Point northeasterly to Lawrence Point, thence west to a point intercepting a line projected from the

northernmost point of Jones Island, thence 90° true to Orcas Island.

(3) Those waters within 1,500 feet of the shore of Cypress Island from Cypress Head to the northernmost point of Cypress Island.

(4) Those waters easterly of a line projected from Iceberg Point to Iceberg Island, to the easternmost point of Charles Island, then true north from the northernmost point of Charles Island to the shore of Lopez Island.

(5) Those waters northerly of a line projected from the southernmost point of land at Aleck Bay to the westernmost point of Colville Island, thence from the easternmost point of Colville Island to Point Colville.

(6) Those waters easterly of a line projected from Biz Point on Fidalgo Island to the Williamson Rocks Light, thence to the Dennis Shoal Light, thence to the light on the westernmost point of Burrows Island, thence to the southwestern-most point of Fidalgo Head, and including those waters within 1,500 feet of the western shore of Allan Island, those waters within 1,500 feet of the western shore of Burrows Island, and those waters within 1,500 feet of the shore of Fidalgo Island from the southwestern-most point of Fidalgo Head northerly to Shannon Point.

(7) Additional Fraser sockeye and pink seasonal closure: Those waters within 1,500 feet of the shore of Fidalgo Island from the Initiative 77 marker northerly to Biz Point.

(8) Those waters within 1,500 feet of the eastern shore of Lopez Island from Point Colville northerly to Lopez Pass, and those waters within 1,500 feet of the eastern shore of Decatur Island from the southernmost point of land northerly to Fauntleroy Point, and including those waters within 1,500 feet of the shore of James Island.

Area 7A - The Drayton Harbor Preserve as defined in WAC 220-47-252.

Area 7B -

(1) That portion south and east of a line from William Point on Samish Island to Saddlebag Island to the southeastern tip of Guemes Island, and that portion northerly of the railroad trestle in Chuckanut Bay.

(2) That portion of Bellingham Bay and Portage Bay adjacent to Lummi Indian Reservation is closed north and west of a line from the intersection of Marine Drive and Hoff Road (48°46'59"N, 122°34'25"W) projected 180° true for 2.75 nautical miles (nm) to a point at 48°45'11"N, 122°34'25"W, then 250° true for 1.4 nm to a point at 48°44'50"N, 122°35'42"W, then 270° true for 1.4 nm to 48°44'50"N, 122°37'08"W, then 230° true for 1.3 nm to 48°44'24"N, 122°37'52"W, then 200° true for 1 nm to 48°43'45"N, 122°38'12"W, then 90° true for 1 nm to a point just northeast of Portage Island (48°43'45"N, 122°37'14"W), then 160° true for 1.4 nm to a point just east of Portage Island (48°42'52"N, 122°36'37"W).

(3) Additional coho seasonal closure: September 1 through September 21, closed to gillnets in the waters of Area 7B west of a line from Point Francis (48°41'46"N, 122°36'32"W) to the red and green buoy southeast of Point Francis (48°40'27"N, 122°35'24"W), then to the northernmost tip of Eliza Island (48°39'38"N, 122°35'14"W), then along the eastern shore of the island to its southernmost tip (48°38'40"N, 122°34'57"W) and then north of a line from the

southernmost tip of Eliza Island to Carter Point (48°38'24"N, 122°36'31"W). Nontreaty purse seiners fishing September 1 through September 21 in this area must release coho.

Area 7C - That portion southeasterly of a line projected from the mouth of Oyster Creek 237° true to a fishing boundary marker on Samish Island.

Area 8 -

(1) That portion of Skagit Bay easterly of a line projected from Brown Point on Camano Island to a white monument on the easterly point of Ika Island, thence across the Skagit River to the terminus of the jetty with McGlenn Island.

(2) Those waters within 1,500 feet of the western shore of Camano Island south of a line projected true west from Rocky Point.

Area 8A -

(1) Those waters easterly of a line projected from Mission Point to Buoy C1, excluding the waters of Area 8D, thence through the green light at the entrance jetty of the Snohomish River and across the mouth of the Snohomish River to landfall on the eastern shore, and those waters northerly of a line from Camano Head to the northern boundary of Area 8D, except when open for pink fisheries.

(2) Additional coho seasonal closure prior to October 3: Those waters southerly of a line projected from the Clinton ferry dock to the Mukilteo ferry dock.

Area 8D - Those waters easterly of a line projected from Mission Point to Hermosa Point.

Area 9 - Those waters lying inside and westerly of a line projected from the Point No Point light to Sierra Echo buoy, thence to Forbes Landing wharf east of Hansville.

Area 10 -

(1) Those waters easterly of a line projected from Meadow Point to West Point.

(2) Those waters of Port Madison westerly of a line projected from Point Jefferson to the northernmost portion of Point Monroe.

(3) Additional pink seasonal closure: The area east inside of the line originating from West Point and extending west to the closest midchannel buoy, thence true through Point Wells until reaching latitude 47°44'50"N, thence extending directly east to the shoreline.

(4) Additional purse seine pink seasonal closure: The area within 500 feet of the eastern shore in Area 10 is closed to purse seines north of latitude 47°44'50"N.

(5) Additional coho and chum seasonal closure: Those waters of Elliott Bay east of a line from Alki Point to the light at Fourmile Rock, and those waters northerly of a line projected from Point Wells to "SF" Buoy, then west to President's Point.

Area 10E - Those waters of Liberty Bay north of a line projected due east from the southernmost Keyport dock, those waters of Dyes Inlet north of the Manette Bridge, and those waters of Sinclair Inlet southwest of a line projected true east from the Bremerton ferry terminal.

Area 11 -

(1) Those waters northerly of a line projected true west from the light at the mouth of Gig Harbor, and those waters south of a line from Browns Point to the northernmost point of land on Point Defiance.

(2) Additional coho seasonal closure: Those waters south of a line projected from the light at the mouth of Gig Harbor to the Tahlequah ferry dock, then south to the Point Defiance ferry dock, and those waters south of a line projected from the Point Defiance ferry dock to Dash Point.

Area 12 -

(1) Those waters inside and easterly of a line projected from Lone Rock to the navigation light off Big Beef Creek, thence southerly to the tip of the outermost northern headland of Little Beef Creek.

(2) Additional purse seine chum seasonal closure:

~~((a)) Those waters of Area 12 south and west of a line projected 94 degrees true from Hazel Point to the light on the opposite shore, bounded on the west by the Area 12/12B boundary line are closed to purse seines except this area is open for purse seines on October 27 and November 3.~~

~~((b))~~ Those waters of Area 12 within 2 miles of the Hood Canal Bridge are closed to purse seines on October ~~((27))~~ 26 and November ~~((3))~~ 2.

Area 12A -

(1) Those waters north of a line projected due east from Broad Spit.

(2) Those waters within 1,000 feet of the mouth of the Quilcene River.

