

**WSR 15-14-058**  
**PERMANENT RULES**  
**DEPARTMENT OF**

**SOCIAL AND HEALTH SERVICES**

(Behavioral Health and Service Integration Administration)

[Filed June 25, 2015, 3:36 p.m., effective July 26, 2015]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The new rules inform individuals applying for, eligible for, or receiving mental health services of their right to express dissatisfaction regarding a mental health service and how to use the regional support network's grievance system. The rules inform consumers of behavioral health services how to use the division of behavioral health and recovery's complaint process, and update and clarify individual rights specific to the medicaid program. The department is repealing WAC 388-865-0255 that is outdated due to these new rules.

Citation of Existing Rules Affected by this Order:  
 Repealing WAC 388-865-0255.

Statutory Authority for Adoption: Chapter 49.60 RCW, RCW 71.05.560, 71.24.035 (5)(c), and 71.34.380; 42 C.F.R. §438.400. Note: The Centers for Medicaid and Medicare [Medicare] Services (CMS) has proposed rule changes for 42 C.F.R. Parts 431, 433, 438, 440, 457 and 495 that will affect medicaid managed care regulations. The department anticipates future amendments to these WAC sections when the proposed CMS rules become final.

Adopted under notice filed as WSR 15-03-057 on January 15, 2015.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-877A-0410 (1)(e) The failure of an RSN ... within the grievance system timeframes as provided in section 42 CFR 438.408(b) WAC 388-877A-0420 through 388-877A-0450.

WAC 388-877A-0410(3) "Appeal" means a an oral or written ... for the regional support network (RSN) to reconsider review an "action," ....

WAC 388-877A-0410(4) "Appeal process" is ... to appeal a decision an action made ....

WAC 388-877A-0410(5) "Expedited appeal process" allows ... that will be reviewed more quickly by the regional support network (RSN) more quickly than a standard appeal.

WAC 388-877A-0410 (9)(a) In the case of a minor, The the individual's ....

WAC 388-877A-0420 (3)(a) **Filing a grievance with a behavioral health agency.** If the individual first files a grievance is filed first with the behavioral health agency and the individual is not satisfied with the agency's written decision is adverse to the individual on the grievance, or if the individual does not receive a copy of that decision from the agency within the time required under subsection (5) of this section, the individual may then choose to file the grievance with the RSN. If the individual is not satisfied with the RSN's written decision on the grievance, or if the individual does not receive a copy of the decision from the RSN within the time required under subsection (5) of this section, RSN's written decision is adverse to the individual, the individual can request an administrative hearing to have the grievance reviewed and the RSN's decision or failure to make a timely decision about it.

WAC 388-877A-0420 (3)(b) If the individual first files a grievance is filed first with the RSN (and not the agency), and the individual either is not satisfied with the RSN's written decision on the grievance, or does not receive a copy of the decision within the time required under subsection (5) of this section, is adverse to the individual, the individual can request an administrative hearing to have the grievance reviewed and the RSN's decision or failure to make a timely decision about it. Once an individual gets a decision on a grievance from an RSN, the individual but cannot file the same grievance with the behavioral health agency, that contracts with the RSN even if that agency or its staff member(s) is the subject of the grievance.

WAC 388-877A-0420 (5)(d) Send the individual who filed the grievance a written notice ....

WAC 388-877A-0420 (6)(b) The individual's right ... of the grievance and, if applicable, through subsequent steps of the grievance system.

WAC 388-877A-0420 (6)(e) That the individual ... representative, are mailed receive a written notice ....

WAC 388-877A-0420 (6)(e)(ii) By the agency ... demonstrate that it needs additional information and that the added ...

WAC 388-877A-0420(g) That full records of all grievances and materials received or compiled in the course of processing and attempting to resolve the grievance are maintained ....

WAC 388-877A-0430(1) The regional support network ... (†) (a) The action ... (‡) (b) The reason ... (‡) (c) ... The individual's right ... (4) (d) The circumstances ... (‡) (e) The individual's right ....

WAC 388-877A-0440(2) The individual ... review of an action: (a) M must file an appeal ... administrative hearing; and (b) May not file a grievance with the behavioral health agency or the RSN for the same issue as the appeal once an appeal has been filed.

WAC 388-877A-0440 (3)(a) Standard as described in subsection (‡) (6) of this section; or (b) Expedited if the criteria in subsection (‡) (7) of this section are met.

WAC 388-877A-0440(4) The appeal process must: (a) Provide an individual a reasonable opportunity to present evidence and allegations of fact or law in person as well as in writing. The RSN must inform the individual of the limited time available. (b) Provide the individual opportunity, before and during the appeal process, to examine the individual's clinical record, including medical records and any other documents and records considered during the appeal process. (c) Include as parties to the appeal as applicable: (i) The individual. (ii) The individual's representative. (iii) The legal representative of a deceased individual's estate.

WAC 388-877A-0440 (5)(b) Are mental health professionals who have appropriate clinical expertise.

WAC 388-877A-0440 (‡) (6)(a)(iii) The RSN must ... of receiving the appeal. This timeframe may be extended up to fourteen additional days if the individual requests an extension or the RSN can demonstrate that it needs additional information and that the added time is in the individual's interest. The written notice of the resolution that must includes:

WAC 388-877A-0440 ~~(6)(b)(i)(A)~~ File the appeal with the RSN on or before the later of the following: (I) ~~W~~ Within ten calendar days of the date on the notice of actions; and or (II) The intended effective date of the RSN's proposed action.

WAC 388-877A-0440 (6)(b)(ii)(C) Include in the notice that if the appeal decision is ~~adverse to~~ not in favor of the individual ....

WAC 388-877A-0440 ~~(6) (7)~~ **Expedited appeal process.** If an individual ... an expedited appeal and resolution of the appeal can be requested. If the RSN denies the request for the expedited appeal and resolution of an appeal, it must transfer the appeal to the timeframe for standard resolutions under subsection (6) of this section, and make reasonable efforts to give the individual prompt oral notice of the denial and follow up within two calendar days with a written notice.

(a)(i) The action taken ... is for denial of a requested service, termination, or reduction ... (ii) The appeal must be filed with the RSN, either orally or in writing, within: (A) ~~T~~en calendar ... the action if the individual is requesting continued benefits; or (B) Twenty calendar days from the date on the RSN's written notice of action that communicated the action if the individual is not requesting continued benefits. ~~(b) The individual may ask for continued mental health services pending the outcome of the expedited appeal.~~ (c) The RSN must: (i) Send the individual ... within two calendar three business days of receiving the request for an expedited appeal. (c) The RSN may ... demonstrate that it needs additional information and that the added time is in the individual's interest.

WAC 388-877A-0440 ~~(7) (8)~~ Duration ... (b)(i) The RSN provides a written notice ... that is ~~adverse to~~ not in favor of the individual;

WAC 388-877A-0440 ~~(8) (9)~~ ... If the final ... the appeal is ~~adverse to~~ not in favor of the individual, ~~(9) (10)~~ The RSN ....

WAC 388-877A-0450 (3)(b)(i) The decision on a notice of action must be for ~~denial, suspension or termination, suspension, or reduction~~ of the individual's ....

WAC 388-877A-0450(7) If the administrative hearing decision is ~~adverse to~~ not in favor of the individual,.

WAC 388-877A-0450(8) ... Chapter 34.05 RCW and chapter 388-02 WAC govern ~~the department's hearing rules cases where an individual has an issue involving a service that is not funded by medicaid.~~ Chapter 34.05 RCW and chapter 182-526 WAC govern cases where an individual has an issue involving a service that is funded by medicaid.

WAC 388-877A-0460 (1)(b)(xx) Request and receive ... as they pertain relate to your rights.

WAC 388-877A-0460 (1)(b)(xxiv) Receive enrollment notices, informational materials, materials related to grievances, appeals, and administrative hearings, and ... language that you understand prefer.

WAC 388-877A-0460 (2)(b) Upon request, given ... in an alternative ~~written~~ format ... legal representative; ~~(e) Available in alternative formats for an individual who is blind;~~ ~~(d) (c)~~ Translated ...; and ~~(e) (d)~~ Posted in ....

WAC 388-877-0605 Any individual ~~applying for or receiving behavioral health services;~~ or the individual's representative; may use the division of behavioral health and

recovery's ... of a behavioral health service. See WAC 388-877-0200 for ....

A final cost-benefit analysis is available by contacting Kathy Sayre, 4500 10th Avenue S.E., Lacey, WA 98503, phone (360) 725-1342, fax (360) 725-2280, e-mail kathy.sayre@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 8, Amended 0, Repealed 1.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 8, Amended 0, Repealed 1.

Date Adopted: June 25, 2015.

Kevin Quigley  
Secretary

## NEW SECTION

**WAC 388-877A-0400 How individuals can express concern about their rights, services, or treatment.** (1) An individual applying for, eligible for, or receiving mental health services authorized by a regional support network (RSN), the individual's representative, or the individual's legal guardian may access the RSN's grievance system to express concern about their rights, services, or treatment. The grievance system includes:

- (a) A grievance process;
- (b) An appeal process; and
- (c) Access to administrative hearings.

(2) Before requesting an administrative hearing, the individual must exhaust:

- (a) The grievance process, subject to the rules in WAC 388-877A-0420; or
- (b) The appeal process, subject to the rules in WAC 388-877A-0440.

(3) Individuals may also use the free and confidential ombuds services through the RSN that contracts with the behavioral health agency in which they receive mental health services. Ombuds services are provided independent of RSNs and agency services providers, and are offered to individuals at any time to help them with resolving issues or problems at the lowest possible level during the grievance, appeal, or administrative hearing process.

(4) See WAC 388-865-0250 for more information on ombuds services.

NEW SECTION

**WAC 388-877A-0410 Grievance system—Definitions.** The terms and definitions in this section and WAC 388-877-0200 apply to the grievance system rules.

(1) "Action" means, in the case of a regional support network (RSN):

(a) The denial or limited authorization of a requested service, including the type or level of service;

(b) The reduction, suspension, or termination of a previously authorized service;

(c) The denial in whole or in part, of payment for a service;

(d) The failure to provide services in a timely manner, as defined by the state; or

(e) The failure of an RSN or its contracted behavioral health agency to act within the grievance system timeframes as provided in WAC 388-877A-0420 through 388-877A-0450.

(2) "Administrative hearing" means a proceeding before an administrative law judge that gives an individual an opportunity to be heard in disputes about DSHS programs and services.

(3) "Appeal" means an oral or written request by an individual, or with the individual's written permission, the individual's representative, for the regional support network (RSN) to review an "action," as defined in this section. See also "expedited appeal."

(4) "Appeal process" is one of the processes included in the grievance system that allows an individual to appeal an action made by the regional support network (RSN) and communicated on a "notice of action."

(5) "Expedited appeal process" allows an individual, in certain circumstances, to file an appeal that will be reviewed by the regional support network (RSN) more quickly than a standard appeal.

(6) "Grievance" means an expression of dissatisfaction about any matter other than an action.

(7) "Grievance process" is one of the processes included in the grievance system that allows an individual to express concern or dissatisfaction about a mental health service.

(8) "Grievance system" means the processes through a regional support network (RSN) in which an individual applying for, eligible for, or receiving mental health services may express dissatisfaction about services. The grievance system must be established by the RSN, must meet the requirements of 42 CFR 438 Subpart F, and include:

(a) A grievance process;

(b) An appeal process; and

(c) Access to the department's administrative hearing process.

(9) "Individual" means a person who applies for, is eligible for, or receives regional support network (RSN)-authorized mental health services from an agency licensed by the department as a behavioral health agency. For the purposes of accessing the grievance system, the definition of individual also includes the following if another person is acting on the individual's behalf:

(a) In the case of a minor, the individual's parent or, if applicable, the individual's custodial parent;

(b) The individual's legal guardian; or

(c) The individual's representative if the individual gives written permission.

(10) "Notice of action" is the written notice a regional support network (RSN) provides to an individual and, if applicable, the individual's legal representative, to communicate an "action."

(11) "Regional support network (RSN)" means a county authority or group of county authorities or other entity recognized by the secretary in contract in a defined region. RSNs contract with behavioral health agencies to provide services.

NEW SECTION

**WAC 388-877A-0420 Grievance process.** (1) The grievance process is used by an individual or their representative to express dissatisfaction in person, orally, or in writing about any matter other than an action to:

(a) The behavioral health agency providing the mental health services; or

(b) The regional support network (RSN).

(2) The ombuds serving the behavioral health agency or RSN may assist the individual in resolving the grievance at the lowest possible level.

(3) Grievances are subject to the rules in this section, WAC 388-877A-0400, and WAC 388-877A-0430 through 388-877A-0460. An individual may choose to file a grievance with the behavioral health agency that provides the mental health services or with the RSN, subject to the following:

(a) **Filing a grievance with a behavioral health agency.** If the individual first files a grievance with the behavioral health agency and the individual is not satisfied with the agency's written decision on the grievance, or if the individual does not receive a copy of that decision from the agency within the time required under subsection (5) of this section, the individual may then choose to file the grievance with the RSN. If the individual is not satisfied with the RSN's written decision on the grievance, or if the individual does not receive a copy of the decision from the RSN within the time required under subsection (5) of this section, the individual can request an administrative hearing to have the grievance reviewed and the RSN's decision or failure to make a timely decision about it.

(b) **Filing a grievance with an RSN.** If the individual first files a grievance with the RSN (and not the agency), and the individual either is not satisfied with the RSN's written decision on the grievance, or does not receive a copy of the decision within the time required under subsection (5) of this section, the individual can request an administrative hearing to have the grievance reviewed and the RSN's decision or failure to make a timely decision about it. Once an individual gets a decision on a grievance from an RSN, the individual cannot file the same grievance with the behavioral health agency, even if that agency or its staff member(s) is the subject of the grievance.

(4) An individual may also request an administrative hearing if a written notice regarding the grievance was not received within the timeframes established in subsection (5) of this section.

(5) When an individual files a grievance, the behavioral health agency or RSN receiving the grievance must:

- (a) Acknowledge the receipt of the grievance in writing within five business days;
- (b) Investigate the grievance;
- (c) Apply the rules in subsection (6) of this section; and
- (d) Send the individual who filed the grievance a written notice describing the decision within ninety calendar days from the date the grievance was filed.

(6) The behavioral health agency or RSN receiving the grievance must ensure all of the following:

(a) Other people, if the individual chooses, are allowed to participate in the grievance process.

(b) The individual's right to have currently authorized mental health services continued pending resolution of the grievance and, if applicable, through subsequent steps of the grievance system.

(c) That a grievance is resolved even if the individual is no longer receiving mental health services.

(d) That the persons who make decisions on a grievance:

(i) Were not involved in any previous level of review or decision making; and

(ii) Are mental health professionals who have appropriate clinical expertise if the grievance involves clinical issues.

(e) That the individual and, if applicable, the individual's representative, receive a written notice containing the decision within ninety days from the date a grievance is received by the agency or RSN. This timeframe can be extended up to an additional fourteen days:

(i) If requested by the individual or the individual's representative; or

(ii) By the agency or RSN when additional information is needed and the RSN can demonstrate that it needs additional information and that the added time is in the individual's interest.

(f) That the written notice includes:

(i) The decision on the grievance;

(ii) The reason for the decision; and

(iii) The right to request an administrative hearing and the required timeframe to request the hearing.

(g) That full records of all grievances and materials received or compiled in the course of processing and attempting to resolve the grievance are maintained and:

(i) Kept for six years after the completion of the grievance process;

(ii) Made available to the department upon request as part of the state quality strategy;

(iii) Kept in confidential files separate from the individual's clinical record; and

(iv) Not disclosed without the individual's written permission, except to the department or as necessary to resolve the grievance.

#### NEW SECTION

**WAC 388-877A-0430 Notice of action.** The regional support network's (RSN's) written notice of action provided to an individual must be in writing, be in the individual's primary language, be easily understood and, at a minimum, explain:

(1) The action the RSN or its contractor (behavioral health agency) has taken or intends to take;

(2) The reason for the action and a citation of the rule(s) being implemented;

(3) The individual's right to file an appeal with the RSN and the required timeframes if the individual does not agree with the decision or action;

(4) The circumstances under which an expedited resolution is available and how to request it; and

(5) The individual's right to receive mental health services while an appeal is pending, how to make the request, and that the individual may be held liable for the cost of services received while the appeal is pending if the appeal decision upholds the decision or action.

#### NEW SECTION

**WAC 388-877A-0440 Appeal process.** (1) The appeal process is used by an individual to ask the regional support network (RSN) to review an action that the RSN has communicated to the individual on a written notice of action (see WAC 388-877A-0430). An individual's representative may appeal an action with the individual's written consent. If a written notice of action was not received, an appeal may still be filed.

(2) The individual requesting review of an action must file an appeal and receive a notice of the resolution from the RSN before requesting an administrative hearing.

(3) The appeal process can be:

(a) Standard as described in subsection (6) of this section; or

(b) Expedited if the criteria in subsection (7) of this section are met.

(4) The appeal process must:

(a) Provide an individual a reasonable opportunity to present evidence and allegations of fact or law in person as well as in writing. The RSN must inform the individual of the limited time available.

(b) Provide the individual opportunity, before and during the appeal process, to examine the individual's clinical record, including medical records and any other documents and records considered during the appeal process.

(c) Include as parties to the appeal as applicable:

(i) The individual.

(ii) The individual's representative.

(iii) The legal representative of a deceased individual's estate.

(5) The RSN must ensure that the persons who make decisions on an appeal:

(a) Were not involved in any previous level of review or decision making; and

(b) Are mental health professionals who have appropriate clinical expertise.

(6) **Standard appeal process.** The standard appeal process includes the following:

(a) **Standard appeals for actions communicated on a notice of action—continued services not requested.** An individual who disagrees with a decision or action communicated on a notice of action may file an appeal orally or in writing. All of the following apply:

(i) The individual must file the appeal within ninety calendar days from the date on the notice of action.

(ii) The RSN must confirm receipt of the appeal in writing within five business days.

(iii) The RSN must send the individual a written notice of the resolution within forty-five calendar days of receiving the appeal. This timeframe may be extended up to fourteen additional days if the individual requests an extension or the RSN can demonstrate that it needs additional information and that the added time is in the individual's interest. The written notice of the resolution must include:

(A) The RSN's decision;

(B) The reason for the decision; and

(C) The right to request an administrative hearing if the individual disagrees with the decision. The hearing must be requested within ninety calendar days from the date on the notice.

**(b) Standard appeals for termination, suspension, or reduction of previously authorized services—continued services requested.** An individual receiving a notice of action from the RSN that terminates, suspends, or reduces previously authorized services may file an appeal and request continuation of those services pending the RSN's decision on the appeal. All of the following apply:

(i) The individual must:

(A) File the appeal with the RSN on or before the later of the following:

(I) Within ten calendar days of the date on the notice of action; or

(II) The intended effective date of the RSN's proposed action.

(B) Request continuation of services.

(ii) The RSN must:

(A) Confirm receipt of the appeal and the request for continued services with the individual orally or in writing;

(B) Send a notice in writing that follows up on any oral confirmation made; and

(C) Include in the notice that if the appeal decision is not in favor of the individual, the RSN may recover the cost of the mental health services provided pending the RSN's decision.

(iii) The RSN's written notice of the resolution must contain:

(A) The RSN's decision on the appeal;

(B) The reason for the decision; and

(C) The right to request an administrative hearing if the individual disagrees with the decision and include the following timeframes:

(I) Within ten calendar days from the date on the notice of the resolution if the individual is asking that services be continued pending the outcome of the hearing.

(II) Within ninety calendar days from the date on the notice of the resolution if the individual is not asking for continued services.

**(7) Expedited appeal process.** If an individual or the individual's mental health provider feels that the time taken for a standard resolution of an appeal could seriously jeopardize the individual's life or health and ability to attain, maintain, or regain maximum function, an expedited appeal and resolution of the appeal can be requested. If the RSN denies

the request for the expedited appeal and resolution of an appeal, it must transfer the appeal to the timeframe for standard resolutions under subsection (6) of this section, and make reasonable efforts to give the individual prompt oral notice of the denial and follow up within two calendar days with a written notice.

(a) Both of the following applies to expedited appeal requests:

(i) The action taken on the notice of action is for denial of a requested service, termination, suspension, or reduction of previously authorized mental health services; and

(ii) The appeal must be filed with the RSN, either orally or in writing, within:

(A) Ten calendar days from the date on the RSN's written notice of action that communicated the action if the individual is requesting continued benefits; or

(B) Twenty calendar days from the date on the RSN's written notice of action that communicated the action if the individual is not requesting continued benefits.

(b) The RSN must:

(i) Confirm receipt of the request for an expedited appeal in person or by telephone.

(ii) Send the individual a written notice of the resolution within three business days of receiving the request for an expedited appeal.

(c) The RSN may extend the timeframes up to fourteen additional days if the individual requests an extension or the RSN can demonstrate it needs additional information and that the added time is in the individual's interest.

**(8) Duration of continued services during the appeal process.** When an individual has requested continued mental health services pending the outcome of the appeal process and the criteria in this section have been met, the RSN ensures the services are continued until one of the following occurs:

(a) The individual withdraws the appeal.

(b) Ten days pass from the date on the notice of action and both of the following occur:

(i) The RSN provides a written notice of the resolution that contains a decision that is not in favor of the individual; and

(ii) The individual, within the ten-day timeframe, has not requested an administrative hearing with continuation of services.

(c) The time period of a previously authorized service has expired.

(d) A mental health treatment service limit of a previously authorized service has been fulfilled.

**(9) Recovery of the cost of mental health services in adverse decisions of appeals.** If the final written notice of the resolution of the appeal is not in favor of the individual, the RSN may recover the cost of the mental health services furnished to the individual while the appeal was pending to the extent that they were provided solely because of the requirements of this section.

(10) The RSN must maintain full records of all appeals and ensure an individual's records are:

(a) Kept for six years after the completion of the appeal process;

(b) Made available to the department upon request as part of the state quality strategy;

(c) Kept in confidential files separate from the individual's clinical record; and

(d) Not disclosed without the individual's written permission, except to the department or as necessary to resolve the appeal.

#### NEW SECTION

##### **WAC 388-877A-0450 Administrative hearings.** (1)

An administrative hearing (also known as "fair hearing") is a proceeding before an administrative law judge (ALJ) that gives an individual, as defined in WAC 388-877A-0410, an opportunity to be heard in disputes about a mental health program or service.

(2) An individual must first exhaust the grievance process described in WAC 388-877A-0420, or the appeal process described in WAC 388-877A-0440 before requesting an administrative hearing.

(3) An individual requesting an administrative hearing must do so within the following timeframes:

(a) If continued services are not requested, a hearing must be requested within ninety calendar days from:

(i) The date on the written notice from the agency or RSN at the end of the grievance process; or

(ii) The date on the written notice of the resolution received from the RSN at the end of the appeal process.

(b) If continued services are requested pending the outcome of the administrative hearing, all of the following applies:

(i) The decision on a notice of action must be for termination, suspension, or reduction of the individual's mental health services and the individual appealed this decision;

(ii) The individual received a written notification of the resolution of the appeal from the RSN that upholds the decision on the notice of action; and

(iii) The individual requests an administrative hearing and continued mental health services within ten calendar days of the date on the written notification of the resolution.

(4) If an individual requests an expedited administrative hearing, the expedited hearing must be requested within ten calendar days from the date on the notice of the resolution. Subsection (3)(b) of this section applies if continued mental health services are requested.

(5) If a written notice was not received under subsection (3) or (4) of this section, the individual may still request an administrative hearing.

(6) When the criteria in this section are met for continued services, the RSN continues the individual's mental health treatment services during the administrative hearing process until one of the following occurs:

(a) The individual withdraws the hearing request.

(b) The administrative law judge issues a hearing decision adverse to the individual.

(c) The period covered by the original authorization of mental health services has expired.

(7) If the administrative hearing decision is not in favor of the individual, the RSN may recover the cost of the mental health services furnished to the individual while the hearing

was pending to the extent that they were provided solely because of the requirements of this section.

(8) For purposes of this chapter, hearings include administrative hearings, adjudicative proceedings, and any other similar term referenced under chapter 34.05 RCW, the Administrative Procedure Act, Title 388 WAC, chapter 10-08 WAC, or other law. Chapter 34.05 RCW and chapter 388-02 WAC govern cases where an individual has an issue involving a service that is not funded by medicaid. Chapter 34.05 RCW and chapter 182-526 WAC govern cases where an individual has an issue involving a service that is funded by medicaid.

#### NEW SECTION

**WAC 388-877A-0460 Individual rights specific to medicaid recipients.** (1) Medicaid recipients have general individual rights and medicaid-specific rights when applying for, eligible for, or receiving mental health services authorized by a regional support network (RSN).

(a) General rights that apply to all individuals, regardless of whether an individual is or is not a medicaid recipient, include:

(i) All applicable statutory and constitutional rights;

(ii) The participant rights provided under WAC 388-877-0600; and

(iii) Applicable necessary supplemental accommodation services in chapter 388-472 WAC.

(b) Medicaid-specific rights that apply specifically to medicaid recipients include the following. You have the right to:

(i) Receive medically necessary mental health services, consistent with the Access to Care Standards adopted by the department in its managed care waiver with the federal government.

(ii) Receive the name, address, telephone number, and any languages offered other than English, of mental health providers in your RSN.

(iii) Receive information about the structure and operation of the RSN.

(iv) Receive emergency or urgent care or crisis services.

(v) Receive post-stabilization services after you receive emergency or urgent care or crisis services that result in admittance to a hospital.

(vi) Receive age and culturally appropriate services.

(vii) Be provided a certified interpreter and translated material at no cost to you.

(viii) Receive information you request and help in the language or format of your choice.

(ix) Have available treatment options and alternatives explained to you.

(x) Refuse any proposed treatment.

(xi) Receive care that does not discriminate against you.

(xii) Be free of any sexual exploitation or harassment.

(xiii) Receive an explanation of all medications prescribed and possible side effects.

(xiv) Make a mental health advance directive that states your choices and preferences for mental health care.

(xv) Receive information about medical advance directives.

(xvi) Choose a mental health care provider for yourself and your child, if your child is under thirteen years of age.

(xvii) Change mental health care providers during the first ninety days of treatment, or first twelve months of being approved for services.

(xviii) Request and receive a copy of your medical or mental health records, and be told the cost for copying.

(xix) Be free from retaliation.

(xx) Request and receive policies and procedures of the RSN and behavioral health agency as they relate to your rights.

(xxi) Receive the amount and duration of services you need.

(xxii) Receive services in a barrier-free (accessible) location.

(xxiii) Medically necessary services in accordance with the Early Periodic Screen, Diagnosis and Treatment (EPSDT) under WAC 182-534-0100, if you are twenty years of age or younger.

(xxiv) Receive enrollment notices, informational materials, materials related to grievances, appeals, and administrative hearings, and instructional materials relating to services provided by the regional support network (RSN), in an easily understood format and non-English language that you prefer.

(xxv) Be treated with dignity, privacy and respect, and to receive treatment options and alternatives in a manner that is appropriate to your condition.

(xxvi) Participate in treatment decisions, including the right to refuse treatment.

(xxvii) Be free from seclusion or restraint.

(xxviii) A second opinion from a qualified professional within your RSN area at no cost, or to have one arranged outside the network at no cost to you, as provided in 42 C.F.R. § 438.206(3).

(xxix) Receive medically necessary mental health services outside of the RSN if those services cannot be provided adequately and timely within the RSN.

(xxx) File a grievance with the RSN if you are not satisfied with a service.

(xxxii) Receive a notice of action so that you may appeal any decision by the RSN that denies or limits authorization of a requested service, that reduces, suspends, or terminates a previously authorized service; or that denies payment for a service, in whole or in part.

(xxxiii) File an appeal if the RSN fails to provide services in a timely manner as defined by the state, or act within the timeframes provided in 42 CFR §438.408(b).

(xxxiiii) Request an administrative (fair) hearing if your grievance or appeal is not resolved in your favor.

(xxxix) Services by an ombuds to help you in filing a grievance or appeal, or to request an administrative hearing.

(2) A behavioral health agency licensed by the division of behavioral health and recovery (DBHR) and certified by DBHR to provide mental health services must ensure the medicaid rights described in (1)(b) of this section are:

(a) Provided in writing to each medicaid recipient, and if appropriate, the recipient's legal representative, on or before admission;

(b) Upon request, given to the medicaid recipient in an alternative format or language appropriate to the recipient and, if appropriate, the recipient's legal representative;

(c) Translated to the most commonly used languages in the agency's service area; and

(d) Posted in public areas.

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

#### NEW SECTION

**WAC 388-877-0605 DBHR complaint process.** Any individual or the individual's representative may use the division of behavioral health and recovery's (DBHR's) complaint process to express concern or dissatisfaction with some aspect of a behavioral health service. See WAC 388-877-0200 for terms and definitions used in this section that apply to the complaint process.

(1) The DBHR complaint manager can be contacted at 360-725-3752 or DBHRcomplaintmgr@dshs.wa.gov.

(2) Examples of complaints include, but are not limited to:

(a) An issue with a behavioral health service or case management;

(b) A possible violation of a DSHS rule; and

(c) A belief that the individual believes their rights have been or are being violated.

(3) DBHR requires the following information for each complaint:

(a) The name of the agency or agency provider involved;

(b) The name of the person making the complaint and the person's contact information;

(c) The name of the individual receiving the service and the individual's contact information;

(d) A description of the complaint issue and the date or timeframe it occurred; and

(e) The final finding and/or resolution and the date of the decision if the individual previously discussed the concern with the RSN, the agency, or agency provider.

(4) If DBHR conducts a complaint investigation in order to resolve a complaint, agency representatives must cooperate to allow DBHR representatives to:

(a) Examine any part of the facility at reasonable times and as needed.

(b) Review and evaluate agency records, including but not limited to:

(i) An individual's clinical record and/or personnel file; and

(ii) The agency's policies, procedures, fiscal records, and any other documents required by DBHR to determine compliance and to resolve the complaint.

(c) Conduct individual interviews with staff members and/or individuals receiving services.

(5) The agency must immediately correct compliance deficiencies found as a result of an investigation, or as agreed to by a plan of correction approved by DBHR.

(6) An agency or agency provider must not retaliate against any:

(a) Individual for making a complaint with DBHR or being interviewed by DBHR about a complaint. Examples of retaliation include, but are not limited to:

- (i) Restricting access to a treatment program;
- (ii) Restricting access to the individual involved with the complaint issue;
- (iii) Increasing or threatening to increase charges for services;
- (iv) Decreasing or threatening to decrease services, rights, or privileges;
- (v) Taking any action that coerces or compels the individual to leave the facility or to stop receiving services; and
- (vi) Abusing or harassing, or threatening to abuse or harass the individual.

(b) Person representing the individual.

(c) A witness involved in the complaint issue.

(d) An employee of the agency.

(7) Under WAC 388-877-0365, DBHR may assess an agency a one thousand dollar fee for the cost of a complaint investigation. Reasons for assessing the fee include, but are not limited to:

(a) Any allegation within the complaint being substantiated; or

(b) DBHR's finding that the individual, an individual's representative, a witness, and/or employee of the agency experienced an act of retaliation by the agency as described in subsection (6) of this section during or after a complaint investigation.

(8) DBHR reviews all complaints and behavioral health agency actions to assure compliance with this section.

(9) At any time during the complaint process, an individual applying for, eligible for, or receiving mental health services, or the individual's representative, may access any of the following through the regional support network's (RSN's) grievance system, subject to the applicable rules:

(a) The grievance process, subject to the rules in WAC 388-877A-0420.

(b) The appeal process, subject to the rules in WAC 388-877A-0440.

(c) An administrative hearing, subject to the rules in WAC 388-877A-0460.

(d) Ombuds services, as described in WAC 388-877A-0400(3) and 388-865-0250.

### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-865-0255 Consumer grievance process.

**WSR 15-15-012**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**FISH AND WILDLIFE**

[Order 15-199—Filed July 2, 2015, 3:12 p.m., effective August 2, 2015]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule proposal makes changes to allow recreational fishing for flatfish species (excluding halibut) in Quilcene and Dabob Bay north of a true east line from the mouth of Turner Creek to Toandos Peninsula in waters shallower than one hundred twenty feet (twenty fathoms).

Reasons Supporting Proposal: The Washington department of fish and wildlife needs these changes to allow recreational fishing for flatfish species in the area listed above. A public hearing was held at the April 2015 fish and wildlife commission meeting, and the commission adopted the rule changes during a fish and wildlife commission meeting on June 12, 2015.

Citation of Existing Rules Affected by this Order: Amending WAC 220-56-230 and 220-56-235.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.055, 77.12.045, and 77.12.047.

Adopted under notice filed as WSR 15-06-063 on March 4, 2015.

Changes Other than Editing from Proposed to Adopted Version: WAC 220-56-230 was adjusted to move the southern boundary line of the fishery to read: In Marine Area 12 north of a true east line from the mouth of Turner Creek to the Toandos Peninsula: Waters shallower than one hundred twenty feet (twenty fathoms). This change increased the area open to fishing.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 12, 2015.

Brad Smith, Ph.D.  
Chair

AMENDATORY SECTION (Amending WSR 10-07-105, filed 3/19/10, effective 5/1/10)

**WAC 220-56-230 Bottomfish and halibut—Closed areas.** (1) It is unlawful to take, fish for, retain, or possess bottomfish or halibut taken for personal use from within the following areas:

(a) An eastward-facing C-shaped closed area defined as: Beginning at 48°N, 124°59'W; thence to 48°N, 125°18'W; thence to 48°18'N, 125°18'W; thence to 48°18'N, 124°59'W; thence to 48°11'N, 124°59'W; thence to 48°11'N, 125°11'W; thence to 48°04'N, 125°11'W; thence to 48°04'N, 124°59'W; thence to the point of origin.

(b) The "Westport Offshore Recreational YRCA" closed area, defined by straight lines connecting the following spe-



cific latitude and longitude coordinates in the order listed: Beginning at 46°54.30'N, 124°53.40'W; thence to 46°54.30'N, 124°51.00'W; thence to 46°53.30'N, 124°51.00'W; thence to 46°53.30'N, 124°53.40'W, thence to the point of origin.

(c) The "South Coast Recreational YRCA" closed area, defined by straight lines connecting the following specific latitude and longitude coordinates in the order listed: Beginning at 46°58.00'N, 124°48.00'W; thence to 46°55.00'N, 124°48.00'W; thence to 46°55.00'N, 124°49.00'W; thence to 46°58.00'N, 124°49.00'W; thence to the point of origin.

~~((d) Marine Area 12.)~~

(2) In Marine Area 4 east of the westernmost point of Cape Flattery(;) and Marine Area 5 through ~~((11 and))~~ 13, it is unlawful to take, fish for, retain, or possess bottomfish taken for personal use except from within the following areas:

(a) In Marine Area 4 east of the westernmost point of Cape Flattery, Marine Area 5, and Marine Area 6 west of the easternmost point of Dungeness Spit: Waters inside of an area approximating 120 feet (20 fathoms) described by following the coordinates: 124°44.20'W, 48°23.90'N; 124°40.00'W, 48°24.10'N; 124°36.46'W, 48°23.61'N; 124°21.24'W, 48°17.71'N; 124°14.43'W, 48°15.96'N; 124°02.02'W, 48°11.91'N; 123°34.51'W, 48°09.93'N; 123°31.13'W, 48°11.02'N; 123°24.13'W, 48°08.53'N; 123°06.02'W, 48°11.45'N; 123°06.02'W, 48°08.22'N.

(b) In the remaining portion of Marine Area 6, and Marine Areas 7 ~~((--))~~ through 11 and 13: Waters shallower than 120 feet (20 fathoms).

(c) In Marine Area 12 north of a true east line from the mouth of Turner Creek to the Toandos Peninsula: Waters shallower than 120 feet (20 fathoms).

(3) It is unlawful to take, fish for, retain, or possess rockfish taken for personal use from Marine Areas 6 ~~((-- and))~~ through 13.

AMENDATORY SECTION (Amending WSR 13-19-007, filed 9/5/13, effective 10/6/13)

**WAC 220-56-235 Possession limits—Bottomfish.** It is unlawful to fish for, retain, or possess sixgill, sevengill, or thresher sharks. It is unlawful for any person to take in any day more than the following quantities of bottomfish for personal use. The possession limit at any time may not exceed the equivalent of two daily limits in fresh, frozen or processed form. Unless otherwise provided, bottomfish fishing is open the entire year.

(1) Coastal (Catch Record Card Areas 1 through 4): Limit 12 fish total, except limit 10 fish total east of the Bonilla-Tatoosh line, of all species and species groups of bottomfish, which may include no more than:

(a) Lingcod: 2 fish. Minimum length is 22 inches in Catch Record Card Areas 1 through 4.

(b) Rockfish: 10 fish. Release all canary and yelloweye rockfish. In Marine Area 4 east of the Bonilla-Tatoosh line: 6 fish. Only black or blue rockfish may be retained.

(c) Wolf-eel: 0 fish from Catch Record Card Area 4.

(d) Cabezon:

(i) Marine Areas 1 through 3: 2 fish.

(ii) Marine Area 4: 1 fish; the minimum size limit is 18 inches.

(2) Inner Puget Sound (Catch Record Card Areas 5 through 13):

(a) Catch Record Card Areas 5 and 6: 15 fish total for all species and species groups of bottomfish, which may include no more than:

Rockfish in Marine Area 5 except	1 fish May 1 through September 30. Only black or blue rockfish may be retained.
in Marine Area 5 west of Slip Point	3 fish. Only black or blue rockfish may be retained.
in Marine Area 6.	0 fish
Surfperch	10 fish
Pacific cod	2 fish
Pollock	2 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	1 fish
Pacific hake	2 fish

(b) Catch Record Card Area 7: 15 fish total for all species of bottomfish, which may include no more than:

Rockfish	0 fish
Surfperch	10 fish
Pacific cod	2 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	1 fish
Pollock	2 fish
Pacific hake	2 fish

(c) Catch Record Card Areas 8-1 through 11 and 13: 15 fish total for all species and species groups of bottomfish, which may include no more than:

Rockfish	0 fish
Surfperch	10 fish
Pacific cod	0 fish
Pollock	0 fish
Flatfish (except halibut)	15 fish
Lingcod	1 fish
Wolf-eel	0 fish
Cabezon	1 fish
Pacific hake	0 fish

(d) Catch Record Card Area 12: (~~Closed~~) 15 fish total for all species and species groups of bottomfish, which may include no more than:

<u>Rockfish</u>	<u>0 fish</u>
<u>Surfperch</u>	<u>0 fish</u>
<u>Pacific cod</u>	<u>0 fish</u>
<u>Pollock</u>	<u>0 fish</u>
<u>Flatfish (except halibut)</u>	<u>15 fish</u>
<u>Lingcod</u>	<u>0 fish</u>
<u>Wolf-eel</u>	<u>0 fish</u>
<u>Cabezon</u>	<u>0 fish</u>
<u>Pacific hake</u>	<u>0 fish</u>

(e) It is unlawful to possess lingcod taken by angling that are under 26 inches in length or over 36 inches in length. It is unlawful to possess lingcod taken by spear fishing that are over 36 inches in length.

(f) In Marine Areas 5 through 11 and 13, the minimum size limit for cabezon is 18 inches. All cabezon must be released in Catch Record Card Areas 5 through 11 and 13 from December 1 through April 30.

(g) In Catch Record Card Area 5, the daily limit for rockfish is the first legal rockfish caught, except that west of Slip Point, the daily limit for rockfish is the first three legal rockfish caught. Only black or blue rockfish may be retained. After the daily limit of rockfish is caught, all subsequent rockfish must be released.

(h) In Catch Record Card Area 5, it is unlawful to take rockfish by spear fishing except when this area is open to spear fishing for lingcod.

to have nexus for up to five years even if the taxpayer ceased performing the instate activity which created nexus. Section 102, chapter 23, Laws of 2010 1st sp. sess., changed the trailing nexus for B&O tax to one year following the year the taxpayer ceases having nexus with the state. This legislation did not address the trailing nexus period for other excise taxes. The department is adopting a one year standard for all excise taxes for uniformity purposes.

3. *Definition of "receipt"*: The department is incorporating the current statutory definition of "receipt," which specifically excludes possession by a shipping company. In addition, the department is including the special sourcing provisions for sales of commercial airplane parts in RCW 82.04.-627.

4. *Drop shipments*: The department is providing clearer and more detailed guidance regarding the tax consequences associated with drop shipment sales.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-101 Tax registration and tax reporting and 458-20-193 Inbound and outbound interstate sales of tangible personal property.

Statutory Authority for Adoption: RCW 82.32.300, 82.01.060(2), 82.24.550(2), 82.26.220(2).

Adopted under notice filed as WSR 15-05-067 on February 17, 2015.

Changes Other than Editing from Proposed to Adopted Version: Rule 101:

- Changed the term "master application" to "business license application" throughout to reflect legislative and agency change[s] to refer to application as "business license application" rather than "master application."
- Added a new sentence to subsection (1) to clarify that for certain ownership structures the secretary of state has its own filing requirements, providing: "Persons with certain ownership structures (e.g., corporations, limited liability companies, limited partnerships, limited liability partnerships, and limited liability limited partnerships) must also register with the office of the secretary of state."
- Changed "licensing" to "revenue" in subsection (6)(c) because the department of revenue is now administering the UBI program.

Rule 193:

- Changed the order of the references to other rules that may also be helpful (subsection (1)(b)) to put them in numerical order.
- Added language to subsection (1)(d) to clarify that the rule does not address "the use tax collection obligation of seller of goods to Washington customers."
- Added the phrase "or other information accessible to customers" to subsection (102)(d)(vii)(B).
- Changed the definition of "receive" and "receipt" in subsection (202)(a) from "taking possession of tangible personal property" to "the purchaser first either taking physical possession of, or having dominion and control over, tangible personal property."

**WSR 15-15-025**

**PERMANENT RULES**

**DEPARTMENT OF REVENUE**

[Filed July 7, 2015, 1:20 p.m., effective August 7, 2015]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 458-20-193 (Rule 193) provides guidance on how Washington's B&O tax and retail sales taxes apply to interstate sales of tangible personal property. WAC 458-20-101 (Rule 101) provides, in relevant part, tax reporting and registration requirements for out-of-state businesses.

