

WSR 15-20-113
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed October 6, 2015, 2:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-12-084.

Title of Rule and Other Identifying Information: The department is amending WAC 388-101-3000, 388-101-4190, 388-101-4200 and 388-101-4240; repealing WAC 388-101-4210, 388-101-4220 and 388-101-4230; and creating WAC 388-101-3202, 388-101-3259, 388-101-4175, 388-101-4180, 388-101-4185, 388-101-4205, 388-101-4515, 388-101-4525, and 388-101-4535.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on November 24, 2015, at 10:00 a.m.

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

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

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by November 11, 2015, phone (360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Changes to chapter 388-101 WAC are needed to align with new or changed legislation to include:

- HB 1307 outlines enforcement changes in regards to CCRSS providers.
- Initiative 1163 modifies the law governing background checks, training, and home care aide certification for long-term care and must be implemented in this program by January 1, 2016. This created changes in the definition section of this WAC and long-term care worker requirements (WAC 388-101-3259) and background checks (WAC 388-101-3202).
- SB 5600 modified certain definitions concerning vulnerable adults, including the definitions of abuse and sexual abuse and also amended RCW 74.35.020 and 74.34.205. These changes are reflected in the definition section of this WAC.

Reasons Supporting Proposal: Repealing the rules is beneficial to or supported by the regulated entities to prevent duplication of certification rules and supports the health and safety of residents in long-term care settings.

Statutory Authority for Adoption: Chapter 71A.12 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fis-

cal Matters: Comments and recommendations were received from the board of appeals regarding statutory language. These recommended changes will be incorporated into these proposed rules once all comments are received through the public hearing process.

Name of Proponent: Department of social and health services, Penelope Rarick, policy program manager, AL TSA/RCS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Penelope Rarick, Olympia, (360) 725-3210.

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

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rules do not meet the definition of "significant legislative rule" under RCW 34.05.328 (5)(c).

September 30, 2015
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-10-028, filed 4/28/14, effective 5/29/14)

WAC 388-101-3000 Definitions. "Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means:

(1) The willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult;

(2) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish; and

(3) Abuse includes sexual abuse, mental abuse, physical abuse, and personal exploitation of a vulnerable adult and improper use of restraint against a vulnerable adult, which have the following meanings:

(a) **"Sexual abuse"** means any form of nonconsensual sexual ~~((contact))~~ conduct, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual ~~((contact))~~ conduct may include interactions that do not involve touching, including but not limited to sending a client sexually explicit messages, or cuing or encouraging a client to perform sexual acts. Sexual abuse also includes any sexual ~~((contact))~~ conduct between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(b) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving((-) or prodding((-) ~~or the use of chemical restraints or physical~~

restraints unless the restraints are consistent with licensing and certification requirements, and includes restraints that are otherwise being used inappropriately).

(c) **"Mental abuse"** means ~~((any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, regular activity, and verbal assault that includes ridiculing, intimidating,))~~ a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling, or swearing.

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

(e) **"Improper use of restraint"** means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline or in a manner that:

(i) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW;

(ii) Is not medically authorized; or

(iii) Otherwise constitutes abuse under this section.

(f) **"Chemical restraint"** means the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has a temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

"Associated with the applicant" means any person listed on the application as a partner, officer, director, or majority owner of the applying entity, or who is the spouse or domestic partner of the applicant.

"Case manager" means the division of developmental disabilities case resource manager or social worker assigned to a client.

"Certification" means a process used by the department to determine if an applicant or service provider complies with the requirements of this chapter and is eligible to provide certified community residential services and support to clients.

"Chaperone agreement" means a plan or agreement that describes who will supervise a community protection program client when service provider staff is not present. This plan or agreement is negotiated with other agencies and individuals who support the client, including the client's legal representative and family.

"Chemical restraint" means the use of psychoactive medications for discipline or convenience and not prescribed to treat the client's medical symptoms.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(4) and who also has been determined eligible to receive services by the division of developmental disabilities under chapter 71A.16 RCW. For purposes of informed consent and decision making requirements, the term "client" includes the client's legal representative to the extent of the representative's legal authority.