Area 12B -

(1) Those waters within 1/4-mile of the mouths of the Dosewallips, Duckabush, and Hamma Hamma rivers and Anderson Creek.

(2) Additional Chinook seasonal closure: Those waters north and east of a line projected from Tekiu Point to Triton Head.

Areas 12, 12B and 12C - Those waters within 1,000 feet of the eastern shore.

Area 12C -

(1) Those waters within 2,000 feet of the western shore between the dock at Glen Ayr R.V. Park and the Hoodsport marina dock.

(2) Those waters south of a line projected from the Cushman Powerhouse to the public boat ramp at Union.

(3) Those waters within 1/4-mile of the mouth of the Dewatto River.

Area 12 - Chum seasonal closures:

(1) Those waters of Area 12 south and west of a line projected 94 degrees true from Hazel Point to the light on the opposite shore, bounded on the west by the Area 12/12B boundary line are closed to purse seines except this area is open for purse seines on October 27 and November 3.

(2) Those waters of Area 12 within 2 miles of the Hood Canal Bridge are closed to purse seines on October 27 and November 3.

Area 13A - Those waters of Burley Lagoon north of State Route 302; those waters within 1,000 feet of the outer oyster stakes off Minter Creek Bay, including all waters of Minter Creek Bay; those waters westerly of a line drawn due north from Thompson Spit at the mouth of Glen Cove; and those waters within 1/4-mile of Green Point.

AMENDATORY SECTION (Amending WSR 14-14-011, filed 6/19/14, effective 7/20/14)

WAC 220-47-311 Purse seine—Open periods. (1) It is unlawful to take, fish for, or possess salmon taken with purse seine gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas and during the periods provided for in each respective Management and Catch Reporting Area:

AREA	TIME	DATE
7, 7A:	7AM - 6PM	- ((10/11,)) 10/12, ((10/14,)) <u>10/13, 10/15, 10/17, 10/18, 10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31</u> ((-11/1))
	7AM - 5PM	- <u>11/1, 11/2, 11/3, 11/4, 11/5, 11/6, 11/7</u> ((-11/8))

Note: In Areas 7 and 7A, it is unlawful to fail to brail when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

7B, 7C:	6AM - 9PM	- ((8/13)) <u>8/12</u>
7B, 7C:	6AM - 8PM	- ((8/20, 8/27, 9/3)) <u>8/19, 8/26, 9/2</u>
7B:	7AM - 8PM	- ((9/8, 9/10, 9/12)) <u>9/7, 9/9, 9/11</u>
	7AM - 7PM	- ((9/15, 9/17, 9/19)) <u>9/14, 9/16, 9/18</u>
	7AM ((9/21))	- 6PM ((10/25)) <u>10/24, 9/20</u>
	7AM ((10/27))	- 4PM ((10/31)) <u>10/30, 10/26</u>
	7AM ((11/3))	- 4PM ((11/7)) <u>11/6, 11/2</u>
	7AM ((11/10))	- 4PM ((11/14)) <u>11/13, 11/9</u>
	7AM ((11/17))	- 4PM ((11/21)) <u>11/20, 11/16</u>
	7AM ((11/24))	- 4PM ((11/28)) <u>11/27, 11/23</u>

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to purse seines beginning at 12:01 a.m. on the last Monday in October and until 4:00 p.m. on the first Friday in December.

8:	<u>6AM - 8PM</u>	- <u>8/25, 9/2, 9/9</u>
8A:	<u>6AM - 8PM</u>	- <u>8/18, 8/26, 9/1</u>
	7AM - 7PM	- Limited participation - Two boats ((9/15, 9/22)) <u>9/14, 9/21</u>
8D:	7AM - 7PM	- ((9/22, 9/29, 10/6)) <u>9/21, 9/28, 10/5</u>
	7AM - 6PM	- ((10/13)) <u>10/12, 10/20, 10/26, 10/28</u> ((-10/30))
	7AM - 5PM	- <u>11/3, 11/9, 11/11, 11/17, 11/17, 11/24</u> ((11/25))
10:	<u>6AM - 8PM</u>	- Limited participation - Five boats <u>only 8/19, 8/25, 8/27, 8/31, 9/2</u>
10, 11:	7AM - 6PM	- ((10/16)) <u>10/15, 10/20, 10/26</u>

AREA	TIME	DATE
	7AM - 5PM	- 11/3, 11/9 , 11/11, (((H43,))) 11/17, (((H25))) <u>11/24</u>
12, 12B:	7AM - 6PM	- (((H46))) <u>10/15</u> , 10/20, (((H28))) <u>10/26</u>
	7AM - 5PM	- 11/3, 11/9 , 11/11, (((H43,))) 11/17
12C:	7AM - 5PM	- 11/3, 11/9 , 11/11, (((H43,))) 11/17, (((H25))) <u>11/24</u>

Note: In Area 10 during any open period occurring in August or September, it is unlawful to fail to brail or use a brailing bunt when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

(2) It is unlawful to retain the following salmon species taken with purse seine gear within the following areas during the following periods:

(a) Chinook salmon - At all times in Areas 7, 7A, 8, 8A, 8D, 10, 11, 12, 12B, and 12C, and after October 20 in Area 7B.

(b) Coho salmon - At all times in Areas 7, 7A, 10, and 11, and prior to September 1 in Area 7B.

(c) Chum salmon - Prior to October 1 in Areas 7 and 7A, and at all times in 8A.

(d) All other saltwater and freshwater areas - Closed for all species at all times.

AMENDATORY SECTION (Amending WSR 14-14-011, filed 6/19/14, effective 7/20/14)

WAC 220-47-401 Reef net open periods. (1) It is unlawful to take, fish for, or possess salmon taken with reef net gear for commercial purposes in Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas, during the periods provided for in each respective area:

AREA	TIME	DATE(S)
7, 7A	5AM - 9PM Daily	(((9/21--11/8))) <u>9/27 - 11/7</u>

(2) It is unlawful at all times to retain (~~(wild))~~ unmarked Chinook salmon taken with reef net gear, and it is unlawful prior to October 1 to retain chum or (~~(wild))~~ unmarked coho salmon taken with reef net gear.

(3) It is unlawful to retain marked Chinook after September 30.

(a) It is unlawful to retain marked Chinook with reef net gear if the fisher does not have in his or her immediate possession a department-issued Puget Sound Reef Net Logbook with all retained Chinook accounted for in the logbook. Marked Chinook are those with a clipped adipose fin and a healed scar at the site of the clipped fin.

(b) Completed logs must be submitted and received within six working days to: Puget Sound Commercial Salmon Manager, Department of Fish & Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091.

(4) All other saltwater and freshwater areas - Closed.