The department is amending Rules 193 and 101 to provide current and clearer guidance. Included among these changes are the following key updates:

1. *Dissociation*: Rule 193 currently provides if a taxpayer can prove that its sales in the state are "dissociated" from its local business activity, then those sales are not subject to Washington tax despite the taxpayer's nexus with the state. The department is removing the dissociation concept from the rule. Consistent with this change to Rule 193, the department is removing the dissociation concept found in subsection (5)(a) of Rule 101.

2. *Trailing nexus*: Rule 193 currently provides that once a taxpayer establishes nexus in Washington, it will continue

- Removed the following sentence from the "shipping company" definition in subsection (202)(b)(ii): "In the case where a seller or purchaser uses its own transportation equipment for delivery, receipt occurs at the location where the seller or purchaser's own transportation equipment delivers (in the case of the seller) or picks up (in the case of a purchaser) the goods."
- Removed the definition of possession in light of changing the definition of "receive" and "receipt" in subsection (203) and renumbered the rest of Part II accordingly.
- Added a definition of "purchaser" in subsection (203)(b)(i) as including "the purchaser's agent or designee."
- Changed the definition of "purchaser's donee," now in subsection (203)(b)(ii), as follows (underlined language added and ~~struckout language~~ deleted from proposed definition):  
The term "purchaser's donee" means ~~the~~ a person to whom the purchaser directs shipment of ~~the goods~~ in a gratuitous transfer (e.g., a gift recipient).
- Added a new Example 11 to subsection (203), providing:  
Company ABC is located in Washington and purchases goods from Company XYZ located in Ohio. Company ABC directs Company XYZ to ship the goods by a for-hire carrier to a commercial storage warehouse in Washington. The goods will be considered as having been received by Company ABC when the goods are delivered at the commercial storage warehouse. Assuming Company XYZ has nexus, Company XYZ is subject to B&O tax and must collect retail sales tax on the sale.
- Changed heading of (204)(b) from "Sales of certain itinerant property" to "Sales of motor vehicles, watercraft, airplanes, manufactured homes, etc."
- Added the following language to subsection (301): "The place of receipt in a drop shipment transaction is where the property is delivered (i.e., the seller's customer's location)."
- Added the following language to the third sentence of (301)(d): "or other approved exemption certificate."
- Deleted the following language from subsection (304): "The wholesaler has nexus with Washington, and the customer receives the property in Washington."
- Added the following language to the fourth sentence of Example 11: "because Seller does not have nexus with Washington."
- Added the following language to the fifth sentence of Example 11: "because Wholesaler has nexus with Washington and Customer receives the parts (i.e., the parts are delivered to Customer) in Washington."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 7, 2015.

Dylan Waits  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-13-093, filed 6/17/14, effective 7/18/14)

**WAC 458-20-101 Tax registration and tax reporting.**

(1) **Introduction.** This (~~(section)~~) rule explains tax registration and tax reporting requirements for the Washington state department of revenue as established in RCW 82.32.030 and 82.32.045. This (~~(section)~~) rule discusses who is required to be registered, and who must file excise tax returns. This (~~(section)~~) rule also discusses changes in ownership requiring a new registration, the administrative closure of taxpayer accounts, and the revocation and reinstatement of a tax reporting account with the department of revenue. Persons required to file tax returns should also refer to WAC 458-20-104 (Small business tax relief based on volume of business). Persons with certain ownership structures (e.g., corporations, limited liability companies, limited partnerships, limited liability partnerships, and limited liability limited partnerships) must also register with the office of the secretary of state.

(2) **Persons required to obtain tax registration endorsements.** Except as provided in (a) of this subsection, every person who is engaged in any business activity for which the department of revenue is responsible for administering and/or collecting a tax or fee, shall apply for and obtain a tax registration endorsement with the department of revenue. (See RCW 82.32.030.) This endorsement shall be reflected on the face of the business person's registrations and licenses document. The tax registration endorsement is non-transferable, and valid for as long as that person continues in business.

(a) Registration under this (~~(section)~~) rule is not required if all of the following conditions are met:

(i) The person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW (business and occupation tax), is less than twelve thousand dollars per year;

(ii) A person's gross income from all business activities taxable under chapter 82.16 RCW (public utility tax), is less than twelve thousand dollars per year;

(iii) The person is not required to collect or pay to the department of revenue retail sales tax or any other tax or fee

which the department is authorized to administer and/or collect; and

(iv) The person is not otherwise required to obtain a license or registration subject to the ~~((master))~~ business license application procedure provided in chapter 19.02 RCW. For the purposes of this ~~((section))~~ rule, the term "license or registration" means any agency permit, license, certificate, approval, registration, charter, or any form or permission required by law, including agency rule, to engage in any activity.

(b) The term "tax registration endorsement," as used in this ~~((section))~~ rule, has the same meaning as the term "tax registration" or "certificate of registration" used in Title 82 RCW and other ~~((sections))~~ rules in chapter 458-20 WAC.

(c) The term "person" has the meaning given in RCW 82.04.030.

(d) The term "tax reporting account number" as used in this ~~((section))~~ rule, is the number used to identify persons registered with the department of revenue.

(3) **Requirement to file tax returns.** Persons registered with the department must file tax returns and remit the appropriate taxes to the department, unless they are placed on an "active nonreporting" status by the department.

(a) The department may relieve any person of the requirement to file returns by placing the person in an active nonreporting status if all of the following conditions are met:

(i) The person's value of products (RCW 82.04.450), gross proceeds of sales (RCW 82.04.070), or gross income of the business (RCW 82.04.080), from all business activities taxable under chapter 82.04 RCW (business and occupation tax), is less than twenty-eight thousand dollars per year;

(ii) The person's gross income (RCW 82.16.010) from all business activities taxable under chapter 82.16 RCW (public utility tax) is less than twenty-four thousand dollars per year; and

(iii) The person is not required to collect or pay to the department retail sales tax or any other tax or fee the department is authorized to collect.

(b) The department will notify those persons it places on an active nonreporting status. (A person may request to be placed on an active nonreporting status if the conditions of (a) of this subsection are met.)

(c) Persons placed on an active nonreporting status by the department are required to timely notify the department if their business activities do not meet any of the conditions explained in (a) of this subsection. These persons will be removed from an active nonreporting status, and must file tax returns and remit appropriate taxes to the department, beginning with the first period in which they do not qualify for an active nonreporting status.

(d) Persons that have not been placed on an active nonreporting status by the department must continue to file tax returns and remit the appropriate taxes.

(4) **Examples.** The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The status of each situation must be determined after a review of all facts and circumstances.

(a) Bob Brown is starting a bookkeeping service. The gross income of the business is expected to be less than

twelve thousand dollars per year. Due to the nature of the business activities, Bob is not required to pay or collect any other tax which the department is authorized to collect.

Bob Brown is not required to apply for and obtain a tax registration endorsement with the department of revenue. The conditions under which a business person may engage in business activities without obtaining the tax registration endorsement have been met. However, if Bob Brown in some future period has gross income exceeding twelve thousand dollars per year, he will be required to obtain a tax registration endorsement. If Bob's gross income exceeds twenty-eight thousand dollars per year, he will be required to file tax returns and remit the appropriate taxes.

(b) Cindy Smith is opening a business to sell books written for children to local customers at retail. The gross proceeds of sales are expected to be less than twelve thousand dollars per year.

Cindy Smith must apply for and obtain a tax registration endorsement with the department of revenue. While gross income is expected to be less than twelve thousand dollars per year, Cindy Smith is required to collect and remit retail sales tax.

(c) Alice Smith operates a taxicab service with an average gross income of eighteen thousand dollars per year. She also owns a management consulting service with an average gross income of fifteen thousand dollars per year. Assume that Alice is not required to collect or pay to the department any other tax or fee the department is authorized to collect. Alice qualifies for an active nonreporting status because her taxicab income is less than the twenty-four thousand dollar threshold for the public utility tax, and her consulting income is less than the twenty-four thousand dollar threshold for the business and occupation (B&O) tax. If the department of revenue does not first place her on an active nonreporting status, she may request the department to do so.

(5) **Out-of-state businesses.** The B&O and public utility taxes are imposed on the act or privilege of engaging in business activity within Washington. RCW 82.04.220 and 82.16.-020. Out-of-state persons who have established sufficient nexus in Washington to be subject to Washington's B&O or public utility taxes must obtain a tax registration endorsement with this department if they do not satisfy the conditions expressed in subsection (2)(a) of this ~~((section))~~ rule. Out-of-state persons required to collect Washington's retail sales or use tax, or who have elected to collect Washington's use tax, even though not statutorily required to do so, must obtain a tax registration endorsement.

~~((a)) Persons with out of state business locations should not include income that is disassociated from their in-state activities in their computations for determining whether the gross income thresholds provided in subsection (2)(a)(i) and (ii) of this section are satisfied.~~

~~((b))~~ Out-of-state persons making sales into or doing business within Washington should also refer to the following rules in chapter 458-20 WAC for a discussion of their tax reporting responsibilities:

~~((+))~~ (a) WAC 458-20-103 (Time and place of sale);

~~((+))~~ (b) WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property);

~~((iii))~~ (c) WAC 458-20-193D (Transportation, communication, public utility activities, or other services in interstate or foreign commerce);

~~((iv))~~ (d) WAC 458-20-194 (Doing business inside and outside the state); and

~~((v))~~ (e) WAC 458-20-221 (Collection of use tax by retailers and selling agents).

(6) **Registration procedure.** The state of Washington initiated the unified business identifier (UBI) program to simplify the registration and licensing requirements imposed on the state's business community. Completion of the ~~((master))~~ business license application enables a person to register or license with several state agencies, including the department of revenue, using a single form. The person will be assigned one unified business identifier number, which will be used for all state agencies participating in the UBI program. The department may assign the unified business identifier number as the taxpayer's revenue tax reporting account number, or it may assign a different or additional number as the revenue tax reporting account number.

(a) Persons completing the ~~((master))~~ business license application will be issued a registrations and licenses document. The face of this document will list the registrations and licenses (endorsements) which have been obtained.

(b) The department of revenue does not charge a registration fee for issuing a tax registration endorsement. Persons required to complete a ~~((master))~~ business license application may, however, be subject to other fees.

(c) While the UBI program is administered by the department of ~~((licensing, master))~~ revenue, business license applications are available at any participating UBI service provider location. The following agencies of the state of Washington participate in the UBI program (see RCW 19.02.050 for a more complete listing of participating agencies):

- (i) The office of the secretary of state;
- (ii) The department of licensing;
- (iii) The department of employment security;
- (iv) The department of labor and industries;
- (v) The department of revenue.

(7) **Temporary revenue registration certificate.** A temporary revenue registration certificate may be issued to any person who operates a business of a temporary nature.

(a) Temporary businesses, for the purposes of registration, are those with:

(i) Definite, predetermined dates of operation for no more than two events each year with each event lasting no longer than one month; or

(ii) Seasonal dates of operation lasting no longer than three months. However, persons engaging in business activities on a seasonal basis every year should refer to subsection (8) of this ~~((section))~~ rule.

(b) Each temporary registration certificate is valid for a single event. Persons that subsequently make sales into Washington may incur additional tax liability. Refer to WAC 458-20-193 (Inbound and outbound interstate sales of tangible personal property) for additional information on tax reporting requirements. It may be required that a tax registration endorsement be obtained, in lieu of a temporary registration certificate. See subsection (2) of this ~~((section))~~ rule.

(c) Temporary revenue registration certificates may be obtained by making application at any participating UBI agency office, or by completing a seasonal registration form.

(8) **Seasonal revenue tax reporting accounts.** Persons engaging in seasonal business activities which do not exceed two quarterly reporting periods each calendar year may be eligible for a tax reporting account with a seasonal reporting status. This is a permanent account until closed by the taxpayer. The taxpayer must specify in which quarterly reporting periods he or she will be engaging in taxable business activities. The quarterly reporting periods in which the taxpayer is engaging in taxable business activities may or may not be consecutive, but the same quarterly period or periods must apply each year. The taxpayer is not required to be engaging in taxable business activities during the entire period.

The department will provide and the taxpayer will be required to file tax returns only for the quarterly reporting periods specified by the taxpayer. Examples of persons which may be eligible for the seasonal reporting status include persons operating Christmas tree and/or fireworks stands. Persons engaging in taxable business activities in more than two quarterly reporting periods in a calendar year will not qualify for the seasonal reporting status.

(9) **Display of registrations and licenses document.** The taxpayer is required to display the registrations and licenses document in a conspicuous place at the business location for which it is issued.

(10) **Multiple locations.** A registrations and licenses document is required for each place of business at which a taxpayer engages in business activities for which the department of revenue is responsible for administering and/or collecting a tax or fee, and any main office or principal place of business from which excise tax returns are to be filed. This requirement applies to locations both within and without the state of Washington.

(a) For the purposes of this subsection, the term "place of business" means:

(i) Any separate establishment, office, stand, cigarette vending machine, or other fixed location; or

(ii) Any vessel, train, or the like, at any of which the taxpayer solicits or makes sales of tangible personal property, or contracts for or renders services in this state or otherwise transacts business with customers.

(b) A taxpayer wishing to report all tax liability on a single excise tax return may request a separate registrations and licenses document for each location. The original registrations and licenses document shall be retained for the main office or principal place of business from which the returns are to be filed, with additional documents obtained for all branch locations. All registrations and licenses documents will reflect the same tax reporting account number.

(c) A taxpayer desiring to file a separate excise tax return covering a branch location, or a specific construction contract, may apply for and receive a separate revenue tax reporting account number. A registrations and licenses document will be issued for each tax reporting account number and will represent a separate account.

(d) A ~~((master))~~ business license application must be completed to obtain a separate registrations and licenses doc-

ument, or revenue tax reporting account number, for a new location.

(11) **Change in ownership.** When a change in ownership of a business occurs, the new owner must apply for and obtain a new registrations and licenses document. The original document must be destroyed, and any further use of the tax reporting account number for tax purposes is prohibited.

(a) A "change in ownership," for purposes of registration, occurs upon but is not limited to:

(i) The sale of a business by one individual, firm or corporation to another individual, firm or corporation;

(ii) The dissolution of a partnership;

(iii) The withdrawal, substitution, or addition of one or more partners where the general partnership continues as a business organization and the change in the composition of the partners is equal to or greater than fifty percent;

(iv) Incorporation of a business previously operated as a partnership or sole proprietorship;

(v) Changing from a corporation to a partnership or sole proprietorship; or

(vi) Changing from a corporation, partnership or sole proprietorship to a limited liability company or a limited liability partnership.

(b) For the purposes of registration, a "change in ownership" does not occur upon:

(i) The sale of all or part of the common stock of a corporation;

(ii) The transfer of assets to an assignee for the benefit of creditors or upon the appointment of a receiver or trustee in bankruptcy;

(iii) The death of a sole proprietor where there will be a continuous operation of the business by the executor, administrator, or trustee of the estate or, where the business was owned by a marital community or registered domestic partnership, by the surviving spouse or surviving domestic partner of the deceased owner;

(iv) The withdrawal, substitution, or addition of one or more partners where the general partnership continues as a business organization and the change in the composition of the partners is less than fifty percent; or

(v) A change in the trade name under which the business is conducted.

(c) While changes in a business entity may not result in a "change in ownership," the completion of a new (~~(master)~~) business license application may be required to reflect the changes in the registered account.

(12) **Change in location.** Whenever the place of business is moved to a new location, the taxpayer must notify the department of the change. A new registrations and licenses document will be issued to reflect the change in location.

(13) **Lost registrations and licenses documents.** If any registrations and licenses document is lost, destroyed or defaced as a result of accident or of natural wear and tear, a new document will be issued upon request.

(14) **Administrative closure of taxpayer accounts.** The department may, upon written notification to the taxpayer, close the taxpayer's tax reporting account and rescind its tax registration endorsement whenever the taxpayer has reported no gross income and there is no indication of taxable activity for two consecutive years.

The taxpayer may request, within thirty days of notification of closure, that the account remain open. A taxpayer may also request that the account remain open on an "active non-reporting" status if the requirements of subsection (3)(a) of this (~~(section)~~) rule are met. The request shall be reviewed by the department and if found to be warranted, the department will immediately reopen the account. The following are acceptable reasons for continuing as an active account:

(a) The taxpayer is engaging in business activities in Washington which may result in tax liability.

(b) The taxpayer is required to collect or pay to the department of revenue a tax or fee which the department is authorized to administer and/or collect.

(c) The taxpayer has in fact been liable for excise taxes during the previous two years.

(15) **Reopening of taxpayer accounts.** A business person choosing to resume business activities for which the department of revenue is responsible for administering and/or collecting a tax or fee, may request a previously closed account be reopened. The business person must complete a new (~~(master)~~) business license application. When an account is reopened a new registrations and licenses document, reflecting a current tax registration endorsement, shall be issued. Persons requesting the reopening of an account which had previously been closed due to a revocation action should refer to subsection (16) of this (~~(section)~~) rule.

(16) **Revocation and reinstatement of tax registration endorsements.** Actions to revoke tax registration endorsements must be conducted by the department pursuant to the provisions of chapter 34.05 RCW, the Administrative Procedure Act, and the taxpayers bill of rights of chapter 82.32A RCW. Persons should refer to WAC 458-20-10001, Adjudicative proceedings—Brief adjudicative proceedings—Wholesale and retail cigarette license revocation/suspension—Certificate of registration (tax registration endorsement) revocation, for an explanation of the procedures and processes pertaining to the revocation of tax registration endorsements.

(a) The department of revenue may, by order, revoke a tax registration endorsement if:

(i) Any tax warrant issued under the provisions of RCW 82.32.210 is not paid within thirty days after it has been filed with the clerk of the superior court; or

(ii) The taxpayer is delinquent, for three consecutive reporting periods, in the transmission to the department of retail sales tax collected by the taxpayer; or

(iii) Either:

(A) The taxpayer was convicted of violating RCW 82.32.290(4) and continues to engage in business without fully complying with RCW 82.32.290 (4)(b)(i) through (iii); or

(B) A person convicted of violating RCW 82.32.290(4) is an owner, officer, director, partner, trustee, member, or manager of the taxpayer, and the person and taxpayer have not fully complied with RCW 82.32.290 (4)(b)(i) through (iii).

For purposes of (a)(iii) of this subsection, the terms "manager," "member," and "officer" mean the same as defined in RCW 82.32.145.

(b) The revocation order will be, if practicable, posted in a conspicuous place at the main entrance to the taxpayer's place of business. The department may also post a copy of the revocation order in any public facility, as may be allowed by the public entity that owns or occupies the facility. The revocation order posted at the taxpayer's place of business must remain posted until the tax registration endorsement has been reinstated or the taxpayer has abandoned the premises. A revoked endorsement will not be reinstated until:

(i) The amount due on the warrant has been paid, or satisfactory arrangements for payment have been approved by the department, and the taxpayer has posted with the department a bond or other security in an amount not exceeding one-half the estimated average annual liability of the taxpayer; or

(ii) The taxpayer and, if applicable, the owner, officer, director, partner, trustee, member, or manager of the taxpayer who was convicted of violating RCW 82.32.290(4) are in full compliance with RCW 82.32.290 (4)(b)(i) through (iii), if the tax registration endorsement was revoked as described in (a)(iii) of this subsection.

(c) It is unlawful for any taxpayer to engage in business after its tax registration endorsement has been revoked.

(17) **Penalties for noncompliance.** The law provides that any person engaging in any business activity, for which registration with the department of revenue is required, shall obtain a tax registration endorsement.

(a) The failure to obtain a tax registration endorsement prior to engaging in any taxable business activity constitutes a gross misdemeanor.

(b) Engaging in business after a tax registration endorsement has been revoked by the department constitutes a Class C felony.

(c) Any tax found to have been due, but delinquent, and any tax unreported as a result of fraud or misrepresentation, may be subject to penalty as provided in chapter 82.32 RCW, WAC 458-20-228 and 458-20-230.

**AMENDATORY SECTION** (Amending WSR 10-06-070, filed 2/25/10, effective 3/28/10)

**WAC 458-20-193 ((Inbound and outbound)) Interstate sales of tangible personal property. (1) Introduction.** ((This section explains Washington's B&O tax and retail sales tax applications to interstate sales of tangible personal property. It covers the outbound sales of goods originating in this state to persons outside this state and of inbound sales of goods originating outside this state to persons in this state. This section does not include import and export transactions.

**(2) Definitions:** For purposes of this section the following terms mean:

(a) "State of origin" means the state or place where a shipment of tangible personal property (goods) originates.

(b) "State of destination" means the state or place where the purchaser/consignee or its agent receives a shipment of goods.

(c) "Delivery" means the act of transferring possession of tangible personal property. It includes among others the transfer of goods from consignor to freight forwarder or for-

hire carrier, from freight forwarder to for hire carrier, one for hire carrier to another, or for hire carrier to consignee.

(d) "Receipt" or "received" means the purchaser or its agent first either taking physical possession of the goods or having dominion and control over them.

(e) "Agent" means a person authorized to receive goods with the power to inspect and accept or reject them.

(f) "Nexus" means the activity carried on by the seller in Washington which is significantly associated with the seller's ability to establish or maintain a market for its products in Washington.

**(3) Outbound sales.** ~~Washington state does not assess its taxes on sales of goods which originate in Washington if receipt of the goods occurs outside Washington.~~

~~(a) Where tangible personal property is located in Washington at the time of sale and is received by the purchaser or its agent in this state, or the purchaser or its agent exercises ownership over the goods inconsistent with the seller's continued dominion over the goods, the sale is subject to tax under the retailing or wholesaling classification. The tax applies even though the purchaser or its agent intends to and thereafter does transport or send the property out of state for use or resale there, or for use in conducting interstate or foreign commerce. It is immaterial that the contract of sale or contract to sell is negotiated and executed outside the state or that the purchaser resides outside the state.~~

~~(b) Where the seller delivers the goods to the purchaser who receives them at a point outside Washington neither retailing nor wholesaling business tax is applicable. This exemption applies even in cases where the shipment is arranged through a for hire carrier or freight consolidator or freight forwarder acting on behalf of either the seller or purchaser. It also applies whether the shipment is arranged on a "freight prepaid" or a "freight collect" basis. The shipment may be made by the seller's own transportation equipment or by a carrier for hire. For purposes of this section, a for hire carrier's signature does not constitute receipt upon obtaining the goods for shipment unless the carrier is acting as the purchaser's agent and has express written authority from the purchaser to accept or reject the goods with the right of inspection.~~

**(4) Proof of exempt outbound sales.**

~~(a) If either a for hire carrier or the seller itself carries the goods for receipt at a point outside Washington, the seller is required to retain in its records documentary proof of the sales and delivery transaction and that the purchaser in fact received the goods outside the state in order to prove the sale is tax exempt. Acceptable proofs, among others, will be:~~

~~(i) The contract or agreement of sale, if any. **And**~~

~~(ii) If shipped by a for hire carrier, a waybill, bill of lading or other contract of carriage indicating the seller has delivered the goods to the for hire carrier for transport to the purchaser or the purchaser's agent at a point outside the state with the seller shown on the contract of carriage as the consignor (or other designation of the person sending the goods) and the purchaser or its agent as consignee (or other designation of the person to whom the goods are being sent); or~~

~~(iii) If sent by the seller's own transportation equipment, a trip sheet signed by the person making delivery for the seller and showing:~~

The seller's name and address,

The purchaser's name and address,

The place of delivery, if different from purchaser's address,

The time of delivery to the purchaser together with the signature of the purchaser or its agent acknowledging receipt of the goods at the place designated outside the state of Washington.

(b) Delivery of the goods to a freight consolidator, freight forwarder or for-hire carrier merely utilized to arrange for and/or transport the goods is not receipt of the goods by the purchaser or its agent unless the consolidator, forwarder or for-hire carrier has express written authority to accept or reject the goods for the purchaser with the right of inspection. See also WAC 458-20-174, 458-20-17401, 458-20-175, 458-20-176, 458-20-177, 458-20-238 and 458-20-239 for certain statutory exemptions.

**(5) Other B&O taxes — Outbound and inbound sales.**

(a) ~~Extracting, manufacturing.~~ Persons engaged in these activities in Washington and who transfer or make delivery of such produced articles for receipt at points outside the state are subject to business tax under the extracting or manufacturing classification and are not subject to tax under the retailing or wholesaling classification. See also WAC 458-20-135 and 458-20-136. The activities taxed occur entirely within the state, are inherently local, and are conducted prior to the commercial journey. The tax is measured by the value of products as determined by the selling price in the case of articles on which the seller performs no further manufacturing after transfer out of Washington. It is immaterial that the value so determined includes an additional increment of value because the sale occurs outside the state. If the seller performs additional manufacturing on the article after transferring the article out of state, the value should be measured under the principles contained in WAC 458-20-112.

(b) ~~Extracting or processing for hire, printing and publishing, repair or alteration of property for others.~~ These activities when performed in Washington are also inherently local and the gross income or total charge for work performed is subject to business tax, since the operating incidence of the tax is upon the business activity performed in this state. No deduction is permitted even though the articles produced, imprinted, repaired or altered are delivered to persons outside the state. It is immaterial that the customers are located outside the state, that the work was negotiated or contracted for outside the state, or that the property was shipped in from outside the state for such work.

(c) ~~Construction, repair.~~ Construction or repair of buildings or other structures, public road construction and similar contracts performed in this state are inherently local business activities subject to B&O tax in this state. This is so even though materials involved may have been delivered from outside this state or the contracts may have been negotiated outside this state. It is immaterial that the work may be performed in this state by foreign sellers who performed preliminary services outside this state.

(d) **Renting or leasing of tangible personal property.** Lessors who rent or lease tangible personal property for use in this state are subject to B&O tax upon their gross proceeds from such rentals for periods of use in this state. Proration of

tax liability based on the degree of use in Washington of leased property is required.

It is immaterial that possession of the property leased may have passed to the lessee outside the state or that the lease agreement may have been consummated outside the state. Lessors will not be subject to B&O tax if all of the following conditions are present:

(i) The equipment is not located in Washington at the time the lessee first takes possession of the leased property; and

(ii) The lessor has no reason to know that the equipment will be used by the lessee in Washington; and

(iii) The lease agreement does not require the lessee to notify the lessor of subsequent movement of the property into Washington and the lessor has no reason to know that the equipment may have been moved to Washington.

(6) **Retail sales tax — Outbound sales.** The retail sales tax generally applies to all retail sales made within this state. The legal incidence of the tax is upon the purchaser, but the seller is obligated to collect and remit the tax to the state. The retail sales tax applies to all sales to consumers of goods located in the state when goods are received in Washington by the purchaser or its agent, irrespective of the fact that the purchaser may use the property elsewhere. However, as indicated in subsection (4)(b), delivery of the goods to a freight consolidator, freight forwarder or for-hire carrier arranged either by the seller or the purchaser, merely utilized to arrange for and/or transport the goods out of state is not receipt of the goods by the purchaser or its agent in this state, unless the consolidator, forwarder or for-hire carrier has express written authority to accept or reject the goods for the purchaser with the right of inspection.

(a) The retail sales tax does not apply when the seller delivers the goods to the purchaser who receives them at a point outside the state, or delivers the same to a for-hire carrier consigned to the purchaser outside the state. This exemption applies even in cases where the shipment is arranged through a for-hire carrier or freight consolidator or freight forwarder acting on behalf of either the seller or the purchaser. It also applies regardless of whether the shipment is arranged on a "freight prepaid" or a "freight collect" basis and regardless of who bears the risk of loss. The seller must retain proof of exemption as outlined in subsection (4), above.

(b) RCW 82.08.0273 provides an exemption from the retail sales tax to certain nonresidents of Washington for purchases of tangible personal property for use outside this state when the nonresident purchaser provides proper documentation to the seller. This statutory exemption is available only to residents of states and possessions or Province of Canada other than Washington when the jurisdiction does not impose a retail sales tax of three percent or more. These sales are subject to B&O tax.

(c) A statutory exemption (RCW 82.08.0269) is allowed for sales of goods for use in states, territories and possessions of the United States which are not contiguous to any other state (Alaska, Hawaii, etc.), but only when, as a necessary incident to the contract of sale, the seller delivers the property to the purchaser or its designated agent at the usual receiving terminal of the for-hire carrier selected to transport the goods; under such circumstance that it is reasonably certain that the



goods will be transported directly to a destination in such noncontiguous states, territories and possessions. As proof of exemption, the seller must retain the following as part of its sales records:

(i) A certification of the purchaser that the goods will not be used in the state of Washington and are intended for use in the specified noncontiguous state, territory or possession.

(ii) Written instructions signed by the purchaser directing delivery of the goods to a dock, depot, warehouse, airport or other receiving terminal for transportation of the goods to their place of ultimate use. Where the purchaser is also the carrier, delivery may be to a warehouse receiving terminal or other facility maintained by the purchaser when the circumstances are such that it is reasonably certain that the goods will be transported directly to their place of ultimate use.

(iii) A dock receipt, memorandum bill of lading, trip sheet, cargo manifest or other document evidencing actual delivery to such dock, depot, warehouse, freight consolidator or forwarder, or receiving terminal.

(iv) The requirements of (i) and (ii) above may be complied with through the use of a blanket exemption certificate as follows:

**Exemption Certificate**

We hereby certify that all of the goods which we have purchased and which we will purchase from you will not be used in the State of Washington but are for use in the state, territory or possession of.....

You are hereby directed to deliver all such goods to the following dock, depot, warehouse, freight consolidator, freight forwarder, transportation agency or other receiving terminal:

.....  
.....

for the transportation of those goods to their place of ultimate use.

This certificate shall be considered a part of each order that we have given you and which we may hereafter give to you, unless otherwise specified, and shall be valid until revoked by us in writing.

DATED .....

.....  
(Purchaser)  
By.....  
(Officer or Purchaser's  
Representative)  
Address.....

(v) There is no business and occupation tax deduction of the gross proceeds of sales of goods for use in noneontiguous states unless the goods are received outside Washington.

(d) See WAC 458-20-173 for explanation of sales tax exemption in respect to charges for labor and materials in the repair, cleaning or altering of tangible personal property for nonresidents when the repaired property is delivered to the purchaser at an out-of-state point.

(7) ~~Inbound sales.~~ Washington does not assert B&O tax on sales of goods which originate outside this state unless the goods are received by the purchaser in this state and the seller has nexus. There must be both the receipt of the goods in Washington by the purchaser and the seller must have nexus for the B&O tax to apply to a particular sale. The B&O tax will not apply if one of these elements is missing.

(a) ~~Delivery of the goods to a freight consolidator, freight forwarder or for-hire carrier located outside this state merely utilized to arrange for and/or transport the goods into this state is not receipt of the goods by the purchaser or its agent unless the consolidator, forwarder or for-hire carrier has express written authority to accept or reject the goods for the purchaser with the right of inspection.~~

(b) ~~When the sales documents indicate the goods are to be shipped to a buyer in Washington, but the seller delivers the goods to the buyer at a location outside this state, the seller may use the proofs of exempt sales contained in subsection 4 to establish the fact of delivery outside Washington.~~

(c) ~~If a seller carries on significant activity in this state and conducts no other business in the state except the business of making sales, this person has the distinct burden of establishing that the in-state activities are not significantly associated in any way with the sales into this state. Once nexus has been established, it will continue throughout the statutory period of RCW 82.32.050 (up to five years), notwithstanding that the in-state activity which created the nexus ceased. Persons taxable under the service B&O tax classification should refer to WAC 458-20-194. The following activities are examples of sufficient nexus in Washington for the B&O tax to apply:~~

(i) ~~The goods are located in Washington at the time of sale and the goods are received by the customer or its agent in this state.~~

(ii) ~~The seller has a branch office, local outlet or other place of business in this state which is utilized in any way, such as in receiving the order, franchise or credit investigation, or distribution of the goods.~~

(iii) ~~The order for the goods is solicited in this state by an agent or other representative of the seller.~~

(iv) ~~The delivery of the goods is made by a local outlet or from a local stock of goods of the seller in this state.~~

(v) ~~The out of state seller, either directly or by an agent or other representative, performs significant services in relation to establishment or maintenance of sales into the state, even though the seller may not have formal sales offices in Washington or the agent or representative may not be formally characterized as a "salesperson."~~

(vi) ~~The out of state seller, either directly or by an agent or other representative in this state, installs its products in this state as a condition of the sale.~~

(8) ~~Retail sales tax - Inbound sales.~~ Persons engaged in selling activities in this state are required to be registered with the department of revenue. Sellers who are not required to be registered may voluntarily register for the collection and reporting of the use tax. The retail sales tax must be collected and reported in every case where the retailing B&O tax is due as outlined in subsection 7. If the seller is not required to collect retail sales tax on a particular sale because the transaction

is disassociated from the in-state activity, it must collect the use tax from the buyer.

**(9) Use tax – Inbound sales.** The following sets forth the conditions under which out-of-state sellers are required to collect and remit the use tax on goods received by customers in this state. A seller is required to pay or collect and remit the tax imposed by chapter 82.12 RCW if within this state it directly or by any agent or other representative:

(a) Has or utilizes any office, distribution house, sales house, warehouse, service enterprise or other place of business; or

(b) Maintains any inventory or stock of goods for sale; or

(c) Regularly solicits orders whether or not such orders are accepted in this state; or

(d) Regularly engages in the delivery of property in this state other than by for-hire carrier or U.S. mail; or

(e) Regularly engages in any activity in connection with the leasing or servicing of property located within this state.

(i) The use tax is imposed upon the use, including storage preparatory to use in this state, of all tangible personal property acquired for any use or consumption in this state unless specifically exempt by statute. The out-of-state seller may have nexus to require the collection of use tax without personal contact with the customer if the seller has an extensive, continuous, and intentional solicitation and exploitation of Washington's consumer market. (See WAC 458-20-221).

(ii) Every person who engages in this state in the business of acting as an independent selling agent for unregistered principals, and who receives compensation by reason of sales of tangible personal property of such principals for use in this state, is required to collect the use tax from purchasers, and remit the same to the department of revenue, in the manner and to the extent set forth in WAC 458-20-221.

**(10) Examples – Outbound sales.** The following examples show how the provisions of this section relating to interstate sales of tangible personal property will apply when the goods originate in Washington (outbound sales). The examples presume the seller has retained the proper proof documents and that the seller did not manufacture the items being sold:

(a) Company A is located in Washington. It sells machine parts at retail and wholesale. Company B is located in California and it purchases machine parts from Company A. Company A carries the parts to California in its own vehicle to make delivery. It is immaterial whether the goods are received at either the purchaser's out-of-state location or at any other place outside Washington state. The sale is not subject to Washington's B&O tax or its retail sales tax because the buyer did not receive the goods in Washington. Washington treats the transaction as a tax-exempt interstate sale. California may impose its taxing jurisdiction on this sale.

(b) Company A, above, ships the parts by a for-hire carrier to Company B in California. Company B has not previously received the parts in Washington directly or through a receiving agent. It is immaterial whether the goods are received at either Company B's out-of-state location or any other place outside Washington state. It is immaterial whether the shipment is freight prepaid or freight collect. Again, Washington treats the transaction as an exempt interstate sale.

(c) Company B, above, has its employees or agents pick up the parts at Company A's Washington plant and transports them out of Washington. The sale is fully taxable under Washington's B&O tax and, if the parts are not purchased for resale by Company B, Washington's retail sales tax also applies.

(d) Company B, above, hires a carrier to transport the parts from Washington. Company B authorizes the carrier, or another agent, to inspect and accept the parts and, if necessary, to hold them temporarily for consolidation with other goods being shipped out of Washington. This sale is taxable under Washington's B&O tax and, if the parts are not purchased for resale by Company B, Washington's retail sales tax also applies.

(e) Washington will not tax the transactions in the above examples (a) and (b) if Company A mails the parts to Company B rather than using its own vehicles or a for-hire carrier for out-of-state receipt. By contrast, Washington will tax the transactions in the above examples (c) and (d) if for some reason Company B or its agent mails the parts to an out-of-state location after receiving them in Washington. The B&O tax applies to the latter two examples and if the parts are not purchased for resale by Company B then retail sales tax will also apply.

(f) Buyer C who is located in Alaska purchases parts for its own use in Alaska from Seller D who is located in Washington. Buyer C specifies to the seller that the parts are to be delivered to the water carrier at a dock in Seattle. The buyer has entered into a written contract for the carrier to inspect the parts at the Seattle dock. The sale is subject to the B&O tax because receipt took place in Washington. The retail sales tax does not apply because of the specific exemption at RCW 82.08.0269. This transaction would have been exempt of the B&O tax if the buyer had taken no action to receive the goods in Washington.

**(11) Examples – Inbound sales.** The following examples show how the provisions of this section relating to interstate sales of tangible personal property will apply when the goods originate outside Washington (inbound sales). The examples presume the seller has retained the proper proof documents:

(a) Company A is located in California. It sells machine parts at retail and wholesale. Company B is located in Washington and it purchases machine parts for its own use from Company A. Company A uses its own vehicles to deliver the machine parts to its customers in Washington for receipt in this state. The sale is subject to the retail sales and B&O tax if the seller has nexus, or use tax if nexus is not present.

(b) Company A, above, ships the parts by a for-hire carrier to Company B in Washington. The goods are not accepted by Company B until the goods arrive in Washington. The sale is subject to the retail sales or use tax and is also subject to the B&O tax if the seller has nexus in Washington. It is immaterial whether the shipment is freight prepaid or freight collect.

(c) Company B, above, has its employees or agents pick up the parts at Company A's California plant and transports them into Washington. Company A is not required to collect sales or use tax and is not liable for B&O tax on the sale of

these parts. Company B is liable for payment of use tax at the time of first use of the parts in Washington.

(d) Company B, above, hires a carrier to transport the parts from California. Company B authorizes the carrier, or an agent, to inspect and accept the parts and, if necessary, to hold them temporarily for consolidation with other goods being shipped to Washington. The seller is not required to collect retail sales or use tax and is not liable for the B&O tax on these sales. Company B is subject to use tax on the first use of the parts in Washington.

(e) Company B, above, instructs Company A to deliver the machine parts to a freight consolidator selected by Company B. The freight consolidator does not have authority to receive the goods as agent for Company B. Receipt will not occur until the parts are received by Company B in Washington. Company A is required to collect retail sales or use tax and is liable for B&O tax if Company A has nexus for this sale. The mere delivery to a consolidator or for-hire carrier who is not acting as the buyer's receiving agent is not receipt by the buyer.

(f) Transactions in examples (11)(a) and (11)(b) will also be taxable if Company A mails the parts to Company B for receipt in Washington, rather than using its own vehicles or a for-hire carrier. The tax will continue to apply even if Company B for some reason sends the parts to a location outside Washington after the parts were accepted in Washington.

(g) Company W with its main office in Ohio has one employee working from the employee's home located in Washington. The taxpayer has no offices, inventory, or other employees in Washington. The employee calls on potential customers to promote the company's products and to solicit sales. On June 30, 1990 the employee is terminated. After this date the company no longer has an employee or agent calling on customers in Washington or carries on any activities in Washington which is significantly associated with the seller's ability to establish or maintain a market for its products in Washington. Washington customers who had previously been contacted by the former employee continue to purchase the products by placing orders by mail or telephone directly with the out-of-state seller. The nexus which was established by the employee's presence in Washington will be presumed to continue through December 31, 1994 and subject to B&O tax. Nexus will cease on December 31, 1994 if the seller has not established any new nexus during this period. Company W may disassociate and exclude from B&O tax sales to new customers who had no contact with the former employee. The burden of proof to disassociate is on the seller.

(h) Company X is located in Ohio and has no office, employees, or other agents located in Washington or any other contact which would create nexus. Company X receives by mail an order from Company Y for parts which are to be shipped to a Washington location. Company X purchases the parts from Company Z who is located in Washington and requests that the parts be drop shipped to Company Y. Since Company X has no nexus in Washington, Company X is not subject to B&O tax or required to collect retail sales tax. Company X has not taken possession or dominion or control over the parts in Washington. Company Z may accept a resale certificate (WAC 458-20-102A) for sales made before

January 1, 2010, or a Streamlined Sales and Use Tax Agreement Certificate of Exemption or a Multistate Tax Commission Exemption Certificate (WAC 458-20-102) for sales made on or after January 1, 2010, from Company X which will bear the registration number issued by the state of Ohio. Company Y is required to pay use tax on the value of the parts. Even though resale certificates are no longer used after December 31, 2009, they must be kept on file by Company Z for five years from the date of last use or December 31, 2014.

(i) Company ABC is located in Washington and purchases goods from Company XYZ located in Ohio. Upon receiving the order, Company XYZ ships the goods by a for-hire carrier to a public warehouse in Washington. The goods will be considered as having been received by Company ABC at the time Company ABC is entitled to receive a warehouse receipt for the goods. Company XYZ will be subject to the B&O tax at that time if it had nexus for this sale.

(j) P&S Department Stores has retail stores located in Washington, Oregon, and in several other states. John Doe goes to a P&S store in Portland, Oregon to purchase luggage. John Doe takes physical possession of the luggage at the store and elects to finance the purchase using a credit card issued to him by P&S. John Doe is a Washington resident and the credit card billings are sent to him at his Washington address. P&S does not have any responsibility for collection of retail sales or use tax on this transaction because receipt of the luggage by the customer occurred outside Washington.

(k) JET Company is located in the state of Kansas where it manufactures specialty parts. One of JET's customers is AIR who purchases these parts as components of the product which AIR assembles in Washington. AIR has an employee at the JET manufacturing site who reviews quality control of the product during fabrication. He also inspects the product and gives his approval for shipment to Washington. JET is not subject to B&O tax on the sales to AIR. AIR receives the parts in Kansas irrespective that JET may be shown as the shipper on bills of lading or that some parts eventually may be returned after shipment to Washington because of hidden defects.))

(a) This rule explains the application of the business and occupation (B&O) and retail sales taxes to interstate sales of tangible personal property. In general, Washington imposes its B&O and retail sales taxes on sales of tangible personal property if the seller has nexus with Washington and the sale occurs in Washington.

(b) The following rules may also be helpful:

(i) WAC 458-20-178 Use tax and the use of tangible personal property.

(ii) WAC 458-20-193C Imports and exports—Sales of goods from or to persons in foreign countries.

(iii) WAC 458-20-193D Transportation, communication, public utility activities, or other services in interstate or foreign commerce.

(iv) WAC 458-20-221 Collection of use tax by retailers and selling agents.