"Client services" means instruction and support services that service providers are responsible to provide as identified in the client's individual support plan.

"Consent" means express written consent granted after the vulnerable adult or his or her legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

"Crisis diversion" means temporary crisis residential services and supports provided to clients at risk of psychiatric hospitalization and authorized by the division of developmental disabilities.

"Crisis diversion bed services" means crisis diversion that is provided in a residence maintained by the service provider.

"Crisis diversion support services" means crisis diversion that is provided in the client's own home.

"Department" means the Washington state department of social and health services.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020(6).

"Functional assessment" means a comprehensive evaluation of a client's challenging behavior(s). This evaluation is the basis for developing a positive behavior support plan.

"Group home" means a residence that is licensed as either an assisted living facility or an adult family home by the department under chapters 388-78A or 388-76 WAC. Group homes provide community residential instruction, supports, and services to two or more clients who are unrelated to the provider.

"Group training home" means a certified nonprofit residential facility that provides full-time care, treatment, training, and maintenance for clients, as defined under RCW 71A.22.020(2).

"Immediate" or **"immediately"** means within twenty-four hours for purposes of reporting abandonment, abuse, neglect, or financial exploitation of a vulnerable adult.

"Immediate risk", **"immediate threat"** or **"imminent danger"** means serious physical harm to or death of a client has occurred, or there is a serious threat to the client's life, health or safety.

"Individual financial plan" means a plan describing how a client's funds will be managed when the service provider is responsible for managing any or all of the client's funds.

"Individual instruction and support plan" means a plan developed by the service provider and the client. The individual instruction and support plan:

(1) Uses the information and assessed needs documented in the individual support plan to identify areas the client would like to develop;

(2) Includes client goals for instruction and support that will be formally documented during the year; and

(3) Must contain or refer to other applicable support or service information that describes how the client's health and welfare needs are to be met (e.g. individual financial plan, positive behavior support plan, cross system crisis plan, indi-

vidual support plan, individual written plan, client-specific instructions).

"Individual support plan" means a document that authorizes and identifies the division of developmental disabilities paid services to meet a client's assessed needs.

"Instruction" means goal oriented teaching that is designed for acquiring and enhancing skills.

"Instruction and support services staff" means long-term care workers of the service provider whose primary job function is the provision of instruction and support services to clients. Instruction and support services staff shall also include employees of the service provider whose primary job function is the supervision of instruction and support services staff. In addition, both applicants, prior to initial certification, and administrators, prior to assuming duties, who may provide instruction and support services to clients shall be considered instruction and support services staff for the purposes of the applicable training requirements.

"Legal representative" means a person's legal guardian, a person's limited guardian when the subject matter is within the scope of the limited guardianship, a person's attorney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

"Long-term care workers" include all persons who provide paid, hands-on personal care services for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care workers employed by home care agencies, providers of home care services to persons with developmental disabilities under Title 71A RCW, all direct care workers in state-licensed assisted living facilities, and adult family homes, respite care providers, direct care workers employed by community residential service businesses, and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

"Managing client funds" means that the service provider:

- (1) Has signing authority for the client;
- (2) Disperses the client's funds; or
- (3) Limits the client's access to funds by not allowing funds to be spent.

"Mechanical restraint" means ((~~any~~) any device ((~~or~~ or ~~object, which the client cannot remove, applied to the client's body that restricts his/her free movement~~)) attached or adjacent to the vulnerable adult's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are:

- (1) medically authorized, as required; and
- (2) used in a manner that is consistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW.

"Medication administration" means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the client by an individual legally authorized to do so.

"Medication assistance" means assistance with self administration of medication rendered by a nonpractitioner to a client receiving certified community residential services

and supports in accordance with chapter 69.41 RCW and chapter 246-888 WAC.

"Medication service" means any service provided by a certified community residential services and support provider related to medication administration or medication assistance provided through nurse delegation and medication assistance.