AMENDATORY SECTION (Amending WSR 14-14-011, filed 6/19/14, effective 7/20/14)

WAC 220-47-411 Gillnet—Open periods. It is unlawful to take, fish for, or possess salmon taken with gillnet gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided for in each respective fishing area:

AREA	TIME	DATE(S)	MINIMUM MESH
6D: Skiff gillnet only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM - 7PM	9/21, 9/22, 9/23 , 9/24, 9/25, (((9/26))) <u>9/28</u> , 9/29, 9/30, 10/1, 10/2, (((H03))) <u>10/5</u> , 10/6, 10/7, 10/8, 10/9, (((H40))) <u>10/12</u> , 10/13, 10/14, 10/15, 10/16, (((H47))) <u>10/19</u> , 10/20, 10/21, 10/22, 10/23, (((H24))) <u>10/26</u> , <u>10/27</u> , <u>10/28</u> , <u>10/29</u> , <u>10/30</u>	5"

Note: In Area 6D, it is unlawful to use other than 5-inch minimum mesh in the skiff gillnet fishery. It is unlawful to retain Chinook taken in Area 6D at any time, or any chum salmon taken in Area 6D prior to October 16. In Area 6D, any Chinook or chum salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

7, 7A:	7AM - Midnight; use of recovery box required	(((H11,))) 10/12, (((H14, H18))) <u>10/13</u> , <u>10/15</u> , <u>10/17</u>	6 1/4"
	7AM - Midnight	<u>10/18</u> , 10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3, 11/4, 11/5, 11/6, 11/7(((H8)))	6 1/4"

Note: In Areas 7 and 7A after October 9 but prior to October 19, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the gillnet web enters the water, until the gillnet is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f) when coho and Chinook release is required.

7B, 7C:	7PM - 8AM	NIGHTLY (((H40))) <u>8/9</u> , <u>8/11</u> , 8/12, (((H43))) <u>8/16</u> , 8/17, 8/18, 8/19, (((H20))) <u>8/23</u> , 8/24, 8/25, 8/26(((H27)))	7"
7B, 7C:	7AM (((H31))) <u>8/30</u>	- 7AM (((H5))) <u>9/4</u>	5"
7B:	7AM (((H7))) <u>9/6</u>	- 7AM (((H42))) <u>9/11</u>	5"

AREA	TIME	DATE(S)	MINIMUM MESH
	7AM ((9/14)) <u>9/13</u>	- 7AM ((9/19)) <u>9/18</u>	5"
	7AM ((9/21)) <u>9/20</u>	- Midnight ((10/25)) <u>10/23</u>	5"
	7AM ((10/27)) <u>10/26</u>	- 4PM ((10/31)) <u>10/30</u>	6 1/4"
	6AM ((11/3)) <u>11/2</u>	- 4PM ((11/7)) <u>11/6</u>	6 1/4"
	6AM ((11/10)) <u>11/9</u>	- 4PM ((11/14)) <u>11/13</u>	6 1/4"
	6 AM ((11/17)) <u>11/16</u>	- 4PM ((11/21)) <u>11/20</u>	6 1/4"
	7 AM ((11/24)) <u>11/23</u>	- 4PM ((11/28)) <u>11/27</u>	6 1/4"

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to gillnets using 6 1/4-inch minimum mesh beginning 12:01 AM on the last day in October and until 4:00 PM on the first Friday in December.

8:	<u>5AM</u>	- <u>11PM</u>	<u>8/26, 9/1, 9/8</u>	<u>5"</u>
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Note: In Area 8 it is unlawful to take or fish for pink salmon with drift gillnets greater than 60-mesh maximum depth. Fishers must also use minimum 5" and maximum 5 1/2" mesh during pink salmon management periods.

8A:	<u>5AM</u>	- <u>11PM</u>	<u>8/19, 8/25, 9/2</u>	<u>5"</u>
	6PM	- 8AM	Limited participation; 2 boats only <u>((9/17)) 9/16</u>	5"
	6PM	- 8AM	NIGHTLY <u>9/22, 9/23((9/24))</u>	5"

Note: In Area 8A fishers must use minimum 5" and maximum 5 1/2" mesh during pink salmon management periods.

8D:	6PM	- 8AM	NIGHTLY <u>((9/21, 9/25, 9/28, 10/2, 10/5, 10/9)) 9/20, 9/24, 9/27, 10/1, 10/4, 10/8</u>	5"
	6PM <u>((9/22)) 9/21</u>	- 8AM <u>((9/25)) 9/24</u>		5"
	6PM <u>((9/29)) 9/28</u>	- 8AM <u>((10/2)) 10/1</u>		5"
	6PM <u>((10/6)) 10/5</u>	- 8AM <u>((10/9)) 10/8</u>		5"
	5PM	- 8AM	<u>((10/12, 10/16)) 10/11, 10/15</u>	5"
	5PM <u>((10/13)) 10/12</u>	- 8AM <u>((10/16)) 10/15</u>		5"
	5PM	- 9AM	<u>((10/19, 10/23, 10/26, 10/30)) 10/18, 10/22, 10/25, 10/29</u>	5"
	5PM <u>((10/20)) 10/19</u>	- 9AM <u>((10/23)) 10/22</u>		5"
	5PM <u>((10/27)) 10/26</u>	- 9AM <u>((10/30)) 10/29</u>		5"
	4PM	- 8AM	<u>((11/2, 11/6)) 11/1, 11/5</u>	5"
	4PM <u>((11/3)) 11/2</u>	- 8AM <u>((11/6)) 11/5</u>		5"
	6AM	- 6PM	<u>11/11, 11/12, ((11/13)) 11/18, 11/19((9/11/20))</u>	6 1/4"
	6AM	- 4PM	<u>((11/14, 11/21)) 11/13, 11/20</u>	6 1/4"
	7AM	- 6PM	<u>11/25, 11/26((9/11/27))</u>	6 1/4"
	7AM	- 4PM	<u>((11/28)) 11/27</u>	6 1/4"
9A: Skiff gillnet only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM <u>((8/24)) 8/16</u>	- 7PM <u>((11/1)) 10/31</u>		5"

Note: It is unlawful to retain chum salmon taken in Area 9A prior to October 1, and it is unlawful to retain Chinook salmon at any time. Any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

10:	<u>7PM</u>	- <u>7AM</u>	<u>Limited participation - 5 boats only 8/18, 8/20, 8/24, 8/26, 9/1</u>	<u>4 1/2" minimum and 5 1/2" maximum</u>
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Note: In Area 10 fishers must use minimum 4 1/2" and maximum 5 1/2" mesh during pink salmon management periods. Also, during August or September openings, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 90 minutes. Net soak time is defined as the time elapsed from when the first of the gillnet web enters the water, until the gillnet is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f). During all limited participation fisheries, it is unlawful for vessels to take or fish for salmon without department observers on board.