(c) Examples included in this rule identify a number of facts and then state a conclusion; they should be used only as a general guide. The tax results of all situations must be determined after a review of all the facts and circumstances.

(d) This rule does not cover sales of intangibles or services and does not address the use tax obligation of a purchaser of goods in Washington (see WAC 458-20-178) or the use tax collection obligation of out-of-state sellers of goods to Washington customers when sellers are not otherwise liable to collect and remit retail sales tax (see WAC 458-20-221).

(e) For purposes of this rule, the term "tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses, but does not include steam, electricity, or electrical energy. It includes prewritten computer software (as such term is defined in RCW 82.04.215) in tangible form. However, this rule does not address electronically delivered prewritten computer software or remote access software.

**(2) Organization of rule.** This rule is divided into three parts:

(a) Part I - Nexus standard for sales of tangible personal property;

(b) Part II - Sourcing sales of tangible personal property; and

(c) Part III - Drop shipment sales.

### **Part I - Nexus Standard for Sales of Tangible Personal Property**

(101) Introduction. The nexus standard described here is provided in RCW 82.04.067(6) and is used to determine whether a person who sells tangible personal property has nexus with Washington for B&O and retail sales tax purposes. The economic nexus standard under RCW 82.04.067 (1) through (5) (as further described in WAC 458-20-19401) does not apply to the activity of selling tangible personal property and is, therefore, not addressed in this rule. Further, Public Law 86-272 (15 U.S.C. Sec. 381 et seq.) applies only to taxes on or measured by net income. Washington's B&O tax is measured by gross receipts. Consequently, Public Law 86-272 does not apply.

(102) Nexus. A person who sells tangible personal property is deemed to have nexus with Washington if the person has a physical presence in this state, which need only be demonstrably more than the slightest presence. RCW 82.04.067(6).

(a) Physical presence. A person is physically present in this state if:

(i) The person has property in this state;

(ii) The person has one or more employees in this state;

or

(iii) The person, either directly or through an agent or other representative, engages in activities in this state that are significantly associated with the person's ability to establish or maintain a market for its products in Washington.

(b) Property. A person has property in this state if the person owns, leases, or otherwise has a legal or beneficial interest in real or personal property in Washington.

(c) Employees. A person has employees in this state if the person is required to report its employees for Washington unemployment insurance tax purposes, or the facts and circumstances otherwise indicate that the person has employees in the state.

(d) In-state activities. Even if a person does not have property or employees in Washington, the person is physically present in Washington when the person, either directly or through an agent or other representative, engages in activities in this state that are significantly associated with the person's ability to establish or maintain a market for its products in Washington. It is immaterial that the activities that establish nexus are not significantly associated with a particular sale into this state.

For purposes of this rule, the term "agent or other representative" includes an employee, independent contractor, commissioned sales representative, or other person acting either at the direction of or on behalf of another.

A person performing the following nonexclusive list of activities, directly or through an agent or other representative, generally is performing activities that are significantly associated with establishing or maintaining a market for a person's products in this state:

(i) Soliciting sales of goods in Washington;

(ii) Installing, assembling, or repairing goods in Washington;

(iii) Constructing, installing, repairing, or maintaining real property or tangible personal property in Washington;

(iv) Delivering products into Washington other than by mail or common carrier;

(v) Having an exhibit at a trade show to maintain or establish a market for one's products in the state (but not merely attending a trade show);

(vi) An online seller having a brick-and-mortar store in this state accepting returns on its behalf;

(vii) Performing activities designed to establish or maintain customer relationships including, but not limited to:

(A) Meeting with customers in Washington to gather or provide product or marketing information, evaluate customer needs, or generate goodwill; or

(B) Being available to provide services associated with the product sold (such as warranty repairs, installation assistance or guidance, and training on the use of the product), if the availability of such services is referenced by the seller in its marketing materials, communications, or other information accessible to customers.

(103) Effect of having nexus. A person selling tangible personal property that has nexus with Washington is subject to B&O tax on that person's retail and wholesale sales, and is responsible for collecting and remitting retail sales tax on that person's sales of tangible personal property sourced to Washington, unless a specific exemption applies.

(104) Trailing nexus. RCW 82.04.220 provides that for B&O tax purposes a person who stops the business activity that created nexus in Washington continues to have nexus for the remainder of that calendar year, plus one additional calendar year (also known as "trailing nexus"). The department applies the same trailing nexus period for retail sales tax and other taxes reported on the excise tax return.

### **Part II - Sourcing Sales of Tangible Personal Property**

(201) Introduction. RCW 82.32.730 explains how to determine where a sale of tangible personal property occurs based on "sourcing rules" established under the streamlined sales and use tax agreement. Sourcing rules for the lease or

rental of tangible personal property are beyond the scope of this rule, as are the sourcing rules for "direct mail," "advertising and promotional direct mail," or "other direct mail" as such terms are defined in RCW 82.32.730. See RCW 82.32.730 for further explanation of the sourcing rules for those particular transactions.

**(202) Receive and receipt.**

(a) **Definition.** "Receive" and "receipt" mean the purchaser first either taking physical possession of, or having dominion and control over, tangible personal property.

(b) **Receipt by a shipping company.**

(i) "Receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser, regardless of whether the shipping company has the authority to accept and inspect the goods on behalf of the purchaser.

(ii) A "shipping company" for purposes of this rule means a separate legal entity that ships, transports, or delivers tangible personal property on behalf of another, such as a common carrier, contract carrier, or private carrier either affiliated (e.g., an entity wholly owned by the seller or purchaser) or unaffiliated (e.g., third-party carrier) with the seller or purchaser. A shipping company is not a division or branch of a seller or purchaser that carries out shipping duties for the seller or purchaser, respectively. Whether an entity is a "shipping company" for purposes of this rule applies only to sourcing sales of tangible personal property and does not apply to whether a "shipping company" can create nexus for a seller.

**(203) Sourcing sales of tangible personal property - In general.** The following provisions in this subsection apply to sourcing sales of most items of tangible personal property.

(a) **Business location.** When tangible personal property is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

**Example 1.** Jane is an Idaho resident who purchases tangible personal property at a retailer's physical store location in Washington. Even though Jane takes the property back to Idaho for her use, the sale is sourced to Washington because Jane received the property at the seller's business location in Washington.

**Example 2.** Department Store has retail stores located in Washington, Oregon, and in several other states. John, a Washington resident, goes to Department Store's store in Portland, Oregon to purchase luggage. John takes possession of the luggage at the store. Although Department Store has nexus with Washington through its Washington store locations, Department Store is not liable for B&O tax and does not have any responsibility to collect Washington retail sales tax on this transaction because the purchaser, John, took possession of the luggage at the seller's business location outside of Washington.

**Example 3.** An out-of-state purchaser sends its own trucks to Washington to receive goods at a Washington-based seller and to immediately transport the goods to the purchaser's out-of-state location. The sale occurs in Washington because the purchaser receives the goods in Washington. The sale is subject to B&O and retail sales tax.

**Example 4.** The same purchaser in Example 3 uses a wholly owned affiliated shipping company (a legal entity separate from the purchaser) to pick up the goods in Washington and deliver them to the purchaser's out-of-state loca-

tion. Because "receive" and "receipt" do not include possession by the shipping company, the purchaser receives the goods when the goods arrive at the purchaser's out-of-state location and not when the shipping company takes possession of the goods in Washington. The sale is not subject to B&O and retail sales tax.

(b) **Place of receipt.** If the sourcing rule explained in (a) of this subsection does not apply, the sale is sourced to the location where receipt by the purchaser or purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or purchaser's donee, as known to the seller.

(i) The term "purchaser" includes the purchaser's agent or designee.

(ii) The term "purchaser's donee" means a person to whom the purchaser directs shipment of goods in a gratuitous transfer (e.g., a gift recipient).

(iii) Commercial law delivery terms, and the Uniform Commercial Code's provisions defining sale or where risk of loss passes, do not determine where the place of receipt occurs.

(iv) The seller must retain in its records documents used in the ordinary course of the seller's business to show how the seller knows the location of where the purchaser or purchaser's donee received the goods. Acceptable proof includes, but is not limited to, the following documents:

(A) Instructions for delivery to the seller indicating where the purchaser wants the goods delivered, provided on a sales contract, sales invoice, or any other document used in the seller's ordinary course of business showing the instructions for delivery;

(B) If shipped by a shipping company, a waybill, bill of lading or other contract of carriage indicating where delivery occurs; or

(C) If shipped by the seller using the seller's own transportation equipment, a trip-sheet signed by the person making delivery for the seller and showing:

- The seller's name and address;
- The purchaser's name and address;
- The place of delivery, if different from the purchaser's address; and

- The time of delivery to the purchaser together with the signature of the purchaser or its agent acknowledging receipt of the goods at the place designated by the purchaser.

**Example 5.** John buys luggage from a Department Store that has nexus with Washington (as in Example 2), but has the store ship the luggage to John in Washington. Department Store has nexus with Washington, and receipt of the luggage by John occurred in Washington. Department Store owes Washington retailing B&O tax and must collect Washington retail sales tax on this sale.

**Example 6.** Parts Store is located in Washington. It sells machine parts at retail and wholesale. Parts Collector is located in California and buys machine parts from Parts Store. Parts Store ships the parts directly to Parts Collector in California, and Parts Collector takes possession of the machine parts in California. The sale is not subject to B&O or retail sales taxes in this state because Parts Collector did not receive the parts in Washington.

**Example 7.** An out-of-state seller with nexus in Washington uses a third-party shipping company to ship goods to a customer located in Washington. The seller first delivers the goods to the shipping company outside Washington using its own transportation equipment. Even though the shipping company took possession of the goods outside of Washington, possession by the shipping company is not receipt by the purchaser for Washington tax purposes. The sale is subject to B&O and retail sales tax in this state because the purchaser has taken possession of the goods in Washington.

**Example 8.** A Washington purchaser's affiliated shipping company arranges to pick up goods from an out-of-state seller at its out-of-state location, and deliver those goods to the Washington purchaser's Yakima facility. The affiliated shipping company has the authority to accept and inspect the goods prior to transport on behalf of the buyer. When the affiliated shipping company takes possession of the goods out-of-state, the Washington purchaser has not received the goods out-of-state. Possession by a shipping company on behalf of a purchaser is not receipt for purposes of this rule, regardless of whether the shipping company has the authority to accept and inspect the goods on behalf of the buyer. Receipt occurs when the buyer takes possession of the goods in Washington. The sale is subject to B&O and retail sales tax in this state.

**Example 9.** An instate seller arranges for shipping its goods to an out-of-state purchaser by first delivering its goods to a Washington-based shipping company at its Washington location for further transport to the out-of-state customer's location. Possession of the goods by the shipping company in Washington is not receipt by the purchaser for Washington tax purposes, and the sale is not subject to B&O and retail sales tax in Washington.

**Example 10.** An out-of-state manufacturer/seller of a bulk good with nexus in Washington sells the good to a Washington-based purchaser in the business of selling small quantities of the good under its own label in its own packaging. The purchaser directs the seller to deliver the goods to a third-party packaging plant located out-of-state for repackaging of the goods in the purchaser's own packaging. The purchaser then has a third-party shipping company pick up the goods at the packaging plant. The Washington purchaser takes constructive possession of the goods outside of Washington because it has exercised dominion and control over the goods by having them repackaged at an out-of-state packaging facility before shipment to Washington. The sale is not subject to B&O and retail sales tax in this state because the purchaser received the goods outside of Washington.

**Example 11.** Company ABC is located in Washington and purchases goods from Company XYZ located in Ohio. Company ABC directs Company XYZ to ship the goods by a for-hire carrier to a commercial storage warehouse in Washington. The goods will be considered as having been received by Company ABC when the goods are delivered at the commercial storage warehouse. Assuming Company XYZ has nexus, Company XYZ is subject to B&O tax and must collect retail sales tax on the sale.

(c) **Other sourcing rules.** There may be unique situations where the sourcing rules provided in (a) and (b) of this

subsection do not apply. In those cases, please refer to the provisions of RCW 82.32.730 (1)(c) through (e).

**(204) Sourcing sales of certain types of property.**

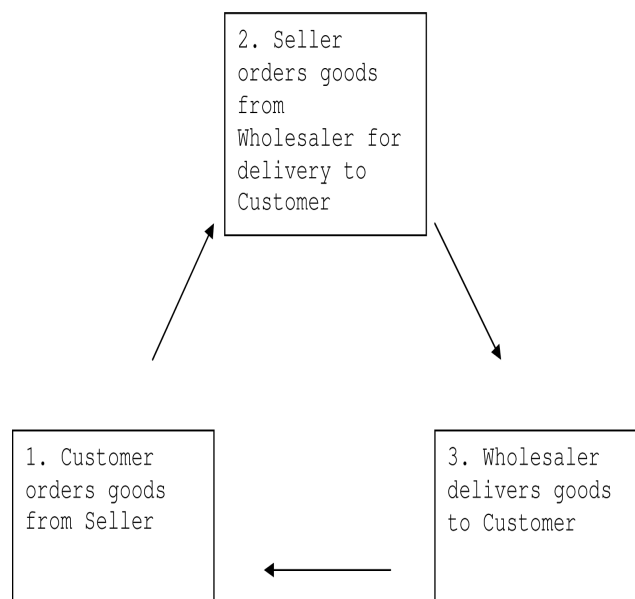
(a) **Sales of commercial aircraft parts.** As more particularly provided in RCW 82.04.627, the sale of certain parts to the manufacturer of a commercial airplane in Washington is deemed to take place at the site of the final testing or inspection.

(b) **Sales of motor vehicles, watercraft, airplanes, manufactured homes, etc.** Sales of the following types of property are sourced to the location at or from which the property is delivered in accordance with RCW 82.32.730 (7)(a) through (c): Watercraft; modular, manufactured, or mobile homes; and motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as "transportation equipment" as defined in RCW 82.32.730. See WAC 458-20-145 (2)(b) for further information regarding the sourcing of these sales.

(c) **Sales of flowers and related goods by florists.** Sales by a "florist" are subject to a special origin sourcing rule. For specific information concerning "florist sales," who qualifies as a "florist," and the related sourcing rules, see RCW 82.32.730 (7)(d) and (9)(e) and WAC 458-20-158.

**Part III - Drop Shipments**

(301) **Introduction.** A drop shipment generally involves two separate sales. A person (the seller) contracts to sell tangible personal property to a customer. The seller then contracts to purchase that property from a wholesaler and instructs that wholesaler to deliver the property directly to the seller's customer. The place of receipt in a drop shipment transaction is where the property is delivered (i.e., the seller's customer's location). Below is a diagram of a basic drop shipment transaction:



The following sections discuss the taxability of drop shipments in Washington when:

(a) The seller and wholesaler do not have nexus;

(b) The seller has nexus and the wholesaler does not;

(c) The wholesaler has nexus and the seller does not; and

(d) The seller and wholesaler both have nexus. In each of the following scenarios, the customer receives the property in Washington and the sale is sourced to Washington. Further, in each of the following scenarios, a reseller permit or other approved exemption certificate has been acquired to document any wholesale sales in Washington. See WAC 458-20-102, Reseller permits.

(302) **Seller and wholesaler do not have nexus.** Where the seller and the wholesaler do not have nexus with Washington, sales of tangible personal property by the seller to the customer and the wholesaler to the seller are not subject to B&O tax. In addition, neither the seller nor the wholesaler is required to collect retail sales tax on the sale.

(303) **Seller has nexus but wholesaler does not.** Where the seller has nexus with Washington but the wholesaler does not have nexus with Washington, the wholesaler's sale of tangible personal property to the seller is not subject to B&O tax and the wholesaler is not required to collect retail sales tax on the sale. The sale by the seller to the customer is subject to wholesaling or retailing B&O tax, as the case may be. The seller must collect retail sales tax from the customer unless specifically exempt by law.

(304) **Wholesaler has nexus but seller does not.** Where the wholesaler has nexus with Washington but the seller does not have nexus with Washington, wholesaling B&O tax applies to the sale of tangible personal property by the wholesaler to the seller for shipment to the seller's customer. The sale from the seller to its Washington customer is not subject to B&O tax, and the seller is not required to collect retail sales tax on the sale.

**Example 12.** Seller is located in Ohio and does not have nexus with Washington. Seller receives an order from Customer, located in Washington, for parts that are to be shipped to Customer in Washington for its own use as a consumer. Seller buys the parts from Wholesaler, which has nexus with Washington, and requests that the parts be shipped directly to Customer. Seller is not subject to B&O tax and is not required to collect retail sales tax on its sale to Customer because Seller does not have nexus with Washington. The sale by Wholesaler to Seller is subject to wholesaling B&O tax because Wholesaler has nexus with Washington and Customer receives the parts (i.e., the parts are delivered to Customer) in Washington.

(305) **Seller and wholesaler have nexus with Washington.** Where the seller and wholesaler have nexus with Washington, wholesaling B&O tax applies to the wholesaler's sale of tangible personal property to the seller. The sale from the seller to the customer is subject to wholesaling or retailing B&O tax as the case may be. The seller must collect retail sales tax from the customer unless the sale is specifically exempt by law.

**WSR 15-15-028**  
**PERMANENT RULES**  
**DEPARTMENT OF REVENUE**

[Filed July 7, 2015, 2:20 p.m., effective August 7, 2015]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Rule 174 explains the application of the business and occupation tax and the retail sales tax on sales to for hire motor carriers operating in interstate or foreign commerce. Rule 17401 explains the use tax and use tax exemptions that apply to for hire motor carriers.

The department has updated WAC 458-20-174 and 458-20-17401 including information from excise tax advisories (ETAs) 3185.2014 and 3186.2014 pertaining to the sourcing and attribution of income on leases and rentals of tangible personal property and the use tax liability for lessees on leased tangible personal property. These ETAs will not be canceled.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-174 (Rule 174) Sales of motor vehicles, trailers, and parts to motor carriers operating in interstate or foreign commerce and 458-20-17401 (Rule 17401) Use tax liability for motor vehicles, trailers, and parts used by motor carriers operating in interstate or foreign commerce.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 15-09-090 on April 17, 2015.

Changes Other than Editing from Proposed to Adopted Version: Language in WAC 458-20-174 (3)(c) has been changed to read: ~~Sourcing of sales~~ Allocation of income. Except as provided in (d) of this subsection, all income from sales to motor carriers ~~are~~ is allocated to where the sales are sourced under the general sourcing provisions of RCW 82.32.730. This includes leases to motor carriers that do not require recurring periodic payments.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: July 7, 2015.

Dylan Waits  
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-14-018, filed 6/20/08, effective 7/21/08)

**WAC 458-20-174 Sales of motor vehicles, trailers, and parts to motor carriers operating in interstate or for-**

**eign commerce.** (1) **Introduction.** This ~~((section))~~ rule explains the ~~((retail sales tax exemptions provided by RCW 82.08.0262 and 82.08.0263 for))~~ application of the business and occupation tax on sales to for hire motor carriers operating in interstate or foreign commerce. ~~((Addressed are))~~

This rule also explains the retail sales tax exemptions provided by RCW 82.08.0262 and 82.08.0263 for sales to for hire motor carriers operating in interstate or foreign commerce, and addresses the requirements ((which)) that must be met and the documents ((which)) that must be preserved to substantiate a claim of retail sales tax exemption. Motor carriers should refer to WAC 458-20-17401 for a discussion of the use tax and use tax exemptions available to motor carriers for the purchase or use of vehicles and parts under RCW 82.12.0254. Use tax complements the retail sales tax, and in most but not all cases mirrors the retail sales tax. Purchases of tangible personal property used or certain services purchased in Washington are subject to use tax if the retail sales tax has not been paid, or where an exemption for sales and use taxes are not available.

(2) **Definitions.** For the purposes of this rule, the following definitions apply:

(a) **Component parts** mean any tangible personal property that is attached to and becomes an integral part of the motor vehicle or trailer. It includes such items as motors, motor and body parts, batteries, paint, permanently affixed decals, and tires.

(i) Component parts include the axle and wheels, referred to as a "converter gear" or "dolly," that is used to connect a trailer behind a tractor and trailer. Component parts also include tangible personal property that is attached to the vehicle and used as an integral part of the motor carrier's operation of the vehicle, even if the item is not required mechanically for the operation of the vehicle. It includes cellular telephones, communication equipment, fire extinguishers, and other such items, whether they are permanently attached to the vehicle or held by brackets that are permanently attached. If held by brackets, the brackets must be permanently attached to the vehicle in a definite and secure manner with these items attached to the bracket when not in use and intended to remain with that vehicle.

(ii) Component parts do not include antifreeze, oil, grease, and other lubricants that are considered consumed at the time they are placed into the vehicle, even though they are required for operation of the vehicle. It does include items such as spark plugs, oil filters, air filters, hoses, and belts.

(b) **Primary property location** is the address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The primary property location is not altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(3) **Business and occupation tax.** Business and occupation (B&O) tax is due on all sales to motor carriers ~~((when delivery is made in))~~ that are sourced to Washington, notwithstanding that the retail sales tax may not apply because of the specific statutory exemptions provided by RCW 82.08.0262 and 82.08.0263.

(a) **Retailing of interstate transportation equipment B&O tax classification.** ~~((This B&O tax classification, with respect to sales to motor carriers, applies to retail sales which are exempt from retail sales tax because of the provisions of RCW 82.08.0262 or 82.08.0263. (See RCW 82.04.250.))~~ The retailing of interstate transportation equipment B&O tax classification (see RCW 82.04.250) applies to the following ~~((but only when))~~ if the retail sales tax exemption requirements for RCW 82.08.0262 or 82.08.0263 are met:

(i) Sales of motor vehicles, trailers, and component parts thereof;

(ii) ~~((The))~~ Leases of motor vehicles and trailers without operator; and

(iii) Charges for labor and services rendered in respect to constructing, cleaning, repairing, altering or improving vehicles and trailers or component parts thereof. ~~((The term "component parts" means any tangible personal property which is attached to and becomes an integral part of the motor vehicle or trailer. It includes such items as motors, motor and body parts, batteries, paint, permanently affixed decals, and tires. "Component parts" includes the axle and wheels, referred to as "converter gear" or "dollies," which is used to connect a trailer behind a tractor and trailer. "Component parts" can include tangible personal property which is attached to the vehicle and used as an integral part of the motor carrier's operation of the vehicle, even if the item is not required mechanically for the operation of the vehicle. It includes cellular telephones, communication equipment, fire extinguishers, and other such items, whether themselves permanently attached to the vehicle or held by brackets which are permanently attached. If held by brackets, the brackets must be permanently attached to the vehicle in a definite and secure manner with these items attached to the bracket when not in use and intended to remain with that vehicle. It does not include antifreeze, oil, grease, and other lubricants which are considered as consumed at the time they are placed into the vehicle, even though required for operation of the vehicle. It does include items such as spark plugs, oil filters, air filters, hoses and belts.))~~

(b) **Retailing B&O tax classification.** The retailing B&O tax classification applies to the following:

(i) Sales and services as described in (a)(i) through (iii) of this subsection, ~~((which))~~ that do not meet the exemption requirements provided in RCW 82.08.0262 or 82.08.0263;

(ii) Sales of equipment, tools, parts and accessories which do not become a component part of a motor vehicle or trailer used in transporting persons or property therein;

(iii) Sales of consumable supplies, such as oil, antifreeze, grease, other lubricants, cleaning solvents and ice; and

(iv) Towing charges.

(c) ~~((Interstate sales deduction for lease income. Persons who lease motor vehicles and trailers to motor carriers at retail (without operator) may claim an interstate sales deduction for the amount of the lease income attributable to the actual out-of-state use of the vehicles and trailers. Documentation substantiating such a claim must be retained by the lessor. This deduction may be taken even if the vehicle is not used substantially in interstate hauls for hire. The B&O tax applies to that portion of use of the vehicle while the vehicle is being used in Washington, even if the usage is in connec-~~



tion with interstate hauls and the vehicle is used substantially in hauling for hire in interstate commerce. See also WAC 458-20-193 Inbound and outbound interstate sales of tangible personal property.

~~(3))~~ **Allocation of income.** Except as provided in (d) of this subsection, all income from sales to motor carriers is allocated to where the sales are sourced under the general sourcing provisions of RCW 82.32.730. This includes leases to motor carriers that do not require recurring periodic payments.

**(d) Periodic lease payments.**

(i) Recurring periodic lease payments of leasing transactions described in (a) of this subsection are sourced as follows:

(A) The first payment is sourced to the location where the lessee takes possession of the transportation equipment. This is often the lessor's store location or a delivery location.

(B) Periodic payments made after the first payment are sourced for each period covered by the payment to the primary property location.

(ii) All recurring periodic lease payments of leasing transactions described in (b) of this subsection are sourced to the primary property location provided by the lessee to the lessor. The location where the lessee takes delivery of this type of equipment is immaterial.

**(4) Retail sales tax.** RCW 82.08.0262 and 82.08.0263 provide retail sales tax exemptions for certain sales to motor carriers when ~~((delivery is made in))~~ the sale is sourced to Washington.

(a) **Sales or leases of motor vehicles and trailers.** RCW 82.08.0263 provides an exemption from the retail sales tax for sales and leases of motor vehicles and trailers to be used for transporting ~~((therein))~~ persons or property for hire in interstate or foreign commerce. This exemption is available whether such use is by a for hire motor carrier, or by persons operating the vehicles and trailers under contract with a for hire motor carrier. The for hire carrier must hold a carrier permit issued by the Interstate Commerce Commission (ICC) or its successor agency to qualify for this exemption. The seller, at the time of the sale, must retain as a part of its records an exemption certificate ~~((which))~~ that must be completed in its entirety. The buyers' retail sales tax exemption certificate is available on the department's ~~((internet))~~ web site at ~~((http://dor.wa.gov))~~ [dor.wa.gov](http://dor.wa.gov), or can be obtained by contacting the department at:

Taxpayer Services  
Department of Revenue  
P.O. Box 47478  
Olympia, WA 98504-7478  
1-800-647-7706

If the department's buyers' retail sales tax exemption certificate is not used, the form used must be in substantially the following form:

**Exemption Certificate**

The undersigned hereby certifies that it is, or has contracted to operate for, the holder of carrier permit No. . . . ., issued by the Interstate Commerce Commission or its successor agency, and that the vehicle this date purchased from you

being a (specify truck or trailer and make) , Motor No. . . . ., Serial No. . . . . is entitled to exemption from the Retail Sales Tax under ~~((the provisions of))~~ RCW 82.08.-0263. This certificate is given with full knowledge of, and subject to, the legally prescribed penalties for fraud and tax evasion.

Dated . . . . .

.....  
(name of carrier-purchaser)

By .....  
(title)

.....  
(address)

The lease of motor vehicles and trailers to motor carriers, with or without operator, must satisfy all conditions and requirements provided by RCW 82.08.0263 to qualify for the retail sales tax exemption. Failure to meet these requirements will require the lessor to collect the retail sales tax on the lease ~~((However, where the exemption from retail sales tax has not been met, a retail sales tax exemption may continue to apply to that portion of the lease while the vehicle is being used outside Washington, provided the lessor can substantiate the usage outside Washington. (See WAC 458-20-193.))~~ as provided in (c) of this subsection.

(b) **Sales of component parts of motor vehicles and trailers and charges for repairs, etc.** RCW 82.08.0262 provides an exemption from the retail sales tax for sales of component parts and repairs of motor vehicles and trailers. This exemption is available only if the user of the motor vehicle or trailer is the holder of a carrier permit issued by the ~~((Interstate Commerce Commission))~~ ICC or its successor agency ~~((which))~~ that authorizes transportation by motor vehicle across the boundaries of Washington. ~~((Since))~~ Because carriers are required to obtain these permits only when the carrier is hauling for hire, the exemption applies only to parts and repairs purchased for vehicles ~~((which))~~ that are used in hauling for hire. The exemption includes labor and services rendered in constructing, repairing, cleaning, altering, or improving such motor vehicles and trailers.

(i) This exemption is available whether the motor vehicles or trailers are owned by, or operated under contract with, persons holding the carrier permit. This exemption applies even if the motor vehicle or trailer to which the parts are attached will not be used substantially in interstate hauls, provided the vehicles are used in for hire hauling ~~((for hire))~~.

(ii) The seller must retain as a part of its records a completed exemption certificate. This certificate may be:

- (A) Issued for each purchase;
  - (B) Incorporated in or stamped upon the purchase order;
- or

(C) In blanket form certifying all future purchases as being exempt from sales tax. Blanket exemption certificates are valid for as long as the buyer and seller have a recurring business relationship. A "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months. RCW 82.08.050 ~~((7(e)))~~.

(iii) The buyers' retail sales tax exemption certificate is available on the department's ~~((internet))~~ web site at ((http://dor.wa.gov)) dor.wa.gov, or can be obtained ~~((by contacting))~~ from the department ((at:

~~Taxpayer Services~~  
~~Department of Revenue~~  
~~P.O. Box 47478~~  
~~Olympia, WA 98504-7478~~  
~~+800-647-7706))~~

using the address provided in (a) of this subsection.

If the department's buyers' retail sales tax exemption certificate is not used, the form used must be in substantially the following form:

**Exemption Certificate**

The undersigned hereby certifies that it is, or has contracted to operate for, the holder of a carrier permit, No. . . . ., issued by the Interstate Commerce Commission or its successor agency authorizing transportation by motor vehicle across the boundaries of this state. The undersigned further certifies that the motor truck or trailer to be constructed, repaired, cleaned, altered, or improved by you, or to which the subject matter of this purchase is to become a component part, will be used in direct connection with the business of transporting therein persons or property for hire; and that such sale and/or charges are exempt from the Retail Sales Tax under ~~((the provisions of))~~ RCW 82.08.0262. This certificate is given with full knowledge of, and subject to, the legally prescribed penalties for fraud and tax evasion.

Dated. . . . .

.....  
(name of carrier-purchaser)

.....  
(address)

By .....  
(title)

(c) **Taxable sales.** ~~((The following))~~ Sales that do not qualify for exemption under the provisions of RCW 82.08.-0262 or 82.08.0263, ~~((and))~~ are subject to the retail sales tax or deferred sales tax when ~~((delivery is made in Washington))~~ sourced to Washington as follows.

(i) ~~Sales ((of equipment, tools, parts and accessories which do not become a component part of a motor vehicle or trailer used in transporting persons or property for hire. This includes items such as tire chains and tarps which are not custom made for a specific vehicle.~~

~~((ii) Sales of consumable supplies, such as oil, antifreeze, grease, other lubricants, cleaning solvents and ice.~~

~~((iii) Towing charges)), including single payment leases.~~ are sourced under the general sourcing provision of RCW 82.32.730.

((ii) All recurring periodic lease payments are sourced to the primary property location provided by the lessee to the lessor.

AMENDATORY SECTION (Amending WSR 97-11-022, filed 5/13/97, effective 6/13/97)

**WAC 458-20-17401 Use tax liability for motor vehicles, trailers, and parts used by motor carriers operating in interstate or foreign commerce.** (1) **Introduction.** This ~~((section))~~ rule explains the use tax and ~~((the))~~ available use tax exemptions provided by RCW 82.12.0254 ~~((which))~~ that apply to for hire motor carriers operating in interstate or foreign commerce. See subsection (3) of this rule for information on the requirement of substantial use in the normal course of the carrier's business as a for hire carrier.

(a) Readers may want to refer to WAC 458-20-174. For hire motor carriers should refer to WAC 458-20-174 for a discussion of the retail sales tax and retail sales tax exemptions ~~((which))~~ that apply to motor carriers for the purchase of vehicles, trailers, and parts under RCW 82.08.0262 and 82.08.0263.

(b) Definitions. Definitions in WAC 458-20-174 apply to this rule.

(c) Examples. This rule contains examples that identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

(2) **Use tax.** The use tax complements the retail sales tax by imposing a tax of like amount ~~((upon))~~ on the use within this state as a consumer of any tangible personal property purchased at retail, where the user has not paid retail sales tax with respect to the purchase of the property used. ~~((See also WAC 458-20-178.))~~ For additional information on use tax refer to WAC 458-20-178. If the seller fails to collect the appropriate retail sales tax, the purchaser is required to pay the deferred retail sales or use tax directly to the department of revenue (department) unless the purchase and/or use is exempt from the retail sales and/or use tax. Use tax is determined by the fair market value of the property when first subject to the use tax. See subsection (5) of this rule.

(3) **Motor vehicles and trailers.** Purchasers of motor vehicles and trailers should note the differences in the conditions and requirements for the retail sales and use tax exemptions provided by RCW 82.08.0263 and 82.12.0254, respectively. The purchaser of a motor vehicle or trailer may qualify for the retail sales tax exemption at the time of purchase, yet incur a use tax liability for the subsequent use of the same vehicle or trailer.

(a) For vehicles purchased in Washington, RCW 82.12.-0254 provides a use tax exemption for the use of any motor vehicle or trailer while being operated under the authority of a trip permit and moving from the point of delivery in this state to a point outside this state.

(b) RCW 82.12.0254 also provides a use tax exemption for the use of any motor vehicle or trailer owned by, or operated under contract with, a for hire motor carrier engaged in the business of transporting persons or property in interstate or foreign commerce if both of the following conditions are met:

(i) The user is, or operates under contract with, a holder of a carrier permit issued by the Interstate Commerce Commission (ICC) or its successor agency; and

(ii) The vehicle is used in substantial part in the normal and ordinary course of the user's business for transporting ~~((therein))~~ persons or property for hire across the boundaries of the state.

"In substantial part" means that the motor vehicle or trailer for which exemption is claimed actually crosses Washington boundaries and is used a minimum of twenty-five percent in interstate for hire hauling ~~((for hire))~~.

(c) **Retaining the exemption.** The motor carrier must continue to substantially use the motor vehicle or trailer in interstate for hire hauls during each calendar year to retain the exemption from use tax. This requires that at the start of each calendar year the carrier review the usage of each vehicle and trailer for a "view period" consisting of the previous calendar year. If a particular vehicle was purchased or sold during the year so that the vehicle was not available for use during the entire calendar year, the taxpayer at its option may elect to review the usage during the portion of the year during which the vehicle was owned or may use ~~((#))~~ the twelve-month period beginning with the date of purchase of a vehicle or ending with the date of sale of a vehicle. For example, if a vehicle is traded-in on May 30, ~~((1996))~~ 2013, the taxpayer must meet the substantial use test for this vehicle for either the period January through May ~~((1996))~~ 2013 or for the period June 1, ~~((1995))~~ 2012, through May 30, ~~((1996))~~ 2013. Use tax is due for those vehicles which have not been used substantially in interstate commerce and on which retail sales or use tax has not been paid.

(d) **Maintaining records on a fiscal year basis.** Carriers who maintain their records on a fiscal year basis may, at their option, elect to review the usage of their vehicles using their fiscal year rather than the calendar year. If a fiscal year is used, it must be used for the entire fleet of vehicles, except for view periods based on the acquisition or disposal of vehicles. These carriers may not change to a calendar year basis without first obtaining prior approval from the department.

(e) **Calendar or fiscal year basis only.** Usage will be reviewed on a calendar or fiscal year basis and not on a "moving" twelve-month period. For example, a tractor purchased on August 1, ~~((1996))~~ 2012, will need to have met the substantial use test for the period August through December ~~((1996))~~ 2012, or for the period August 1, ~~((1996))~~ 2012, through July 31, ~~((1997))~~ 2013, the period selected being at the taxpayer's option, and for the calendar year ~~((1997))~~ 2013 and each calendar year thereafter ~~((in order))~~ to retain the use tax exemption.

(f) **Methods for determining if motor vehicles and trailers qualify.** The motor carrier may select one of the methods from those listed below to determine if its motor vehicles and trailers satisfy the substantial use threshold for exemption under RCW 82.12.0254. The particular method must be applied to all trucks, tractors, and trailers within the fleet. Regardless of the method selected, a vehicle will not be considered as used in interstate hauls unless the vehicle actually crosses the boundaries of the state and is used in part outside Washington. The motor carrier may change the method with the prior written consent of the department ~~((of revenue))~~. The methods are:

(i) **Line crossing.** The line crossing method compares the number of interstate for hire hauls made by a particular

motor vehicle or trailer to the total number of for hire hauls. It makes no difference whether the for hire hauls are partial or full loads. The motor vehicle or trailer must actually cross the boundaries of this state or be used for hauls which begin and end outside this state, for the haul to be considered an interstate haul.

(ii) **Mileage.** The mileage method compares the interstate mileage associated with the for hire hauls made by a particular motor vehicle or trailer, to the total mileage associated with its for hire hauls. All mileage associated with a specific haul ~~((which))~~ that requires the motor vehicle or trailer to actually cross the boundaries of this state, or haul exclusively outside this state, is considered to be interstate mileage. Where a vehicle is returning empty after having delivered an interstate load or is empty on its way to pickup an interstate load, the empty mileage will be considered to be part of the mileage from an interstate haul.

(iii) **Revenue.** The revenue method compares the interstate for hire revenue generated by the particular motor vehicle or trailer to the total for hire revenue generated. The revenue generated by the motor vehicle or trailer actually crossing the boundaries of this state, or hauling exclusively outside this state, is considered to be interstate revenue for the purposes of determining use tax liability. If the motor carrier uses more than one motor vehicle or trailer to transport the cargo, the revenue generated from hauling this cargo must be allocated between the motor vehicles and/or trailers used. For the purposes of determining use tax liability, a vehicle will not be considered as having interstate revenue even if the haul originates or ends outside Washington unless the vehicle actually crosses the boundaries of the state.

(iv) **Other.** Any other method may be used only when approved in advance and in writing by the department ~~((of revenue))~~.

~~((The following examples show how the methods of determining substantial interstate use would be applied to various situations. 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.))~~

**Examples.**

(i) **Example 1.** ARC Trucking picks up a load of cargo in Spokane, Washington and delivers it to the dock in Seattle, Washington, for subsequent shipment to Japan. While ARC may claim an interstate and foreign sales deduction on its excise tax return for the income attributable to this haul if all of the requirements of RCW 82.16.050(8) are met, the haul itself is considered to be intrastate for the purposes of determining whether the ~~((tractor/trailer))~~ tractor and trailer (tractor-trailer) rig meets the substantial use threshold discussed in RCW 82.12.0254. Both the pickup and delivery points are within the state of Washington.

(ii) **Example 2.** DMG Express picks up a load of cargo in Yakima, Washington for ultimate delivery in Billings, Montana. The cargo is initially hauled from the Yakima location to DMG's hub terminal in Spokane, Washington by truck A. It is unloaded from truck A at the hub terminal, reloaded on truck B, and delivered to Billings. For the purposes of determining qualification for the use tax exemption provided by RCW 82.12.0254, two hauls have taken place. The haul performed by truck A is considered to be ~~((#))~~ intrastate ~~((haul~~

since)) because truck A did not cross the borders of Washington, while the haul performed by truck B is considered interstate for purposes of determining continued exemption from use tax on the trucks, even though the entire hauling income may be deductible from the motor transportation tax.

(iii) Example 3. AA Express operates one ((~~tractor/trailer~~)) tractor-trailer rig, which has previously met the retail sales and use tax exemption requirements. AA verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis, using the line crossing method. AA makes one hundred for hire hauls within the calendar year. Of these hauls, seventy-one are entirely in Washington, ten are performed entirely outside Washington, and nineteen require AA to cross the borders of Washington. AA Express has not incurred a use tax liability on the ((~~tractor/trailer~~)) tractor-trailer rig as twenty-nine percent of the for hire hauls were interstate in nature.

(iv) Example 4. BDC Hauling operates one ((~~tractor/trailer~~)) tractor-trailer rig ((~~which~~)) that has previously met the retail sales and use tax exemption requirements. BDC verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis, using the mileage method. BDC makes one hundred for hire hauls within the calendar year, for a total of one hundred thousand miles. Included in this mileage figure are the unladen or "empty" miles BDC incurs from delivery points to its terminal. Fifteen of these hauls were interstate in nature and involved laden travel of twenty thousand miles, including the Washington miles of the interstate hauls where the rig made border crossings. BDC's tractor-trailer rig also incurred an additional eight thousand miles as a result of having to drive unladen from the delivery point of an interstate haul to its Washington terminal. BDC Hauling has not incurred a use tax liability for its use of the ((~~tractor/trailer~~)) tractor-trailer rig((-Under the mileage method,)) as twenty-eight percent of the ((~~tractor/trailer's~~)) tractor-trailer's usage was in interstate hauling.

(v) Example 5. GV Trucking operates one ((~~tractor/trailer~~)) tractor-trailer rig ((~~which~~)) that has previously met the retail sales and use tax exemption requirements. GV verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis, using the revenue method. GV makes one hundred for hire hauls within the calendar year, for which GV earns eighty thousand dollars. Fifteen of these hauls were interstate in nature, for which GV earned twenty thousand dollars. GV Trucking has not incurred a use tax liability for its use of the ((~~tractor/trailer~~)) tractor-trailer rig((-Under the revenue method,)) as twenty-five percent of GV's usage of the ((~~tractor/trailer~~)) tractor-trailer rig was in interstate hauling.

(vi) Example 6. XYZ Trucking operates a single ((~~tractor/trailer~~)) tractor-trailer rig ((~~which~~)) that has previously met the retail sales and use tax exemption requirements. XYZ picks up two loads of cargo in Seattle, one load for delivery to Kent, Washington, and another for delivery to Portland, Oregon. ((~~Upon~~)) At delivery of the cargo to Kent, XYZ picks up another load for delivery to Portland, Oregon. XYZ has performed three separate hauls, even if the loads are combined on the same tractor-trailer rig. The Seattle to Portland and Kent to Portland hauls are considered interstate hauls, and the Seattle to Kent haul is intrastate. ((~~If using~~)) Under

the mileage method, the mileage associated with the Seattle to Portland and Kent to Portland hauls would be ((~~combined~~)) added together to determine total interstate miles, even though the tractor-trailer rig made only one trip to Portland. ((~~If using~~)) Under the revenue method, the revenue generated by the Seattle to Portland and Kent to Portland hauls would be considered interstate. The ((~~mileage and/or~~)) revenue associated with the Seattle to Kent haul would be considered intrastate.