"Minimal" means violations that result in little or no negative outcome and/or little or no potential harm for a client.

"Moderate" means violations that result in negative outcome and actual or potential harm for a client.

"Negative outcome" includes any negative effect on the client's physical, mental, or psychosocial well-being (i.e., safety, quality of life, quality of care).

"Neglect" means:

(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or

(2) An act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

"Physical intervention" means the use of a manual technique intended to interrupt or stop a behavior from occurring. This includes using physical restraint to release or escape from a dangerous or potentially dangerous situation.

"Physical restraint" means ((~~physically holding or restraining all or part of a client's body in a way that restricts the client's free movement. This does not include briefly holding, without undue force, a client in order to calm him/her, or holding a client's hand to escort the client safely from one area to another~~)) the application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include:

(a) Briefly holding without undue force on a vulnerable adult in order to calm or comfort him or her; or

(b) Holding a vulnerable adult's hand to safely escort him or her from one area to another.

"Psychoactive" means possessing the ability to alter mood, anxiety level, behavior, cognitive processes, or mental tension, usually applied to pharmacological agents.

"Psychoactive medications" means medications prescribed to improve or stabilize mood, mental status or behavior. Psychoactive medications include anti-psychotics/neuroleptics, atypical antipsychotics, antidepressants, stimulants, sedatives/hypnotics, and antimanania and antianxiety drugs.

"Qualified professional" means a person with at least three years' experience working with individuals with developmental disabilities and as required by RCW 71A.12.220 (12).

"Recurring" or "repeated" means that the department has cited the service provider for a violation of applicable licensing laws or rules and the circumstances of (1) and (2) of this definition are present:

(1) The department previously imposed an enforcement remedy for a violation of the same section of law or rule for substantially the same problem following any type of inspection within the preceding twenty four months; or

(2) The department previously cited a violation under the same section of law or rule for substantially the same problem following any type of inspection on two occasions within the preceding twenty four months.

(3) If the previous violation in (1) or (2) of this definition was pursuant to a law or rule that has changed at the time of the new violation, a citation to the equivalent current law or rule section is sufficient.

"Restrictive procedure" means any procedure that restricts a client's freedom of movement, restricts access to client property, requires a client to do something which he/she does not want to do, or removes something the client owns or has earned.

"Risk assessment" means an assessment done by a qualified professional and as required by RCW 71A.12.230.

"Serious" means violations that result in one or more negative outcomes and significant actual harm to client that does not constitute imminent danger; and/or, there is reasonable predictability of recurring actions, practices, situations or incidents with potential for causing significant harm to a client.

"Severity" means the seriousness of a violation as determined by the actual or potential negative outcomes for clients and subsequent actual or potential for harm. Negative outcomes include any negative effect on the client's physical, mental, or psychosocial well-being (i.e., safety, quality of life, quality of care).

"Service provider" means a person or entity certified by the department who delivers services and supports to meet a client's identified needs. The term includes the state operated living alternative (SOLA) program.

"Support" means assistance a service provider gives a client based on needs identified in the individual support plan.

"Supported living" means instruction, supports, and services provided by service providers to clients living in homes that are owned, rented, or leased by the client or their legal representative.

"Treatment team" means the program participant and the group of people responsible for the development, implementation, and monitoring of the person's individualized supports and services. This group may include, but is not limited to, the case manager, therapist, the service provider, employment/day program provider, and the person's legal representative and/or family, provided the person consents to the family member's involvement.

"Uncorrected deficiency" means the department has cited a violation of WAC or RCW following any type of certification evaluation or complaint investigation and the violation remains uncorrected at the time the department makes a subsequent inspection for the specific purpose of verifying whether such violation has been corrected.

"Vulnerable adult" includes a person:

- (1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or
- (2) Found incapacitated under chapter 11.88 RCW; or

(3) Who has a developmental disability as defined under RCW 71A.10.020; or

(4) Admitted to any facility; or

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(6) Receiving services from an individual provider.