10, 11:	5PM	- 9AM	NIGHTLY <u>((10/14)) 10/13, 10/18, 10/21, ((10/23, 10/26, 10/30)) 10/27, 10/29</u>	6 1/4"
	5PM	- 7AM	NIGHTLY <u>((10/15)) 10/14</u>	6 1/4"

AREA	TIME	DATE(S)	MINIMUM MESH	
	((4PM)) <u>5PM</u>	- ((8AM)) <u>9AM</u>	<u>11/2, 11/4, ((11/6, 11/9,)) 11/12, 11/16, 11/18, ((11/20)) 11/22, 11/23((-11/26))</u>	6 1/4"
	4PM	- 7AM	NIGHTLY ((11/12)) <u>11/10</u>	6 1/4"
12A: Skiff gillnet only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM	- 7PM	Dates determined per agreement with tribal co-managers in-season if Summer Chum Salmon Conservation Initiative goals are met allowing for openings of gillnet gear.	5"
Note: In Area 12A, it is unlawful to use other than 5-inch minimum mesh in the skiff gillnet fishery. It is unlawful to retain Chinook or chum salmon taken in Area 12A at any time, and any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.				
12, 12B:	7AM	- 8PM	<u>10/13, 10/14, ((10/15)) 10/19, 10/21((-10/23))</u>	6 1/4"
	7AM	- 7PM	10/27, ((10/30)) <u>10/29</u>	6 1/4"
	6AM	- 6PM	<u>11/1, 11/4, ((11/6,)) 11/10, 11/12, 11/15, 11/18((-11/20))</u>	6 1/4"
12C:	6AM	- 6PM	<u>11/1, 11/4, ((11/6,)) 11/10, 11/12, 11/15, 11/18, ((11/20)) 11/23, 11/24((-11/26))</u>	6 1/4"

All other saltwater and freshwater areas - Closed.

Nightly openings refer to the start date.

Within an area or areas, a mesh size restriction remains in effect from the first date indicated until a mesh size change is shown, and the new mesh size restriction remains in effect until changed.

AMENDATORY SECTION (Amending WSR 14-14-011, filed 6/19/14, effective 7/20/14)

WAC 220-47-428 Beach seine—Open periods. It is unlawful to take, fish for, or possess salmon taken with beach seine gear for commercial purposes from Puget Sound except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided hereinafter in each respective Management and Catch Reporting Area:

All areas:

AREA	TIME	DATE(S)
6D:	<u>7AM</u>	- <u>7PM</u> <u>Limited participation - 2 boats only 7/20, 7/21, 7/22, 7/23, 7/24, 7/27, 7/28, 7/29, 7/30, 7/31</u>
12A:	7AM	- 7PM 8/21, ((8/22)) <u>8/24</u> , 8/25, 8/26, 8/27, 8/28, ((8/29)) <u>8/31</u> , 9/1, 9/2, 9/3, 9/4, ((9/5)) <u>9/7</u> , 9/8, 9/9, 9/10, 9/11, ((9/12)) <u>9/14</u> , 9/15, 9/16, 9/17, 9/18, ((9/19)) <u>9/21</u> , 9/22, 9/23, 9/24, 9/25 ((9/26))
12H:	7AM	- 7PM November (dates determined per agreement with tribal co-managers in-season if harvestable surplus of salmon remain).

It is unlawful to retain Chinook taken with beach seine gear in all areas, and it is unlawful to retain chum from Area 12A.

**WSR 15-11-104
PROPOSED RULES
HUMAN RIGHTS COMMISSION**

[Filed May 20, 2015, 10:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-21-084.

Title of Rule and Other Identifying Information: Sexual orientation and gender identity.

Hearing Location(s): Oasis Youth Center, 2215 Pacific Avenue, Tacoma, WA 98402, on June 24, 2015, at 6:00 p.m. to 8:30 p.m.

Date of Intended Adoption: July 31, 2015.

Submit Written Comments to: Laura Lindstrand, State Human Rights Commission, P.O. Box 42490, Olympia, WA 98541-2490 [98504-2490], e-mail rulemakingcomments@hum.wa.gov, fax (360) 586-2282, by June 29, 2015.

Assistance for Persons with Disabilities: Contact Laura Skinner by June 15, 2015, TTY (800) 300-7525 or (800) 753-6770.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Sexual orientation and gender identity were added as a protected class to the Washington law against discrimination in 2006. Rules are needed in order to interpret that law to provide understanding to businesses, employers, and the public. Stakeholders have requested clarification and explanation of the law in the form of rules. A chapter is added for sexual orientation and gender identity issues, and additional sections are amended to add sexual orientation as a protected class.

Reasons Supporting Proposal: Since the addition of sexual orientation and gender identity to the protected classes under the Washington law against discrimination, there has

been no agency guidance for stakeholders or the public. These rules will provide that agency guidance.

Statutory Authority for Adoption: RCW 49.60.120(3).

Statute Being Implemented: Chapter 49.60 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The proposed language in the rules was compiled after four stakeholder meetings were held around the state in 2012, and participants were given the opportunity to express concerns and make recommendations as to the content of the rules.

Name of Proponent: Washington state human rights commission, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Laura Lindstrand, Olympia, Washington, (360) 359-4923; and Enforcement: Cheryl Strobert, Olympia, Washington, (360) 359-4950.

No small business economic impact statement has been prepared under chapter 19.85 RCW. There will be no economic impact on small businesses or school district fiscal impact.

A cost-benefit analysis is not required under RCW 34.05.328. This agency is not one listed in RCW 34.05.328 (5)(a)(1)(i), nor do the conditions of RCW 34.05.328 (5)(a)(11)(ii) apply to this rule.

June [May] 20, 2015
Laura Lindstrand
Policy Analyst

AMENDATORY SECTION (Amending WSR 00-01-177, filed 12/21/99, effective 1/21/00)

WAC 162-12-100 Purpose. (1) These regulations carry out the law against discrimination as stated generally in RCW 49.60.010 and 49.60.030, and interpret RCW 49.60.180 and 49.60.200 which declare certain preemployment inquiries to be unfair practices.

(2) The commission generally follows chapter 49.60 RCW and federal court decisions that interpret comparable statutes and rules. The commission will not follow federal precedents when a different interpretation of state statutes and rules will better carry out the purposes of chapter 49.60 RCW.

(3) This regulation cannot cover every question that might arise in connection with inquiries prior to employment. The commission expects that in most cases these rules, either directly or by analogy, will guide those who are covered by the law.

(4) Definition: In this chapter, the following words are used in the meaning given, unless the context clearly indicates another meaning.

"Protected status" is short for the phrase, "age, sex, sexual orientation, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person," and means the full phrase (see RCW 49.60.180).

AMENDATORY SECTION (Amending WSR 00-01-177, filed 12/21/99, effective 1/21/00)

WAC 162-12-140 Preemployment inquiries. (1) The following examples of fair and unfair inquiries apply when made in reference to job application forms, preemployment interviews, or any other type of inquiry made of job applicants. The rules also apply to inquiries made to persons other than an applicant and to inquiries made by third parties such as a credit reporting service. The rules do not apply after a person is employed. See WAC 162-12-180.