(4) **Special application to trailers.** Motor carriers must keep appropriate records and determine qualification for the use tax exemption provided by RCW 82.12.0254 for each individual truck and tractor. Motor carriers are encouraged to keep similar records for each individual trailer. Where records are maintained to document the use of individual trailers, it is encouraged that use tax liability for trailers ((~~must~~)) be determined on the basis of those records. However, it is recognized that some motor carriers do not have ((~~no~~)) an adequate system of tracking or documenting the travel of their trailers and it would be an undue burden to require such recordkeeping, particularly where a tractor may be used to pull multiple trailers and the trailers are not assigned to a specific tractor. ((~~These~~)) Motor carriers may elect to determine the use tax liability attributable to their use of trailers on the basis of their actual use of the tractors. Whether the motor carrier uses their records or the ratio of fleetwide trailers to tractors that method must be applied to all trailers within the fleet. The motor carrier may change the method with prior written consent of the department.

(a) Under ((~~this~~)) the trailer to tractor ratio method, it is assumed that there is a direct correlation between the use of tractors and the use of trailers. Whenever use tax is incurred on a tractor because of the failure to maintain the twenty-five percent interstate usage, use tax will also be due on one or more trailers. The number of trailers subject to the use tax under this method shall correspond to the fleetwide trailer to tractor ratio. Any trailer to tractor ratio resulting in a fraction shall be rounded up when determining the number of trailers subject to the use tax. For example, if the fleetwide ratio of trailers to tractors is two and one quarter to one, and one tractor fails to maintain the substantial use threshold in a given year, the motor carrier shall incur a use tax liability on three trailers. ((~~However,~~)) If two tractors fail to maintain the substantial use threshold in a given year, the motor carrier shall incur a use tax liability on five trailers.

(b) The trailer or trailers subject to use tax under this method shall be those acquired nearest to the purchase date of the tractor triggering the use tax liability for those trailers meeting the following conditions:

(i) The trailer or trailers are compatible for towing with the tractor upon which use tax is incurred; and

(ii) The trailer or trailers have not previously incurred a retail sales or use tax liability; and

(iii) The trailer or trailers have been actively used in hauling for hire in the year tax liability is incurred.

(c) Under this method of reporting, use tax liability is generally incurred on one or more trailers whenever a tractor is subject to the use tax. If a tractor is purchased with the intent that less than twenty-five percent of the hauls will be across state borders, it will be presumed the tractor will also

be pulling a trailer or trailers on which use tax is also due. For example, ABC Trucking has eight tractors and fifteen trailers in its fleet. The tractors and trailers met the exemption from retail sales tax and use tax at the time they were purchased, and it was determined during previous annual reviews that the tractors continued to be substantially used on interstate hauls. However, at the time of the annual review for the just-completed calendar year it was determined that one tractor was not used at least twenty-five percent in interstate hauls. Use tax is due on this tractor. Under this method, use tax is also due on two trailers. The two trailers on which use tax must be reported are the two purchased ~~((most-nearly))~~ closest to the purchase date of the tractor.

(5) **Valuation.** The value of the motor vehicle or trailer subject to the use tax is its fair market value at the time of first use within the ~~((review))~~ view period for which the exemption cannot be maintained. However, because the taxpayer will not know until the close of the period whether the usage met the exemption requirements, the use tax is due and should be reported on the last excise tax return for that ~~((review))~~ view period. For example, a motor carrier who has previously met the exemption requirements for a particular truck determines this truck no longer was substantially used in interstate hauls during calendar year ~~((1996))~~ 2013. Use tax should be reported on the last tax return filed for ~~((1996))~~ 2013 with the taxable value based on the value of the truck at January 1, ~~((1996))~~ 2013. If the motor carrier is using a fiscal year as the view period (see subsection (3)(e) of this rule), the use tax should be reported, based on the value of the truck on the first day of the view period, on the last tax return filed for the view period. The motor carrier must not change from calendar to fiscal year view periods without prior written consent of the department.

(a) **Determining valuation.** The department ~~((of revenue))~~ will accept independent publications containing values of comparable vehicles if those values are generally accepted in the industry as accurately reflecting the value of used vehicles. The department will also consider notarized valuation opinions signed by qualified appraisers and/or dealers as evidence of the fair market value. In the absence of a readily available fair market value, the department will accept a value based on depreciation schedules in effect and used by the department of licensing to determine the value of vehicles for licensing purposes.

(b) ~~((The following examples show how use tax liability would be determined in typical situations. 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.))~~ **Examples.**

(i) **Example 7.** ABC Trucking purchased five trailers for use in both interstate and intrastate for hire hauls on January 1, ~~((1996))~~ 2012. All the necessary conditions for exemption under RCW 82.08.0263 were met; delivery was made in Washington, and the trailers were purchased without payment of the retail sales tax. The taxpayer uses the "line crossing" method for determining interstate use.

ABC Trucking keeps a journal showing the origin and destination for each haul ~~((which))~~ that identifies each ~~((truck/tractor))~~ truck or tractor and trailer used on a per unit basis. This journal is reviewed at the end of each calendar

year to verify compliance with the statutory provision that motor vehicles and trailers be substantially used for transporting ~~((therein))~~ persons or property for hire across the boundaries of the state. During the first year of use, all five of the trailers met the "substantial use" threshold. However, ~~((# reviewing this journal))~~ for the ~~((1997))~~ 2013 calendar year, ABC Trucking determines that two of the trailers failed to meet the twenty-five percent "substantial use" threshold. ABC Trucking must remit use tax directly to the department on its ~~((December 1997))~~ last excise tax return filed for 2013, based on the fair market values of the two trailers as of January 1, ~~((1997))~~ 2013. ~~((Since))~~ Because the taxpayer maintained specific usage records for each trailer, the "substantial use" in interstate hauling must be met by each trailer for which exemption is claimed. If detailed records for usage of trailers had not been kept, use tax liability of the trailers would have been based on the tractors. In any event, use tax liability may not be determined based on the overall experience of a fleet of vehicles. If a vehicle is used both in hauling for hire and in hauling the carrier's own products, the "substantial use" is determined solely on the usage in for hire hauling ~~((for hire))~~.

(ii) **Example 8.** DB Carriers is a motor carrier ~~((which))~~ that is engaged in both intrastate and interstate for hire hauls. DB purchases and first uses a truck in Washington on January 1, ~~((1997))~~ 2012. All the necessary conditions for exemption under RCW 82.08.0263 were met; delivery was made in Washington, and the truck was purchased without payment of the retail sales tax. DB Carriers uses the "line crossing" method ~~((for determining))~~ to determine interstate use.

DB Carriers keeps a journal showing the origin and destination for each haul ~~((which))~~ that identifies each truck used on a per unit basis. This journal is reviewed at the end of the ~~((1997))~~ 2012 calendar year, and DB determines that the truck failed to meet the twenty-five percent "substantial use" threshold. DB Carriers must remit use tax directly to the department on its ~~((December 1997))~~ last excise tax return filed for 2012, based on the fair market value of the truck as of January 1, ~~((1997))~~ 2012. DB Carriers may not compute the use tax liability based ~~((upon))~~ on the December 31, ~~((1997))~~ 2012, fair market value as the vehicle never satisfied the substantial interstate use provision of RCW 82.12.0254.

(6) **Leased vehicles.** The use tax exemption requirements are the same for leased vehicles as for purchased vehicles. Motor vehicles and trailers, leased with or without operator are exempt from the use tax if the user is, or operates under contract with, a holder of a permit issued by the ICC or its successor agency and the vehicle is used in substantial part in the normal and ordinary course of the user's business for transporting ~~((therein))~~ persons or property for hire across the boundaries of the state. This requires that the leased vehicle be used a minimum of twenty-five percent in interstate hauls. The taxpayer may elect to use either the fiscal year of the business or a calendar year to determine if the leased vehicle was used substantially in interstate hauls for hire. Where the vehicle lease does not begin or end at the start of the calendar year (or fiscal year if the business uses a fiscal year view period), the same requirements apply to leased vehicles as to purchased vehicles (see subsection (3)(c) of this ~~((section))~~ rule).

(a) **Substantial use requirement not met.** If the leased vehicle or trailer does not meet the substantial use requirement during the "view period," the use tax applies ~~((only to the portion of the))~~ to each lease payment ~~((which is for))~~ within the "view period" where there was use in Washington ~~((during the "view period." See the examples in subsection (6)(b) of this section. Mileage is an acceptable basis for determining in-state and out-of-state use. For the purposes of determining in-state and out-of-state use of leased vehicles or trailers where use tax is determined to be due, all miles traveled in Washington by the leased vehicle are in-state miles, notwithstanding that they may be associated with an interstate haul. The motor carrier must maintain accurate records of actual in-state and out-of-state use to substantiate any claim that a portion of any lease payment was exempt of use tax because of out-of-state use))~~. Use tax will be determined first for each "view period~~(-)~~," then for each periodic lease period within the "view period." For example, if a truck was leased on a monthly basis for the years ~~((1996 and 1997))~~ 2013 and 2014 and failed to meet the substantial use requirement in ~~((1996))~~ 2013, but met the requirement in ~~((1997))~~ 2014, use tax would only be due for the monthly payments for January and September of 2013 if those are the only two months during which usage in Washington ~~((which))~~ occurred in ~~((1996))~~ 2013.

(b) ~~((The following examples show how this method would be applied to typical situations. 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.))~~ **Examples.**

(i) Example 9. BG Hauling ~~((is))~~, a for hire carrier ~~((which on January 1, 1996))~~, enters into a lease agreement for a truck without operator on January 1, 2013. All the necessary conditions for the retail sales and use tax exemptions for the first year of the lease were met. BG Hauling verifies compliance with the twenty-five percent substantial use threshold on a calendar year basis.

BG determines that this truck failed to meet the twenty-five percent substantial use threshold for calendar year ~~((1997))~~ 2014. Use tax will be due beginning with the period for which the exemption was not met, in this case beginning with January ~~((1997))~~ 2014. However, BG Hauling may report use tax only on ~~((that portion of))~~ each lease payment ~~((attributable to))~~ in which payment period there was actual in-state use, provided it maintains accurate records substantiating the truck's in-state and out-of-state activity. ~~((Only mileage incurred while actually outside Washington will be considered out-of-state mileage.))~~ If BG Hauling continues to lease this truck in ~~((1998))~~ 2015, usage will again be reviewed for that period and use tax may or may not be due for the ~~((1998))~~ 2015 lease payments, depending on whether the vehicle was used substantially in interstate hauls during that year.

(ii) Example 10. MG Inc. is an equipment distributor which, in addition to hauling its own product to customers, is engaged in hauling for hire activities. MG is a holder of an ICC permit. MG enters into a lease agreement for a truck without operator on January 1, ~~((1996))~~ 2013. All conditions for retail sales and use tax exemption are satisfied for the first year of the lease.

Based upon the truck's for hire hauling activities during the ~~((1997))~~ 2014 calendar year, MG determines that the use of the truck failed to satisfy the twenty-five percent substantial use threshold. MG must remit use tax ~~((upon))~~ on the amount of lease payments made during ~~((1997))~~ 2014 at the time it files its last tax return ~~((in 1997))~~ for 2014. Provided accurate records are maintained to substantiate in-state and ~~((of))~~ out-of-state use, MG may remit use tax ~~((only upon that portion of))~~ on each lease payment ~~((attributable to))~~ in which the payment period there was actual in-state use. While only the hauling for hire activities are reviewed when determining whether the truck satisfies the substantial interstate use threshold, once it is established the exemption cannot be maintained, the use tax liability is based upon all in-state activity, including the motor carrier's hauling of its own product.

(7) **Component parts.** RCW 82.12.0254 also provides a use tax exemption for the use of tangible personal property ~~((which))~~ that becomes a component part (including purchases of services related to that component part) of any motor vehicle or trailer used for transporting ~~((therein))~~ persons or property for hire. This exemption is available only for motor vehicles or trailers owned by, or operated under contract with, a person holding a carrier permit issued by the ~~((Interstate Commerce Commission))~~ ICC or its successor agency authorizing transportation by motor vehicle across the boundaries of this state. Since carriers are required to obtain these permits only when the carrier is hauling for hire, the exemption applies only to tangible personal property purchased for vehicles ~~((which))~~ that are used in hauling for hire. The exemption for component parts will apply even if the parts are for use on a motor vehicle or trailer ~~((which))~~ that is used less than twenty-five percent in interstate hauls for hire, provided the vehicle is used in hauling for hire.

~~((a) For the purposes of this section, the term "component parts" means any tangible personal property which is attached to and becomes an integral part of the motor vehicle or trailer. It includes such items as motors, motor and body parts, batteries, paint, permanently affixed decals, and tires. "Component parts" includes the axle and wheels, referred to as "converter gear" or "dollies," which is used to connect a trailer behind a tractor and trailer. "Component parts" can include tangible personal property which is attached to the vehicle and used as an integral part of the motor carrier's operation of the vehicle, even if the item is not required mechanically for the operation of the vehicle. It includes cellular telephones, communication equipment, fire extinguishers, and other such items, whether themselves permanently attached to the vehicle or held by brackets which are permanently attached. If held by brackets, the brackets must be permanently attached to the vehicle in a definite and secure manner with these items attached to the bracket when not in use and intended to remain with that vehicle. It does not include antifreeze, oil, grease, and other lubricants which are considered as consumed at the time they are placed into the vehicle, even though required for operation of the vehicle. It does include items such as spark plugs, oil filters, air filters, hoses and belts.~~

~~((b) The following items do not qualify for exemption from the use tax under the provisions of RCW 82.12.0254:~~

- (i) Equipment, tools, parts and accessories which do not become a component part of a motor vehicle or trailer used in transporting persons or property for hire; and
- (ii) Consumable supplies, such as oil, grease, other lubricants, cleaning solvents and ice.)

**WSR 15-15-033**  
**PERMANENT RULES**  
**DEPARTMENT OF REVENUE**

[Filed July 8, 2015, 8:45 a.m., effective August 8, 2015]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 458-20-240 (Rule 240) 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.

Rule 240 has been revised to:

- Incorporate legislation pertaining to the criteria of eligibility for businesses applying for a B&O tax credit under chapter 82.62 RCW;
- Clarify application requirements, hiring requirements, and reporting requirements; and
- Reorganize the definition of eligible business project by enumerating each of the requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-240 New employee B&O credit.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 15-11-093 on May 20, 2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 8, 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 occupa-

tion (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 quarters 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 15-15-034**  
**PERMANENT RULES**  
**DEPARTMENT OF LICENSING**

[Filed July 8, 2015, 9:52 a.m., effective August 8, 2015]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This order will extend suspension of fees in an effort to maintain a balanced budget for the architect licensing program. The current temporary suspension expires on July 1, 2015.

Citation of Existing Rules Affected by this Order: Amending WAC 308-12-205 Architect fees.

Statutory Authority for Adoption: RCW 18.08.340.

Other Authority: RCW 43.24.086.

Adopted under notice filed as WSR 15-11-048 on May 15, 2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 8, 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:

<b>Title of Fee</b>	<b>Fee</b>
Individuals:	
Examination application	\$50.00
Reciprocity application	250.00
Initial licensure	75.00

<b>Title of Fee</b>	<b>Fee</b>
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:

<b>Title of Fee</b>	<b>Fee</b>
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 15-15-036**  
**PERMANENT RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**

(Developmental Disabilities Administration)

[Filed July 8, 2015, 10:53 a.m., effective August 8, 2015]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Changes to WAC 388-837-9005 What is the purpose of this chapter? and 388-837-9030 What rights are available to a resident regarding a proposed transfer from one RHC to another RHC?, are willingly being made to comply with goals stated in RCW 44.04.280, by replacing demeaning language with respectful language. This was done by using respectful language when referring to individuals with disabilities by replacing all instances of MR and mental retardation to ID and intellectual disability. Other housekeeping changes were also made to reflect agency reorganization. None of the changes resulted in any changes to policy, eligibility, or processes.

Citation of Existing Rules Affected by this Order: Amending WAC 388-837-9005 and 388-837-9030.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 44.04.280.

Adopted under notice filed as WSR 15-07-053 on March 13, 2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 2, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: July 6, 2017.

Katherine I. Vasquez  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 04-16-018, filed 7/23/04, effective 8/23/04)

**WAC 388-837-9005 What is the purpose of this chapter?** (1) The purpose of this chapter is to establish rules authorized by Title 71A RCW for RHC ICF/((MR))ID programs, rules that:

(a) Regulate the purchase and provision of services in state operated intermediate care facility for ~~((the mentally retarded))~~ those with an intellectual disability (ICF/((MR))ID); and

(b) Assure adequate ICF/((MR))ID care, service, and protection are provided through certification procedures; and

(c) Establish standards for providing habilitative training, health-related care, supervision, and residential services to eligible persons.

(2) Except where specifically referenced, this chapter supersedes and replaces any and all sections affecting ICF/((MR))ID facilities or programs contained in chapter 388-96 WAC.

(3) Except as referenced, definitions in WAC 388-835-0010 apply to this chapter.

AMENDATORY SECTION (Amending WSR 04-16-018, filed 7/23/04, effective 8/23/04)

**WAC 388-837-9030 What rights are available to a resident regarding a proposed transfer from one RHC to another RHC?** (1) A resident, their guardian, next-of-kin, or responsible party must be notified in writing at least thirty days before any transfer occurs.

(2) The transfer notice must include the reason for the proposed transfer.

(3) A resident, their guardian, next of kin, or responsible party has a right to an informal administrative review before the ~~((division director))~~ assistant secretary or designee.

## WSR 15-15-044

### PERMANENT RULES

#### DEPARTMENT OF HEALTH

(Chiropractic Quality Assurance Commission)

[Filed July 8, 2015, 3:06 p.m., effective August 8, 2015]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 246-808-700 Cooperation with investigation, the chiropractic quality assurance commission is repealing WAC 246-808-700. RCW 18.130.230 requires all healthcare professionals, including chiropractors, to produce documents requested by the disciplinary authority as part of an investigation or be subject to a fine. RCW 18.130.230 controls the legal process for production of documents, so WAC 246-808-700 is being repealed.

Citation of Existing Rules Affected by this Order: Repealing WAC 246-808-700.

Statutory Authority for Adoption: RCW 18.25.0171 and 18.130.050.

Other Authority: RCW 18.130.230.

Adopted under notice filed as WSR 15-03-002 on January 7, 2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 1.

Date Adopted: July 8, 2015.

Matthew Waldron, DC  
Chair

#### REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 246-808-700 Cooperation with investigation.

## WSR 15-15-050

### PERMANENT RULES

#### HEALTH CARE AUTHORITY

(Washington Apple Health)

[Filed July 9, 2015, 8:30 a.m., effective August 9, 2015]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The agency is revising this rule to clarify that individual providers who work in a group practice that has been terminated by the agency may reapply for participation.

Citation of Existing Rules Affected by this Order:  
Amending WAC 182-502-0060.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 15-12-082 on June 1, 2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 9, 2010 [2015].

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-17-047, filed 8/13/13, effective 10/1/13)

**WAC 182-502-0060 Reapplying for participation.** (1)

Providers who are denied enrollment or removed from participation are not eligible to reapply for participation with the medicaid agency for five years from the date of denial or termination.

(2) Providers who are denied enrollment or removed from participation more than once are not eligible to reapply for participation with the agency.

(3) A provider who is terminated solely under WAC 182-502-0030(3) is eligible for immediate reapplication with the agency if the provider is not a full or partial owner of a terminated group practice.

**WSR 15-15-053**  
**PERMANENT RULES**  
**HEALTH CARE AUTHORITY**

(Washington Apple Health)

[Filed July 9, 2015, 12:37 p.m., effective August 9, 2015]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The agency is making housekeeping changes to correct agency names, program names, rule numbers, and to make other clarifications that do not change the effect of the rules.

Citation of Existing Rules Affected by this Order:  
Amending WAC 182-501-0055, 182-501-0100, 182-501-0163, 182-501-0165, 182-501-0169, 182-501-0180, 182-501-0182, 182-501-0184, 182-501-0200, and 182-501-0213.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 15-12-014 on May 21, 2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 10, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 10, Repealed 0.

Date Adopted: July 9, 2015.

Wendy Barcus  
Rules Coordinator

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

**WAC 182-501-0055 Health care coverage—How the ~~((department))~~ agency determines coverage of services for its health care programs using health technology assessments.** (1) The ~~((department))~~ medicaid agency uses health technology assessments ~~((in determining))~~ to determine whether a new technology, new indication, or existing technology approved by the Food and Drug Administration (FDA) is a covered service under ~~((department))~~ agency health care programs. The ~~((department))~~ agency only uses health technology assessments when coverage is not mandated by federal or state law. A health technology assessment may be conducted by or on behalf of:

(a) The ~~((department))~~ agency; or

(b) The health technology assessment clinical committee (HTACC) ~~((according to))~~ under RCW 70.14.080 through 70.14.140.

(2) The ~~((department))~~ agency reviews available evidence relevant to a medical or dental service or health care-related equipment and uses a technology evaluation matrix ~~((in order))~~ to:

(a) Determine its efficacy, effectiveness, and safety;

(b) Determine its impact on health outcomes;

(c) Identify indications for use;

(d) Identify potential for misuse or abuse; and

(e) Compare to alternative technologies to assess benefit vs. harm and cost effectiveness.

(3) The ~~((department))~~ agency may determine the technology, device, or technology-related supply is:

(a) Covered (see WAC ~~((388-501-0060))~~ 182-501-0060 for the scope of coverage ~~((for department medical assistance))~~ under Washington apple health (WAH) programs((-));

(b) Covered with authorization (see WAC ~~((388-501-0165))~~ 182-501-0165 for the process on how authorization is determined~~((:))~~);

(c) Covered with limitations (see WAC ~~((388-501-0169))~~ 182-501-0169 for how limitations can be extended~~((:))~~); or

(d) Noncovered (see WAC ~~((388-501-0070))~~ 182-501-0070 for ~~((the))~~ noncovered services ~~((determined to be non-covered:))~~)).

(4) The ~~((department))~~ agency may periodically review existing technologies, devices, or technology-related supplies and reassign authorization requirements as necessary ~~((according to))~~ using the ~~((same))~~ provisions ~~((as outlined above))~~ in this section for new technologies, devices, or technology-related supplies.

(5) The ~~((department))~~ agency evaluates the evidence and criteria ~~((presented by))~~ from HTACC to determine whether a service is covered ~~((in accordance with WAC 388-501-0050))~~ under WAC 182-501-0050 (9) and (10) and this section.

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

**WAC 182-501-0100 Subrogation.** (1) For the purpose of this section, "**liable third party**" means:

(a) The tort-feasor, or insurer of the tort-feasor, or both; and

(b) Any person, entity or program that is or may be liable to provide coverage for the illness or injuries for which the ~~((department))~~ medicaid agency is providing assistance or residential care.

(2) As a condition of medical care eligibility, a client must assign to the state any right the client may have to receive payment from any liable third party for medical expenses, assistance, or residential care.

(3) To the extent authorized by a contract executed under RCW 74.09.522, a managed health care plan has the rights and remedies of the ~~((department as provided in))~~ agency under RCW 43.20B.060 and 74.09.180.

(4) The ~~((department))~~ agency is not responsible for medical care payment(s) for a client whose personal injuries are caused by the negligence or wrongdoing of another. However, the ~~((department))~~ agency may provide the medical care required as a result of an injury or illness to the client if the client is otherwise eligible for medical care.

(5) The ~~((department))~~ agency may pursue its right to recover the value of medical care provided to an eligible client from any liable third party or third-party settlement or judgment as a subrogee, assignee, or by enforcement of its public assistance lien ~~((as provided))~~ under RCW 43.20B.040 through 43.20B.070, ~~((RCW))~~ 74.09.180, and 74.09.185.

(6) Notice to the ~~((department))~~ agency and determining the reimbursement amount:

(a) The client or the client's legal representative must notify the ~~((department))~~ agency in writing ~~((at the time of))~~ when filing any claim against a third party, commencing an action at law, negotiating a settlement, or accepting an offer from the liable third party. ~~((Written))~~ Send notices ~~((to the department))~~ under this section ~~((should be sent))~~ to:

Health ~~((and Recovery Services Administration))~~ Care Authority

COB Casualty Unit

P.O. Box 45561

Olympia, WA 98504-5561

Fax: ~~((6))~~360~~((3))~~-753-3077

(b) The client or the client's legal representative must ~~((provide the department with))~~ give the agency documentation proposing allocation of damages, if any, to be used for settlement or to be proven at trial.

(c) Where damages, including medical damages, have not been designated in the settlement or judgment, the client or the client's legal representative must contact the ~~((department))~~ agency to determine the appropriate reimbursement amount for payments the ~~((department))~~ agency made for the client's benefit.

(d) If the client and the ~~((department are unable to reach an agreement as to))~~ agency cannot agree upon the appropriate reimbursement amount, any party may bring a motion in ~~((the))~~ superior court for a hearing to determine the amount of reimbursement to the ~~((department))~~ agency from settlement or judgment proceeds.

(7) The ~~((secretary of the department))~~ agency director or the ~~((secretary's))~~ director's designee must consent in writing to any discharge or compromise of any settlement or judgment of a lien created under RCW 43.20B.060. The ~~((department))~~ agency considers the compromise or discharge of a medical care lien only as authorized by federal regulation at 42 C.F.R. 433.139.

(8) The doctrine of equitable subrogation does not apply to defeat, reduce, or prorate any recovery made by the ~~((department that is))~~ agency based on its assignment, lien, or subrogation rights.

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

**WAC 182-501-0163 Health care coverage—Process for submitting a valid request for authorization.** (1) The ~~((department))~~ medicaid agency requires providers to obtain authorization for certain health care services ~~((in accordance with))~~ under this section, chapters ~~((388-501 and 388-502))~~ 182-501 and 182-502 WAC, other applicable ~~((department))~~ agency rules, current published ~~((department))~~ agency billing instructions, and ~~((of))~~ numbered memoranda. For the purposes of this section, health care services include treatment, equipment, related supplies, and drugs.

(a) For health care services that require prior authorization (PA), a provider (as defined in WAC ~~((388-500-0005))~~ 182-500-0085) must submit a written, electronic, or telephonic request to the ~~((department))~~ agency. To be a valid request for ~~((prior authorization))~~ PA, the provider must ~~((submit))~~ send the request and ~~((conform to))~~ follow the ~~((department's))~~ agency's current published program billing instructions, numbered memoranda, and any additional requirements in Washington Administrative Code (WAC) and ~~((of))~~ Revised Code of Washington (RCW).

(b) For expedited prior authorization (EPA), a provider must certify that the client's clinical condition meets the appropriate EPA criteria outlined in the ~~((department's))~~

agency's current published program billing instructions, numbered memoranda, and any additional requirements in WAC and ~~((for))~~ RCW. The provider must use the ~~((department assigned))~~ agency-assigned EPA number when submitting a claim for payment to the ~~((department))~~ agency.

(c) The ~~((department))~~ agency requires ~~((prior authorization))~~ PA for covered health care services when the applicable ~~((expedited prior authorization))~~ EPA criteria are not met.

(d) Upon request, a provider must ~~((submit))~~ send documentation to the ~~((department))~~ agency showing how the client's condition meets the required criteria for PA or EPA.

(2) ~~((Department))~~ Agency authorization requirements for covered health care services are not a denial of service.

(3) The ~~((department))~~ agency returns invalid requests to the provider and takes no further action unless the request for authorization is resubmitted. The return of an invalid request is not a denial of service.

(4) Failure of a provider to request authorization for a health care service that requires it or a provider's failure to do so properly is not a denial of service.

(5) The ~~((department's))~~ agency's authorization of health care ~~((service(s)))~~ services does not guarantee payment. See WAC ~~((388-501-0050))~~ 182-501-0050 for other general requirements that must be satisfied before payment can be made for a health care service requested and authorized under this section.

(6) The ~~((department))~~ agency evaluates a request for ~~((an))~~ authorization of a health care service that exceeds identified limitations~~((s))~~ on a case-by-case basis and ~~((in accordance with WAC 388-501-0169))~~ under WAC 182-501-0169.

(7) The ~~((department))~~ agency may recoup any payment made to a provider if the ~~((department))~~ agency later determines the health care service was not properly authorized or did not meet EPA criteria. ~~((Refer to))~~ See chapters ~~((388-502 and 388-502A))~~ 182-502 and 182-502A WAC.

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

**WAC 182-501-0165 Medical and dental coverage—Fee-for-service (FFS) prior authorization—Determination process for payment.** (1) This section applies to fee-for-service (FFS) requests for medical or dental services and medical equipment that:

(a) Are identified as covered services or ~~((EPSDT))~~ early and periodic screening, diagnosis, and treatment services; and

(b) Require prior authorization by the ~~((department))~~ medicaid agency.

(2) The following definitions and those found in ~~((WAC 388-500-0005))~~ chapter 182-500 WAC apply to this section:

**"Controlled studies"** - Studies in which defined groups are compared with each other to reduce bias.

**"Credible evidence"** - Type I-IV evidence or evidence-based information from any of the following sources:

- Clinical guidelines
- Government sources
- Independent medical evaluation (IME)
- Independent review organization (IRO)

- Independent technology assessment organizations
- Medical and hospital associations
- Policies of other health plans
- Regulating agencies ~~((e.g.))~~ for example, the Federal Drug Administration or Department of Health)

- Treating provider
- Treatment pathways

**"Evidence-based"** - The ordered and explicit use of the best evidence available (see "hierarchy of evidence" in subsection (6)(a) of this section) when making health care decisions.

**"Health outcome"** - Changes in health status (mortality and morbidity) which result from the provision of health care services.

**"Institutional review board (IRB)"** - A board or committee responsible for reviewing research protocols and determining whether:

(1) The rights and welfare of human subjects are adequately protected;

(2) The risks to ~~((individuals))~~ people are minimized and are not unreasonable;

(3) The risks to ~~((individuals))~~ people are outweighed by the potential benefit to them or by the knowledge to be gained; and

(4) The proposed study design and methods are adequate and appropriate in the light of stated study objectives.

**"Independent review organization (IRO)"** - A panel of medical and benefit experts intended to provide unbiased, independent, clinical, evidence-based reviews of adverse decisions.

**"Independent medical evaluation (IME)"** - An objective medical examination of the client to establish the medical facts.

**"Provider"** - The ~~((individual))~~ person who is responsible for diagnosing, prescribing, and providing medical, dental, or mental health services to ~~((department))~~ agency clients.

(3) The ~~((department))~~ agency authorizes, on a case-by-case basis, requests described in subsection (1) of this section when the ~~((department))~~ agency determines the service or equipment is medically necessary as defined in WAC ~~((388-500-0005))~~ 182-500-070. The process the ~~((department))~~ agency uses to assess medical necessity is based on:

(a) The evaluation of submitted and obtainable medical, dental, or mental health evidence as described in subsections (4) and (5) of this section; and

(b) The application of the evidence-based rating process described in subsection (6) of this section.

(4) The ~~((department))~~ agency reviews available evidence relevant to a medical, dental, or mental health service or equipment to:

(a) Determine its efficacy, effectiveness, and safety;

(b) Determine its impact on health outcomes;

(c) Identify indications for use;

(d) Evaluate pertinent client information;

(e) Compare to alternative technologies; and

(f) Identify sources of credible evidence that use and report evidence-based information.

(5) The ~~((department))~~ agency considers and evaluates all available clinical information and credible evidence rele-

vant to the client's condition. ~~((At the time of request,))~~ The provider responsible for the client's diagnosis ~~((and/))~~, or treatment, or both, must submit with the request credible evidence specifically related to the client's condition~~((;))~~ including, but not limited to:

(a) A ~~((client-specific))~~ physiological description of the client's disease, injury, impairment, or other ailment;

(b) Pertinent laboratory findings;

(c) Pertinent X-ray and/or imaging reports;

(d) Individual patient records pertinent to the case or request;

(e) Photographs ~~((and/))~~, or videos ~~((when))~~, or both, if requested ~~((by the department))~~; and

(f) Objective medical/dental/mental health information such as medically/dentally acceptable clinical findings and diagnoses resulting from physical or mental examinations.

(6) The ~~((department))~~ agency uses the following processes to determine whether a requested service described in subsection (1) is medically necessary:

(a) **Hierarchy of evidence - How defined.** The ~~((department))~~ agency uses a hierarchy of evidence to determine the weight given to available data. The weight of medical evidence depends on objective indicators of its validity and reliability including the nature and source of the evidence, the empirical characteristics of the studies or trials upon which the evidence is based, and the consistency of the outcome with comparable studies. The hierarchy (in descending order with Type I given the greatest weight) is:

(i) Type I: Meta-analysis done with multiple, well-designed controlled studies;

(ii) Type II: One or more well-designed experimental studies;

(iii) Type III: Well-designed, quasi-experimental studies such as nonrandomized controlled, single group pre-post, cohort, time series, or matched case-controlled studies;

(iv) Type IV: Well-designed, nonexperimental studies, such as comparative and correlation descriptive, and case studies (uncontrolled); and

(v) Type V: Credible evidence submitted by the provider.

(b) **Hierarchy of evidence - How classified.** Based on the quality of available evidence, the ~~((department))~~ agency determines if the requested service is effective and safe for the client by classifying it as an "A," "B," "C," or "D" level of evidence:

(i) **"A" level evidence:** Shows the requested service or equipment is a proven benefit to the client's condition by strong scientific literature and well-designed clinical trials such as Type I evidence or multiple Type II evidence or combinations of Type II, III or IV evidence with consistent results (An "A" rating cannot be based on Type III or Type IV evidence alone).

(ii) **"B" level evidence:** Shows the requested service or equipment has some proven benefit supported by:

(A) Multiple Type II or III evidence or combinations of Type II, III or IV evidence with generally consistent findings of effectiveness and safety (A "B" rating cannot be based on Type IV evidence alone); or

(B) Singular Type II, III, or IV evidence in combination with ~~((department-recognized))~~ agency-recognized:

(I) Clinical guidelines; ~~((or))~~

(II) Treatment pathways; or

(III) Other guidelines that use the hierarchy of evidence in establishing the rationale for existing standards.

(iii) **"C" level evidence:** Shows only weak and inconclusive evidence regarding safety ~~((and/))~~, or efficacy ~~((such as))~~, or both. For example:

(A) Type II, III, or IV evidence with inconsistent findings; or

(B) Only Type V evidence is available.

(iv) **"D" level evidence:** Is not supported by any evidence regarding its safety and efficacy, for example that which is considered investigational or experimental.

(c) **Hierarchy of evidence - How applied.** After classifying the available evidence, the ~~((department))~~ agency:

(i) Approves "A" and "B" rated requests if the service or equipment:

(A) Does not place the client at a greater risk of mortality or morbidity than an equally effective alternative treatment; and

(B) Is not more costly than an equally effective alternative treatment.

(ii) Approves a "C" rated request only if the provider shows the requested service is the optimal intervention for meeting the client's specific condition or treatment needs, and:

(A) Does not place the client at a greater risk of mortality or morbidity than an equally effective alternative treatment; ~~((and))~~

(B) Is less costly to the ~~((department))~~ agency than an equally effective alternative treatment; and

(C) Is the next reasonable step for the client in a well-documented tried-and-failed attempt at evidence-based care.

(iii) Denies "D" rated requests unless:

(A) The requested service or equipment has a humanitarian device exemption from the Food and Drug Administration (FDA); or

(B) There is a local institutional review board (IRB) protocol addressing issues of efficacy and safety of the requested service that satisfies both the ~~((department))~~ agency and the requesting provider.

(7) Within fifteen days of receiving the request from the client's provider, the ~~((department))~~ agency reviews all evidence submitted and:

(a) Approves the request;

(b) Denies the request if the requested service is not medically necessary; or

(c) Requests the provider submit additional justifying information. The ~~((department))~~ agency sends a copy of the request to the client at the same time.

(i) The provider must submit the additional information within thirty days of the ~~((department's))~~ agency's request.

(ii) The ~~((department))~~ agency approves or denies the request within five business days of the receipt of the additional information.

(iii) If the provider fails to provide the additional information, the ~~((department))~~ agency will deny the requested service.

(8) When the ~~((department))~~ agency denies all or part of a request for a covered service~~((s))~~ or equipment, the



((department)) agency sends the client and the provider written notice, within ten business days of the date the information is received, that:

- (a) Includes a statement of the action the ((department)) agency intends to take;
- (b) Includes the specific factual basis for the intended action;
- (c) Includes reference to the specific WAC provision upon which the denial is based;
- (d) Is in sufficient detail to enable the recipient to:
  - (i) Learn why the ((department's)) agency's action was taken; and
  - (ii) Prepare an appropriate response.
- (e) Is in sufficient detail to determine what additional or different information might be provided to challenge the ((department's)) agency's determination;
- (f) Includes the client's administrative hearing rights;
- (g) Includes an explanation of the circumstances under which the denied service is continued or reinstated if a hearing is requested; and
- (h) Includes examples(s) of "lesser cost alternatives" that permit the affected party to prepare an appropriate response.
- (9) If an administrative hearing is requested, the ((department)) agency or the client may request an independent review organization (IRO) or independent medical examination (IME) to provide an opinion regarding whether the requested service or equipment is medically necessary. The ((department will)) agency pays for the independent assessment if the ((department)) agency agrees that it is necessary, or an administrative law judge orders the assessment.

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

**WAC 182-501-0169 Health care coverage—Limitation extension.** This section addresses requests for limitation extensions regarding scope, amount, duration, and ~~((of))~~ frequency of a covered health care service. For the purposes of this section, health care services includes treatment, equipment, related supplies, and drugs. The ((department)) medicaid agency does not authorize or pay for any covered health care services exceeding identified limitations unless authorization is obtained ~~((prior to))~~ before the client ~~((receiving))~~ receives the service.

- (1) No limitation extension of covered health care services ~~((will be))~~ is authorized when prohibited by specific program rules.
- (2) When a limitation extension is not prohibited by specific program rules, the client's provider may request a limitation extension.
- (3) The ((department)) agency evaluates requests for limitation extensions as follows:
  - (a) For a fee-for-service client, the process described in WAC ~~((388-501-0165))~~ 182-501-0165.
  - (b) For a managed care enrollee, the client's managed care organization (MCO) evaluates requests for limitation extensions according to the MCO's prior authorization process.

(c) Both the ((department)) agency and MCO consider the following in evaluating a request for a limitation extension:

- (i) The level of improvement the client has shown to date related to the requested health care service and the reasonably calculated probability of continued improvement if the requested health care service is extended; and
- (ii) The reasonably calculated probability the client's condition will worsen if the requested health care service is not extended.

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

**WAC 182-501-0180 Health care services provided outside the state of Washington—General provisions.** WAC ~~((388-501-0180 through 388-501-0184))~~ 182-501-0180 through 182-501-0184 apply only to services payable on a fee-for-service basis for Washington ~~((state medical assistance))~~ apple health (WAH) clients.

(1) Subject to the exceptions and limitations in this section, WAC ~~((388-501-0182 and 388-501-0184))~~ 182-501-0182, and 182-501-0184, the ((department)) medicaid agency covers emergency and nonemergency out-of-state health care services provided to eligible ~~((Washington state medical assistance clients))~~ WAH recipients when the services are:

- (a) Within the scope of the client's health care program as specified under chapter ~~((388-501))~~ 182-501 WAC;
  - (b) Allowed to be provided outside the state of Washington by specific program WAC; and
  - (c) Medically necessary as defined in WAC ~~((388-500-0005))~~ 182-500-0070.
- (2) The ((department)) agency does not cover services provided outside the state of Washington under the Involuntary Treatment Act (chapter 71.05 RCW and chapter 388-865 WAC), including designated bordering cities.
- (3) When the ((department)) agency pays for covered health care services furnished to an eligible ~~((Washington state medical assistance))~~ WAH client outside the state of Washington, its payment is payment in full according to 42 C.F.R. 447.15.

(4) The ((department)) agency determines coverage for transportation services provided out of state, including ambulance services, according to chapter ~~((388-546))~~ 182-546 WAC.

(5) With the exception of designated bordering cities (see WAC ~~((388-501-0175))~~ 182-501-0175), if the client travels out of state expressly to obtain health care, the service~~((s))~~ must be prior authorized by the ((department)) agency. See WAC ~~((388-501-0182))~~ 182-501-0182 for requirements related to out-of-state nonemergency treatment and WAC ~~((388-501-0165))~~ 182-501-0165 for the ((department's)) agency's medical necessity determination process.

(6) The ((department)) agency does not cover health care services provided outside the United States and U.S. territories, ~~((with the exception of))~~ except in British Columbia, Canada. See WAC ~~((388-501-0184))~~ 182-501-0184 for limitations on coverage of, and payment for, health care pro-

vided to ~~((medical assistance))~~ WAH clients in British Columbia, Canada.

(7) See WAC ~~((388-502-0120))~~ 182-502-0120 for provider requirements for payment of health care provided outside the state of Washington.

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

**WAC 182-501-0182 Health care provided in another state or U.S. territory—Nonemergency.** (1) This rule applies to nonemergency treatment situations occurring in another state or U.S. territory. Applicable situations include, but are not limited to:

(a) Health care services ~~((that))~~ the ~~((department))~~ medicaid agency has prior authorized for a client; and

(b) Health care services obtained by the client, independent of the ~~((department))~~ agency, while traveling or visiting.

(2) ~~((In accordance with))~~ Under the prior authorization process described in WAC ~~((388-501-0165))~~ 182-501-0165, except as specified in subsection (3) of this section, the ~~((department))~~ agency pays for covered nonemergency health care services provided to an eligible Washington ~~((state medical assistance client))~~ apple health (WAH) recipient in another state or U.S. territory to the same extent that it pays for covered nonemergency services provided within the state of Washington when the ~~((department))~~ agency determines that:

(a) Services are medically necessary and the client's health will be endangered if the client ~~((is required to))~~ must travel to the state of Washington to receive the needed care;

(b) Medically necessary services are not available in Washington state or designated bordering cities (see WAC ~~((388-501-0175))~~ 182-501-0175) and are more readily available in another state; or

(c) It is general practice for clients in a particular Washington state locality to use medically necessary resources in a bordering state.

(3) The ~~((department))~~ agency pays for covered non-emergency health care services ~~((furnished to))~~ for an eligible ~~((Washington state medical assistance client))~~ WAH recipient in another state or U.S. territory, unless the out-of-state provider ~~((is unwilling to))~~ will not accept the ~~((department's))~~ agency's payment as payment in full ~~((according to))~~ under 42 C.F.R. 447.15. The ~~((department))~~ agency does not pay when the provider refuses to accept the ~~((department's))~~ agency's payment as payment in full.