"Willful" means the deliberate, or nonaccidental, action or inaction by an individual that he/she knew or reasonably should have known could cause a negative outcome, including harm, injury, pain, or anguish.

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

NEW SECTION

WAC 388-101-3202 Background checks—National fingerprint background checks. (1) Administrators and all caregivers who are hired on or after January 1, 2016, and are not disqualified by the Washington state name and date of birth background check, must complete a national fingerprint background check and follow department procedures.

(2) After receiving the results of the national fingerprint background check the service provider must not employ, directly or by contract, an administrator, employee, volunteer, student or subcontractor who has a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113, 388-78A or 388-76 WAC.

(3) The service provider may accept a copy of the national fingerprint background check results letter and any additional information from the department's background check central unit from an individual who previously completed a national fingerprint check through the department's background check central unit, provided the national fingerprint background check was completed after January 7, 2012.

NEW SECTION

WAC 388-101-3259 Long-term care worker requirements. Beginning January 1, 2016, all staff employed as Long-term care workers as defined by RCW 74.39A.009(16) are required to meet all the training requirements in the following:

- (1) Chapter 388-112 WAC, if the service provider is also licensed as an adult family home or assisted living facility
- (2) Chapter 388-829 WAC, if the service provider is certified only.

NEW SECTION

WAC 388-101-4175 Remedies—General. The department may take one or more of the following actions in any case which the department finds that a service provider is noncompliant with the requirements of this chapter, the department's residential services contract, the requirements of chapter 74.34 RCW or other relevant federal, state and local laws, requirements or ordinances:

- (1) Require a service provider to implement a plan of correction developed by the department and to cooperate

with subsequent monitoring of the service provider's progress;

(2) Impose reasonable conditions on a service provider's certification such as correction within a time specified in the statement of deficiency, training, and limits on the type of client the provider may serve,

(3) Impose civil penalties;

(4) Suspend the service provider from accepting clients with specified needs by imposing a limited suspension of department referrals (stop placement);

(5) Suspend department referrals (stop placement);

(6) Refuse to certify a prospective provider;

(7) Decertify or refuse to renew the certification of the service provider;

(8) The enforcement actions and penalties authorized in this section are not exclusive or exhaustive and nothing in this section prohibits the department from taking any action authorized in statute or rule or under the terms of a contract with the service provider.

NEW SECTION

WAC 388-101-4180 Remedies—Consideration for imposing remedies. (1) When determining the appropriate enforcement actions the department will select actions in proportion to the seriousness of the harm or threat of harm to clients being served by the service provider.

(2) The department may take enforcement actions that are more severe for violations that are:

(a) Uncorrected;

(b) Repeated;

(c) Pervasive; or

(d) Present a serious threat to the health, safety, or welfare of clients served by the provider.

NEW SECTION

WAC 388-101-4185 Remedies—Circumstances resulting in enforcement remedies. The department is authorized to impose the enforcement remedies described in these chapters when the service provider has:

(1) Failed or refused to comply with the health and safety related requirements of this chapter, chapter 74.34 RCW or the rules adopted under these chapters;

(2) Failed or refused to cooperate with the certification process;

(3) Prevented or interfered with a certification, inspection, or complaint investigation by the department;

(4) Failed to comply with any applicable requirements regarding vulnerable adults under chapter 74.34 RCW or;

(5) Knowingly, or with reason to know, made a false statement of material fact related to certification or contracting with the department, or in any matter under investigation by the department;

(6) Failed to submit a plan of correction for approval by the department;

(7) Failed to implement the plan or plans of correction or failed to make a correction imposed under WAC; or

(8) Failed to cooperate with subsequent monitoring.

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

WAC 388-101-4190 Remedies—Specific provisional certification. (1) The department may impose a provisional certification, not to exceed one hundred eighty days, if any service provider does not comply with requirements of this chapter, other applicable laws and rules, or the residential services contract.