(2) Employers and employment agencies shall comply with these rules except where one or more of the following conditions exist:

(a) When there is a "bona fide occupational qualification."

(b) A voluntary affirmative action plan that is in compliance with the requirements of a government agency or other competent authority such as a court, and if made in a manner provided in WAC 162-12-160 and 162-12-170.

(c) A requirement of federal law or regulation, as explained in WAC 162-12-150.

If one or more of the above conditions apply, the inquiries of employers and employment agencies must be accompanied by a written explanation of their purpose. See WAC 162-12-135, 162-12-160 and 162-12-170.

(3) The following examples of fair and unfair preemployment inquiries define what is an unfair practice under RCW 49.60.180(4) and 49.60.200. These examples, however, are not all inclusive. All preemployment inquiries that unnecessarily elicit the protected status of a job applicant are prohibited by these statutes irrespective of whether or not the particular inquiry is covered in this regulation.

SUBJECT	FAIR PREEMPLOYMENT INQUIRES	UNFAIR PREEMPLOYMENT INQUIRES
a. Age	Inquiries as to birth date and proof of true age are permitted by RCW 49.44.090.	Any inquiry not in compliance with RCW 49.44.090 that implies a preference for persons under 40 years of age.
(For age discrimination, RCW 49.44.090 must be read in conjunction with RCW 49.60.180 and 49.60.200. RCW 49.44.090 limits age discrimination coverage to persons 40 years of age and older, and makes other limitations and exceptions to the age discrimination law.)		
b. Arrests (see also Convictions)	Because statistical studies regarding arrests have shown a disparate impact on some racial and ethnic minorities, and an arrest by itself is not a reliable indication of criminal behavior, inquiries concerning arrests must include whether charges are still pending, have been dismissed, or led to conviction of a crime involving behavior that would adversely affect job performance, and the arrest	Any inquiry that does not meet the requirements for fair pre-employment inquiries.

SUBJECT	FAIR PREEMPLOYMENT INQUIRES	UNFAIR PREEMPLOYMENT INQUIRES	SUBJECT	FAIR PREEMPLOYMENT INQUIRES	UNFAIR PREEMPLOYMENT INQUIRES
	occurred within the last ten years. Exempt from this rule are law enforcement agencies and state agencies, school districts, businesses and other organizations that have a direct responsibility for the supervision, care, or treatment of children, mentally ill persons, developmentally disabled persons, or other vulnerable adults. See RCW 43.20A.710; 43.43.830 through 43.43.842; and RCW 72.23.035.		e. Family	Whether applicant can meet specified work schedules or has activities, commitments or responsibilities that may prevent him or her from meeting work attendance requirements.	Specific inquiries concerning spouse, <u>spouse's gender</u> , spouse's employment or salary, children, child care arrangements, or dependents.
c. Citizenship	Whether applicant is prevented from lawfully becoming employed in this country because of visa or immigration status. Whether applicant can provide proof of a legal right to work in the United States after hire.	Whether applicant is citizen. Requirement before job offer that applicant present birth certificate, naturalization or baptismal divulge applicant's lineage, ancestry, national origin, descent, or birth place.	f. Disability	Whether applicant is able to perform the essential functions of the job for which the applicant is applying, with or without reasonable accommodation. Inquiries as to how the applicant could demonstrate or describe the performance of these specific job functions with or without reasonable accommodation. Note: Employers are encouraged to include a statement on the application form apprising applicants that if they require accommodation to complete the application, testing or interview process, to please contact the employment office, personnel or human resources department or other office as may be able to assist them.	Inquiries about the nature, severity or extent of a disability or whether the applicant requires reasonable accommodation prior to a conditional job offer. Whether applicant has applied for or received worker's compensation. Also any inquiry that is not job related or consistent with business necessity.
d. Convictions (see also Arrests)	Statistical studies on convictions and imprisonment have shown a disparate impact on some racial and ethnic minority groups. Inquiries concerning convictions (or imprisonment) will be considered to be justified by business necessity if the crimes inquired about relate reasonably to the job duties, and if such convictions (or release from prison) occurred within the last ten years. Law enforcement agencies, state agencies, school districts, businesses and other organizations that have a direct responsibility for the supervision, care, or treatment of children, mentally ill persons, developmentally disabled persons, or other vulnerable adults are exempt from this rule. See RCW 43.20A.710; 43.43.830 through 43.43.842; and RCW 72.23.035.	Inquiries concerning convictions and imprisonment which either do not relate reasonably to job duties or did not occur within the last ten years will not be considered justified by business necessity.	g. Height and Weight	Being of a certain height or weight will not be considered to be a job requirement unless the employer can show that all or substantially all employees who fail to meet the requirement would be unable to perform the job in question with reasonable safety and efficiency.	Any inquiry which is not based on actual job requirements and not consistent with business necessity.
			h. Marital Status (see also Name and Family)	None.	() Mr. () Mrs. () Miss () Ms. Whether the applicant is married, single, divorced, separated, engaged, widowed, <u>has a same sex spouse</u> , etc.
			i. Military	Inquiries concerning education, training, or work experience in the armed forces of the United States.	Type or condition of military discharge. Applicant's experience in military other than U.S. armed forces. Request for discharge papers.

SUBJECT	FAIR PREEMPLOYMENT INQUIRES	UNFAIR PREEMPLOYMENT INQUIRES	SUBJECT	FAIR PREEMPLOYMENT INQUIRES	UNFAIR PREEMPLOYMENT INQUIRES
j. Name	Whether applicant has worked for this company or another employer under a different name and, if so, what name. Name under which applicant is known to references if different from present name.	Inquiry into original name where it has been changed by court order or marriage. Inquiries about a name that would divulge marital status, lineage, ancestry, national origin or descent.	q. Religion or Creed	None.	Inquiries concerning applicant's religious preference, denomination, religious affiliations, church, parish, pastor, or religious holidays observed.
k. National Origin	Inquiries into applicant's ability to read, write and speak foreign languages, when such inquiries are based on job requirements.	Inquiries into applicant's lineage, ancestry, national origin, descent, birthplace, or mother tongue. National origin of applicant's parents or spouse.	r. Residence	Inquiries about address to the extent needed to facilitate contacting the applicant.	Names or relationship of persons with whom applicant resides. Whether applicant owns or rents own home.
l. Organizations	Inquiry into organization memberships, excluding any organization the name or character of which indicates the race, color, creed, sex, <u>sexual orientation</u> , marital status, religion, or national origin or ancestry of its members.	Requirement that applicant list all organizations, clubs, societies, and lodges to which he or she belongs.	s. Sex	None.	Any inquiry concerning gender is prohibited.
m. Photographs	May be requested <i>after</i> hiring for identification purposes.	Request that applicant submit a photograph, mandatorily or optionally, at any time before hiring.	t. <u>Sexual Orientation</u>	<u>None.</u>	<u>Any inquiry concerning sexual orientation is prohibited.</u>
n. Pregnancy (see also Disability)	Inquiries as to a duration of stay on job or anticipated absences which are made to males and females alike.	All questions as to pregnancy, and medical history concerning pregnancy and related matters.			
o. Race or Color	None. See WAC 162-12-150, 162-12-160, and 162-12-170.	Any inquiry concerning race or color of skin, hair, eyes, etc., not specifically permitted by WAC 162-12-150, 162-12-160, and 162-12-170.			
p. Relatives	Name of applicant's relatives already employed by this company or by any competitor.	Any other inquiry regarding marital status, identity of one's spouse, or spouse's occupation are considered unfair practices in accordance with WAC 162-12-150.			