(4) The ~~((department))~~ agency does not pay for medically necessary, nonsymptomatic treatment (i.e., preventive care) furnished outside the state of Washington unless it is furnished in a designated bordering city, which is considered the same as an in-state city for the purposes of health care coverage (see WAC ~~((388-501-0175))~~ 182-501-0175). Covered nonemergency services requiring prior authorization, when provided in the state of Washington, also require prior authorization, when provided in a designated bordering city (see WAC ~~((388-501-0165))~~ 182-501-0165 for the ~~((department's))~~ agency's medical necessity determination process).

(5) See WAC ~~((388-501-0180))~~ 182-501-0180 for additional information regarding health care services provided outside the state of Washington.

(6) The ~~((department's health and recovery services administration's (HRSA) assistant secretary))~~ agency's director or designee reviews all exception to rule (ETR) requests.

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

**WAC 182-501-0184 Health care services provided outside of the United States and U.S. territories or in a foreign country.** For the purposes of this section, the term "health care services" does not include the diagnosis and treatment for alcohol ~~((and/or))~~, substance abuse, and mental health services.

(1) The provisions of WAC ~~((388-501-0182))~~ 182-501-0182 apply to this section.

(2) The ~~((department))~~ medicaid agency does not pay for health care services furnished in a foreign country, except for medical services furnished in the province of British Columbia, Canada, under ~~((the conditions specified in))~~ this section. The ~~((department))~~ agency pays for medical services furnished in British Columbia, Canada, to ~~((the following))~~ Washington ~~((state medical assistance))~~ apple health (WAH) clients only when those clients:

(a) ~~((Those who))~~ Reside in Point Roberts, Washington;

(b) ~~((Those who))~~ Reside in Washington communities along the border with British Columbia, Canada (see subsection (3) of this section for further clarification); ~~((and))~~ or

(c) Are members of the Canadian First Nations who live in Washington state.

(3) For ~~((those medical assistance))~~ WAH clients identified in subsection (2) of this section, the ~~((department))~~ agency covers emergency and nonemergency medical services provided in British Columbia, Canada, when the services are:

(a) Within the scope of the client's health care program as specified in chapter ~~((388-504))~~ 182-501 WAC;

(b) Allowed to be provided outside the United States and U.S. territories by specific program WAC; and

(c) Medically necessary as defined in WAC ~~((388-500-0005))~~ 182-500-0070.

(4) For ~~((those medical assistance))~~ WAH clients identified in subsection (2) of this section, the ~~((department))~~ agency covers nonemergency medical services in British Columbia, Canada, only when:

(a) It is general practice for ~~((Washington state medical assistance))~~ WAH clients ~~((residing in these particular localities))~~ to use medically necessary resources across the Canadian border; or

(b) The medical services in British Columbia, Canada, are closer or more readily accessible to the client's Washington state residence. As applied to nonemergency medical services, the phrase "closer or more readily accessible to the client's Washington state residence" means:

(i) There is not a United States provider for the ~~((same))~~ service within twenty-five miles of the client's Washington state residence; and

(ii) The closest Canadian provider of the service is closer than the closest U.S. provider of the service.

(5) The ~~((department))~~ agency does not cover services provided in British Columbia, Canada, under the Involuntary Treatment Act (chapter 71.05 RCW and chapter 388-865 WAC).

(6) ~~((When the department pays))~~ The agency's payment for covered medical services furnished to a ~~((Washington state medical assistance))~~ WAH client in British Columbia, Canada, ~~((its payment))~~ is payment in full according to 42 C.F.R. 447.15.

(7) A British Columbia, Canada, provider who furnished health care services ~~((and))~~ or covered items to a ~~((medical assistance))~~ WAH client ~~((will))~~ receives payment from the ~~((department))~~ agency only when:

(a) ~~((Such))~~ The reimbursement is made to a financial institution or entity located within the United States in U.S. dollars; and

(b) The participating British Columbia, Canada, provider:

(i) Has signed a core provider agreement with the ~~((department))~~ agency;

(ii) Satisfies all medicaid conditions of participation;

(iii) Meets functionally equivalent licensing requirements; and

(iv) Complies with the same utilization control standards as in-state providers.

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

**WAC 182-501-0200 Third-party resources.** (1) The ~~((department))~~ medicaid agency requires a provider to seek timely reimbursement from a third party when a client has available third-party resources, except as described under subsections (2) and (3) of this section.

(2) The ~~((department))~~ agency pays for medical services and seeks reimbursement from ~~((the))~~ a liable third party when the claim is for any of the following:

(a) Prenatal care;

(b) Labor, delivery, and postpartum care (except inpatient hospital costs) for a pregnant woman; or

(c) Preventive pediatric services as covered under the ~~((EPSDT))~~ early and periodic screening, diagnosis and treatment program.

(3) The ~~((department))~~ agency pays for medical services and seeks reimbursement from any liable third party when both of the following apply:

(a) The provider submits to the ~~((department))~~ agency documentation of billing the third party and the provider has not received payment after thirty days from the date of services; and

(b) The claim is for a covered service provided to a client on whose behalf the office of support enforcement is enforcing an absent parent to pay support. For the purpose of this section, "is enforcing" means the absent parent either:

(i) Is not complying with an existing court order; or

(ii) Received payment directly from the third party and did not pay for the medical services.

(4) The provider may not bill the ~~((department))~~ agency or the client for a covered service when a third party pays a provider the same amount as or more than the ~~((department))~~ agency rate.

(5) When the provider receives payment from ~~((the))~~ a third party after receiving reimbursement from the ~~((department))~~ agency, the provider must refund to the ~~((department))~~ agency the amount of the:

(a) Third-party payment when the payment is less than the ~~((department's))~~ agency's maximum allowable rate; or

(b) The ~~((department))~~ agency payment when the third-party payment is equal to or ~~((greater))~~ more than the ~~((department's))~~ agency's maximum allowable rate.

(6) The ~~((department is not responsible to))~~ agency does not pay for medical services ~~((when the))~~ if third-party benefits are available to pay for the client's medical services ~~((at the time))~~ when the provider bills the ~~((department))~~ agency, except ~~((as described))~~ under subsections (2) and (3) of this section.

(7) The client is liable for charges for covered medical services that would be paid by the third-party payment when the client either:

(a) Receives direct third-party reimbursement for ~~((such))~~ the services; or

(b) Fails to execute legal signatures on insurance forms, billing documents, or other forms necessary to receive insurance payments for services rendered. See WAC ~~((388-505-0540))~~ 182-503-0540 for assignment of rights.

(8) The ~~((department))~~ agency considers an adoptive family to be a third-party resource for the medical expenses of the birth mother and child only when there is a written contract between the adopting family and either the birth mother, the attorney, the provider, or the adoption service. The contract must specify that the adopting family will pay for the medical care associated with the pregnancy.

(9) A provider cannot refuse to furnish covered services to a client because of a third-party's potential liability for the services.

(10) For third-party liability on personal injury litigation claims, the ~~((department))~~ agency is responsible for providing medical services ~~((as described))~~ under WAC ~~((388-501-0100))~~ 182-501-0100.

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

**WAC 182-501-0213 Case management services.** (1) The ~~((department shall))~~ medicaid agency provides case management services to ~~((medical assistance))~~ Washington apple health recipients:

(a) By contract with providers of case management services.

(b) Limited to target groups of clients as determined by the contract.

(c) Limited to services as determined by the contract.

(2) Case management services are services which will assist clients in gaining access to needed medical, social, educational, and other services.

**WSR 15-15-056**  
**PERMANENT RULES**  
**CLARK COLLEGE**

[Filed July 9, 2015, 5:01 p.m., effective August 9, 2015]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To comply with the latest Title IX, VAWA, and campus SaVE requirements.

Citation of Existing Rules Affected by this Order: Amending WAC 132N-300-001, 132N-300-010, and 132N-125-035.

Statutory Authority for Adoption: RCW 28B.50.140(3).

Adopted under notice filed as WSR 15-09-064 on June 29 [April 14], 2015.

Changes Other than Editing from Proposed to Adopted Version: A sentence was added to the adopted version in WAC 132N-300-010 (2)(c) (under the definition of "consent") that was inadvertently left out of the proposed version ... "Intoxication is not a defense against allegations that an individual has engaged in nonconsensual sexual conduct." This exact language was included elsewhere in the proposed version in WAC 132N-125-035 (14)(c)(vi) (under the definition of "consent") and was adopted.

Number of Sections Adopted in Order to Comply with Federal Statute: New 3, Amended 0, Repealed 0; Federal Rules or Standards: New 3, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 3, Amended 0, Repealed 0.

Date Adopted: June 29, 2015.

Bob Williamson  
 Vice-President of  
 Administrative Services

AMENDATORY SECTION (Amending WSR 14-12-024, filed 5/27/14, effective 7/7/14)

**WAC 132N-125-035 Prohibited student conduct.** The college may impose disciplinary sanctions against a student who commits, or aids, abets, incites, encourages or assists another person to commit, an act(s) of misconduct which include, but are not limited to, the following:

(1) **Academic dishonesty.** Any act of academic dishonesty including, but not limited to, cheating, plagiarism, and fabrication.

(a) Cheating includes using or any attempt to use, give or obtain unauthorized assistance relating to the completion of an academic assignment.

(b) Plagiarism includes taking and using as one's own, without proper attribution, the ideas, writings, or work of another person in completing an academic assignment.

(c) Self-plagiarism may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(d) Fabrication includes falsifying data, information, or citations in completing an academic assignment and also includes providing false or deceptive information to an instructor concerning the completion of an assignment.

(e) No student shall be allowed to withdraw from a course or from the college to avoid the consequences of academic dishonesty.

(2) **Other dishonesty.** Any other acts of dishonesty, such acts include, but are not limited to:

(a) Forgery, alteration, submission of falsified documents or misuse of any college document, record, or instrument of identification;

(b) Tampering with an election conducted by or for college students; or

(c) Furnishing false information, or failing to furnish correct information, in response to the request or requirement of a college officer or employee.

(3) **Obstruction or disruption.** Obstruction or disruption of:

(a) Any instruction, research, administration, disciplinary proceeding, or other college activity, including the obstruction of the free flow of pedestrian or vehicular movement on college property or at a college activity; or

(b) Any activity that is authorized to occur on college property, whether or not actually conducted or sponsored by the college. 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.

(4) Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person or another person's property. For purposes of this subsection:

(a) Bullying is physical or verbal abuse, repeated over time, and involving a power imbalance between the aggressor and victim.

(b) Stalking is intentional and repeated following of another person, which places that person in reasonable fear that the perpetrator intends to injure, intimidate, or harass that person. Stalking also includes instances where the perpetrator knows or reasonably should know that the person is frightened, intimidated, or harassed, even if the perpetrator lacks such an intent.

(5) **Cyber misconduct.** Cyberstalking, cyberbullying, or online harassment. Use of electronic communications including, but not limited to, electronic mail, instant messaging, electronic bulletin boards, and social media sites to harass, abuse, bully, or engage in other conduct which harms, threatens, or is reasonably perceived as threatening the health or safety of another person. Prohibited activities include, but are not limited to, unauthorized monitoring of another's e-mail communications directly or through spyware, sending threatening e-mails, disrupting electronic communications with

spam or by sending a computer virus, sending false messages to third parties using another's e-mail identity, nonconsensual recording of sexual activity, and nonconsensual distribution of a recording of sexual activity.

(6) **Property violation.** Attempted or actual damage to, or theft or misuse of, real or personal property or money of:

(a) The college or state;

(b) Any student or college officer, employee, or organization;

(c) Any other member of the college community or organization; or

(d) Possession of such property or money after it has been stolen.

(7) **Failure to comply with directive.** Failure to comply with the direction of a college officer or employee who is acting in the legitimate performance of his or her duties, including failure to properly identify oneself to such a person when requested to do so.

(8) **Weapons.** Possession or use of firearms, explosives, dangerous chemicals, or other dangerous weapons, which can be used to inflict bodily harm or to damage real or personal property is prohibited on the college campus, at any other facilities leased or operated by the college, or at any activity under the administration or sponsorship of the college. Exceptions to this policy are permitted when the weapon is used in conjunction with an approved college instructional program, is carried by duly constituted law enforcement officer, or is otherwise permitted by law.

(9) **Hazing.** Hazing includes, but is not limited to, any initiation into a student organization or any pastime or amusement engaged in with respect to such an organization that causes, or is likely to cause, bodily danger or physical harm, or serious mental or emotional harm to any student.

(10) **Alcohol, drug, and tobacco violations.**

(a) **Alcohol.** The use, possession, delivery, sale, or being visibly under the influence of any alcoholic beverage, except as permitted by law and applicable college policies.

(b) **Marijuana.** The use, possession, delivery, sale, or being visibly under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or being under the influence of any legend drug, including anabolic steroids, androgens, or human growth hormones as defined in chapter 69.41 RCW, or any other controlled substance under chapter 69.50 RCW, except as prescribed for a student's use by a licensed practitioner.

(d) **Tobacco, electronic cigarettes, and related products.** Consistent with its efforts to promote wellness, fitness, and a campus environment conducive to work, study, and activities for staff, students, and the public, Clark College maintains a tobacco-free campus. The use of tobacco, electronic cigarettes, and related products in any building owned, leased, or operated by the college or in any location is prohibited. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

(11) **Lewd conduct.** Conduct which is obscene, lewd, or indecent.

(12) **Disorderly conduct.** Conduct which disrupts campus operations or the educational environment, is disturbing the peace, or assisting or encouraging another person to disturb the peace.

(13) **Discriminatory conduct.** Discriminatory conduct which harms or adversely affects any member of the college community because of her/his race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. Such finding is considered an aggravating factor in determining a sanction for such conduct.

(14) **Sexual misconduct.** The term "sexual misconduct" includes sexual harassment, sexual intimidation, and sexual violence.

(a) **Sexual harassment.** The term "sexual harassment" means unwelcome conduct of a sexual nature, including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature that is sufficiently serious as to deny or limit, and that does deny or limit, based on sex, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members.

(b) **Sexual intimidation.** The term "sexual intimidation" incorporates the definition of "sexual harassment" and means threatening or emotionally distressing conduct based on sex including, but not limited to, nonconsensual recording of sexual activity or the distribution of such recording.

(c) **Sexual violence.** ~~((The term "sexual violence" incorporates the definition of "sexual harassment" and means a physical sexual act perpetrated without clear, knowing, and voluntary consent, such as committing a sexual act against a person's will, exceeding the scope of consent, or where the person is incapable of giving consent including rape, sexual assault, sexual battery, sexual coercion, sexual exploitation, gender- or sex-based stalking. The term further includes acts of dating or domestic violence. A person may be incapable of giving consent by reason of age, threat or intimidation, lack of opportunity to object, disability, drug or alcohol consumption, or other cause-))~~ "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.

(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family law, or anyone else protected under domestic or family violence law.

(iv) Dating violence means violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such a relationship will be gauged by its length, type, and frequency of interaction.

(v) Stalking means intentional and repeated harassment or following of another person, which places that person in reasonable fear that the perpetrator intended 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.

(vi) 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.

(15) **Harassment.** Unwelcome and offensive conduct including verbal, nonverbal, or physical conduct, that is directed at a person because of such person's protected status and that is sufficiently serious as to deny or limit, and that does deny or limit, the ability of a student to participate in or benefit from the college's educational program or that creates an intimidating, hostile, or offensive environment for other campus community members. Protected status includes a person's race; color; national origin; sensory, mental or physical disability; use of a service animal; gender, including pregnancy; marital status; age (40+); religion; creed; genetic information; sexual orientation; gender identity; veteran's status; or any other legally protected classification. See "Sexual misconduct" for the definition of "sexual harassment." Harassing conduct may include, but is not limited to, physical conduct, verbal, written, social media, and electronic communications.

(16) **Retaliation.** ~~Retaliation((, intimidation, threats, or coercion against anyone who asserts a right protected by)) against any individual for reporting, providing information, exercising one's rights or responsibilities, or otherwise being involved in the process of responding to, investigating, or addressing allegations or violations of federal, state, or local law, or college policies including, but not limited to, student conduct code provisions prohibiting discrimination and harassment((, or who cooperates in an investigation)).~~

(17) **Theft or misuse of electronic resources.** Theft or other misuse of computer time or other electronic information resources of the college. Such misuse includes, but is not limited to:

(a) Unauthorized use of such resources or opening of a file, message, or other item;

(b) Unauthorized duplication, transfer, or distribution of a computer program, file, message, or other item;

(c) Unauthorized use or distribution of someone else's password or other identification;

(d) Use of such time or resources to interfere with someone else's work;

(e) Use of such time or resources to send, display, or print an obscene or abusive message, text, or image;

(f) Use of such time or resources to interfere with normal operation of the college's computing system or other electronic information resources;

(g) Use of such time or resources in violation of applicable copyright or other law;

(h) Adding to or otherwise altering the infrastructure of the college's electronic information resources without authorization; or

(i) Failure to comply with the student computing resources policy. [http://www.clark.edu/student\\_services/computing\\_resources/policy.php](http://www.clark.edu/student_services/computing_resources/policy.php)

(18) **Unauthorized access.** Unauthorized possession, duplication, or other use of a key, keycard, or other restricted means of access to college property, or unauthorized entry onto or into college property.

(19) **Safety violations.** Safety violations include any nonaccidental conduct that interferes with or otherwise compromises any college policy, equipment, or procedure relating to the safety and security of the campus community, including tampering with fire safety equipment and triggering false alarms or other emergency response systems.

(20) **Abuse or misuse of any procedures.** Abuse or misuse of any of the procedures relating to student complaints or misconduct including, but not limited to:

(a) Failure to obey a subpoena;

(b) Falsification or misrepresentation of information;

(c) Disruption or interference with the orderly conduct of a proceeding.

(d) Interfering with someone else's proper participation in a proceeding;

(e) Destroying or altering potential evidence or attempting to intimidate or otherwise improperly pressure a witness or potential witness;

(f) Attempting to influence the impartiality of, or harassing or intimidating, a student conduct committee member; or

(g) Failure to comply with any disciplinary sanction(s) imposed under this student conduct code.

(21) **Motor vehicles.** 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.

(22) **Violation of other laws or policies.** Violation of any federal, state, or local law, rule, or regulation or other college rules or policies, including college traffic and parking rules.

(23) **Ethical violation.** The breach of any generally recognized and published code of ethics or standards of professional practice that governs the conduct of a particular profession for which the student is taking a course or is pursuing an educational goal or major.

In addition to initiating discipline proceedings for violation of the student conduct code, the college may refer any violations of federal, state, or local laws to civil and criminal authorities for disposition. The college shall proceed with student disciplinary proceedings regardless of whether the underlying conduct is subject to civil or criminal prosecution.

AMENDATORY SECTION (Amending WSR 98-19-066, filed 9/18/98, effective 10/19/98)

**WAC 132N-300-001 Statement of policy.** ((+)) The college affirms a commitment to freedom from discrimination for all members of the college community. The responsibility for, and the protection of, this commitment extends to students, faculty, administration, staff, contractors, and those who develop or participate in college programs. It encompasses every aspect of employment and every student and community activity. The college expressly prohibits discrimination ((against any person)) on the basis of race, ((sex, creed, religion,)) color, national origin, age, perceived or actual physical or mental disability, pregnancy, genetic information, sex, sexual orientation, gender identity, marital status, ((the presence of any physical, sensory or mental disability, or status as a disabled or Vietnam-era veteran)) creed, religion, honorably discharged veteran or military status, or use of a trained guide dog or service animal. Harassment is a form of discrimination.

((2) Definitions.

(a) ~~Sexual harassment is a form of sex discrimination which involves the inappropriate introduction into the work or learning situation of sexual activities or comments that demean or otherwise diminish one's self worth on the basis of gender. Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment under any of the following conditions:~~

(i) ~~When submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic standing.~~

(ii) ~~When submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting such individual.~~

(iii) ~~When such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, offensive working or educational environment.~~

~~Sexual harassment often involves relationships of unequal power and contains elements of coercion— as when compliance with requests for sexual favors becomes a criterion for granting work, study, or grading benefits. However, sexual harassment may also involve relationships among equals, e.g., student to student, as when repeated sexual advances or demeaning verbal behavior have a harmful effect on a person's ability to study or work.~~

Gender discrimination is the process of making a distinction in favor of, or against, a person or persons on the basis of sex rather than on individual merit. If gender is taken into account when making a decision regarding an employee, except when it is a *bona fide* occupational qualification or is otherwise authorized by law, or if an employee is sexually harassed, that person has been subjected to gender discrimination:

(b) ~~Racial harassment is defined as physical or verbal conduct that is maliciously intended to harass, intimidate, or humiliate a person or persons on account of race, color, or national origin and that causes severe emotional distress, physical injury or damage or destruction to the property of another, or threatens and places a specific person or group of persons in reasonable fear of harm.~~

(c) ~~Disabilities. People with disabilities are persons with a physical, mental, or sensory impairment which substantially limits one or more major life activities. An individual is disabled if he or she meets at least any one of the following tests:~~

(i) ~~He or she is substantially impaired with respect to a major life activity; or~~

(ii) ~~He or she has a record of such an impairment; or~~

(iii) ~~He or she is regarded as having such an impairment.~~

(d) ~~Disabled veteran. A person entitled to disability compensation under laws administered by the U.S. Department of Veterans Affairs, or a person whose discharge or release from active duty was for a disability incurred or aggravated in the line of duty.~~

(e) ~~Vietnam-era veteran. A person who served on active duty for a period of more than one hundred eighty days, any part of which occurred between August 5, 1964, and May 7, 1975, and was discharged or released from duty with other than a dishonorable discharge.)~~

AMENDATORY SECTION (Amending WSR 98-19-066, filed 9/18/98, effective 10/19/98)

**WAC 132N-300-010 Grievance procedure.** ((+)) Any person who believes she or he has been discriminated against or harassed by Clark College or its employee(s) or agent(s) on the basis of race, sex, creed, religion, color, national origin, age, sexual orientation, marital status, the presence of any physical, sensory or mental disability, or status as a disabled or Vietnam-era veteran, may lodge a formal grievance. The college president delegates investigation of grievances on the basis of disability or disabled or Vietnam-era veteran status to the ADA Compliance Officer (ADACO). The college president delegates investigation of all other discrimination/harassment grievances to the college's affirmative action officer (AAO).

(a) ~~Complaints should be filed within one hundred eighty days from the most recent incident. Where extraordinary circumstances are shown, the one hundred eighty-day limit may be waived by the ADACO or AAO.~~

(b) ~~If the individualized education program (IEP) of a student provides for enrollment at Clark College or contracted special education or related services to be provided by the college, the school district which developed the IEP shall remain responsible for insuring that the requirements of~~

chapter 392-172 WAC and the Individuals with Disabilities Education Act, 20 U.S.C. secs. 1400 *et seq.*, including review and revisions to the IEP, are met.

(2)(a) **Step 1: Informal meeting.** In an attempt to informally resolve the concern, the complainant may request a meeting with the individual believed to have committed the discriminatory act (the respondent) or with the appropriate supervisor or president's designee. The time period in which attempts to informally resolve the concern are made shall not exceed thirty working days from the time the complaint is lodged.

(b) **Step 2: Formal grievance procedure.** The complainant may initiate a formal grievance.

(i) A formal grievance must be filed in writing and must set forth the specific grievance(s) raised by the complainant, including the dates, times, places, and circumstances surrounding his or her complaint. A form for this purpose is available from the ADACO or AAO; however, any written document is acceptable. Formal complaints may not be filed by e-mail.

(ii) Upon receipt of the grievance, the ADACO or AAO will conduct an investigation which includes, but is not limited to, interview(s) with the complainant, the respondent, and any additional persons necessary to determine the merit(s) of the complaint. The investigation should be completed within thirty working days.

(iii) Upon completion of the investigation, the ADACO or AAO will present a written report, including findings and conclusions to the complainant and the respondent. The report may include a recommendation by the ADACO or AAO for appropriate disciplinary or corrective action, or the report may be sent to the designated dean or administrator to determine appropriate disciplinary or corrective action.

(iv) If the complaint is found to be false and malicious, the ADACO or AAO will notify the designated dean or administrator for possible disciplinary action against the complainant.

(e) **Step 3: Presidential appeal.** If the complaint is not resolved at Step 2 the complainant may appeal to the college president.

(i) The appeal must be made in writing within twenty-one days after the report is issued.

(ii) Within twenty days after receiving the appeal, the college president or the president's designee will conduct the presidential review and report the results in writing to both the complainant and the respondent. The college president may affirm or modify the report, remand the case for further investigation, or dismiss the appeal.

(iii) The written results of the presidential review will be considered final. No further intra-institutional appeal exists.

(3) If desired, inquiries or appeals beyond the institutional level may be directed to:

(a) Equal employment opportunity commission.

(b) Washington state human rights commission.

(c) Regional director, office of civil rights, department of education.) (1) **Introduction.**

Clark College recognizes its responsibility for investigation, resolution, implementation of corrective measures, and monitoring 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 Amendments Act, the Age Discrimination Act of 1975, the Violence Against Women Reauthorization Act and Washington state's law against discrimination, chapter 49.60 RCW and their implementing regulations. To this end, Clark College has enacted policies prohibiting discrimination against and harassment of members of these protected classes. 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.

The responsibility for, and the protection of this commitment, extends to students, faculty, administration, staff, contractors, and those who develop or participate in college programs. It encompasses every aspect of employment and every student and community activity.

Any person who believes she or he has been discriminated against or harassed by Clark College or its employee(s) or agent(s) on the basis of any status listed in subsection (1) of this section, may request informal assistance and/or lodge a formal grievance. If the complaint is against that designee, the complainant should report the matter to the president's office for referral to an alternate designee.

The college president designates investigation of grievances on the basis of race, creed, religion, color, national origin, age, political affiliation, and/or marital status to: Associate vice-president of human resources and Title IX coordinator, human resources, Baird administration building (BRD) 133, 360-992-2619. The college president designates investigation of grievances on the basis of sex, sexual orientation, gender identity, or gender expression to: Special advisor for diversity and equity and Title IX deputy coordinator, office of diversity and equity, Gaiser hall (GHL) 214, 360-992-2355, and dean of student success and retention and Title IX deputy coordinator, student affairs office, Gaiser hall (GHL) 204, 360-992-2900. The college president designates investigation of grievances on the basis of any physical, sensory or mental disability, or status as a disabled, or honorably discharged veteran or military status to: ADA compliance coordinator, disability support services, Penguin Union building (PUB) 013, 360-992-2065.

The presidential designee:

- Will accept all complaints and referrals from college employees, applicants, students, and visitors.

- Will make determinations regarding how to handle requests by complainants for confidentiality.

- Will keep accurate records of all complaints and referrals for the required time period.

- May conduct investigations or delegate and oversee investigations conducted by a designee.

- May impose interim remedial measures to protect parties during investigations of discrimination or harassment.

- Will issue written findings and recommendations upon completion of an investigation.



- 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, a formal complaint form is available online at [http://www.clark.edu/clark-and-community/about/policies-procedures/grievance\\_procedure.php](http://www.clark.edu/clark-and-community/about/policies-procedures/grievance_procedure.php). Hardcopies of the complaint form are available at the following locations on campus: Office of diversity and equity, Gaiser hall (GHL) 214; student affairs office, Gaiser hall (GHL) 204; or human resources office, Baird administration building (BRD) 133.

## **(2) Definitions.**

(a) Complainant: Employee(s), applicant(s), student(s), or visitors(s) of Clark College who alleges that she or he has been subjected to discrimination or harassment due to his or her membership in a protected class.

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

(c) Consent: Knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Each party has the responsibility to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be at the time of the act of sexual intercourse or sexual contact actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.

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.

(d) 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.

(e) 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. 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:

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

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

(iii) Making, posting, e-mailing, texting, or otherwise circulating demeaning or offensive pictures, cartoons, graffiti, notes or other materials that relate to race, ethnic origin, gender or any other protected class.

(f) Protected class: 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.

(g) Resolution: The means by which the complaint is finally addressed. This may be accomplished through informal or formal processes, including counseling, mediation, or the formal imposition of discipline sanction.

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

(i) 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.

(i) 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.

(ii) 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.

(j) 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.

(i) Nonconsensual sexual intercourse is any sexual intercourse (anal, oral, or vaginal), however slight, with any object, by a person upon another person, that is without consent and/or by force. Sexual intercourse includes anal or vaginal penetration by a penis, tongue, finger, or object, or oral copulation by mouth to genital contact or genital to mouth contact.

(ii) Nonconsensual sexual contact is any intentional sexual touching, however slight, with any object, by a person upon another person that is without consent and/or by force. Sexual touching includes any bodily contact with the breasts, groin, mouth, or other bodily orifice of another individual, or any other bodily contact in a sexual manner.

(iii) Domestic violence includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

(iv) Dating violence 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.

(v) 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.

### **(3) 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, a formal complaint form is available online at [http://www.clark.edu/clark-and-community/about/policies-procedures/grievance\\_procedure.php](http://www.clark.edu/clark-and-community/about/policies-procedures/grievance_procedure.php). Hardcopies of the complaint form are available at the following locations on campus: Diversity center - GHL 214, vice-president of student affairs office - GHL 204, human resources office - BRD 133. Any person submitting a discrimination complaint shall be provided with a written copy of the college's antidiscrimination policies and procedures.

### **(4) Confidentiality and right to privacy.**

Clark College will seek to protect the privacy of the complainant to the full 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 Clark College policies and procedures. Although Clark 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 presidential designee.

Confidentiality requests and sexual violence complaints. The presidential designee 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 presidential designee will inform the complainant that maintaining confidentiality may limit the college's ability to fully respond to the allegations and that retaliation by the respondent and/or others is prohibited. If the complainant still insists that his or her name not be disclosed or that the college not investigate, the presidential designee will determine whether the college can honor the request and at the same time maintain a safe and nondiscriminatory environment for all members of the college community, including the complainant. Factors to be weighed during this determination may include, but are not limited to:

- The seriousness of the alleged sexual violence;
- The age of the complainant;
- Whether the sexual violence was perpetrated with a weapon;
- Whether the respondent has a history of committing acts of sexual violence or 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 presidential designee will notify the complainant of the decision and ensure that complainant's identity is disclosed only to the extent reasonably necessary to effectively conduct and complete the investigation.

If the college decides not to conduct an investigation or take disciplinary action because of a request for confidentiality, the presidential designee will evaluate whether other measures are available to limit the effects of the harassment and prevent its recurrence and implement such measures if reasonably feasible.

### **(5) Investigation procedure.**

Upon receiving a discrimination complaint, the college shall commence an impartial investigation. The presidential designee shall be responsible for overseeing all investigations. Investigations may be conducted by the presidential designee or his or her designee. If the investigation is assigned to someone other than the presidential designee, the presidential designee shall inform the complainant and respondent(s) of the appointment of an investigator.

(a) Interim measures. The presidential designee may impose interim measures to protect the complainant and/or respondent pending the conclusion of the investigation. Interim measures may include, but are not limited to, imposition of 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.

(b) 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 reason-

able 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 presidential designee. The presidential designee 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.

(c) Written notice of decision. The presidential designee will provide each party and the appropriate student services administrator or appointing authority with written notice of the investigative findings and of actions taken or recommended to resolve the complaint, subject to the following limitations:

(i) 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.

(ii) The complainant may be notified generally that the matter has been referred for disciplinary action.

(iii) The respondent shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint and shall be notified of referrals for disciplinary action.

Both the complainant and the respondent are entitled to review any final findings, conclusions, and recommendations, subject to any FERPA confidentiality requirements.

(d) Informal dispute resolution. Informal dispute resolution processes, 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.

(e) Final decision/reconsideration. Either the complainant or the respondent may seek reconsideration of the decision by the presidential designee. Requests for reconsideration shall be submitted in writing to the presidential designee within seven days of receiving the decision. Requests must specify which portion of the decision should be reconsidered and the basis for reconsideration. If no request for reconsideration is received within seven days, the decision becomes final. If a request for reconsideration is received, the presidential designee shall respond within seven days. The presidential designee shall either deny the request or, if the presidential designee determines that the request for recon-

sideration has merit, issue an amended decision. Any amended decision is final and no further reconsideration is available.

**(6) 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 these policies and procedures.

**(7) Limits to authority.**

Nothing in this procedure shall prevent the college president or designee from taking immediate disciplinary action in accordance with Clark College policies and procedures, and federal, state, and municipal rules and regulations.

**(8) Nonretaliation, intimidation, and coercion.**

Retaliation by, for, or against any participant (including complainant, respondent, witness, presidential designee, 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 presidential designee immediately.

**(9) 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:

Vancouver Police Department  
605 E. Evergreen Blvd.  
Vancouver, WA 98661  
360-487-7400  
[vanpd@cityofvancouver.us](mailto:vanpd@cityofvancouver.us)

Clark County Sheriff's Office  
707 W. 13th Street  
Vancouver, WA 98660  
Mailing address: P.O. Box 410  
Vancouver, WA 98666  
Main phone: 360-397-2211  
[sheriff@clark.wa.gov](mailto:sheriff@clark.wa.gov)

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.

**(10) Other discrimination complaint options.**

Discrimination complaints may also be filed with the following federal and state agencies:

Washington State Human Rights Commission  
<http://www.hum.wa.gov/index.html>

U.S. Department of Education Office for Civil Rights  
<http://www2.ed.gov/about/offices/list/ocr/index.html>

Equal Employment Opportunity Commission  
<http://www.eeoc.gov/>

**WSR 15-15-063**  
**PERMANENT RULES**  
**GAMBLING COMMISSION**

[Order 713—Filed July 10, 2015, 12:13 p.m., effective August 10, 2015]

Effective Date of Rule: Thirty-one days after filing.

Purpose: At their July 2015 meeting, the commissioners adopted a petition for rule change authorizing a new amusement game for play by persons age twenty-one and over. The game allows the player to view the prize that is available before each play of the game without the insertion of money or any other thing of value. Prizes are awarded based upon the player's skill in correctly discerning a pattern and completing that pattern within a predetermined time period.

Citation of Existing Rules Affected by this Order: Amending WAC 230-13-005.

Statutory Authority for Adoption: RCW 9.46.070, 9.46.-0331.

Adopted under notice filed as WSR 15-09-074 on April 15, 2015.

Changes Other than Editing from Proposed to Adopted Version: Original language filed under WSR 15-09-074 states the games would be allowed for adults only. The adopted version clarifies that the games are allowed for persons age twenty-one and older and may only be operated by licensees where persons under the age of twenty-one are prohibited from entering.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 1, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 1, Repealed 0.

Date Adopted: July 10, 2015.

Susan Newer  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 07-15-064, filed 7/16/07, effective 1/1/08)

**WAC 230-13-005 Amusement games authorized.** (1) We authorize the ~~((eleven))~~ approved groups of amusement games set forth in this chapter. Operators must only operate amusement games that meet the standards of at least one of the authorized groups.

(2) Commercial businesses or nonprofit or charitable organizations may apply for licenses for amusement games.

(3) Charitable or nonprofit organizations also may conduct amusement games without a license when authorized to do so under RCW 9.46.0321 and 9.46.0331.

(4) Operators must operate amusement games as either:

(a) An attended amusement game.

(i) An "attended amusement game" means an amusement game that requires the presence or assistance of a person (attendant) in the regular operation of the game; and

(ii) These games must award a merchandise prize to players if players achieve the objective with one cost of play; or

(b) A coin or token activated amusement game.

(i) A "coin or token activated amusement game" means an amusement game that uses a mechanical, electronic, or electro-mechanical machine to allow the player to activate the game by inserting coins or tokens; and

(ii) These games may dispense merchandise prizes, or coupons, tickets, or tokens redeemable for merchandise prizes.

(5) Amusement games must not award additional plays as prizes.

**NEW SECTION**

**WAC 230-13-067 Group 12—Electronic puzzle and pattern solving game standards.** In Group 12 games, players must correctly solve a puzzle to win a prize, which is viewable by the player before each puzzle is presented.

(1) The game must allow the player to view the prize that is available before each play of the game without the insertion of money or any other thing of value; and

(2) Prizes are awarded based upon the player's skill in correctly discerning a pattern and completing that pattern; and

(3) When a game presents a potential winning pattern, the puzzle must be capable of completion within the predetermined time period; and

(4) Group 12 amusement games are for adults over the age of twenty-one only and may only be operated by licensees where persons under the age of twenty-one are prohibited from entering.

**WSR 15-15-065**  
**PERMANENT RULES**  
**GAMBLING COMMISSION**

[Order 714—Filed July 10, 2015, 1:17 p.m., effective August 9, 2015]

Effective Date of Rule: August 9, 2015.

Purpose: At their July 2015 meeting, the commissioners adopted rules to streamline regulations related to card games. The changes:

- Remove the nine player limit for Mini Baccarat when the game is operated according to the nonpatented approved game rules posted on our web site and without any modifications as allowed in WAC 230-15-040.
- Add a definition for gaming area and clarify the gaming area includes poker tables. The requirement for two levels of supervision was also removed.
- Remove detailed key control requirements to give licensees the flexibility to set key control standards that best meet their operational needs.

Citation of Existing Rules Affected by this Order: Amending WAC 230-15-005, 230-15-460 and 230-15-630; and repealing WAC 230-15-635, 230-15-640, 230-15-645, 230-15-650, 230-15-655, 230-15-660, 230-15-665, 230-15-670, and 230-15-675.

Statutory Authority for Adoption: RCW 9.46.070, 9.46.-0282.

Adopted under notice filed as WSR 15-09-076 on April 15 [16], 2015.

Changes Other than Editing from Proposed to Adopted Version: The three rules relating to promotions were removed from this rules package for further review and will be brought back at a later date.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 9, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 9, Amended 3, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 9, Amended 3, Repealed 0.

Date Adopted: July 9, 2015.

Susan Newer  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-23-079, filed 11/18/08, effective 1/1/09)

**WAC 230-15-055 Limit on number of players at each table.** Card game licensees must only allow:

(1) Up to nine players or areas for wagering at any table in house-banked card games. This section does not apply to Mini-Baccarat when the game is operated according to the nonpatented approved game rules posted on the agency's web site and without any modifications as allowed in WAC 230-15-040.

(2) Up to ten players at any table in nonhouse-banked card games.

AMENDATORY SECTION (Amending WSR 08-11-044, filed 5/14/08, effective 7/1/08)

**WAC 230-15-460 Supervision requirements for house-banked card rooms.** (1) House-banked card game licensees must have at least one floor supervisor for each gambling ~~((area. Each supervisor may supervise up to seven tables. We must approve the arrangement of tables in the internal controls.~~

~~(2) Licensees must have two levels of supervision present on the business premises if more than ten tables are open. Poker tables operated in a separate gambling area are not included in the calculation of levels of supervision))~~ area/pit.

(2) Gambling area/pit means a self-contained group of card tables, including poker tables, physically separated from other tables. The separation may be due to the layout of the tables or physical barriers, such as walls, chains, or ropes.

(3) A card room employee may act as a dealer and a supervisor during the same shift as long as he or she does not sign forms as both the dealer and the supervisor.

AMENDATORY SECTION (Amending WSR 07-09-033, filed 4/10/07, effective 1/1/08)

**WAC 230-15-630 ((Restricting access and)) Controlling keys and restricting access.** House-banked card game licensees must:

(1) Use keys or electronic key control systems to control access to restricted areas of the business premises((-

~~(1) Licensees must install and keep key control boxes that, at least:~~

~~(a) Are constructed of metal with a minimum of one key-lock mechanism. We permit coded key boxes or combination key boxes; and~~

~~(b) Are attached to a permanent structure without the hardware used to attach the key box being visible; and~~

~~(c) Are tamper proof; and~~

~~(d) Store keys so that they are identifiable, have identification labels, and are displayed in numeric or alphabetic order; and~~

~~(2) Licensees may decide the location of key control boxes, but the location must not allow an individual to gain access to a restricted area that he or she would not otherwise be authorized to enter.~~

~~(3) If licensees locate key boxes in restricted areas, persons who are not authorized to enter those areas must give their key to the key box to an authorized person. The authorized person must then only open the key box in the presence of the unauthorized person or while under camera coverage)); and~~

(2) Restrict access to keys or electronic key control systems to only those licensed card room employees whose specific job functions and duties require access to them; and

(3) Keep a key control log in the format we require.

#### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 230-15-635	Electronic key control systems.
WAC 230-15-640	Keeping individual key control boxes for departments.
WAC 230-15-645	Keeping a key control log.
WAC 230-15-650	Keys for the gambling operations department.
WAC 230-15-655	Keys for the security department.
WAC 230-15-660	Keys for the accounting department.
WAC 230-15-665	Keys for the surveillance department.
WAC 230-15-670	Keeping a master key control box.

WAC 230-15-675 Key control box for the emergency key.

**WSR 15-15-068**  
**PERMANENT RULES**  
**UNIVERSITY OF WASHINGTON**

[Filed July 13, 2015, 8:58 a.m., effective August 13, 2015]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To amend chapter 478-168 WAC, Regulations for the University of Washington libraries, amendments to the chapter bring rules for the larger University of Washington libraries system as well as the Marian Gould Gallagher Law library, that is separately administered by the University of Washington School of Law, up-to-date with current technology, terminology, and best practices.

Citation of Existing Rules Affected by this Order: Amending WAC 478-168-070, 478-168-080, 478-168-092, 478-168-094, 478-168-096, 478-168-180, 478-168-310, and 478-168-380.

Statutory Authority for Adoption: RCW 28B.20.130.

Adopted under notice filed as WSR 15-09-132 on April 22, 2015.

Changes Other than Editing from Proposed to Adopted Version: WAC 478-168-310 was modified such that replacement charges could be incurred irrespective of overdue status whenever the materials were acknowledged to be unrecoverable.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 8, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 9, 2015.

Rebecca Goodwin Deardorff  
Director of Rules Coordination

**AMENDATORY SECTION** (Amending WSR 95-14-045, filed 6/28/95, effective 9/18/95)

**WAC 478-168-070 Marian Gould Gallagher Law Library—Access to facilities.** (1) Access to the Marian Gould Gallagher Law Library is limited. Only University of Washington faculty and University of Washington law school students may use the library as a study hall (i.e., for use not related to that library's materials). In general, the (reading room) library is open for use by any person having

need of the library's legal materials. However, when necessary to serve University of Washington faculty and University of Washington law school students effectively, the law librarian may restrict access to the library or any part of the library.