(2) At the end of provisional certification the department may:

(a) Approve the service provider for regular certification if the service provider has complied with certification requirements; or

(b) ~~((Revoke))~~ Decertify the service provider ~~((s certification))~~ and terminate the residential services contract if the service provider has not complied with all certification requirements.

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

WAC 388-101-4200 Remedies—Specific—Decertification. The department may ~~((revoke any))~~ decertify a service provider ~~((s certification))~~ at any time for noncompliance with the requirements of this chapter, the department's residential services contract, the requirements of chapter 74.34 RCW or other relevant federal, state and local laws, requirements or ordinances.

NEW SECTION

WAC 388-101-4205 Remedies—Specific—Suspend department referrals (stop placement). (1) The department may suspend referrals to the provider for noncompliance with the requirements of this chapter, the department's residential services contract, and the requirements of chapter 74.34 RCW or other relevant federal, state and local laws.

(2) Once imposed, the provider must not admit new referrals until the suspension of department referrals is lifted.

(3) The department may end the suspension of department referrals only after the department finds the:

(a) Deficiencies necessitating the suspension of department referrals have been corrected; and

(b) Provider can exhibit the capacity to maintain correction of the violations previously found.

(4) If upon revisiting the provider, the department finds new violations that the department reasonably believes will result in a new suspension or limited suspension of department referrals, the previous suspension or limited suspension of department referrals remains in effect until the new suspension or limited suspension of department referrals is imposed

(5) After a department finding of a violation for which a suspension of department referrals has been imposed, the department shall make an on-site revisit of the provider within fifteen working days from the date the provider notifies the department of the correction.

NEW SECTION

WAC 388-101-4515 Remedies—Specific—Limited suspension of department referrals (stop placement) for clients with specified needs. (1) The department may order a limited suspension of department referrals and prohibit the accepting of clients with specified needs if the provider is noncompliant with the requirements of this chapter, the department's residential services contract, the requirements of chapter 74.34 RCW or other relevant federal, state and local laws.

(2) Once imposed, the provider must not accept any clients with the identified specific needs or at a specific site until the limited suspension of department referrals order is lifted.

(3) The department may lift the limited suspension of department referrals only after the department finds the:

(a) Deficiencies necessitating the limited suspension of department referrals have been corrected; and

(b) Provider can exhibit the capacity to maintain correction of the violations previously found.

(4) If upon revisiting the provider the department finds new violations that the department reasonably believes will result in a new suspension or limited suspension of department referrals, the previous suspension or limited suspension

of department referrals remains in effect until the new suspension or limited suspension of department referrals is imposed.

(5) After a department finding of a violation for which a limited suspension of department referrals has been imposed, the department shall make an on-site revisit of the provider within fifteen working days from the date the provider notifies the department of the correction.

NEW SECTION

WAC 388-101-4525 Remedies—Specific—Civil penalties. (1) The department may impose civil penalties of at least one hundred dollars per day per violation.

(2) The department may impose a civil penalty up to three thousand dollars per violation.

(3) The civil penalty can be assessed from the compliance date identified in the approved plan of correction or the date of the statement of deficiencies.

(4) If a provider fails to submit a plan of correction for approval by the department, the department may impose civil penalties as described in this subsection starting ten days after the provider received the statement of deficiency.

NEW SECTION

WAC 388-101-4535 Remedies—Civil fine grid. The department will consider the guidance in the tiered sanction grid below when imposing civil fine remedies:

NO HARM	MINIMAL or MODERATE HARM		SERIOUS HARM		IMMINENT DANGER and/or IMMEDIATE THREAT
Repeat/ Uncorrected	Initial	Repeat/ Uncorrected	Initial	Repeat/ Uncorrected	Any Violation
Civil fine of up to \$100 per violation	Civil fine up to \$100 per day per violation not to exceed \$500 per violation	Civil fine up to \$100 per day per violation not to exceed \$1000 per violation	Civil fine up to \$100 per day per violation not to exceed \$2000 per violation	Civil fine up to \$100 per day per violation not to exceed \$3000 per violation	Civil fine up to \$100 per day per violation not to exceed \$3000 per violation

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

WAC 388-101-4240 Informal dispute resolution. (1) When a service provider disagrees with the department's finding of a violation or certification action under this chapter, the service provider may request an informal dispute resolution meeting with the department.