(While the law does not prohibit company policies governing the employment of relatives, any policy that has the effect of disadvantaging minorities, women, married couples, or other protected classes, would be in violation of the law unless it is shown to serve a necessary business purpose.) See WAC 162-12-150, 162-12-160, and 162-12-170.

AMENDATORY SECTION (Amending WSR 99-15-025, filed 7/12/99, effective 8/12/99)

WAC 162-16-200 General purpose and definitions.
The law against discrimination protects persons from discrimination in employment (RCW 49.60.180, 49.60.190, and 49.60.200). Persons are also protected from discrimination as provided in RCW 49.60.172 (unfair practices with respect to HIV infection), RCW 49.60.174 (actual or perceived HIV infection), and RCW 49.60.210 (unfair to discriminate against person opposing unfair practice).

(1) The commission's first objective in writing the rules in this chapter and in making future decisions on questions not addressed in this chapter is to eliminate and prevent discrimination. This is the overall purpose of the law against discrimination.

(2) Other objectives in writing these rules are:

(a) To be consistent with interpretations of federal anti-discrimination law and the antidiscrimination laws of other states, where these are comparable to Washington law, and where the commission does not find that a different rule would better serve the state of Washington.

(b) To avoid the uncritical adoption of definitions from areas of law other than antidiscrimination law. It is appropriate to define employment differently in different areas of the law to carry out the separate purpose of each area of law.

(c) To give effect to the purposes of the exemption of employers of less than eight from public enforcement of the law against discrimination, as identified in RCW 49.60.040.

(d) The public and commission staff need standards that are certain and that are easy to understand and apply. Therefore we must sometimes simply draw a line, although reasonable persons could differ as to where the line should be drawn.

(3) The state law against discrimination covers employers with eight or more employees. Persons should also educate themselves on relevant local or federal antidiscrimination laws.

(4) Definition:

In this chapter, the following words are used in the meaning given, unless the context clearly indicates another meaning.

"Protected status" is short for the phrase, "age, sex, sexual orientation, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a disabled person," and means the full phrase (see RCW 49.60.180).

Chapter 162-32 WAC**SEXUAL ORIENTATION AND GENDER IDENTITY**NEW SECTION

WAC 162-32-010 General purpose and scope. This chapter interprets and implements the sexual orientation discrimination protections of RCW 49.60.030, 49.60.180, and 49.60.215 and provides guidance regarding certain specific forms of sexual orientation discrimination.

NEW SECTION

WAC 162-32-020 Leave policies and reasonable accommodation. (1) **Leave.** When an employer grants leave or time off of work to employees for medical or health reasons, the employer shall treat leave requests to address medical or health care needs related to an individual's sexual orientation or gender identity in the same manner as requests for all other medical conditions. For example:

(a) If an employer provides paid sick leave for periods of disability that require medical leave, the employer should provide paid sick leave for periods of disability related to an individual's sexual orientation or gender identity that require medical leave;

(b) If the employer's policy requires a medical provider's statement to verify the leave period as a reasonable accommodation, a medical provider's statement may be required to verify the leave period as a reasonable accommodation for the disabling condition related to the individual's sexual orientation or gender identity;

(c) If the employer's policy permits the retention and accrual of benefits, such as seniority, retirement, and pension rights, during the leave period for other disabilities, the policy must also permit such accrual of benefits during leave for disabling conditions related to an individual's sexual orientation or gender identity;

(d) If an employer allows an employee to use shared leave for disabling conditions, the employer must apply the same policies and procedures for disabling conditions related to an individual's sexual orientation or gender identity.

(2) **Reasonable accommodation.** An employer shall provide reasonable accommodation for a disability when the disability is related to the individual's sexual orientation or gender identity, absent undue hardship to the employer. Such reasonable accommodation includes, but is not limited to, medical leave for medical and counseling appointments, surgery, and recovery from surgery that are related to gender reassignment procedures and treatments. An undue hardship

as a reason for denying an accommodation in situations involving disabilities relating to sexual orientation and gender identity shall be analyzed in the same manner as with accommodations for any other disability.

(3) Nothing in this section is intended to suggest that a person's sexual orientation or gender identity itself is a disabling condition.

NEW SECTION**WAC 162-32-030 Employee benefits and privileges.**

(1) **Consistent and equal basis.** Employee benefits provided in whole or in part by an employer must be consistent between all employees and equal for all employees, regardless of the employee's sexual orientation. For example, it is an unfair practice to:

(a) Provide health insurance coverage to an employee's opposite sex spouse but to fail to provide health insurance coverage to an employee's same sex spouse (except in situations where such a rule is prohibited or pre-empted by federal law.)

(b) Provide paternity leave or bonding time for the father of a child newly born or adopted into a heterosexual relationship, but fail to provide the same paternity leave or bonding time to the parent of a child newly born or adopted into a same-sex relationship.

(2) **Other benefits and privileges of employment.** All other employee benefits, provided formally or informally including, but not limited to, health club memberships, discount programs, training, staff retreats, company gatherings and parties, and use of company vehicles or other company services, shall be provided on an equal basis to all employees regardless of the employee's sexual orientation. If the benefit or privilege is extended to the employee's opposite sex spouse, it must be extended to an employee's same sex spouse as well.

NEW SECTION**WAC 162-32-040 Harassment.** (1) **Harassment.**

Harassment based on an individual's sexual orientation or gender identity is prohibited. Sexual orientation harassment in employment is offensive and unwelcome behavior serious enough to affect the terms and conditions of employment and which occurred because of an individual's sexual orientation or gender identity and can be imputed to the employer.

(2) **Prohibited conduct.** Prohibited conduct may include, but is not limited to, the following:

(a) Asking unwelcome personal questions about an individual's sexual orientation, gender identity or gender transition;

(b) Intentionally causing distress to an individual by disclosing the individual's sexual orientation against his or her wishes;

(c) Using offensive names, slurs, jokes, or terminology regarding an individual's sexual orientation;

(d) The deliberate misuse of an individual's preferred name, form of address, or gender-related pronoun (except on official documentation, if the individual has not officially obtained a name change);

(e) Posting offensive pictures or sending offensive electronic or other communications;

(f) Unwelcome physical conduct.