(2) ~~((The faculty library is for the use of University of Washington law faculty only, but books may be taken by library staff from the faculty library))~~ The law librarian may designate an area of the library for the exclusive use of faculty. Materials located in any area designated exclusively for faculty may be taken by library staff for the limited use of other patrons.

**AMENDATORY SECTION** (Amending WSR 95-14-045, filed 6/28/95, effective 9/18/95)

**WAC 478-168-080 Marian Gould Gallagher Law Library—Use of materials.** (1) In the use of library materials, the Marian Gould Gallagher Law Library serves the students, faculty, and staff of the law school, the students, faculty, and staff of other university departments, faculty of other colleges and universities, librarians of other libraries, judges, members of the Washington bar and persons who have a degree from the law school. The law librarian has discretion to specify other groups of patrons and to set priorities of use among all groups of patrons. However, University of Washington law school faculty and law school students have priority when other patrons need the same materials. The law librarian also has discretion to establish restrictions specific to particular library materials or a single library item.

(2) Circulation regulations may differ according to type of material and usage.

(3) Because of the reference nature of ~~((much))~~ some of the collection, ~~((many of the books))~~ some materials do not circulate and must be used in the library. The law librarian shall define the phrase "in the library."

(4) Each borrower is responsible for materials ~~((which))~~ he or she checks out at the circulation ~~((desks))~~ desk.

**AMENDATORY SECTION** (Amending WSR 95-14-045, filed 6/28/95, effective 9/18/95)

**WAC 478-168-092 Marian Gould Gallagher Law Library—Student identification cards—Conditions of use.** (1) ~~((To ensure prompt access to the library collection,))~~ University of Washington law school students must carry official ~~((law school))~~ identification cards ~~((issued at the time of enrollment in the school))~~ to enter the library when it is not staffed.

(2) An identification card is authorized for use only by the student whose name appears on the card.

(3) Student identification must be presented for the completion of each in-person circulation transaction.

(4) Each student must maintain current validation of the student's card.

(5) Each student ~~((shall))~~ must keep the ~~((library))~~ appropriate university office informed of changes of name and address.

AMENDATORY SECTION (Amending WSR 95-14-045, filed 6/28/95, effective 9/18/95)

**WAC 478-168-094 Marian Gould Gallagher Law Library—Official registration of other library users.** (1) All library users other than University of Washington (~~law school~~) faculty (~~and~~) staff, and (~~University of Washington law school~~) students must complete a registration (~~card~~) form for library records at the (~~main~~) circulation desk.

(2) Information required includes name, permanent address, (~~telephone number, and user category~~) and additional requested contact information.

(3) Each borrower (~~shall~~) must keep the (~~library~~) appropriate university office informed of changes of name, permanent address, (~~telephone number, and user category~~) and additional requested contact information.

AMENDATORY SECTION (Amending WSR 95-14-045, filed 6/28/95, effective 9/18/95)

**WAC 478-168-096 Marian Gould Gallagher Law Library—(~~Daily~~) Registration by library users—Procedures.** (1) All eligible library users other than University of Washington (~~law school~~) faculty (~~and~~) staff, and (~~University of Washington law school~~) students must present identification and register at the (~~main~~) circulation desk upon entering (~~and leaving~~) the library.

(2) (~~Proper~~) Identification and visitor's permits shall be as specified by the law librarian.

~~((3) When in the law library, all eligible library users other than University of Washington law school faculty and staff and University of Washington law school students must display a visitor's permit on the person or at the workplace when there. Visitor's permits are issued at the time of daily registration.~~

~~(4) Permits must be returned to the main circulation desk upon leaving the library.~~

~~(5) Failure to return permits may result in the revocation of library privileges.~~

AMENDATORY SECTION (Amending WSR 14-17-097, filed 8/19/14, effective 9/19/14)

**WAC 478-168-180 Identification card—Conditions of use.** (1) Each borrower is responsible for obtaining an official identification card from the appropriate university office or a library borrower's card from the library account services.

(2) An identification card is authorized for use only by the individual whose name appears on the card.

(3) Official identification must be presented for the completion of each in-person circulation transaction.

(4) Each borrower is responsible for materials checked out on (~~his/her~~) his or her University of Washington identification card or library borrower's card. Library materials are not to be loaned to others (~~except as designated in WAC 478-168-180(6)~~).

(5) (~~Campus~~) All borrowers are responsible for keeping the (~~registrar or payroll~~) appropriate university office informed of changes of address. (~~Off-campus borrowers are~~

~~responsible for keeping the library account services informed of changes of address.~~

~~(6) Each University of Washington faculty, academic personnel, administrative personnel, professional staff, visiting scholar, and other individuals as authorized by the dean of university libraries, may designate up to two proxies or couriers for the purpose of picking up materials for his/her use.)~~

AMENDATORY SECTION (Amending WSR 05-21-133, filed 10/19/05, effective 11/19/05)

**WAC 478-168-310 Fines and charges.** (1) All borrowers are subject to a uniform system of fines and charges for late return of library material and for replacement costs when required. The dean of university libraries or (~~his/her~~) his or her designee will set the schedule of fines and charges on a regular basis.

(2) The approved schedule of fines and charges will be available (~~online and in the Libraries Operations Manual~~) on the University of Washington libraries web site.

(3) Fines are monetary sanctions for the late return of material. (~~Fines are levied only when an overdue item is returned prior to billing.~~)

(4) (~~Billing charges are~~) A fee is levied to defray the costs incurred by the libraries in billing, processing sanctions, and other activities related to the recovery of material (~~that is substantially overdue~~).

(5) Replacement charges are levied to pay for the replacement of (~~substantially overdue~~) material. The replacement charges include the cost of the material and the cost of processing the material for the shelves. All library materials, regardless of fines and fees paid, remain state property.

(6) Binding, mending, and damage charges are levied to repair material, to prepare replacement materials for circulation or to compensate for the decreased value of materials due to irreparable damage.

AMENDATORY SECTION (Amending WSR 04-13-087, filed 6/17/04, effective 9/21/04)

**WAC 478-168-380 Appeal of library charges.** (1) The (~~library has~~) libraries have the right to reduce or forgive fines and charges for borrowers in accordance with the guidelines (~~specified in the Libraries Operations Manual~~) available on the University of Washington libraries web site. Borrowers can appeal unresolved problems to the library fines appeals committee.

(2) The libraries inform potential appellants of the availability of the appeals process at the time of billing and in all correspondence regarding the application of sanctions.

(3) Meetings of the libraries fines appeals committee are considered brief adjudicative procedures as defined by the Administrative Procedure Act (chapter 34.05 RCW). Committee meetings are conducted in conformance with the act and other applicable laws.

(4) A completed appeals form must be submitted within six months of billing for the charges to be appealed.

**WSR 15-15-070**  
**PERMANENT RULES**  
**DEPARTMENT OF LICENSING**

[Filed July 13, 2015, 11:27 a.m., effective August 13, 2015]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amend provisions of chapter 308-103 WAC, pertaining to rules of procedure for hearings conducted under RCW 46.20.308, to clarify, revise, and make technical corrections to hearing procedures and filing requirements. Add a new section, WAC 308-103-125, to specify format and length for briefs to be submitted for a hearing.

Citation of Existing Rules Affected by this Order: Amending WAC 308-103-020, 308-103-040, 308-103-050, 308-103-060, 308-103-070, 308-103-080, 308-103-090, 308-103-110, 308-103-130, 308-103-150, 308-103-170, 308-103-180, and 308-103-190.

Statutory Authority for Adoption: RCW 46.01.110 and 46.20.308.

Adopted under notice filed as WSR 15-09-094 on April 20, 2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 13, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 10, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 13, 2015.

Damon Monroe  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

**WAC 308-103-020 Definitions.** As used in this chapter, unless the context requires otherwise, the term:

- (1) "Department" refers to the department of licensing;
- (2) "Hearing" means a formal hearing as authorized and conducted pursuant to RCW 46.20.308(8);
- (3) "Hearing office" refers to the physical location from which a hearing officer conducts hearings under RCW 46.20.308. Where appropriate, the term "hearing office" also refers to the staff assigned to a hearing office;
- (4) "Hearing officer" means a person who is appointed by the director of the department to conduct hearings under RCW 46.20.308;
- (5) "Legal representative" means an attorney licensed and authorized to practice law in the state of Washington;
- (6) "Petitioner" refers to ~~((a driver))~~ an individual subject to the provisions of RCW 46.20.308 who has requested a hearing.

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

**WAC 308-103-040 Requests for hearings.** The request for a hearing shall be in compliance with the following requirements:

(1) The petitioner must submit his or her formal request for hearing:

(a) Within ~~((thirty))~~ twenty days of the date notice is given under RCW 46.20.308(6) if the petitioner submitted to a breath test;

(b) Within ~~((thirty))~~ twenty days of the date notice is given under RCW 46.20.308(6) if the petitioner is alleged to have refused the breath or blood test; or

(c) Within ~~((thirty))~~ twenty days of the date notice of the department's intention to suspend, revoke, or deny the petitioner's license, permit, or privilege to drive is given in the event notice is given by the department following a blood test;

(2) If a request for a hearing is mailed, it must be received by the department within seven days of the date the request was postmarked in order to be considered timely under this section. This provision may be waived if the request is received by the department within ~~((thirty))~~ twenty days of the date of arrest, or within ~~((thirty))~~ twenty days of the date notice is given in the event notice is given by the department following a blood test, or if the petitioner and the department agree to ~~((a waiver of))~~ waive the sixty-day hearing requirement;

(3) The request for a hearing shall be in writing. The petitioner may use the form provided by the department for this purpose or any other writing. The petitioner may request a hearing online if the petitioner meets the qualifications described on the web site at [www.dol.wa.gov](http://www.dol.wa.gov);

(4) The hearing request form provided by the department shall include a statement that if the parties or witness(es) are hearing or speech impaired and/or non-English speaking, a qualified interpreter will be appointed at no cost to the parties or witnesses. The form shall include a section where the petitioner may request an interpreter and where he or she may identify the language and/or nature of the interpretive services needed;

(5) The request for hearing shall include the following information with respect to the petitioner:

- (a) Full name;
- (b) Mailing address;
- (c) Daytime telephone number, including area code;
- (d) Date of birth; and
- (e) Driver's license number;

(6) If petitioner will have legal representation at the administrative hearing, the request shall also include the legal representative's name, mailing address, and daytime telephone number, including area code;

(7) The request for a hearing shall be submitted to the Department of Licensing, ~~((Driver Services Division,))~~ Hearings & Interviews, P.O. Box 9048, Olympia, Washington 98507-9048. If the petitioner is entitled to or ~~((applying))~~ applies for a waiver of the filing fee because of indigence, the request must be submitted to the Department of Licensing, ~~((Driver Services Division,))~~ Hearing & Interviews, P.O. Box 9031, Olympia, Washington 98507-9031;



(8) The written request for hearing shall be accompanied by the applicable nonrefundable filing fee, unless the petitioner is entitled to a waiver of the filing fee because of indigence, in which case a request and justification for the fee waiver shall accompany the hearing request;

(9) A petitioner who has been denied a court-appointed attorney on the underlying related criminal charge because he or she is deemed "not indigent" is not eligible for a fee waiver;

(10) Indigence may be established as follows:

(a) Written verification of court-appointed legal counsel on the associated underlying criminal charge;

(b) Written verification of current involuntary commitment to a public mental health facility;

(c) Verification of current receipt of general assistance, temporary assistance for needy families, refugee resettlement benefits, food stamps, supplemental security income, or medicaid; or

(d) Submission and approval of the department's "Application for Waiver of Hearing Fee" form;

(11) Failure to timely submit a hearing request and/or failure to include the filing fee or application for waiver with the hearing request shall be deemed a waiver of the petitioner's right to a hearing; and

(12) If a request for hearing is denied, the department shall notify the petitioner and the petitioner's legal representative, if any, stating the reason(s) for denial.

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

**WAC 308-103-050 Scheduling—Notice of hearing.**

(1) Upon receipt of a timely request for a hearing, the department shall schedule a telephone hearing within sixty days following the arrest or following the date the notice has been given by the department following a blood test, unless otherwise agreed to by the department and the person.

(2) The petitioner or petitioner's legal representative may state a preferred range of hearing dates or unavailable dates. To the extent that such requests can be accommodated within the applicable time limits and hearing officer availability, the department will attempt to do so.

(3) The department shall mail a hearing notice to the petitioner or petitioner's legal representative at least ten days prior to the date of the hearing.

(4) The department's scheduling notice and brochure will include the assigned hearing officer's name, a phone number at which he or she may be contacted, and other information concerning the administrative hearing. The department's notice will also include a telephone number and a TDD number that any party or witness may call to request special accommodations.

(5) The petitioner or petitioner's legal representative may request that all or part of the hearing be conducted "in person." Such request must be in writing stating the reasons therefore and directed to the assigned hearing officer immediately upon receipt of the scheduling notice. The hearing officer will have the sole discretion to grant or deny this request, and may require a waiver of the ~~((sixty-day hearing))~~ requirement that the hearing be held within sixty days, the

requirement that the hearing be held in the county of arrest, or both requirements as a condition to granting the request.

(6) Each party shall ensure that his or her address and telephone number on file is correct and shall immediately notify the department and/or hearing officer of any change of address or telephone number that occurs during the course of the proceeding.

(7) The administrative hearing may be reassigned to a different hearing officer without notice to the parties.

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02, effective 6/3/02)

**WAC 308-103-060 Notice of appearance.** If a petitioner has legal representation at the administrative hearing, the department shall be provided with the legal representative's name, address, and telephone number. The department may require the legal representative to file a written notice of appearance or to provide documentation that an absent petitioner has authorized the legal representative to appear on the party's behalf. The legal representative ~~((shall file a written notice of appearance and))~~ shall file a notice of withdrawal upon withdrawal of representation.

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

**WAC 308-103-070 Continuances.** (1) After a hearing has been scheduled, it may be continued, rescheduled, or adjourned only at the discretion of the hearing officer.

(2) Requests for a continuance, reschedule, or adjournment must be made in writing, to the assigned hearing officer, and shall include the basis for the request.

(3) Except in the case of an emergency, the hearing officer must receive the continuance request at least two business days before the scheduled hearing. Absent an emergency, requests made with less than two business days' notice may be summarily denied.

(4) The hearing officer may continue, adjourn, or reschedule at any time, including on the date of the administrative hearing.

(5) Hearings that are continued, rescheduled, or adjourned may be reset to a date within sixty days of the driver's arrest, or within sixty days of the date notice of the department's intention to suspend, revoke, or deny the petitioner's license, permit, or privilege to drive is given in the event notice is given by the department following a blood test, unless a written waiver of the sixty-day hearing requirement of RCW 46.20.308 accompanies the written continuance request, or unless the petitioner is deemed to have "waived" the statutory time frame.

(6) A petitioner is deemed to have waived the statutory requirement that the hearing be held within sixty days if petitioner requests an action that cannot be accommodated within the sixty-day period.

(7) A party shall not consider a hearing continued, rescheduled, or adjourned until notified by the hearing officer or his or her designee.

(8) The hearing officer may require the party who requests a continuance, reschedule, or adjournment to submit

documentary evidence that substantiates the reason for the request.

(9) A second request for a continuance, reschedule, or adjournment will only be granted in the event of an ~~((extreme))~~ emergency and at the discretion of the assigned hearing officer.

(10) Notwithstanding any provisions of this section to the contrary, a hearing officer may continue a hearing in the event a law enforcement officer who has been subpoenaed as a witness fails to appear. The hearing officer must continue a hearing in the event a law enforcement officer who has been subpoenaed as a witness fails to appear and the petitioner is a holder of a commercial driver's license or was operating a commercial motor vehicle at the time of the driver's arrest. A hearing continued under this subsection must be adjourned until such time as the subpoena may be enforced under RCW 7.21.060. Action taken by the hearing officer to enforce a subpoena issued on the petitioner's behalf is considered to be at the request of the petitioner for purposes of WAC 308-103-070(6).

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

**WAC 308-103-080 Deferred prosecutions—~~((Withdrawals))~~ Cancellation of hearings.** (1) In the event a petitioner elects to seek a deferred prosecution, ~~((the petitioner shall notify the assigned hearing officer and file a notice of Intent to Seek Deferred Prosecution, on a form provided by the department, with the hearing officer or the department. To))~~ he or she may be eligible for a stay~~((:))~~. The petitioner must not have previously entered a deferred prosecution program, must have taken the breath or blood test, and must indicate that he or she intends to seek a deferred prosecution. If the petitioner is eligible, a stay of the administrative action shall be entered on the driver's record pursuant to RCW 46.20.308~~((10))~~. ~~If the petitioner is not eligible, he or she will be so notified by the department and the administrative action will continue))~~ (9).

(2) If a stay is entered under subsection (1) of this section, the hearing will proceed and the results will be sent to the petitioner. As provided by RCW 46.20.308~~((10))~~ (9), the stay of the action shall continue but any appeal of the Findings and Conclusion must be undertaken within thirty days of service of the results.

(3) If the petitioner elects to ~~((withdraw))~~ cancel his or her request for a hearing, he or she must notify the department in writing of his or her intent to do so. Upon receiving such a request for a withdrawal, the department shall proceed with the administrative action against the petitioner's driving privilege, unless a stay has been entered on the driver's record due to the filing of a notice of Intent to Seek a Deferred Prosecution.

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

**WAC 308-103-090 Subpoenas.** (1) Subpoenas shall be issued and enforced, and witness fees paid, as provided in RCW 46.20.308~~((8))~~ (7). All subpoenas shall direct the wit-

ness to appear by telephone unless otherwise agreed to by the hearing officer.

(2) Every subpoena shall be submitted on a form approved by the department, available on the internet at [www.dol.wa.gov](http://www.dol.wa.gov), and must be signed and issued by a hearing officer. An approved form may be obtained from the department.

(a) A subpoena to a person to provide testimony at a hearing shall specify the date and time ~~((and place))~~ set for hearing.

(b) A subpoena duces tecum requesting a person to produce designated books, documents, or things under his or her control shall specify a time and place for producing the books, documents, or things. That time and place may be the time and place set for hearing, or another reasonably convenient time and place in advance of the hearing.

(3) A subpoena must be personally served by a suitable person over eighteen years of age, by exhibiting and reading it to the witness, or by giving him or her a copy thereof, or by leaving such copy at the place of his or her abode. Proof of service shall be made by affidavit or declaration under penalty of perjury. Service by certified mail must be preapproved by the hearing officer. Service of a subpoena on a law enforcement officer may be effected by serving the subpoena upon the officer's employer.

(4) The hearing officer may condition issuance of the subpoena upon advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(5) A subpoena must be properly served ten days prior to the date of the hearing, excluding weekends and holidays, in order to have full force and effect.

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

**WAC 308-103-110 Video evidence.** If the petitioner wishes to submit video evidence, the petitioner shall be responsible for the costs of preparing a copy to be admitted as evidence. Video evidence shall be submitted sufficiently in advance of the hearing to allow the hearing officer the opportunity to review it prior to the hearing. The hearing officer may require a time waiver from the petitioner in order to reschedule the hearing and satisfy this provision when needed. Video evidence must be submitted in a format which allows it to be viewed on the department's equipment. Any costs associated with this requirement is to be the responsibility of the petitioner.

#### NEW SECTION

**WAC 308-103-125 Format and length for briefs.** (1) The text of any brief must be typed or printed in a proportionally spaced typeface and must appear in print as twelve point or larger type with no more than ten characters per inch and double-spaced. The same typeface and print size should be standard throughout the brief, except that footnotes may appear in print as ten point or larger type and be the equivalent of single-spaced. Quotations may be the equivalent of single-spaced. Except for materials in an appendix, the type-

written or printed material in the brief may not be reduced or condensed by photographic or other means.

(2) Briefs shall not exceed twenty pages. For the purpose of determining compliance with this rule, appendices are not included. For good cause, the hearing officer may grant a motion to file an over-length brief.

AMENDATORY SECTION (Amending WSR 02-11-011, filed 5/3/02, effective 6/3/02)

**WAC 308-103-130 Interpreters.** (1) When an impaired person as defined in chapter 2.42 RCW or a non-English-speaking person as defined in chapter 2.43 RCW is a party or witness in an adjudicative proceeding, the department shall appoint an interpreter to assist the party or witness during the hearing. Appointment, qualifications, waiver, compensation, visual recording, and ethical standards of interpreters in hearings are governed by the provisions of chapters 2.42 and 2.43 RCW.

(a) If a hearing impaired person is a party or witness to an adjudicative proceeding, a qualified interpreter shall be appointed to interpret the proceedings. Under RCW (~~2.42-050~~) 2.42.110, a "qualified interpreter" means a visual language interpreter who is certified by the state or is certified by the registry of interpreters for the deaf.

(b) Whenever an interpreter is appointed to assist a non-English-speaking person, a qualified or certified interpreter shall be appointed to assist the person during the hearing. Under RCW 2.43.020, a "qualified interpreter" means a person who is able readily to interpret or translate spoken and written English for a non-English-speaking person. A "certified interpreter" means an interpreter who is certified by the office of the administrator for the courts.

(2) Relatives of any participant in a proceeding and employees of the department involved in a proceeding shall not be appointed as interpreters in the proceeding unless authorized by the petitioner.

(3) Mode of interpretation:

(a) The consecutive mode of foreign language interpretation shall be used unless the hearing officer and interpreter agree that simultaneous interpretation will advance fairness and efficiency;

(b) Interpreters for hearing impaired persons shall use the simultaneous mode of interpretation unless an intermediary interpreter is needed. If an intermediary interpreter is needed, interpreters shall use the mode that the interpreter considers to provide the most accurate and effective communication with the hearing impaired person;

(c) When an impaired or non-English-speaking person is a party to a proceeding, the interpreter shall translate all statements made by other hearing participants, unless waived by the petitioner. The hearing officer shall ensure that sufficient extra time is provided to permit translation and the hearing officer shall ensure that the interpreter translates the entire proceeding to the party to the extent that the party has the same opportunity to understand all statements made during the proceeding as a nonimpaired or English-speaking party listening to uninterpreted statements would have.

(4) The department shall pay interpreter fees and expenses.

(5) Every interpreter shall, before beginning to interpret, take an oath that a true interpretation will be made to the person being examined of all the proceedings in a language or in a manner which the person understands, and that the interpreter will repeat the statements of the person being examined to the hearing officer conducting the proceedings, in the English language, to the best of the interpreter's skill and judgment.

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

**WAC 308-103-150 Conduct of hearings.** Hearings are open to public observation. To the extent that a hearing is conducted by telephone or other electronic means, the availability of public observation is satisfied by giving members of the public an opportunity to hear or inspect the agency's record. The hearing officer's authority includes, but shall not be limited to, the authority to:

- (1) Determine the order of presentation of evidence;
- (2) Administer oaths and affirmations;
- (3) Issue subpoenas pursuant to RCW 46.20.308(~~(8)~~);
- (4) Rule on procedural matters, objections, and motions;
- (5) Rule on offers of proof and receive relevant evidence;
- (6) Order the exclusion of witnesses upon a showing of good cause;
- (7) Afford the petitioner the opportunity to respond, present evidence, conduct cross-examination, and submit rebuttal evidence. The hearing officer may question witnesses to develop any facts deemed necessary to fairly and adequately decide the matter;
- (8) Call additional witnesses and request and/or obtain additional exhibits deemed necessary to complete the record and receive such evidence subject to full opportunity for cross-examination and rebuttal by the petitioner;
- (9) Examine and admit the official records of the department, subject to full opportunity, including the opportunity to request a continuance if needed, for cross-examination and rebuttal by the petitioner;
- (10) Examine and admit public records, including but not limited to maps, policy and procedure manuals, breath testing equipment manuals and the Washington state patrol breath test section web site at any time before and during the hearing, subject to full opportunity, including the opportunity to request a continuance if needed, for cross-examination and rebuttal by the petitioner;
- (11) Regulate the course of the hearing and take any appropriate action necessary to maintain order during the hearing;
- (12) Permit or require oral argument or briefs and determine the time limits for submission thereof;
- (13) Issue an order of default;
- (14) Recess the hearing to a later time to accommodate scheduling conflicts. Hearings are ordinarily scheduled to be one hour in length;
- (15) Take any other action necessary and authorized by any applicable statute or rule; and

(16) Waive any requirement of these rules unless petitioner shows that he or she would be prejudiced by such a waiver.

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

**WAC 308-103-170** (~~Temporary license~~) **Reserved.**  
(~~A temporary license issued by a law enforcement officer pursuant to RCW 46.20.308 may be extended when:~~

~~(1) A hearing is conducted and a decision on the outcome of the hearing is taken under advisement by the hearing officer; or~~

~~(2) A hearing is continued or rescheduled outside of the initial sixty-day effective period of the temporary license.)~~

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

**WAC 308-103-180 Final order.** (1) Every decision and order shall:

~~((1))~~ (a) Be correctly captioned as to the name of the department of licensing and name of the proceeding;

~~((2))~~ (b) Designate all parties and representatives participating in the proceeding;

~~((3))~~ (c) Contain a final order disposing of all contested issues; and

~~((4))~~ (d) Contain a statement describing the right to appeal.

(2) In the event the original hearing officer is unavailable, the department may assign the case to another hearing officer to either hear the case if the record has not closed, or in a case where the record is closed, make a determination as to the finding of fact and conclusions of law based on the record submitted.

AMENDATORY SECTION (Amending WSR 06-15-081, filed 7/14/06, effective 8/14/06)

**WAC 308-103-190 Reconsideration and appeals.** (1) The petitioner's rights to appeal are provided in RCW 46.20.308~~((9))~~ (8), and nothing herein is intended to detract from that statute.

(2) Grounds for a petition for reconsideration are limited to evidence or legal argument which are material to the petitioner and were not produced at the time of the hearing, or for other good and sufficient reason as determined by the hearing officer.

(3) The petition must state with particularity any new evidence or new legal argument that is proposed and why it could not have been discovered using due diligence prior to the hearing. The petition must specify with particularity the portions of the initial order to which the petition applies.

(4) A petition for reconsideration of a final order shall be filed with the hearing officer who signed that final order, within ten days of the date the final order is mailed to the petitioner.

(5) The petition shall be reviewed by the hearing officer who entered the original final order, if reasonably available. If the original hearing officer assigned to the case is unavailable, the department, within its discretion, may assign the

case to another hearing officer to preside over the motion. The disposition shall be in the form of a written order denying the petition, granting the petition and dissolving or modifying the final order, or granting the petition and setting the matter for further hearing.

(6) If the petition is granted in whole or in part, a new order shall be issued in the same form as the original order, and shall include the designation "amended" in its title. This amended order shall reference the petition for reconsideration in its preamble, which sets out what the hearing officer considered. Any amended order shall include the "Findings of Fact and Conclusions of Law" from the original final order with amendments.

(7) The relief granted pursuant to a petition for reconsideration is limited to review of the designated evidence and/or argument as identified in the petition. At the hearing officer's discretion, a supplemental hearing may be scheduled. Such a petition is not grounds for a new hearing, and the record already established shall remain undisturbed.

(8) A petition for reconsideration does not stay the department's action on the petitioner's driving privilege as ordered by the original final order. A petitioner seeking a stay must file a separate petition for that purpose. The hearing officer will grant a stay only if the hearing officer determines that it is likely that the petitioner will prevail and the action be reversed and that denying the stay will create irreparable harm to the petitioner. If the hearing officer grants such a petition for a stay, the hearing officer shall sign an order releasing the action and crediting any time already served, and subsequently sign an order sustaining or reversing the action, as determined by the amended final order. Disposition denying a stay is not subject to review.

(9) An amended final order shall be issued either denying reconsideration or, in the event reconsideration is granted, dissolving or modifying the original final order. The date of the amended final order begins the thirty-day period for the petitioner to appeal the amended final order, and there is no longer a right to appeal the original final order.

(10) The filing of a petition for reconsideration is not a prerequisite for filing an appeal. An order denying reconsideration is not subject to appeal.

## WSR 15-15-071

### PERMANENT RULES

### GREEN RIVER COLLEGE

[Filed July 13, 2015, 12:07 p.m., effective August 13, 2015]

Effective Date of Rule: Thirty-one days after filing.

Purpose: On December 18, 2014, the board of trustees for the tenth college district approved changing the name of the college from "Green River Community College" to "Green River College." These proposed rule changes implement the name change throughout Title 132J WAC. The word "community" is removed from all references to Green River Community College and Community College District Ten. In addition, the proposed changes in WAC 132J-276-100, 132J-276-040, 132J-276-120, and 132J-276-110 are allowed under expedited rule making, RCW 34.05.353 (1)(c),

to make name changes, address changes, and clarify language in rules.

Green River College's rules need to be amended to reflect the college's new name, to clarify that records are redacted and not deleted, to remove a gender-specific reference to the president, and to clarify the location for filing public record requests and for holding regular board meetings.

Citation of Existing Rules Affected by this Order: Amending WAC 132J-108-040 Application for adjudicative proceeding, 132J-116-010 Purpose for adopting rules, 132J-116-021 Definitions, 132J-126-010 Purpose, 132J-126-030 Definitions, 132J-126-070, Denial of access to Green River Community College, 132J-126-080 Rights of ownership of works, 132J-128-200 Board policy on tenure and dismissals, 132J-141-010 Prohibited activities, 132J-150-010 Use of college facilities, 132J-150-060 Prohibited conduct at college facilities, 132J-155-010 Statement of purpose, 132J-155-020 Definitions, 132J-155-040 Additional requirements for non-college groups, 132J-160-010 Purpose, 132J-160-020 Definitions, 132J-164-010 Purpose of the Buckley Family Educational Rights and Privacy Act policy for Green River Community College, 132J-164-020 Definitions, 132J-276-010 Purpose, 132J-276-020 Definitions, 132J-276-030 Description of central and field organization of Community College District No. 10, 132J-276-040 Operations and procedures, 132J-276-100 Exemptions, 132J-276-110 Review of denials of public records requests, 132J-276-120 Protection of public records, 132J-276-900 Appendix "A"—Request for public record to Community College District No. 10, 132J-300-010 Grievance procedure—Sex discrimination, and 132J-325-010 State Environmental Policy Act (SEPA).

Statutory Authority for Adoption: RCW 28B.50.140, 34.02.353 [34.05.353].

Adopted under notice filed as WSR 15-09-001 on Wednesday, April 1, 2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 28, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 28, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 28, Repealed 0.

Date Adopted: June 23, 2015.

Allison Friedly  
Executive Director  
of College Relations

AMENDATORY SECTION (Amending WSR 90-22-067, filed 11/5/90, effective 12/6/90)

**WAC 132J-108-040 Application for adjudicative proceeding.** An application for adjudicative proceeding shall be in writing. Application forms are available at the following address:

Office of the President  
Green River ((Community)) College  
12401 S.E. 320th Street  
Auburn, WA 98002

Written application for an adjudicative proceeding should be submitted to the above address within twenty days of the agency action giving rise to the application, unless provided for otherwise by statute or rule.

AMENDATORY SECTION (Amending WSR 94-04-052, filed 1/31/94, effective 3/3/94)

**WAC 132J-116-010 Purpose for adopting rules.** Pursuant to RCW 28B.50.140(10), the board of trustees of Green River ((Community)) College, District 10, is granted authority to make rules and regulations for pedestrian and vehicular traffic on property owned, operated, or maintained by the college district. The rules and regulations contained in this chapter are adopted under that authority for the following purposes:

- (1) To protect and control pedestrian and vehicular traffic;
- (2) To assure access at all times for emergency traffic;
- (3) To minimize traffic disturbance during class hours; and
- (4) To facilitate the operation of the ((community)) college by assuring access for vehicles and regulating the use of parking spaces.

AMENDATORY SECTION (Amending WSR 94-04-052, filed 1/31/94, effective 3/3/94)

**WAC 132J-116-021 Definitions.** As used in this chapter:

- (1) "Board" shall mean the board of trustees of Green River ((Community)) College, District 10, state of Washington.
- (2) "Campus" shall mean any and all public lands owned, operated, or maintained by Green River ((Community)) College, District 10, state of Washington.
- (3) "Campus security officer" shall mean an independent contractor or employee of the college who is designated by the vice-president for business affairs as being responsible for campus traffic control, parking, and security.
- (4) "College" shall mean Green River ((Community)) College, District 10, state of Washington.
- (5) "Faculty member" or "academic employee" shall mean any employee of Green River ((Community)) College, District 10, state of Washington whose employment is as a teacher, counselor, librarian or academic department head, except an administrator.
- (6) "Parking permit" shall mean a writing issued under the authority of the vice president for business affairs which

grants a license to its authorized holder to park a designated vehicle on the campus for a time period and under conditions stated thereon.

(7) "Permanent" parking permits shall mean permits which are valid, as specified thereon, for a school term or a portion thereof exceeding one month.

(8) "School term" shall mean, unless otherwise designated, the time period commencing with the summer quarter of a ((community)) college calendar year and extending through the immediately subsequent fall, winter, and spring quarters.

(9) "Staff member" shall mean a contracted or classified employee of Green River ((Community)) College, District 10, state of Washington.

(10) "Student" shall mean any person who is enrolled in Green River ((Community)) College.

(11) "Temporary" parking permits shall mean permits which are valid for a specific period designated on the permit up to a maximum of one month.

(12) "Vehicle" shall mean an automobile, truck, motor cycle, motor scooter, or other motor-driven vehicle.

(13) "Vice-president for business affairs" shall mean the college employee designated with that job title or with the responsibilities of that title by the president, and any person designated by the vice-president to act for her/him on any matter(s) arising under this chapter.

(14) "Visitor" shall mean any person other than a student, faculty member, staff member, or officer of the college, who lawfully comes upon the campus for purposes which are in keeping with the college's role as an institution of higher education in the state of Washington.

**AMENDATORY SECTION** (Amending WSR 14-24-129, filed 12/3/14, effective 1/3/15)

**WAC 132J-126-010 Purpose.** (1) Green River ((Community)) College, an agency of the state of Washington, provides a variety of educational opportunities for students; namely the opportunities to examine the academic, vocational, technical, cultural, social, and recreational aspects of society. Green River ((Community)) College as an institution of society must maintain conditions conducive to the effective performance of its functions. Consequently, Green River ((Community)) College has special expectations regarding the conduct of students. Student conduct that detracts from, or interferes with, the accomplishment of college purposes is not acceptable.

(2) The student is a member of the community at large, and as such has the rights and responsibilities of any citizen. In addition, admission to Green River ((Community)) College carries with it the presumption that students will conduct themselves as responsible members of the college community. This includes an expectation that students will obey the law, will comply with rules and regulations of the college, will maintain a high standard of integrity and honesty, and will respect the rights, privileges, and property of other members of the college community.

(3) The following rules regarding the conduct of students are adopted in order to provide students a full understanding of the rules that will enable the college to maintain conditions

conducive to the effective performance of the college's functions. Sanctions for violations of the rules of student conduct will be administered by the college in the manner provided by said rules. When violation(s) of laws of the state of Washington and/or the United States are also involved, the college may refer such matters to the appropriate authorities. In cases of minors, this conduct may also be referred to parents or legal guardians.

(4) The office of judicial programs, under the leadership of the vice-president of student affairs, maintains and administers the student code of conduct for Green River ((Community)) College. The office of judicial programs and Green River ((Community)) College strive to engage our students to become civic minded citizens who positively contribute to society and achieve their educational goals. The office of judicial programs seeks to educate students as to their rights, responsibilities, and expectations as members of Green River ((Community)) College while providing a fair and educational process through which alleged violations of the code of conduct are adjudicated.

**AMENDATORY SECTION** (Amending WSR 14-24-129, filed 12/3/14, effective 1/3/15)

**WAC 132J-126-030 Definitions.** The following definitions shall apply for the purpose of this student conduct code:

"Assembly" is any overt activity engaged in by two or more persons, the object of which is to gain publicity, advocate a view, petition for a cause or disseminate information to any person, persons, or groups of persons.

"Business day" means a weekday, excluding weekends and college holidays.

"Cheating" is defined as intentional deception in producing or creating academic work. Cheating includes, but is not limited to:

- (a) Intentional plagiarism;
- (b) Selling or giving your own completed work to others who intend to turn it in as their own;
- (c) Purchasing or accepting the work of others with the intent of turning it in as your own;
- (d) Acquiring and/or using teachers' editions of textbooks, without the permission of the specific instructor, in order to complete your course assignments;
- (e) Obtaining or attempting to obtain an examination prior to its administration;
- (f) Referring to devices, materials or sources not authorized by the instructor;
- (g) Receiving assistance from another person when not authorized by the instructor;
- (h) Providing assistance to another person when not authorized by the instructor;
- (i) Taking an examination for another person;
- (j) Obtaining or attempting to obtain another person to take one's own examination;
- (k) Falsifying laboratory results or copying another person's laboratory results; and
- (l) Falsifying or attempting to falsify the record of one's grades or evaluation.

"College" means Green River ((Community)) College.

"College facilities" includes all buildings, structures, grounds, office space, and parking lots.

"College groups" shall mean individuals or groups who are currently enrolled students or current employees of the college, or guests of the college who are sponsored by a recognized student organization, employee organization, or the administration of the college.

"College official" includes any person employed by the college, performing assigned administrative or professional responsibilities.

"College premises" shall include all campuses of the college, wherever located, and includes all land, buildings, facilities, vehicles, equipment, and other property owned, used, or controlled by the college.

"Complainant" means any person who submits a charge alleging that a student violated the student code. When a student believes that she/he has been a victim of another student's misconduct, the student who believes she/he has been a victim will have the same rights under this student code as are provided to the complainant, even if another member of the college community submitted the charge himself or herself.

"Conduct review officer" is the vice-president of student affairs or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is authorized to reassign any and all of the conduct review officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

"Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

"Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or a dismissal are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

"Expressive activity" includes, but is not necessarily limited to, informational picketing, petition circulation, the distribution of informational leaflets or pamphlets, speech making, demonstrations, rallies, appearances of speakers in outdoor areas, protests, meetings to display group feelings or sentiments and/or other types of assemblies to share information, perspectives or viewpoints.

"Fabrication" is defined as intentional misrepresentation of an activity done by a student for an academic project or practicum. Fabrication includes, but is not limited to:

- (a) Counterfeiting data, research results, information, or procedures with inadequate foundation in fact;
- (b) Counterfeiting a record of internship or practicum experiences;
- (c) Submitting a false excuse for absence or tardiness; and
- (d) Unauthorized multiple submission of the same work; sabotage of others' work.

"Faculty member" means any person hired by the college to conduct classroom, counseling, or teaching activities or

who is otherwise considered by the college to be a member of its faculty.

"Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

- (a) Hand delivery of the document to the specified college official or college official's assistant; or
- (b) By sending the document by e-mail and first class mail to the specified college official's office and college e-mail address.

Papers required to be filed shall be deemed filed upon actual receipt during office hours at the office of the specified college official.

"May" is used in the permissive sense.

"Member of the college community" includes any person who is a student, faculty member, college official or any other person employed by the college. A person's status in a particular situation shall be determined by the vice-president of student affairs or designee.

"Noncollege groups" shall mean individuals, or combinations of individuals, who are not currently enrolled students or current employees of the college and who are not officially affiliated or associated with, or invited guests of a recognized student organization, recognized employee group, or the administration of the college.

"Organization" means number of persons who have complied with the formal requirements for college recognition/registration.

"Plagiarism" is defined as using others' original ideas in your written or spoken work without giving proper credit.

(a) Ideas include, but are not limited to:

- (i) Facts;
- (ii) Opinions;
- (iii) Images;
- (iv) Statistics;
- (v) Equations;
- (vi) Hypotheses;
- (vii) Theories.

(b) Plagiarism can occur in two ways: Intentional and unintentional.

(c) Ways that intentional plagiarism occur include, but are not limited to:

- (i) Turning in someone else's work as your own;
- (ii) Copying words or ideas from someone else without giving credit;
- (iii) Failing to put a quotation in quotation marks;
- (iv) Giving incorrect information about the source of a quotation;
- (v) Changing words but copying the sentence structure of a source without giving credit;
- (vi) Copying so many words or ideas from a source that it makes up the majority of your work, whether you give credit or not.

(d) Unintentional plagiarism may occur when a student has tried in good faith to document their academic work but fails to do so accurately and/or thoroughly. Unintentional plagiarism may also occur when a student has not had course work covering plagiarism and documentation and is therefore unprepared for college academic writing or speaking.

"Policy" means the written regulations of the college as found in, but not limited to, the student code, the college web page and computer use policy, and catalogs.

"Respondent" is the student against whom disciplinary action is initiated.

"Service" is the process by which a document is officially delivered to a party. Unless otherwise provided, service upon a party shall be accomplished by:

- (a) Hand delivery of the document to the party; or
- (b) By sending the document by e-mail and by certified mail or first class mail to the party's last known address.

Service is deemed complete upon hand delivery of the document or upon the date the document is e-mailed and deposited in the mail.

"Shall" is used in the imperative sense.

"Student" includes all persons taking courses at or through the college, whether on a full-time or part-time basis, and whether such courses are credit courses, noncredit courses, online courses, or otherwise. Persons who withdraw after allegedly violating the code, who are not officially enrolled for a particular term but who have a continuing relationship with the college, or who have been notified of their acceptance for admission are considered students.

"Student conduct officer" is a college administrator designated by the president or vice-president of student affairs to be responsible for implementing and enforcing the student conduct code. The president or vice-president of student affairs is authorized to reassign any and all of the student conduct officer's duties or responsibilities as set forth in this chapter as may be reasonably necessary.

"The president" is the president of the college. The president is authorized to delegate any and all of his or her responsibilities as set forth in this chapter as may be reasonably necessary.

"Vice-president of student affairs" means the college administrator who reports to the college president, who serves as the college's student judicial affairs administrator, and who is responsible for administering the student rights and responsibilities code. The vice-president of student affairs may designate a student conduct officer to fulfill this responsibility.

AMENDATORY SECTION (Amending WSR 14-24-129, filed 12/3/14, effective 1/3/15)

**WAC 132J-126-070 Denial of access to Green River ((Community)) College.** (1) The vice-president of student affairs may deny admission to a prospective student, or continued attendance to an enrolled student, if it reasonably appears that the student would not be competent to profit from the curriculum offerings of the college, or would, by the student's presence or conduct, create a disruptive atmosphere within the college or a substantial risk of actual harm to self or other members of the campus community.