(3) Harassment in a place of public accommodation.

Sexual orientation harassment in a place of public accommodation is offensive and unwelcome behavior serious enough to alter the individual's experience at the place of public accommodation, or severe enough that the individual has no choice but to leave the place of public accommodation, due to the individual's sexual orientation, and perpetrated by the place of public accommodation.

NEW SECTION

WAC 162-32-050 Dress and grooming standards. (1)

Standards allowed. Covered entities may require standards of dress or grooming that serve a reasonable business or institutional purpose, such as promoting safety, developing a company identity, or projecting a professional, positive public image.

(2) **Prohibited standards.** Covered entities cannot require an individual to dress or groom in a manner that is not consistent with that individual's gender identity.

NEW SECTION

WAC 162-32-060 Gender segregated facilities. (1)

Facility use. All covered entities, except school districts or other primary and secondary schools, shall allow individuals the use of gender-segregated facilities, such as restrooms, locker rooms, dressing rooms, and homeless shelters, that are consistent with that individual's gender identity.

In such facilities where undressing in the presence of others occurs, covered entities, except for school districts and other primary or secondary schools, shall allow access to and use of a facility consistent with that individual's gender identity.

(2) **Cannot require use inconsistent with gender identity.** A covered entity shall not request or require an individual to use a gender-segregated facility that is inconsistent with that individual's gender identity, or request or require an individual to use a separate or gender-neutral facility.

(a) If another person expresses concern or discomfort about a person who uses a facility that is consistent with the person's gender identity, the person expressing discomfort should be directed to a separate or gender neutral facility, if available.

(b) Any action taken against a person who is using a restroom, such as removing a person, should be taken due to that person's actions or behavior while in the restroom, and must be unrelated to gender identity. The same standards of conduct and behavior must be consistently applied to all restroom users, regardless of gender identity.

(3) **Schools.** School districts and other primary and secondary schools should allow students to use the restroom that is consistent with their gender identity consistently asserted at school. School districts and other primary and secondary schools should assess the use of locker rooms by transgendered students on a case-by-case basis, with the goals of maximizing the student's social integration and equal opportunity, ensuring the student's safety and comfort, and minimizing the

stigmatization of the student. In most cases, transgender students should have access to the locker room that corresponds to their gender identity consistently asserted at school.

(4) **Provision of options encouraged.** Whenever feasible, covered entities are encouraged to provide options for privacy, such as single-use gender-neutral bathrooms or private changing areas, that are available to any individual desiring privacy.

AMENDATORY SECTION (Amending WSR 98-08-035, filed 3/23/98, effective 4/23/98)

WAC 162-36-005 Discrimination. (1) It is an unfair practice for any person, whether acting for himself, herself, or another, because of sex, sexual orientation, marital status, race, creed, color, national origin, families with children status, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a disabled person:

(a) To refuse to engage in a real estate transaction with a person;

(b) To discriminate against a person in the terms, conditions, or privileges or a real estate transaction or in the furnishing of facilities or services in connection therewith;

(c) To refuse to receive or to fail to transmit a bona fide offer to engage in a real estate transaction from a person;

(d) To refuse to negotiate for a real estate transaction with a person;

(e) To represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to fail to bring a property listing to his or her attention, or to refuse to permit the person to inspect real property;

(f) To discriminate in the sale or rental, or to otherwise make unavailable or deny a dwelling, to any person; or to a person residing in or intending to reside in that dwelling after it is sold, rented, or made available; or to any person associated with the person buying or renting;

(g) To make, print, publish, circulate, post, mail, or cause to be so made or published a statement, advertisement, or sign, or to use a form of application for a real estate transaction, or to make a record or inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a limitation, specification, or discrimination with respect thereto;

(h) To offer, solicit, accept, use, or retain listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or services in connection therewith;

(i) To expel a person from occupancy of real property;

(j) To discriminate in the course of negotiating, executing, or financing a real estate transaction whether by mortgage, deed of trust, contract, or other instrument imposing a lien or other security in real property, or in negotiating or executing any item or service related thereto including issuance of title insurance, mortgage insurance, loan guarantee, or other aspect of the transaction. Nothing in this section shall limit the effect of RCW 49.60.176 relating to unfair practices in credit transactions;

(k) To attempt to do any of the unfair practices defined in this chapter or chapter 49.60 RCW.

(2) It is an unfair practice for any person, for profit, to induce or attempt to induce any person to sell or rent any real property by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, creed, color, sex, sexual orientation, national origin, families with children status, or with any sensory, mental or physical disability and/or the use of a trained dog guide or service animal by a disabled person.

(3) It is an unfair practice to insert in a written instrument relating to real property a provision that is void under RCW 49.60.224(1) or to honor or attempt to honor such a provision in the chain of title.

(4) Nothing in this chapter prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, creed, national origin, sex, sexual orientation, disability, the use of a trained dog guide or service animal by a disabled person, or families with children status.

(5) Nothing in this chapter limits the applicability of any reasonable federal, state or local restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(6) Nothing in this chapter prohibiting discrimination based on families with children status applies to housing for older persons as defined by the federal Fair Housing Amendments Act of 1988, 42 U.S.C. ((see)) Sec. 3607 (b)(1) through (3), as amended by the Housing for Older Persons Act of 1995, P.L. 104-76, as enacted on December 28, 1995.

AMENDATORY SECTION (Amending WSR 98-08-035, filed 3/23/98, effective 4/23/98)

WAC 162-36-010 Soliciting buyers from neighbors of listed house. Some real estate firms have a practice of sending letters, post cards or printed circulars to residents of a neighborhood where they have a home listed for sale in order to obtain referrals of prospective buyers of the home. Such a practice does not necessarily discriminate against persons on the basis of race, creed, color, national origin, sex, sexual orientation, marital status, families with children status, the presence of a sensory, mental or physical disability or the use of a trained dog guide or service animal by a disabled person. However, the practice can have a discriminatory effect, and thereby constitute an unfair practice in a real estate transaction within the meaning of this chapter, where:

(1) It is used only in neighborhoods occupied entirely or predominantly by persons of a single race, creed, color, national origin, sex, sexual orientation, marital status, families with children status, have the presence of a sensory, mental or physical disability, or who use a trained dog guide or service animal as a disabled person, or

(2) Persons of a particular race, creed, color, national origin, sex, sexual orientation, marital status, families with children status, have the presence of a sensory, mental or physical disability, or use a trained dog guide or service animal as a disabled person living in the same neighborhood are not sent solicitations, or

(3) The content or language of the solicitation invites, promotes or perpetuates residential segregation or discrimination on the basis of race, creed, color, national origin, sex, sexual orientation, marital status, families with children status, the presence of a sensory, mental or physical disability, or the use of a trained dog guide or service animal by a disabled person.