(2) Denial of access decisions may be appealed, as or like disciplinary actions, to the student conduct committee.

AMENDATORY SECTION (Amending WSR 14-24-129, filed 12/3/14, effective 1/3/15)

**WAC 132J-126-080 Rights of ownership of works.** It shall be the policy of Green River ((Community)) College that employees of the college shall not use students' published or unpublished works for personal gain without written consent of the student.

AMENDATORY SECTION (Amending WSR 94-04-053, filed 1/31/94, effective 3/3/94)

**WAC 132J-128-200 Board policy on tenure and dismissals.** (1) In accordance with RCW 28B.50.852, the board of trustees of College District No. 10, the appointing authority of Green River ((Community)) College, adopts this rules chapter to implement RCW ((28B.50.850-869)) 28B.50.850 - 28B.50.869.

(2) The board of trustees recognizes the importance of faculty tenure and appropriate tenure review and dismissal review processes in a higher education institution. The board further recognizes its own ultimate statutory responsibilities in these regards. Accordingly, the board reserves all of its statutory powers and rights regarding the awarding of faculty tenure and the dismissal of faculty, except as expressly provided otherwise in this chapter.

(3) The board also recognizes the important role of the faculty and the faculty's bargaining representative in helping to determine the college's procedures for awarding tenure and dismissing faculty((—)) and helping to implement those procedures. Accordingly, the board will continue to negotiate with that bargaining representative to include major aspects of the tenure and dismissal review processes in the faculty collective bargaining agreements.

(4) These rules are intended to avoid unnecessary duplication of the controlling statutes and/or currently effective provisions of a faculty collective bargaining agreement, while providing for situations not covered thereby.

AMENDATORY SECTION (Amending Order 75-3, filed 12/16/75)

**WAC 132J-141-010 Prohibited activities.** It shall be prohibited on or in property either owned, controlled or operated by Green River ((Community)) College, District No. 10, for anyone to use or have on his/her person firearms or solid explosives, except duly commissioned law enforcement officers and other individuals who receive written prior approval from the president of the college or his designee. Sanctions for violations of this rule may include, but are not limited to, suspension, dismissal and/or expulsion or removal from campus.

AMENDATORY SECTION (Amending WSR 14-24-129, filed 12/3/14, effective 1/3/15)

**WAC 132J-150-010 Use of college facilities.** Because Green River ((Community)) College is an educational institution provided and maintained by the people of the state, its campus, buildings, properties, and facilities shall be reserved at all times for those activities which either are related



directly to its educational mission or are justifiable on the basis of their contributions to the cultural, social, or economic development of the state.

AMENDATORY SECTION (Amending WSR 14-24-129, filed 12/3/14, effective 1/3/15)

**WAC 132J-150-060 Prohibited conduct at college facilities.** (1) State law relative to public institutions governs the use or possession of intoxicants on campus or at college functions. The use or possession of unlawful narcotics or drugs, not medically prescribed, on college property or at college functions, is prohibited. Students obviously under the influence of intoxicants, unlawful drugs or narcotics while in college facilities shall be subject to disciplinary action.

(2) A lottery or any other form of gambling is prohibited at Green River ((Community)) College.

(3) The use of tobacco, electronic cigarettes, and related products is not allowed on college premises.

(4) Destruction of property is also prohibited by state law in reference to public institutions.

AMENDATORY SECTION (Amending WSR 14-24-129, filed 12/3/14, effective 1/3/15)

**WAC 132J-155-010 Statement of purpose.** Green River ((Community)) College is an educational institution provided and maintained by the people of the state of Washington. College facilities are reserved primarily for educational use including, but not limited to, instruction, research, public assembly of college groups, student activities and other activities directly related to the educational mission of the college. The public character of the college does not grant to individuals the right to substantially interfere with, or otherwise disrupt the normal activities for and to which the college's facilities and grounds are dedicated. Accordingly, the college is designated a public forum opened for the purposes recited herein and further subject to the time, place, and manner provisions set forth in these rules.

The purpose of the time, place, and manner regulations set forth in this policy is to establish procedures and reasonable controls for the use of college facilities for both college and noncollege groups. It is intended to balance the college's responsibility to fulfill their mission as state educational institutions of Washington with the interests of college groups and noncollege groups who are interested in using the campus for purposes of constitutionally protected speech, assembly or expression. The college recognizes that college groups should be accorded the opportunity to utilize the facilities and grounds of the college to the fullest extent possible. The college intends to open its campus to noncollege groups to the extent that the usage does not conflict with the rights of college groups or substantially disrupt the educational process.

AMENDATORY SECTION (Amending WSR 14-24-129, filed 12/3/14, effective 1/3/15)

**WAC 132J-155-020 Definitions.** "College facilities" or "campus" includes all buildings, structures, grounds, office space, and parking lots.

"College group" means individuals who are currently enrolled students or current employees of Green River ((Community)) College or individuals who are sponsored by faculty, a recognized student organization or a recognized employee group of the college.

"Noncollege group" means individuals or groups who are not currently enrolled students or current employees of Green River ((Community)) College.

"Public forum areas" means those areas of campus that the college has chosen to be open as places for expressive activities protected by the first amendment, subject to reasonable time, place or manner provisions.

"Sponsor" means that when a college group invites a noncollege group onto campus, the college group will be responsible for the activity and will designate an individual to be present at all times during the activity. The sponsor will ensure that those participating in the sponsored activity are aware of the college's rules and policies governing the activity. This definition does not apply to noncollege groups that rent college facilities.

AMENDATORY SECTION (Amending WSR 14-24-129, filed 12/3/14, effective 1/3/15)

**WAC 132J-155-040 Additional requirements for noncollege groups.** (1) College facilities may be rented by noncollege groups in accordance with the college's facilities use policy. Noncollege groups may otherwise use college facilities in accordance with Green River ((Community)) College's rules.

(2) The college designates its grounds and outdoor spaces as the public forum area(s) for use by noncollege groups for first amendment activities on campus. Nothing in these rules prohibits noncollege groups from engaging in first amendment activities at open public meetings, subject to the requirements of RCW 42.30.050.

(3) Noncollege groups may use the public forum areas for first amendment activities between the hours of 6:00 a.m. and 10:00 p.m. on days that the college is open to the general public.

(4) Before engaging in first amendment activities, all noncollege groups are encouraged to sign in and notify the college of the noncollege group's presence on campus and to acknowledge receipt of these rules and to ensure that there are no scheduling conflicts. This notice does not involve any application or approval process, and therefore, the ability to use designated areas will not be denied unless they are already reserved for use by another group. This notice is intended to provide the college with knowledge of the noncollege group's presence on campus so that the college can notify the appropriate members of its staff whose services might be needed or impacted by the use of the designated area. When signing in, the individual or group are encouraged to provide the following information:

(a) The name, address, and telephone number of the individual, group, entity, or organization sponsoring the activity (hereinafter "the sponsoring organization");

(b) The name, address, and telephone number of a contact person for the sponsoring organization;

(c) The date, time, and requested location of the activity;

(d) The type of sound amplification devices to be used in connection with the activity, if any; and

(e) The estimated number of people expected to participate in the activity.

AMENDATORY SECTION (Amending WSR 84-11-021, filed 5/11/84)

**WAC 132J-160-010 Purpose.** The board of trustees of ((Community)) College District No. 10 proposes the adoption of policies for administering the refund of tuition and special course/program connected fees when a student withdraws from college or reduces class load.

AMENDATORY SECTION (Amending WSR 84-11-021, filed 5/11/84)

**WAC 132J-160-020 Definitions.** (1) "Withdraw" - When a student formally leaves college by completing the forms and procedures established by the college.

(2) "Misconduct" - When a student has violated a college rule or policy which results in dismissal from college.

(3) "Tuition" - Fees collected by ((Community)) College District No. 10 which include the general tuition fees, operating fees and the services and activities fees.

(4) "Special course/program connected fees" - Fees other than tuition required for enrollment (i.e., equipment fees, laboratory material fees, etc.).

AMENDATORY SECTION (Amending Order 77-3, filed 8/30/77)

**WAC 132J-164-010 Purpose of the Buckley Family Educational Rights and Privacy Act policy for Green River ((Community)) College.** (1) The Family Educational Rights and Privacy Act of 1974 requires that colleges adopt policies and guidelines concerning the rights of students to inspect their educational records and the releasing of such records to third parties. The act also provides that such students shall have the right of hearings to correct or delete inaccurate, misleading or inappropriate data. The act also provides that students shall be informed of the categories of records maintained by the college which are related and identifiable to the student.

(2) Green River ((Community)) College is committed to conform to the minimum requirements of Section 438, Public Law 90-247 Title IV, as amended, 88 Stat 571-574 (20 U.S.C. 1232g) otherwise known as the Buckley Amendment Family Educational Rights and Privacy Act.

(3) Green River ((Community)) College is also committed to conform to the minimum requirements of the statement of the rights and responsibilities of the student body of Green River ((Community)) College (chapter 132J-120 WAC((—)))- See Appendix).

(4) In compliance with the above-stated guidelines this policy is designed to insure continued confidentiality of student records and to govern the release of personally identifiable information therein.

AMENDATORY SECTION (Amending Order 77-3, filed 8/30/77)

**WAC 132J-164-020 Definitions.** (1) "Administrative unit" shall mean any one of a number of offices under the direction of a particular administrator, and set up to maintain a variety of records and processes for the college.

(2) "Administrator" shall mean those employees whose job duties are administrative by job description and who exercise supervisory or other managerial responsibilities over other employees.

(3) "Classified person" shall mean any employee who is contracted for a job that is listed and classified with the higher education personnel board of the state of Washington.

(4) "College" shall mean Green River ((Community)) College, District 10, state of Washington and the personnel thereof, and any other ((community)) college centers or facilities established within District 10, state of Washington.

(5) "Confidentiality" shall mean the state of being held in secrecy or privacy, so as not to be available to third parties.

(6) "Coordinator of admissions" is the college employee who is charged with the responsibility for maintaining applications, transcripts from other institutions, closed program records, and other records required or developed in the admissions process.

(7) "Credentials" shall mean those records and recommendations kept on file by the placement office for job or college placement purposes.

(8) "Dean for students" shall mean the dean for students of Green River ((Community)) College, District 10, state of Washington.

(9) "Directory information" includes the following information relating to a student: The student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous educational agency or institution attended by the student, and other similar information.

(10) "Educational records" are official transcripts, documents, references, or other such information which is in writing and is preserved as evidence.

(11) "Faculty" shall mean any employee of Green River ((Community)) College, District 10, state of Washington who has employment as a teacher, counselor, librarian, or other position for which the training, experience, and responsibilities are comparable as determined by the appointing authority, except administrative appointments.

(12) "Financial aids officer" is the college employee who is charged with the responsibility for maintaining applications for financial aids, student financial records, records of financial aids awards, work-study, and other information as may pertain to the operations of the financial aid office.

(13) "Identifiable information" shall mean any record or information of such a nature as to aid in or cause the identification of the person to whom it relates.

(14) "Placement officer" is the college employee who is charged with the responsibility for maintaining credentials, recommendations, and other information as may relate to the placement office.

(15) "President" is the chief executive of the college appointed by the board of trustees.

(16) "Registrar" is the college administrative employee who is charged with the responsibility for maintaining transcripts, grades, and grade rosters.

(17) "Student" is any person enrolled at the college.

(18) "Student body of Green River (~~Community~~) College" includes all persons who are enrolled in classes at the college.

(19) "Student body president" shall mean the person elected to the position so-titled by a vote of the student body of Green River (~~Community~~) College.

(20) "Third parties" shall mean any and all persons and/or organizations other than the college or the student.

AMENDATORY SECTION (Amending Order 73-2, filed 5/14/73)

**WAC 132J-276-010 Purpose.** The purpose of this chapter shall be to ensure compliance by (~~the Community~~) College District No. 10 with the provisions of chapter 1, Laws of 1973 (Initiative 276), Disclosure—Campaign finances—Lobbying—Records; and in particular with sections 25-32 of that act, dealing with public records.

AMENDATORY SECTION (Amending Order 73-2, filed 5/14/73)

**WAC 132J-276-020 Definitions.** (1) **Public records.** "Public record" includes any writing containing information relating to the conduct of governmental or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

(2) **Writing.** "Writing means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds; or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents."

(3) (~~Community~~) **College District No. 10.** (~~The Community~~) College District No. 10 is an agency organized by statute pursuant to RCW 28B.50.040. (~~The Community~~) College District No. 10 shall hereinafter be referred to as the "district." Where appropriate, the term district also refers to the staff and board of trustees employees of the district.

AMENDATORY SECTION (Amending Order 73-2, filed 5/14/73)

**WAC 132J-276-030 Description of central and field organization of (~~Community~~) College District No. 10.** District No. 10 is a (~~community~~) college district organized under RCW 28B.50.040. The administrative office of the district and its staff are located at Green River (~~Community~~) College, 12401 S.E. 320th Street, Auburn, Washington 98002.

AMENDATORY SECTION (Amending Order 73-2, filed 5/14/73)

**WAC 132J-276-040 Operations and procedures.** The district is established under RCW 28B.50.040 to implement the educational purposes established by RCW 28B.50.020. The college district is operated under the supervision and control of a board of trustees. The board of trustees is made up of five members each appointed by the governor to a term of five years. The trustees meet the third Thursday of each month at 4:00 p.m. in the (~~Holman Library~~) administration building board room of Green River (~~Community~~) College, unless public notice is given of a special meeting. At such time the trustees exercise the powers and duties granted it under RCW 28B.50.140.

AMENDATORY SECTION (Amending Order 73-2, filed 5/14/73)

**WAC 132J-276-100 Exemptions.** (1) The district reserves the right to determine that a public record requested in accordance with the procedures outlined in WAC 132J-276-080 is exempt under the provisions of section 31, chapter 1, Laws of 1973.

(2) In addition, pursuant to section 26, chapter 1, Laws of 1973, the district reserves the right to (~~delete~~) redact identifying details when it makes available or publishes any public record, in any cases when there is reason to believe that disclosure of such details would be an invasion of personal privacy protected by chapter 1, Laws of 1973. The public records officer will fully justify such (~~deletion~~) redaction in writing.

(3) All denials of requests for public records must be accompanied by a written statement specifying the reason for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the records withheld.

AMENDATORY SECTION (Amending Order 73-2, filed 5/14/73)

**WAC 132J-276-110 Review of denials of public records requests.** (1) Any person who objects to the denial of a request for a public record may petition for prompt review of such decision by tendering a written request for review. The written request shall specifically refer to the written statement by the public records officer or other staff member which constituted or accompanied the denial.

(2) Immediately after receiving a written request for review of a decision denying a public record, the public records officer or other administrative staff member denying the request shall refer to the president of the college. The president or (~~his~~) designee shall immediately consider the matter and either affirm or reverse such denial or consult with the attorney general to review the denial. In any case, the request shall be returned with a final decision, within two business days following the original denial.

(3) Administrative remedies shall not be considered exhausted until the district has returned the petition with a decision or until the close of the second business day following denial of inspection, whichever occurs first.

AMENDATORY SECTION (Amending Order 73-2, filed 5/14/73)

WAC 132J-276-120 Protection of public records.

Requests for public records shall be made in the administration building ((Holman library)) of Green River ((Community)) College. Public records and a facility for their inspection will be provided by the public records officer. Such records shall not be removed from the place designated for their inspection. Copies shall be made at Green River ((Community)) College. If copying facilities are not available at the college, the college will arrange to have copies made commercially according to the provisions of WAC 132J-276-090.

AMENDATORY SECTION (Amending Order 73-2, filed 5/14/73)

WAC 132J-276-900 Appendix "A"—Request for public record to ((Community)) College District No. 10.

APPENDIX "A"
REQUEST FOR PUBLIC RECORD TO
((COMMUNITY)) COLLEGE DISTRICT NO. 10

(a) Signature Signature (Please Print)
Name of Organization, if Applicable
Mailing Address of Applicant Phone Number
(b) Date Request Made at ((Community)) Time of Day Request Made
College District No. 10
(c) Nature of Request
(d) Identification Reference on Current Index Please Describe
(e) Description of Record, or Matter, Requested if not Identifiable by Reference to ((the Community)) College District No. 10's Current Index
Request: Approved By Date Public Records Officer
Denied Date

Reasons for Denial

Referred to By
Date Public Records Officer

AMENDATORY SECTION (Amending Order 76-5, filed 6/25/76)

WAC 132J-300-010 Grievance procedure—Sex discrimination. Title IX. Statement of policy (as required by Section 86.8(a) of Title IX). Green River ((Community)) College is covered by Title IX prohibiting sex discrimination in education. It is the policy of Green River ((Community)) College to ((insure)) ensure equal opportunity without regard to sex in all areas of admission, education, application for employment, and employment.

(1) Grievance procedure (as required by Section 86.8(b) of Title IX). Any applicant for admission, enrolled student, applicant for employment or employee of Green River ((Community)) College who believes he/she has been discriminated against on the basis of sex may lodge a formal institutional grievance by:

(a) Step 1. Informal meeting. Requesting an informal meeting with the individual believed to have committed the discriminatory act and attempt to informally resolve the concern.

(b) Step 2. Title IX official hearing. If not satisfied by the results of the informal meeting, the complainant may request in writing, stipulating the specific grievance(s), a meeting with the college Title IX officer will have arranged a meeting and reported the findings, in writing, to both the complainant and the person to whom the complaint is directed. It shall be at the discretion of the complainant to determine whether the Title IX officer will meet with each party separately or in a single meeting.

If the complainant requests a single meeting, that meeting shall be attended by the complainant, the person to whom the complaint is directed and the Title IX officer who will chair the meeting.

(c) Step 3. Presidential appeal. If the complaint is not resolved as a result of the hearing conducted by the Title IX officer, either the complainant or the person to whom the complaint is directed may request an appeal to the college president in writing within 10 days after receiving the written results of Title IX official hearing. Within 15 days after receiving the written request, the college president or the president's designee will conduct the presidential appeal hearing and report the findings in writing to both the complainant and the person to whom the complaint is directed.

(i) The college president or designee, the Title IX officer, the complainant and the person to whom the complaint is directed shall attend the presidential appeal hearing. The college president or presidential designee shall preside.

(ii) Either the complainant or person to whom the complaint is directed may have witnesses present at the discretion of the person presiding.

(iii) The written findings of the presidential appeal will be considered final. No further intra-institutional appeal exists.

(2) If desired, inquiries or appeals beyond the institutional level may be directed to: Regional Director, Office of Civil Rights, HEW, 1321 Second Avenue, Seattle, WA 98101; The Equal Opportunity Commission, 705 Second Avenue, Seattle, WA 98101; Human Rights Commission, 402 Evergreen Plaza Building, 7th and Capitol Way, Olympia, WA 98504.

AMENDATORY SECTION (Amending Order 76-3, filed 6/25/76)

**WAC 132J-325-010 State Environmental Policy Act (SEPA).** It shall be the policy of ~~((Community))~~ College District No. 10 that capital projects proposed and developed by the district shall comply with the provisions of chapter 43.21C RCW, the State Environmental Policy Act (SEPA); chapter 197-10 WAC, guidelines for SEPA implementation; and WAC 131-24-030, SEPA implementation rules of the state board for community college education.

In compliance with WAC 197-10-820, the district president, or an administrative officer designated by the district president, shall be the "responsible official" for carrying out this policy.

## WSR 15-15-072

### PERMANENT RULES

#### RECREATION AND CONSERVATION OFFICE

(Recreation and Conservation Funding Board)

[Filed July 13, 2015, 1:39 p.m., effective August 13, 2015]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of the rule making 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.

Citation of Existing Rules Affected by this Order: Repealing WAC 286-04-090; and amending WAC 286-04-010 through 286-04-060, 286-04-070, and 286-04-085.

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.

Adopted under notice filed as WSR 15-11-080 on May 19, 2015.

Changes Other than Editing from Proposed to Adopted Version: There are two changes between the text as proposed and adopted.

1. The definition of "acquisition" in WAC 286-04-010(1) is expanded to include donations.

2. Authority to designate state recreational trails pursuant to RCW 79A.35.030 is added to WAC 286-04-020(3).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 8, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 8, Repealed 1.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 13, 2015.

Leslie Connelly  
Natural Resource Policy Specialist  
Rules Coordinator

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;))~~ or donation 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) "Educa-

tion 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(~~(s)~~) 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](http://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 (~~(f))~~ Marine Recreation Land Act of 1964 (~~(-H)~~) (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);

(k) Recommend to the governor potential candidates for the position of the director as described in RCW 79A.25.150; and

(l) Designate state recreation trails pursuant to RCW 79A.35.030.

(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

(1) 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 15-15-101**

#### **PERMANENT RULES DEPARTMENT OF**

#### **SOCIAL AND HEALTH SERVICES**

(Developmental Disabilities Administration)

[Filed July 15, 2015, 2:20 p.m., effective August 15, 2015]

Effective Date of Rule: Thirty-one days after filing.

Purpose: 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.

Citation of Existing Rules Affected by this Order: Amending WAC 388-825-145.

Statutory Authority for Adoption: 42 C.F.R. 431.232(d).

Other Authority: RCW 71A.12.030.

Adopted under notice filed as WSR 15-11-073 on May 19, 2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or

Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 13, 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 unnecessary underscoring in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

**WSR 15-15-107**  
**PERMANENT RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed July 16, 2015, 9:55 a.m., effective August 16, 2015]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose is to assign to the office of administrative hearings (OAH) the authority to hear cases and issue final decisions on behalf of the office of superintendent of public instruction (OSPI) related to the withholding or recovering of federal funds as a result of school consolidated program reviews (CPR) of school district programs conducted in accordance with 34 C.F.R. § 80.40. The anticipated effect of the amendment of WAC 392-101-010, is authorizing OAH to hear and issue final decisions pertaining to federal fund withholding and recovery resulting from OSPI CPRs.

Citation of Existing Rules Affected by this Order: Amending WAC 392-101-010.

Statutory Authority for Adoption: RCW 34.05.220.

Adopted under notice filed as WSR 15-12-118 on June 3, 2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 8, 2015.

Randy Dorn  
Superintendent of  
Public Instruction

AMENDATORY SECTION (Amending WSR 13-18-077, filed 9/3/13, effective 10/4/13)

**WAC 392-101-010 Conduct of administrative hearings.** The superintendent of public instruction hereby assigns the following administrative hearings to the office of administrative hearings and hereby delegates to the administrative law judge conducting any such hearing the authority to ren-

der the final decision by the superintendent of public instruction:

(1) Nonresident transfer appeals pursuant to WAC 392-137-055(2).

(2) Special education hearings pursuant to chapter 392-172A WAC or as amended.

(3) Equal educational opportunity complaints pursuant to WAC 392-190-075.

(4) Professional certification appeals pursuant to WAC 181-86-150.

(5) National school lunch program, special milk program for children, school breakfast program, summer food service program, and child and adult care food program appeals pursuant to 7 C.F.R. Parts 210, 215, 220, 225 and 226.

(6) Traffic safety education appeals pursuant to WAC 392-153-001 through 392-153-070.

(7) Bus driver authorization appeals pursuant to chapter 392-144 WAC.

(8) Audit resolution appeals of agency management decisions regarding resolution of state and federal audit findings pursuant to chapter 392-115 WAC.

(9) Appeals of enforcement actions withholding or recovering funds, in whole or in part, taken as a result of consolidated program reviews of federal programs conducted in accordance with 34 C.F.R. Sections 80.40 and 80.43.

**WSR 15-15-115**  
**PERMANENT RULES**  
**SUPERINTENDENT OF**  
**PUBLIC INSTRUCTION**

[Filed July 16, 2015, 12:58 p.m., effective August 16, 2015]

Effective Date of Rule: Thirty-one days after filing.

Purpose: 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.

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 a dropout reengagement program.

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.

Citation of Existing Rules Affected by this Order: Amending WAC 392-700-015, 392-700-035, 392-700-042, 392-700-065, 392-700-085, 392-700-137, 392-700-152, 392-700-155, 392-700-160, 392-700-165, 392-700-175, and 392-700-195.

Statutory Authority for Adoption: RCW 28A.175.100.

Adopted under notice filed as WSR 15-11-077 on May 19, 2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 12, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 2, 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))~~ (b) Earns high school credit or college credit;
- ~~((c))~~ (c) 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))~~ (d) 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))~~ 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

~~(c) 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 of 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(~~(19)~~) (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 guid-

ance 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. College based high school equivalency certificate and adult basic education (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 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 institution, 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 ~~((or))~~ 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(~~((14))~~) (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~~((14))~~ (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 15-15-123**  
**PERMANENT RULES**  
**SEATTLE COLLEGES**

[Filed July 16, 2015, 4:33 p.m., effective August 16, 2015]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Update special exemptions rule for parking to comply with current practices.

Citation of Existing Rules Affected by this Order: Amending WAC 132F-116-100.

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

Adopted under notice filed as WSR 15-02-069 on January 6, 2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 9, 2015.

Jill Wakefield  
Chancellor

AMENDATORY SECTION (Amending WSR 15-02-072, filed 1/6/15, effective 2/6/15)

**WAC 132F-116-100 Parking—Special exemptions.**

(1) Consideration shall be given to provide parking for the following (on a space available basis):

(a) Members of the press, television and radio on official business.

(b) Vehicles owned by contractors and their employees working on campus construction.

(2) Members of the college board of trustees and retired employees of the Seattle College District will be given complimentary ~~((annual permits))~~ parking for college functions upon request.

(3) Federal, state, county, city and school district personnel on official business and in vehicles with tax exempt licenses.

**WSR 15-15-143**  
**PERMANENT RULES**  
**HEALTH CARE AUTHORITY**  
(Washington Apple Health)

[Filed July 17, 2015, 4:07 p.m., effective August 17, 2015]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The agency has created a new rule regarding client authorized representatives, specifically how to designate, serve as, and terminate an authorized representative.

Citation of Existing Rules Affected by this Order: Amending WAC 182-500-0010.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 15-09-136 on April 22, 2015.

Changes Other than Editing from Proposed to Adopted Version:

- In subsection (1)(a), "modalities" was changed to "methods." This change was made to improve comprehension with simpler language.
- The form number "(DSHS 14-532)" was placed after "Authorized Representative Designation Form" in subsections (1)(a) and (d). The sentence "The Authorized Representative Designation Form is available online at <https://www.dshs.wa.gov/fsa/forms> [<https://www.dshs.wa.gov/fsa/forms>]" was also added to subsection (1)(a). These changes were made so that the forms in the WAC could be easily located.
- In subsection (1)(d), "someone" was changed to "a person." In subsections (1)(d) and (2), "a person" was changed to "an individual." These changes were made to clarify whether or not the WAC was referring to the client or the AREP.
- In subsection (3), "Terminating an AREP" was changed to "Terminating authorized representation."

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 17, 2015.

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-01-021, filed 12/9/13, effective 1/9/14)

**WAC 182-500-0010 Medical assistance definition—**  
**A. "Administrative renewal"** means the agency uses verification from electronically available income data sources to verify and recertify a person's Washington apple health benefits for a subsequent certification period. A case is administratively renewed when the person's self-attested income is reasonably compatible (as defined in WAC 182-500-0095)

with the information available to the agency from the electronic data sources and the person meets citizenship, immigration, Social Security number, and age requirements.

**"Agency"** means the Washington state health care authority (HCA), created ~~((pursuant to))~~ under chapter 41.05 RCW.

**"Agency's designee"** means the Washington state department of social and health services (DSHS), created ~~((pursuant to))~~ under chapter 43.20A RCW.

**"Allowable costs"** are the documented costs as reported after any cost adjustment, cost disallowances, reclassifications, or reclassifications to nonallowable costs which are necessary, ordinary and related to the outpatient care of medical care clients ~~((are))~~ or not expressly declared nonallowable by applicable statutes or regulations. Costs are ordinary if they are of the nature and magnitude which prudent and cost-conscious management would pay.

**"Alternative benefits plan"** means the range of health care services included within the scope of service categories described in WAC 182-501-0060 available to persons eligible to receive health care coverage under the Washington apple health modified adjusted gross income (MAGI)-based adult coverage described in WAC 182-505-0250.

**"Ancillary services"** means additional services ordered by the provider to support the core treatment provided to the patient. These services may include, but are not limited to, laboratory services, radiology services, drugs, physical therapy, occupational therapy, and speech therapy.

**"Apple health for kids"** is the umbrella term for health care coverage for certain groups of children that is funded by the state and federal governments under Title XIX medicaid programs or Title XXI Children's Health Insurance Program, or solely through state funds (including the program formerly known as the children's health program). Funding for any given child depends on the program for which the child is determined to be eligible. Apple health for kids programs are included in the array of health care programs available through Washington apple health (WAH).

**"Attested income"** means a self-declared statement of a person's income made under penalty of perjury to be true. (See also "self-attested income.")

**"Authorization"** means the agency's or the agency's designee's determination that criteria are met, as one of the preconditions to the agency's or the agency's designee's decision to provide payment for a specific service or device. (See also "expedited prior authorization" and "prior authorization.")

**"Authorized representative"** ~~((means a family member, friend, organization or someone acting responsibly on behalf of a person who is designated by the person to act on his or her behalf in all matters relating to an application or renewal of Washington apple health or other ongoing communications with agency or its designee. The authorization must be made in writing and signed by the person unless the person's medical condition prevents such written authorization. Authority to act on behalf of an applicant or beneficiary under state law can substitute for the person's authorization. The power to act as an authorized representative ends when the person or a court appointed guardian of the person informs the agency or its designee that the representative is~~

~~no longer authorized to act on his or her behalf, or when the agency learns of a change in the legal authority upon which the authorization is based)) is defined under WAC 182-503-0130.~~

#### NEW SECTION

#### **WAC 182-503-0130 Authorized representative. (1) Designating an authorized representative (AREP).**

(a) A person may designate an AREP to act on his or her behalf in eligibility-related interactions with the medicaid agency by completing the agency's Authorized Representative Designation Form (DSHS 14-532), or through any of the methods described in 42 C.F.R. 435.907(a) and 42 C.F.R. 435.923. The Authorized Representative Designation Form is available online at <https://www.dshs.wa.gov/fsa/forms>.

(b) A court-appointed legal guardian with authority to make financial decisions on a person's behalf is that person's AREP.

(c) An agreement creating power of attorney (POA) that grants decision-making authority regarding the person's financial interactions with the agency establishes the POA as the AREP.

(d) If a person is unable to designate an AREP due to a medical condition, an individual may designate himself or herself as the AREP by signing the agency's Authorized Representative Designation Form (DSHS 14-532).

(2) **Serving as an AREP.** To serve as an AREP, an individual or organization must:

(a) Have a good-faith belief that the information he or she provides to the agency is correct.

(b) Report any change in circumstance required under WAC 182-504-0105 unless doing so would exceed the scope of authorized representation or violate state or federal law.

(c) A provider, staff member, or volunteer of an organization must also comply with 42 C.F.R. 435.923(d-e).

#### **(3) Terminating authorized representation.**

(a) The person or the AREP may terminate the authorized representation at any time for any reason by notifying the agency verbally or in writing.

(b) Authorized representation terminates automatically when the person dies.

#### **WSR 15-15-144**

#### **PERMANENT RULES**

#### **DEPARTMENT OF HEALTH**

[Filed July 20, 2015, 9:09 a.m., effective August 20, 2015]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 246-815-020 and 246-815-140, dental hygienists, amending rules to reduce barriers to licensing, clarify application requirements and provide more flexibility when a dental hygienist is obtaining his or her continuing education.

Citation of Existing Rules Affected by this Order: Amending WAC 246-815-020 and 246-815-140.

Statutory Authority for Adoption: RCW 43.70.280 and 18.29.130(7).

Adopted under notice filed as WSR 15-08-026 on March 25, 2015.

A final cost-benefit analysis is available by contacting Vicki Brown, Health Professions and Facilities Dental Hygiene Program, P.O. Box 47852, Olympia, WA 98504-7852, phone (360) 236-4865, fax (360) 236-2901, e-mail [vicki.brown@doh.wa.gov](mailto:vicki.brown@doh.wa.gov).

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 1, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: May 29, 2015.

Jessica Todorovich  
Deputy Secretary  
for John Wiesman, DrPH, MPH  
Secretary

AMENDATORY SECTION (Amending WSR 04-20-049, filed 10/1/04, effective 11/1/04)

**WAC 246-815-020 Dental hygiene (~~examination~~) licensure—Initial eligibility and application requirements.** ~~((1) To be eligible to take the approved dental hygiene examination, the applicant must meet the following requirements:~~

~~(a) The applicant must have successfully completed a dental hygiene education program approved by the secretary of the department of health pursuant to WAC 246-815-030.~~

~~(b) Applicants must complete seven clock hours of AIDS education as required in chapter 246-12 WAC, Part 8.~~

~~(c) The applicant must demonstrate knowledge of Washington law pertaining to the practice of dental hygiene including the administration of legend drugs.~~

~~(d) The applicant must complete the required application materials and pay the required fee.~~

~~(2) The application must include:~~

~~(a) The required examination fee.~~

~~(b) Either the national board IBM card reflecting a passing score or a notarized copy of the national board certificate.~~

~~(c) One photograph of the applicant taken within one year preceding the application.~~

~~(3) An official transcript or certificate of completion constitutes proof of successful completion from an approved dental hygiene education program. No other proof of successful completion is acceptable.)~~ **(1) An applicant for a dental hygiene license shall submit to the department the following:**

**(a) An initial application on forms provided by the department;**

(b) The fee required under WAC 246-815-990;

(c) Proof of successful completion of the Washington state dental hygiene drug and law exam; and

(d) Proof of completion of seven clock hours of HIV/AIDS education as required in chapter 246-12 WAC, Part 8.

(2) An applicant for a dental hygiene license shall also:

(a) Have official transcripts verifying successful completion of a dental hygiene education program approved by the secretary under WAC 246-815-030 sent directly from the dental hygiene program to the department. No other proof of successful completion is acceptable;

(b) Have verification of passing the National Board Dental Hygiene written examination. Results must be sent directly to the department from the American Dental Association Department of Testing Services; and

(c) Have verification of passing the examinations as required in WAC 246-815-050. Results must be sent directly to the department from the testing agency.

AMENDATORY SECTION (Amending WSR 98-05-060, filed 2/13/98, effective 3/16/98)

**WAC 246-815-140 Continuing education for dental hygienists.** (1) ~~((Purposes. The secretary of the department of health in consultation with the dental hygiene examining committee has determined that the public health, safety and welfare will be served by requiring all holders of dental hygiene licenses granted under chapter 18.29 RCW to continue their education after receiving such licenses.~~

~~(2) Requirements. Licensed dental hygienists must complete 15 clock hours of continuing education as required in chapter 246-12 WAC, Part 7. A current CPR card must be maintained as part of this requirement.~~

~~(3) Acceptable continuing education. Continuing education must be dental related education for professional development as a dental hygienist. The 15 clock hours shall be obtained through continuing education courses, correspondence courses, college credit courses, dental hygiene examination standardization/calibration workshops and dental hygiene examination item writer workshops.)) To renew a license a dental hygienist must:~~

~~(a) Complete fifteen clock hours of continuing education each year following the first license renewal;~~

~~(b) Maintain a current basic life support (BLS) card for health care providers; and~~

~~(c) Sign a declaration attesting to the completion of the required number of hours as part of the annual renewal requirement.~~

~~(2) The department will not authorize or approve specific continuing education courses. Continuing education course work must contribute to the professional knowledge and development of the dental hygienist or enhance services provided to patients.~~

For the purposes of this chapter, acceptable continuing education means courses offered or authorized by industry recognized local, state, private, national and international organizations, agencies or institutions of higher learning. Examples of sponsors or types of continuing education courses may include, but are not limited to:

(a) The Washington State Dental Association, American Dental Association, National Dental Association, Washington State Dental Hygienists' Association, American Dental Hygienists' Association, National Dental Hygienists' Association, including the constituent and component/branch societies;

(b) Basic life support (BLS), advanced cardiac life support (ACLS), Occupational Safety and Health Administration (OSHA)/Washington Industrial Safety and Health Act (WISHA), or emergency related training such as courses offered or authorized by the American Heart Association or the American Cancer Society; or any other organizations or agencies;

(c) Self-study through study clubs, books, research materials, or other publications. The required documentation for this activity is a summary of what was learned, not to exceed five hours per year;

(d) Distance learning. Distance learning includes, but is not limited to: Correspondence course, webinar, audio/video broadcasting, audio/video teleconferencing, computer aided instruction, e-learning/online-learning, or computer broadcasting/webcasting that includes an assessment tool upon completion;

(e) A licensee who serves as an educator or who lectures in continuing education programs or courses, that contribute to the professional knowledge of a licensed dental hygienist may accumulate hours for the content preparation of the program or course, not to exceed ten hours per year;

(f) Attendance at a continuing education program with a featured speaker(s);

(g) Courses relating to practice organization and management, medical/dental insurance courses, or retirement, not to exceed five hours per year;

(h) Dental hygiene examination standardization/calibration workshops and dental hygiene examination item writer workshops, not to exceed ten hours per year;

(i) Provision of clinical dental hygiene services in a documented volunteer capacity when preceded by educational/instructional training prior to provision of services, not to exceed five hours per year. Volunteering must be without compensation and under appropriate supervision;

(j) A licensee who serves as a public health official or employee, contractor for a state or local health agency, community prevention education expert, or works in a field that relates to prevention activities in public health dentistry, may accumulate hours for the content preparation of providing services, education, or training to the underserved, rural, and at risk populations, not to exceed five hours per year; and

(k) College courses.

(3) The department may randomly audit up to twenty-five percent of practitioners for compliance with the requirements in this section after the credential is renewed as allowed by chapter 246-12 WAC, Part 7.

**WSR 15-15-152**  
**PERMANENT RULES**  
**HEALTH CARE AUTHORITY**  
(Washington Apple Health)

[Filed July 21, 2015, 9:45 a.m., effective August 21, 2015]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The amendments to these rules are necessary to replace outdated references to "medical assistance" with "Washington apple health" and replace reference to Title 388 WAC with the correct reference to WAC 182-502-0020.

Citation of Existing Rules Affected by this Order: Amending WAC 182-553-100 and 182-553-400.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 15-11-014 on May 8, 2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: July 21, 2015.

Wendy Barcus  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-08-103, filed 4/1/15, effective 5/2/15)

**WAC 182-553-100 Home infusion therapy and parenteral nutrition program—General.** The medicaid agency's home infusion therapy and parenteral nutrition program provides the supplies and equipment necessary for parenteral infusion of therapeutic agents to (~~medical assistance~~) Washington apple health clients. An eligible client receives equipment, supplies, and parenteral administration of therapeutic agents in a qualified setting to improve or sustain the client's health.

AMENDATORY SECTION (Amending WSR 15-08-103, filed 4/1/15, effective 5/2/15)

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

- (a) Have a signed core provider agreement with the medicaid agency; and
- (b) Be one of the following provider types:
  - (i) Pharmacy provider;

- (ii) Durable medical equipment (DME) provider; or
- (iii) Infusion therapy provider.
- (2) The agency pays eligible providers for home infusion supplies and equipment and parenteral nutrition solutions only when the providers:
  - (a) Are able to provide home infusion therapy within their scope of practice;
  - (b) Have evaluated each client in collaboration with the client's physician, pharmacist, or nurse to determine whether home infusion therapy and parenteral nutrition is an appropriate course of action;
  - (c) Have determined that the therapies prescribed and the client's needs for care can be safely met;
  - (d) Have assessed the client and obtained a written physician order for all solutions and medications administered to the client in the client's residence or in a dialysis center through intravenous, epidural, subcutaneous, or intrathecal routes;
  - (e) Meet the requirements in WAC (~~388-502-0020~~) 182-502-0020, including keeping legible, accurate, and complete client charts, and providing the following documentation in the client's medical file:
    - (i) For a client receiving infusion therapy, the file must contain:
      - (A) A copy of the written prescription for the therapy;
      - (B) The client's age, height, and weight; and
      - (C) The medical necessity for the specific home infusion service.
    - (ii) For a client receiving parenteral nutrition, the file must contain:
      - (A) All the information listed in (e)(i) of this subsection;
      - (B) Oral or enteral feeding trials and outcomes, if applicable;
      - (C) Duration of gastrointestinal impairment; and
      - (D) The monitoring and reviewing of the client's lab values:
        - (I) At the initiation of therapy;
        - (II) At least once per month; and
        - (III) When the client, the client's lab results, or both, are unstable.

**WSR 15-15-153**  
**PERMANENT RULES**  
**HEALTH CARE AUTHORITY**  
(Washington Apple Health)

[Filed July 21, 2015, 9:50 a.m., effective August 21, 2015]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule filing is necessary to update an incorrect cross-citation and to make housekeeping changes.

Citation of Existing Rules Affected by this Order: Amending WAC 182-505-0210.

Statutory Authority for Adoption: RCW 41.05.021, 41.05.160.

Adopted under notice filed as WSR 15-11-007 on May 7, 2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal

Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: July 21, 2015.

Wendy Barcus  
Rules Coordinator

**AMENDATORY SECTION** (Amending WSR 14-16-052, filed 7/29/14, effective 8/29/14)

**WAC 182-505-0210 Washington apple health—Eligibility for children.** (1) Unless otherwise stated in this section, a child is a person (~~(who is under nineteen years of)~~) age eighteen or younger (including the month the ~~(person)~~ child turns nineteen). To be eligible for one of the Washington apple health (WAH) for kids programs (~~(described below)~~), a child must:

(a) Be a resident of Washington state (~~(as described in)~~) under WAC 182-503-0520 and 182-503-0525;

(b) Provide a Social Security number (SSN) (~~(as described in)~~) under WAC 182-503-0515 unless exempt; and

(c) Meet any additional requirements listed for the specific program.

(2) Children (~~(under)~~) younger than age one (~~(year of age)~~) are eligible for WAH categorically needy (CN) coverage, without a new application, when they are born to a mother who is eligible for WAH:

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

(b) Based on meeting a medically needy (MN) spenddown liability with expenses incurred (~~(no later than)~~) by the date of the newborn's birth.

(3) Children are eligible for WAH at no cost when they:

(a) Have countable family income that is no more than two hundred ten percent of the federal poverty level (FPL) (~~(as described in)~~) under WAC 182-505-0100;

(b) Are currently eligible for supplemental security income (SSI); or

(c) Received SSI payments in August 1996 and would continue to be eligible for those payments except for the August 1996 passage of amendments to federal disability definitions.

(4) Children are eligible for premium-based WAH (~~(as described in)~~) under WAC 182-505-0215 when they:

(a) Have countable family income that is not more than three hundred twelve percent of FPL (~~(as described in)~~) under WAC 182-505-0100;

(b) Do not have other creditable health insurance (~~(as described in WAC 182-505-0220)~~) under WAC 182-500-0020; and

(c) Pay the required monthly premiums (~~(as described in)~~) under WAC 182-505-0225.

(5) Children are eligible for WAH home and community based waiver programs (~~(as described in)~~) under chapter 182-515 WAC when they:

(a) Meet citizenship or immigration status (~~(as described in)~~) under WAC 182-503-0525;

(b) Meet SSI-related eligibility requirements (~~(as described in)~~) under chapter 182-512 WAC; and

(c) Meet program-specific age requirements.

(6) Children are eligible for the WAH long-term care program when they meet the institutional program rules (~~(as described in)~~) under chapter 182-513 or 182-514 WAC, and either:

(a) Reside or are expected to reside in a medical institution, intermediate care facility for the intellectually disabled (ICF/ID), hospice care center, or nursing home for thirty days or longer; or

(b) Reside or are expected to reside in an institution for mental diseases (IMD) (as defined in WAC 182-500-0050(1)) or inpatient psychiatric facility:

(i) For ninety days or longer and are age seventeen or younger; or

(ii) For thirty days or longer and are age eighteen through twenty-one.

(7) Children are eligible for the WAH-MN program (~~(as described in)~~) under WAC 182-519-0100 when they:

(a) Meet citizenship or immigrant status (~~(as described in)~~) under WAC 182-503-0535;

(b) Have countable family income that exceeds three hundred twelve percent of FPL (~~(as described in)~~) under WAC 182-505-0100; or

(c) Have countable family income that is more than two hundred ten percent of FPL, but are not eligible for premium-based WAH as described in subsection (4) of this section because of creditable coverage; and

(d) Meet a spenddown liability (~~(as described in)~~) under WAC 182-519-0110, if required.

(8) Children are eligible for WAH SSI-related programs (~~(as described in)~~) under chapter 182-512 WAC when they:

(a) Meet citizenship or immigration status (~~(as described in)~~) under WAC 182-503-0535;

(b) Meet SSI-related eligibility (~~(as described in)~~) under chapter 182-512 WAC; and

(c) Meet an MN spenddown liability (~~(as described in)~~) under WAC 182-519-0110, if required.

(9) Children who are not eligible for WAH under subsections (5) through (8) of this section because of their immigration status, are eligible for the WAH alien emergency medical program if they:

(a) Meet the eligibility requirements of WAC 182-507-0110;

(b) Have countable family income:

(i) That exceeds three hundred twelve percent of FPL (~~(as described in)~~) under WAC 182-505-0100; or

(ii) That is more than two hundred ten percent of FPL, but they are not eligible for premium-based WAH, as



described in subsection (4) of this section because of creditable coverage; and

(c) Meet a spenddown liability (~~(as described in)~~) under WAC 182-519-0110, if required.

(10) Children who are in foster care or receive subsidized adoption services are eligible for coverage under the WAH foster care program described in WAC 182-505-0211.

(11) Children who are incarcerated in a public institution (as defined in WAC 182-500-0050(4)) that is not an IMD, are not eligible for any WAH program unless they are receiving inpatient hospital services outside of the public institution.

(12) Children who reside in a public institution that is an IMD are eligible for WAH under this section but are not eligible to receive inpatient hospital services outside of the IMD unless they are unconditionally discharged from the IMD (~~(prior to)~~) before receiving (~~(such)~~) the services.

### WSR 15-15-155

#### PERMANENT RULES

#### DEPARTMENT OF AGRICULTURE

[Filed July 21, 2015, 11:29 a.m., effective August 21, 2015]

Effective Date of Rule: Thirty-one days after filing.

Purpose: In 2014, halo blight was identified in a seed crop in Washington state. In order to curtail the presence of halo blight in Washington state, the department is modifying the bean seed quarantine under chapter 16-301 WAC either to require two field inspections for fields not under sprinkler irrigation and to add a third inspection for fields under sprinkler irrigation or require a laboratory pathology test of seed for halo blight prior to planting. The department is also requiring a fourth inspection for plantings in a trial ground.

Citation of Existing Rules Affected by this Order: Amending WAC 16-301-235, 16-301-395, 16-301-425, and 16-301-430.

Statutory Authority for Adoption: RCW 15.49.005, 17.24.041.

Other Authority: Chapter 34.05 RCW.

Adopted under notice filed as WSR 15-12-064 on May 29, 2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 4, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 21, 2015.

Derek I. Sandison  
Director

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-301-235 Phytosanitary field inspection requirements for beans.** (1) Specific bacterial diseases of beans for which phytosanitary certificates may be issued are:

(a) Halo blight - *Pseudomonas phaseolicola* (Burk.) Dows.

(b) Common bean blight - *Xanthomonas phaseoli* (E.F. Sm.) Dows.

(c) Fuscous blight - *Xanthomonas phaseoli* var. *fuscans* (Burk.)

(d) Bean bacterial wilt - *Corynebacterium flaccumfaciens* (Hedges) Dows.

(e) Or any varieties or new strains of these diseases.

(f) Brown spot disease - *Pseudomonas syringae*.

(g) Bean anthracnose - *Colletotrichum lindemuthianum*.

(h) Seed-borne viral diseases.

(2) For beans to be eligible for a phytosanitary certificate covering the bacterial diseases listed in subsection (1) of this section the following provisions apply:

(a) Common bean must be free of the diseases as determined by the department with a field inspection during the growing season and by a windrow inspection. (~~(A serology test)~~) An appropriate seed health assay and greenhouse test may be accepted in lieu of a windrow inspection at the discretion of the department.

(b) Pintos, red Mexicans, pinks, great northern, small whites, navy beans, and black turtle beans may be grown for an unlimited number of generations under rill or sprinkler irrigation.

(c) Kidney beans, cranberry types, Taylor horticultural, and Borlotto types may be grown for an unlimited number of generations under rill irrigation or for one generation under rill irrigation and, subsequently, for two generations under sprinkler irrigation. The fourth and unlimited subsequent generations may be grown and inspected with the same alternation of irrigation types.

(d) A field planted must be free of halo blight the previous two years of planting.

(e) Seed fields must be 1,320 feet from an incident of disease. The department recommends that equipment be disinfected between fields.

(3) At least two field inspections of beans are required for bacterial diseases listed in subsection (1) of this section:

(a) Fields not under sprinkler irrigation shall be inspected twice:

(i) The first inspection is to be conducted by the department when (~~(factors effecting diseases are most evident.~~ ~~(b))~~) plants are near the early pod stage.

(ii) The second inspection is to be conducted by the department when the plants are in the windrow.

(b) Fields under sprinkler irrigation shall be inspected three times:

(i) The first inspection is to be conducted by the department when plants are near the full bloom stage. An appropriate seed health assay for halo blight may be accepted in lieu of the first growing season inspection.

(ii) The second inspection is to be conducted by the department when plants are near the full pod stage.

(iii) The third inspection is to be conducted by the department when the plants are in the windrow.

(4) All bean seed entered into the phytosanitary inspection program must comply with the bean seed quarantine rules. See chapter 16-301 WAC.

AMENDATORY SECTION (Amending WSR 04-08-043, filed 3/31/04, effective 5/1/04)

**WAC 16-301-395 General requirements for planting bean seed in the regulated area.** (1) No beans may be planted, sold, shipped, transported for seed purposes, or knowingly received in the regulated area which are found to be or are known to be contaminated with any disease listed in WAC 16-301-380 and must also comply with the requirements as listed in WAC 16-301-396.

(2) ~~((The department shall be notified in writing, prior to shipping, of any person's intent to ship, move, or transport any bean seed into the regulated area.))~~ For all bean seed to be planted in the regulated area, proof of quarantine compliance must ~~((have a Notice of Intent/Quarantine Compliance form filed with the WSDA seed program))~~ accompany any application for phytosanitary or certification field inspection. A copy of the field inspection report or other proof of freedom from specified diseases based on at least one growing season field inspection and one windrow inspection or negative results from an approved pathology laboratory ~~((test must accompany this form. In addition,))~~ indicating freedom from the regulated diseases and a copy of the ~~((laboratory analysis (ELISA))~~ appropriate seed health assay showing freedom from regulated viral diseases issued for that bean seed must accompany ~~((this Notice of Intent/Quarantine Compliance form))~~ these applications. Proof of I-gene resistance may be provided in lieu of ~~((laboratory analysis (ELISA))~~ appropriate seed health assay indicating freedom from regulated viral diseases.

AMENDATORY SECTION (Amending WSR 00-24-077, filed 12/4/00, effective 1/4/01)

**WAC 16-301-425 Inspection procedures for trial grounds.** (1) Applications for planting in a trial ground must be submitted to the department prior to May 15 of the growing year, and must include a detailed varietal planting plan, a description of the exact location of the trial ground and the manner of isolation.

(2) A minimum of ~~((three))~~ four field inspections ~~((is))~~ are made during the growing season and one windrow inspection.

(3) A disinfectant must be applied to machinery used in the production of bean seed and to footwear of personnel performing inspections prior to movement to other bean fields.

(4) If any regulated diseases are detected by field inspections or subsequent laboratory/greenhouse tests, no seed may be released for general planting but must again be planted in an approved trial ground for one additional year and undergo inspection procedures by the department.

AMENDATORY SECTION (Amending WSR 04-08-043, filed 3/31/04, effective 5/1/04)

**WAC 16-301-430 Identification and disposition of diseased bean seed and infected bean fields.** (1) Any bean field planted with seed in violation of the requirements of this quarantine is subject to destruction, in full or in part, or quarantined, as determined necessary by the director, to prevent the spread of regulated diseases. Any expenses of such actions will be solely that of the grower or their responsible agents.

(a) Fields that are placed under a quarantine order must be entered into the Washington state bean seed ~~((phyto-sanitary))~~ phytosanitary inspection program as provided in WAC 16-301-235 with all costs of inspection to be borne by the grower or the grower's agent.

(b) Fields that are placed under a quarantine order may be subject to additional requirements for inspection, control or isolation, as deemed necessary by the director, to prevent the spread of regulated diseases.

(2) Any bean field determined to be infected with a regulated disease must be reported within seventy-two hours after discovery to the department, seed program.

(3) The department encourages the aid of all interested parties, including growers and seed company representatives, in the prompt reporting of suspected infected bean fields in order that timely investigation may be made.

(4) Any bean fields within the boundaries of the regulated area which show contamination by a regulated disease, as provided in subsection (5) of this section, must be destroyed in part or in total as may be required to eliminate the disease, by or at the expense of the grower or their responsible agents. The director may authorize any other method of control at the director's discretion. The director must notify the grower, seed company representatives and/or the grower's landlord of the method and extent of the destruction and safeguards against disease spread in order for the parties to comply.

(5) The identity of a regulated disease on growing plants or plants in windrow is based on the observance of the visual symptoms of the disease. If the department deems it necessary to establish true identity or pathogenically, a laboratory and/or greenhouse test may be conducted by the department in cooperation with the university. Testing is subject to provisions provided in WAC 16-301-396 (3) and (4), the results of which will be used to determine final disposition.

(a) In cases of disagreement concerning the presence of a regulated disease between the department plant pathologist and a qualified plant pathologist representing the commercial company or grower, the definitive verification of identity or pathogenically must be determined by isolation of the suspected pathogen and inoculation of seedlings of a known susceptible host using accepted scientific and professional techniques.

(b) Until verification of the suspected pathogen as specified in this section is completed, the involved planting must be placed under quarantine for a period of thirty days subject to conditions and review or extension as determined by the director. Entry into the quarantined area is to be restricted to the grower or grower's agents, department employees, and/or persons authorized in writing by the director. Persons granted

entry into the quarantined area will be required to take all necessary sanitary precautions as prescribed by the director to safeguard against the possible spread of the suspected regulated disease.

(6) The true identity of the regulated disease when found in or on seed is based on testing methods recommended by the university results of which, when positive, is evidence to identify the disease as being subject to the department's requirements. The owner of the seed, at owner's expense, may request verification of pathogenicity. Such verification must be made using accepted scientific and professional techniques.

(7) When the director determines that it is probable, based on visual symptoms and serological analysis, that a seed field may be infected with bean seed-borne viral diseases and determines that a threat of infection of other fields exists, the director may prescribe aphid control or other requirements, through a notice of destruction as provided in WAC 16-301-435, deemed necessary to prevent infection of adjacent properties.

(8) All bean seed that is determined to be contaminated by bean seed-borne viral diseases and which does not meet the requirements of WAC 16-301-395(2) must be destroyed or diverted to dry edible or other nonseed purposes. For seed that is diverted to dry edible or other nonseed purposes, documentation of disposition of the seed must be provided to the department of agriculture upon request.

(9) Exemptions and special situations:

(a) Any field of beans first found infected during windrow inspection, is exempt from total destruction if the diseased portion and an area (not less than a fifty-foot radius) surrounding the infected site is promptly destroyed or harvested with the beans from the infected area directed, under department supervision, to processing. Seed from the remainder of the field must be tested by ~~((a serology test))~~ the appropriate seed health assays for the regulated disease. Only seed apparently free from regulated diseases may be used for seed purposes in the regulated area.

(b) Any field of beans to be used only for dry edible purposes is exempt from destruction if the diseased portion of the field is destroyed and the entire crop residue is promptly and completely destroyed after harvest.

(c) Beans for processing or fresh consumption are exempt from destruction if the diseased portion of the field is destroyed or harvested within ten days after first detection and/or verification as provided in subsection (4) of this section and the crop residue is promptly and completely destroyed after harvest.

### WSR 15-15-157

#### PERMANENT RULES

#### DEPARTMENT OF REVENUE

[Filed July 21, 2015, 12:53 p.m., effective August 21, 2015]

Effective Date of Rule: Thirty-one days after filing.

Purpose: WAC 458-20-108 (Rule 108) Selling price—Credit card service fees, foreign currency, discounts, patronage dividends, Rule 108 has discussed returned goods, allowances and cash discounts. The department has amended Rule

108 to include information on credit card service fees, purchases with foreign currency, use of coupons and discount vouchers, patronage dividends, and payments to dealers for "make-ready" services previously included in ETAs 3008, 3041, 3060, 3081, 3129, and 3147. These ETAs will be canceled when the rule is adopted. Discussion of discounts is now arranged by what is and is not a bona fide discount.

WAC 458-20-278 Returned goods, defective goods—Motor vehicle lemon law, the department has moved discussions on returned goods, defective goods and the motor vehicle lemon law to this new rule, and added examples.

Citation of Existing Rules Affected by this Order: Amending WAC 458-20-108 Selling price—Credit card service fees, foreign currency, discounts, patronage dividends.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Adopted under notice filed as WSR 15-12-081 on June 1, 2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 21, 2015.

Dylan Waits  
Rules Coordinator

AMENDATORY SECTION (Amending WSR 88-01-050, filed 12/15/87)

~~WAC 458-20-108 ((Returned goods, allowances, cash discounts.)) Selling price—Credit card service fees, foreign currency, discounts, patronage dividends. ((+)) When a contract of sale is made subject to cancellation at the option of one of the parties or to revision in the event the goods sold are defective or if the sale is made subject to cash or trade discount, the gross proceeds actually derived from the contract and the selling price are determined by the transaction as finally completed.~~

~~((2)) Returned goods. When sales are made either upon approval or upon a sale or return basis, and the purchaser returns the property purchased and the entire selling price is refunded or credited to the purchaser, the seller may deduct an amount equal to the selling price from gross proceeds of sales in computing tax liability, if the amount of sales tax previously collected from the buyer has been refunded by the seller to the buyer. If the property purchased is not returned within the guaranty period as established by contract or by customs of the trade, or if the full selling price is not refunded~~

or credited to the purchaser, a presumption is raised that the property returned is not returned goods but is an exchange or a repurchase by the vendor.

To illustrate: S sells an article for \$60.00 and credits his sales account therewith. The purchaser returns the article purchased within the guaranty period and the purchase price and the sales tax theretofore paid by the buyer is refunded or credited to him. S may deduct \$60.00 from the gross amount reported on his tax return.

(3) **Defective goods.** When bona fide refunds, credits or allowances are given within the guarantee period by a seller to a purchaser on account of defects in goods sold, the amount of such refunds, credits or allowances may be deducted by the seller in computing tax liability, if the proportionate amount of the sales tax previously collected from the buyer has been refunded by the seller.

To illustrate: S sells an article to B for \$60.00 and credits his sales account therewith. The article is later found to be defective.

(a) S gives B credit of \$50.00 on account of the defect, and also a credit of sales tax collectible on that amount. S may deduct \$50.00 from the gross amount reported in his tax returns. This is true whether or not B retains the defective article.

(b) B returns the article to S who gives B an allowance of \$50.00 on a second article of the same kind which B purchases for an additional payment of \$10.00, plus sales tax thereon. S may deduct \$50.00 from the gross amount reported in his tax returns. The sale of the second article, however, must be reported for tax purposes as a \$60.00 sale and included in the gross amount in his tax return.

(c) B returns the article to S who replaces it with a new article of the same kind free of charge, and without sales tax. S may deduct \$60.00 from the gross amount reported in his tax returns, but the \$60.00 selling price of the substituted article must be reported in the gross amount.

No deduction is allowed from the gross amount reported for tax if S in (b) and (c) of this subsection, does not credit his sales account with the selling price of the new article furnished to replace the defective one, but instead merely credits the sales account with an amount equal to the additional payment received, if any. In such case, the allowance for the defect is already shown in the sales account by the reduced sales price of the new article.

(4) **Motor vehicle warranties.** In the 1987 session, the Washington legislature enacted a "lemon law" creating enforcement provisions for new motor vehicle warranties. A manufacturer which repurchases a new motor vehicle under warranty because of a defective condition is required to refund to the consumer the "collateral charges" which include retail sales tax. The refund shall be made to the consumer by the manufacturer or by the dealer for the manufacturer. The department will then credit or refund the amount of the tax so refunded.

**Evidence.** To receive a credit or refund, the manufacturer or dealer must provide evidence that the retail sales tax was collected by the dealer and that it was refunded to the consumer. Acceptable proof will be:

(a) A copy of the dealer invoice showing the sales tax was paid by the consumer; and

(b) A signed statement from the consumer acknowledging receipt of the refunded tax. The statement should include the consumer's name, the date, the amount of the tax refunded, and the name of the dealer or the manufacturer making the refund.

(5) **Discounts.** The selling price of a service or of an article of tangible personal property does not include the amount of bona fide discounts actually taken by the buyer and the amount of such discount may be deducted from gross proceeds of sales providing such amount has been included in the gross amount reported.

(a) Discounts are not deductible under the retail sales tax when such tax is collected upon the selling price before the discount is taken and no portion of the tax is refunded to the buyer.

(b) Discount deductions will be allowed under the extracting or manufacturing classifications only when the value of the products is determined from the gross proceeds of sales.

(c) Patronage dividends which are granted in the form of discounts in the selling price of specific articles (for example, a rebate of one cent per gallon on purchases of gasoline) are deductible. (Some types of patronage dividends are not deductible. See WAC 458-20-219.)) (1) **Introduction.** This rule explains "selling price" and what is included in the selling price when discounts, coupons, rebates, or foreign currency are used. This rule also provides tax guidance for credit card service fees, patronage dividends, and payments for "make ready" services.

(a) **Other rules that may apply.** Readers may also want to refer to other rules for additional information, including those in the following list:

(i) WAC 458-20-107, Requirement to separately state sales tax—Advertised prices including sales tax.

(ii) WAC 458-20-211, Leases or rentals of tangible personal property, bailments.

(iii) WAC 458-20-247, Trade-ins, selling price, sellers' tax measures.

(iv) WAC 458-20-278, Returned goods, defective goods—Motor vehicle lemon law.

(b) **Examples:** Examples found in this rule identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(2) **What is included in the "selling price"?** RCW 82.08.010 states that "selling price" includes "sales price." "Sales price" means the total amount of consideration, except separately stated trade-in property of like kind, including cash, credit, property, and services, for which tangible personal property, extended warranties, digital goods, digital codes, digital automated services, or other services or anything else defined as a "retail sale" under RCW 82.04.050 are sold, leased, or rented, valued in money, whether received in money or otherwise. No deduction from the total amount of consideration is allowed for the following:

(a) The seller's cost of the property sold;

(b) The cost of materials used, labor or service cost, interest, losses, costs of transportation to the seller, taxes imposed on the seller, and any other expense of the seller;

(c) Charges by the seller for any services necessary to complete the sale other than delivery and installation charges;

(d) Delivery charges; and

(e) Installation charges.

**(3) When is third-party consideration included in the "selling price"?** The "selling price" or "sales price" includes consideration received by the seller from a third party if:

(a) The seller actually receives consideration from a party other than the buyer, and the consideration is directly related to a price reduction or discount on the sale;

(b) The seller has an obligation to pass the price reduction or discount through to the buyer;

(c) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of sale of an item to the buyer; and

(d) One of the following criteria is met:

(i) The buyer presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party must reimburse any seller to whom the coupon, certificate, or documentation is presented;

(ii) The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the buyer or on a coupon, certificate, or other documentation presented by the buyer; or

(iii) The buyer identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount; however, a "preferred customer" card that is available to any patron does not constitute membership in such a group. RCW 82.08.010.

(e) **Example 1.** The Sporting Goods Store offers a 10% discount to all members of the local credit union. Dave, the customer and credit union member, must present an identification card or other evidence of membership in the credit union to claim the 10% discount on his \$100 purchase. As the credit union reimburses The Sporting Goods Store for the discount of \$10, the store must compute sales tax on the full price of \$100. The discount of \$10 is deducted from the total price after sales tax has been added to the purchase price. The store must compute retailing business and occupation (B&O) tax on \$100.

**(4) What is not included in the "selling price"?** The "selling price" or "sales price" does not include:

(a) Discounts, including cash, term, or coupons that are not reimbursed by a third party that a seller allows a buyer to take on a sale;

(b) Interest, financing, and carrying charges from credit extended on the sale of tangible personal property, extended warranties, digital goods, digital codes, digital automated services, or other services or anything else defined as a retail sale in RCW 82.04.050, if the amount is separately stated on the invoice, bill of sale, or similar document given to the buyer; and

(c) Any taxes legally imposed directly on the buyer that are separately stated on the invoice, bill of sale, or similar document given to the buyer. RCW 82.08.010.

(d) **Example 2.** The Good Health Club offers a 10% discount to all members of the local credit union. Jill, the club member and credit union member, must present an identifica-

tion card or other evidence of membership in the credit union to claim the 10% discount on her monthly membership fee of \$50. If the credit union does not reimburse the health club for the \$5 discount, the health club absorbs the \$5 and it is not part of the taxable selling price. Thus, the club must collect sales tax on a selling price of \$45 and compute retailing B&O tax on gross proceeds of sale of \$45.

(5) **Credit card service fees.** When a seller allows a buyer to charge purchases on a credit card, the institution that issued the credit card charges a service fee to the seller. The service fee charge is a part of the seller's cost of doing business. Because the service fee is a cost of doing business, the seller may not deduct the fee when determining its B&O tax and retail sales tax liabilities. RCW 82.04.070 and 82.08.010.

(6) **Foreign currency accepted by seller.** When determining the measure of tax liability, the selling price or gross proceeds of sale must be measured in terms of the currency of the United States. If payment is accepted in foreign currency, the payment must be converted into United States currency. The effect of this conversion, whether resulting in an increase or decrease in the selling price or gross proceeds of sale, must be recognized when tax is computed.

**Example 3.** ABC Company (ABC) sells a sweater for \$100, plus \$8 in retail sales tax, for a total of \$108. ABC accepts payment in the form of \$108 Canadian. The exchange rate for Canadian dollars at ABC's bank is 0.95 Canadian to 1 U.S. dollars at the time of the sales transaction. In terms of U.S. currency, ABC has actually accepted a payment of \$102.60 (108 Canadian x 0.95). The selling price or gross proceeds of sale for determining the measure of tax liability is \$95 (\$102.60 less \$7.60 retail sales tax).

(7) **Bona fide discounts.** When a sale is made subject to cash or trade discount, the gross proceeds actually derived from the selling price are determined by the transaction as finally completed. A sale is made subject to a discount when the sales price is reduced under terms known to the buyer and seller at the time of the sale, and the price reduction occurs at the time of the sale or within a time agreed and understood by the parties at the time of the sale.

The selling price or sales price of a service or article of tangible personal property does not include bona fide discounts actually taken by the buyer. The amount of bona fide discounts may be deducted only if the amount has been included in the gross amount reported.

Discounts are not deductible when the retail sales tax is based on the selling price or sales price before the discount is taken and no portion of the tax is refunded to the buyer.

(a) **Discount vouchers.** A discount voucher is an instrument redeemed by a customer from a seller at the time of purchase that:

- Is obtained by the customer from a discount voucher provider that has an agreement with the seller, and the seller determined the price of the voucher sold;

- Allows the customer to acquire the voucher for less than its face value;

- Is redeemable either for a specific good or service (product) or for a certain dollar amount towards the sales price of any product sold by the seller; and

- The seller, at the time of redemption, knows the amount paid by the customer for the voucher.

For additional information that may apply see subsection (3) of this rule.

**(i) Taxes apply on the redemption of a discount voucher.**

(A) The purchase of a discount voucher prior to redemption is not taxable.

(B) The seller of a product or products purchased using a discount voucher must include the amount the customer paid for the discount voucher in the gross proceeds of sales or gross income of the business, as the case may be.

(C) If a discount voucher is redeemed by a customer for a product subject to retail sales tax, then the amount paid by the customer is included in the taxable sales price of the product.

(D) The seller may not deduct advertising or similar expenses (fees) paid to the discount voucher provider, even if the discount voucher provider "nets out" those expenses (fees) before remitting the payment to the seller.

**(ii) Determining the amount paid by the customer for the discount voucher.** Sellers must be able to substantiate, through documentation, the amount the customer paid for the redeemed discount voucher and any discount applied to the sale.

(A) If a discount voucher indicates the amount the customer paid, the seller must include that amount in the sales price of the product purchased.

(B) If the seller, through its agreement with the discount voucher provider, knows the amount the customer paid for the discount voucher, that amount is to be included in the sales price of the product purchased.

(C) If the seller does not know at the time of sale the amount the customer paid to obtain a payment instrument and thus does not know whether the instrument is a discount voucher, the seller must treat the consideration paid by the customer as equal to the face value of the instrument.

**(b) Cash discounts.** A cash discount is an incentive for the buyer to pay the seller's invoice price of goods or charges for services on or before a specified date. RCW 82.04.160. Cash discounts may be deducted when determining the measure for the B&O tax.

**Example 4.** Mann's Lumber Shop (Mann's) sells construction material to Ken, who builds sheds for resale. Mann's bills Ken for \$2,000.00, and offers Ken a 10% discount if he pays the invoiced amount within ten days. Ken pays the invoice upon receipt and takes a 10% discount. Mann's may reduce its gross sales figure by \$200 when determining its wholesaling B&O tax.

**(i) Extracting or manufacturing.** Discount deductions are allowed under the extracting or manufacturing classifications only when the value of the products is determined from the gross proceeds of sales. No discount is available if tax is computed by other means authorized by RCW 82.04.450 (e.g., gross proceeds determined by sales in this state of similar products of like quality and character, and in similar quantities by other taxpayers).

**(ii) Retail sales tax.** Cash discounts are not deductible for retail sales tax purposes when the seller collects the tax on the selling price before the discount is taken and no portion of the tax is refunded to the buyer.

**Example 5.** Mann's sells Richard all materials needed for a shed that Richard wants to build for extra storage. Mann's bills Richard for \$500 plus retail sales tax at 9.5% (\$500 + \$47.50). Mann's offers a 10% discount if Richard pays the invoiced amount within ten days. Richard neglects to take advantage of the offered discount even though he pays the full invoice within ten days. Mann's gives Richard a credit for \$50. Mann's may deduct the \$50 discount when reporting retailing B&O tax, but cannot when reporting retail sales tax as no sales tax was refunded.

**Example 6.** Mann's sells George all the materials needed for a shed that George plans to build for storage. Mann's bills George for \$500 plus retail sales tax at 9.5% (\$500 + \$47.50 = \$547.50). Mann's offers a 10% discount if George pays the invoiced amount within ten days. George takes advantage of the cash discount and pays \$492.75. Mann's must report a sale of \$450 and sales tax of \$42.75 on its excise tax return.

**(c) Retail stores' coupons.** Retail stores' coupons are issued by retail stores and redeemable only at that store or at affiliated stores of the chain. The coupons offer a reduced price for a specific item upon presentation at the store. The price reduction is a discount, and the retail store must report the amount actually paid by the buyer when reporting retail sales and B&O taxes.

**(8) What is not a bona fide discount?** Bona fide discounts do not include discounts on the selling price to the buyer, when the buyer is required to perform a service to receive a discount. Examples of services that may be required include advertising, shelf placement of product, special in-store displays, and hiring product demonstrators to promote sales.

**(a) Slotting fees.** Grocers sometimes receive discounts, allowances, slotting fees, or free product from manufacturers if the grocers provide shelf space for new products or advantageous shelf space for display of the manufacturers' products. Grocers' product placement or slotting activities in exchange for consideration from manufacturers constitute business transactions. RCW 82.04.140. Receipts received by grocers for product placement or slotting activities are taxable income to the grocers under the service and other activities B&O tax classification.

**(b) Manufacturers' or distributors' coupons.** Manufacturers' or distributors' coupons offer a reduction in price of a specified amount on the customer's purchase of specified items. The manufacturer or distributor will redeem these coupons when they are turned in by the seller. Redemption is usually at full face value plus a small handling charge. In this case, the seller actually receives the full retail price for the item sold. Tax is due on the full retail price.

**(c) Manufacturers' rebates.** Manufacturers sometimes make rebates available to buyers. Normally the buyer pays the seller the full purchase price for an item, and then sends requested documentation with a rebate claim form to the manufacturer. The rebate is sent directly to the buyer.

**(i) Seller's measure of tax.** A cash payment by the manufacturer to the buyer has no effect on the selling price of the sales transaction that occurred between the seller and buyer. The measure of the tax remains the total consideration paid or delivered to the seller by the buyer.

**(ii) Automobile manufacturers' sales promotions.**

Automobile manufacturers routinely run sales promotions offering a rebate or cash payment directly to the buyer. As an alternative to direct payment, these programs may allow the buyer to assign his or her right to the rebate to the selling dealer. The assignment from the buyer to the seller of the right to a manufacturer's rebate is a part of the consideration paid or delivered by the buyer to the seller. In such cases, the measure of the B&O tax and retail sales tax must include the value of the manufacturer's rebate.

**(d) Manufacturers' incentives to retailers.** Except as provided in subsection (7)(b) of this rule regarding cash discounts, a payment or credit from a manufacturer or distributor to a retailer that is conditioned on the retailer making sales of services or tangible personal property to consumers, or engaging in any activity other than making the original wholesale purchase from the manufacturer or distributor, is not a bona fide discount.

**(9) Patronage dividends.** A patronage dividend is the distribution of a member's share of the profits of a cooperative association based on the quantity of purchases made by the member. The amount of a patronage dividend (rebate or refund) is determined by:

- The expenses of doing business;
- The volume of sales to other members; and
- The proportion of business the specific member has conducted with the cooperative.

A patronage dividend determined in this manner is simply a redistribution of the cooperative's "profit," even though the cooperative may refer to accounting mechanisms such as "tentative" or "delayed" invoices, or to "deferred discounts."

A member receiving dividends may deduct the amount received from gross income if it reports the income and qualifies for the investment income deduction under RCW 82.04.4281.

**(a) Exception.** Patronage dividends that are granted in the form of discounts in the selling price of specific articles (for example, a rebate of five cents per gallon on purchases of gasoline) are deductible from the gross income received by the taxpayer granting the dividends.

**(b) Example 7.** AB Cooperative, a nonprofit association, sells equipment to members and nonmembers. All equipment is sold at the normal and competitive prices. At year-end the volume of business done with members is determined, and proportionate shares of net profit are refunded. These dividends are not discounts on the selling price of specific articles and are not deductible from the cooperative's gross proceeds of sales when determining taxability.

**(c) Example 8.** MAX, a cooperative selling association comprised of several franchise dealers, sets up refunds as patronage dividends to comply with the Robinson-Patman Act. This act allows MAX to return to its dealers net earnings resulting from trading operations in proportion to purchases from or through the association.

Each purchase is invoiced to the dealer at the suggested wholesale price with net price to MAX also indicated. Every month dealers pay a regular flat fee plus a fixed percentage assessed on volume of purchases for payment of operational expenses. Refunds of the difference between the suggested

wholesale price and the net cost are made to dealers quarterly.

The patronage dividends are distributions of the cooperative corporation's profits and are not deductible discounts because the discounts were not provided as a part of the sale of a particular article.

**(10) Payments to dealers for "make-ready" services.** Equipment dealers may be required by the manufacturer to perform or be responsible for "make-ready" services. These services generally include the inspection, conditioning, and necessary repair of the equipment prior to the sale by the dealer. Payments for "make-ready" services are not bona fide cash discounts taken by the dealer, nor do they represent any adjustment to the dealer's purchase price of the sold equipment.

Payment for these services is a cost of doing business for the manufacturer. As a cost of doing business, the payment may not be deducted from the gross proceeds of sales when the manufacturer determines its B&O tax liability. Payments or credits received by the dealer for services performed are subject to the wholesaling B&O tax classification.

**NEW SECTION**

**WAC 458-20-278 Returned goods, defective goods—Motor vehicle lemon law. (1) Introduction.** This rule explains how sellers should report business and occupation (B&O) tax and retail sales tax when goods are returned and refunds or credits are granted.

**(a) Contract of sale.** Generally, when a contract of sale is made subject to cancellation at the option of one of the parties or to revision in the event the goods sold are defective, the gross proceeds actually derived from the contract and the selling price are determined by the transaction as finally completed.

**(b) Examples.** The examples in this rule identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

**(2) Returned goods.** When sales are made either upon approval or upon a sale or return basis, and the buyer returns the property purchased and the entire selling price is refunded or credited to the buyer, the seller may deduct an amount equal to the selling price from gross proceeds of sales in computing tax liability. A deduction is available under the retail sales tax classification only if the amount of sales tax previously collected from the buyer has been refunded by the seller to the buyer. If the property purchased is not returned within the guaranty period as established by contract, or if the full selling price is not refunded or credited to the buyer, a presumption is raised, subject to rebuttal by a preponderance of the evidence, that the property returned is not a returned good but is an exchange or a repurchase by the seller.

**(a) Example 1.** Stan sells an article for \$60.00 and credits his sales account with the sale. The buyer returns the article purchased within the guaranty period and the purchase price and the sales tax previously paid by the buyer is refunded or credited to the buyer. If the sale has not been reported to the department of revenue, Stan may deduct

\$60.00 for the returned article from his gross sales amount. If Stan has already reported the sale on his excise tax return, he may take a deduction for \$60.00 for the returned article on his next filed excise tax return.

(b) **Restocking fees charged on returned goods.** A "restocking fee" is a fee intended to cover the cost, by the seller, of restoring returned items to saleable condition and returning them to inventory. The restocking fee is the same regardless of when a purchased item is returned to the seller by the buyer.

If all the conditions of this subsection are met for returned merchandise with the exception of a restocking fee, the transaction will be viewed as a sale return and not as a repurchase. When a sale return occurs, a deduction may be taken under the appropriate tax classification used in reporting the original sale. However, the restocking fee is considered income and taxable under the service and other business activities B&O tax classification.

(i) **Example 2.** Ace Auto Parts (Ace) sells a catalytic converter to Stan for \$400.00 plus tax. The receipt that Ace gives Stan states that returns must be made within 30 days and a \$35.00 restocking fee will apply to returns. Stan realizes after he gets the part home that it is the wrong one for his car. When Stan returns the part, he finds that Ace does not have the catalytic converter that he needs for his car. Ace computes Stan's refund of \$400.00 plus sales tax minus the \$35.00 restocking fee. Ace may reduce its gross retail sales by \$400.00, but must report the \$35.00 restocking fee under the service and other business activities B&O tax classification.

(ii) **Example 3.** Breen's Department Store (Breen's) accepts returned items, in new condition, but may discount the original purchase price based on the time elapsed since purchase.

Return within	Amount of credit
0 - 30 days from receipt	100% of original purchase price
31 - 60 days from receipt	75% of original purchase price
61 + days from receipt	50% of original purchase price

For example, Jill purchases a dress from Breen's and returns the dress 45 days after purchase. Breen's refunds or provides a credit to her of 75 percent of the cost of the dress. The amount retained by Breen's is not considered a restocking fee. This is considered a repurchase by Breen's, and thus no deductions are allowed under the retailing B&O tax or retail sales tax classifications on Breen's excise tax return.

(3) **Defective goods.** This subsection does not apply to new motor vehicles under an original manufacturer's warranty. See subsection (4) of this rule regarding new motor vehicles under an original manufacturer's warranty.

When bona fide refunds, credits, or allowances are given within the guaranty period by a seller to a buyer on account of defects in goods sold, the seller may deduct the amount of such refunds, credits, or allowances in computing its tax lia-

bility, if the seller has refunded the proportionate amount of the sales tax it previously collected from the buyer.

**Example 4.** On April 5th, Stan sells an item to Bob for \$60.00. Stan records the sale as gross income. The item is later found to be defective by Bob.

(a) Bob returns the item prior to Stan reporting the sale on his excise tax return, and remitting B&O tax and the collected retail sales tax. Stan refunds Bob the purchase price including the retail sales tax. Stan may subtract \$60.00 from his gross income when completing his excise tax return.

(b) Bob returns the defective article and Stan allows him a full credit of \$60.00 towards another article. The new article's price is \$80.00. Bob pays, in cash, the additional \$20.00 plus retail sales tax on the \$20.00. Stan records the \$20.00 as gross sales. The allowance for the defective article (\$60.00) is already included in Stan's gross sales, thus only the \$20.00 (\$60.00 credit and \$20.00 cash = \$80.00 purchase price) should be added to the gross sales amount.

(c) Bob waits a month to return the defective item for a refund. Stan refunds Bob the full purchase price of \$60.00 plus the retail sales tax. As Stan has already reported the sale on his excise tax return, he may deduct \$60.00 under "Returns" for both the retailing B&O tax and retail sales tax classifications on his next excise tax return.

(d) Bob is willing to keep the defective item but requests a partial refund to offset repair costs. Stan refunds Bob \$25.00 of the purchase price, plus the applicable retail sales tax. As Stan has already reported the sale on his excise tax return, he may take a deduction for \$25.00 under both the retailing B&O tax and retail sales tax classifications on his next excise tax return.

(4) **Motor vehicle warranties - Lemon law.** A manufacturer that replaces or repurchases a new motor vehicle under warranty because of a defective condition is required to refund to the consumer the "collateral charges" (RCW 19.118.021(2)) which include retail sales tax. The refund will be made to the consumer by the manufacturer or by the dealer for the manufacturer. The department of revenue will then verify calculations and credit or refund the correct amount of the tax so refunded. For information on the lemon law, other than retail sales tax, contact the attorney general's office.

(a) **What documentation is needed for credit or refund?** To receive a credit or refund, the manufacturer or dealer must provide the following information to the department of revenue establishing that the dealer collected the retail sales tax and that it was refunded to the consumer:

(i) A complete copy of the new motor vehicle arbitration board decision including the owner signed acceptance/denied page; or

(ii) The Lemon Law Refund Request Verification Form completed in nonarbitrated situations; and

(iii) A statement signed and dated by the consumer accepting the arbitration board decision or the manufacturer's nonarbitrated repurchase offer. The statement must include the consumer's name, repurchase offer date, total repurchase amount, sales tax amount refunded, the name of the manufacturer issuing the refund and any other supporting documents needed to substantiate the claim; and



(iv) A copy of the dealer invoice (purchase order) or lease agreement, signed by the consumer, that shows the amount of retail sales tax paid; and

(v) A copy of the manufacturer's refund check(s) for repurchase drawn payable to the consumer and/or lien holder; and

(vi) For the calculation of reasonable offset for mileage provide all supporting documentation necessary to verify the calculation used and documentation (e.g., all dealer repair records or service records) to verify the attempted repairs to the vehicle did comply with RCW 19.118.041.

(b) **Where can I obtain the Lemon Law Refund Request Verification Form?** The "Lemon Law Refund Request Verification Form" is available on the department's web site at dor.wa.gov, or by calling the department's telephone information center at 1-800-647-7706, or writing to:

Taxpayer Services  
Department of Revenue  
P.O. Box 47478  
Olympia, WA 98504-7478

(c) **Where should documentation be sent?** All documentation from manufacturers for credit or refund on lemon law refunds should be sent to:

Audit Division/Lemon Law Refund Section  
Department of Revenue  
P.O. Box 47474  
Olympia, WA 98504-7474

**WSR 15-15-161**  
**PERMANENT RULES**  
**COMMUNITY COLLEGES**  
**OF SPOKANE**

[Filed July 21, 2015, 2:55 p.m., effective August 21, 2015]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This proposal repeals and replaces the previous chapter on student conduct. Changes 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 changes are consistent with the recommendations in the model student conduct code and model hearing procedures for Washington community and technical college[s] and CCS Board Policy 3.30.01 on Non-discrimination/Antiharassment Educational Programs.

Citation of Existing Rules Affected by this Order:  
Repealing chapter 132Q-30 WAC.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 15-11-096 on May 20, 2015.

Number of Sections Adopted in Order to Comply with Federal Statute: New 54, Amended 0, Repealed 44; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 21, 2015.

Kathleen Roberson  
Executive Assistant  
to the CFO

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.

### Chapter 132Q-10 WAC

#### STANDARDS OF CONDUCT FOR STUDENTS

##### NEW SECTION

**WAC 132Q-10-101 Standards of conduct for students—Preamble.** (1) Community Colleges of Spokane (CCS), a multicollge 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 officer, 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; forc-

ible 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 liti-

gation 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 activi-

ties. 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.