AMENDATORY SECTION (Amending WSR 98-08-035, filed 3/23/98, effective 4/23/98)

WAC 162-36-020 Content and language of solicitation. Residential segregation on the basis of race, creed, national origin or other ethnic classification is rooted in the history of this country and fixed in the patterns of thought of many people. The content and language of a solicitation of names of prospective purchasers directed to neighbors of a house listed for sale, must be examined in this context in assessing whether the solicitation constitutes an unfair practice within the meaning of RCW 49.60.222 and WAC 162-36-010. A solicitation which indicates that the recipient of the solicitation can control the type of persons who will move into the neighborhood by referring appropriate prospective buyers, is likely to be understood as an invitation to discriminate on the basis of race, creed, color, national origin, sex, sexual orientation, marital status, families with children status, the presence of a sensory, mental or physical disability, or the use of a trained dog guide or service animal by a disabled person. Phrases such as "uphold the standards of the community" (when the "standards" are unspecified) are likely to be understood the same way. Accordingly, it is an unfair practice under RCW 49.60.222 and WAC 162-36-010 for the content or language of a neighborhood solicitation to:

(1) Suggest in any way that the solicitor, buyer or seller has the power to control the type or character of the person or persons to whom the property involved may be sold;

(2) Invite or provoke discriminatory feelings, actions, or responses from the person or persons being solicited;

(3) Make reference to an assumed standard of the community which the solicitor, buyer or seller must or will uphold, unless the particular community standard is identified specifically, and the standard does not have the effect of excluding persons of a particular race, creed, color, national origin, sex, sexual orientation, marital status, families with children status, the presence of a sensory, mental or physical disability, or the use of a trained dog guide or service animal by a disabled person.

WSR 15-11-105

PROPOSED RULES

LIQUOR CONTROL BOARD

[Filed May 20, 2015, 10:55 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-08-032.

Title of Rule and Other Identifying Information: WAC 314-28-030 What does a distillery license allow? and 314-28-050 What does a craft distillery license allow?

Hearing Location(s): Washington State Liquor Control Board, Board Room, 3000 Pacific Avenue S.E., Olympia, WA 98504, on July 1, 2015, at 10:00 a.m.

Date of Intended Adoption: July 15, 2015.

Submit Written Comments to: Karen McCall, P.O. Box 43098, Olympia, WA 98504, e-mail rules@liq.wa.gov, fax (360) 664-9689, by July 1, 2015.

Assistance for Persons with Disabilities: Contact Karen McCall by July 1, 2015, (360) 664-1631.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is the result of a petition for rule making submitted by a stakeholder requesting the board allow mixers to be used in samples provided at the distillery premises to customer[s].

Reasons Supporting Proposal: This revision in the rules does not create a public safety issue and allows distilleries to provide samples to their customers in the same way spirits retail licensees are allowed to provide samples.

Statutory Authority for Adoption: RCW 66.08.030, 66.24.145.

Statute Being Implemented: RCW 66.24.140, 66.24.145.

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

Name of Proponent: Washington state liquor control board, governmental.

Name of Agency Personnel Responsible for Drafting: Karen McCall, Rules Coordinator, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1631; Implementation: Becky Smith, Licensing Director, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1615; and Enforcement: Justin Nordhorn, Chief Enforcement, 3000 Pacific Avenue S.E., Olympia, WA 98504, (360) 664-1726.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not required.

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

May 20, 2015
Jane Rushford
Chairman

AMENDATORY SECTION (Amending WSR 14-20-047, filed 9/24/14, effective 10/25/14)

WAC 314-28-030 What does a distillery allow? (1) A distillery license allows the licensee to:

(a) Sell spirits of their own production directly to a licensed spirits distributor in the state of Washington and to a licensed spirits retailer in the state of Washington;

(b) Sell spirits of its own production for consumption off the premises. A distiller selling spirits under this subsection must comply with the applicable laws and rules relating to retailers;

(c) Provide free or for a charge one-half ounce or less samples of spirits of its own production to persons on the premises of the distillery.

(i) Samples may be altered with mixers, ice, and/or water (~~only~~).

(ii) The maximum total per person per day is two ounces.

(iii) Every person who participates in any manner in the service of samples must obtain a class 12 alcohol server permit.

(d) Contract distilled spirits for, and sell contract distilled spirits to, holders of distillers' or manufacturers' licenses, including licenses issued under RCW 66.24.520, or for export.

(2) Contract production is when one distillery, referred to as the "contractor," produces distilled spirits for and sells contract distilled spirits to holders of a distillery license, or manufacturers' license including licenses issued under RCW 66.24.520, referred to as "contractee," and for export from the state. This distilled spirit is referred to as the "product."

(a) The contractee is the product owner. The contractee may handle the product under its license as the Revised Code of Washington and the Washington Administrative Code allow.

(b) The contractor is required to physically transport all contracted product to the contractee. The contractor is not allowed to distribute or retail the product.

(3) The contractor must submit a copy of the contract to the board prior to production. Any changes in the contract must also be submitted to the board prior to subsequent production. The board may require additional information.

(4) The contractor and contractee are required to obtain any federal approvals.

AMENDATORY SECTION (Amending WSR 14-20-047, filed 9/24/14, effective 10/25/14)

WAC 314-28-050 What does a craft distillery license allow? (1) A craft distillery license allows a licensee to:

(a) Produce one hundred fifty thousand proof gallons or less of spirits per calendar year. A "proof gallon" is one liquid gallon of spirits that is fifty percent alcohol at sixty degrees Fahrenheit;

(b) Sell spirits of its own production directly to a customer for off-premises consumption, provided that the sale occurs when the customer is physically present on the licensed premises. A craft distiller may not sell liquor products of someone else's production;

(c) Sell spirits of its own production to a licensed spirits distributor;

(d) Sell spirits of its own production to a licensed spirits retailer in the state of Washington;

(e) Sell to out-of-state entities;

(f) Provide, free or for a charge, samples of spirits of its own production to persons on the distillery premises.

(i) Each sample must be one-half ounce or less, with no more than two ounces of samples provided per person per day.

(ii) Samples may be altered with mixers, ice, and/or water (~~only~~).

(iii) Anyone involved in the serving of such samples must have a valid Class 12 alcohol server permit.

(iv) Samples must be in compliance with RCW 66.28.040;

(g) Provide samples of spirits of its own production to retailers. Samples must be unaltered, and in compliance with

RCW 66.28.040, 66.24.310 and WAC 314-64-08001. Samples are considered sales and are subject to taxes;

(h) Contract produce spirits for holders of a distiller or manufacturer license.

(2) A craft distillery licensee may add a spirits, beer, and wine restaurant license at the craft distillery premises. The licensee must complete an application and submit the application and applicable fees to the board for processing.