(2) The service provider must make a written request to the department for an informal dispute resolution meeting within ten working days of receipt of the written notice of the department's final report of findings and/or certification action.

(3) The service provider must submit a written statement identifying the challenged action, and include specifically the issues and regulations involved.

(4) Except for the imposition of civil penalties, the effective date of enforcement actions may not be delayed or sus-

pending pending any hearing or informal dispute resolution process.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-101-4210 Community protection program—Circumstances resulting in enforcement remedies.

WAC 388-101-4220 Community protection program—Authorized enforcement remedies.

WAC 388-101-4230 Community protection program—Considerations for imposing remedies.

WSR 15-21-015
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed October 12, 2015, 10:05 a.m.]

October 12, 2015
Damon Monroe
Rules Coordinator

Original Notice.

Preproposal statement of inquiry was filed as WSR 14-23-067.

Title of Rule and Other Identifying Information: Chapter 308-20 WAC, Cosmetology—Barber—Manicurist—Esthetician rules.

Hearing Location(s): Department of Licensing, Business and Professions Division, Building 2, Conference Room 209, 405 Black Lake Boulevard S.W., Olympia, WA 98502, on December 4, 2015, 10:30 a.m.

Date of Intended Adoption: December 10, 2015.

Submit Written Comments to: Cameron Dalmas, Department of Licensing, Cosmetology Program, P.O. Box 9026, Olympia, WA 98507, e-mail plssunit@dol.wa.gov, fax (360) 664-6643, by December 4, 2015.

Assistance for Persons with Disabilities: Contact Cameron Dalmas by December 4, 2015, TTY (360) 664-0116 or (360) 664-6643.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department will amend chapter 308-20 WAC to ensure we are meeting current safety and sanitation requirements regarding public safety. Also, the department will restructure the cosmetology salon shop license fee when cosmetology and permanent cosmetic services are offered at the same location to reduce the burden to small businesses.

Amending WAC 308-20-055 Apprentice records, 308-20-080 Minimum instruction guidelines for cosmetology, barbering, manicuring and esthetics training, 308-20-110 Minimum safety and sanitation standards for schools, cosmetologists, manicurists, estheticians, barbers, instructors, salons/shops, mobile units and personal services, and 308-20-210 Fees.

Reasons Supporting Proposal: The department has received numerous requests from stakeholders to have the existing safety and sanitation procedures updated and amended for clarity, intent, and statutory authority. The proposed rule amendments are supported by industry.

Statutory Authority for Adoption: RCW 18.145.050, 43.24.023.

Statute Being Implemented: Chapter 18.16 RCW.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Susan Colard, Administrator, 405 Black Lake Boulevard S.W., Olympia, WA 98502, (360) 664-6647.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are exempt under RCW 34.05.310 (4)(g)(ii).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

AMENDATORY SECTION (Amending WSR 13-24-042, filed 11/26/13, effective 1/1/14)

WAC 308-20-055 Apprentice records. (1) Apprentice salon/shops shall collect and record monthly and final apprentice training records. These reports described in WAC 308-20-010(8) shall contain the cumulative number of hours the apprentice has earned in each area of the minimum instruction guidelines and the number of times an apprentice performs an activity. Records shall include the month, year, and daily activities of the apprentice in each subject.

(2) Copies of each apprentice's records shall be kept on file at the apprentice salon shop for the duration of training for each apprentice and provided to the apprentice and the apprenticeship program at the end of each month of training.

(3) Monthly and final apprentice records shall be signed by the apprentice trainer (~~and shop owner~~). The apprentice salon/shop shall notify the department of persons authorized to sign the apprentice's records on forms provided by the department.

(4) The apprenticeship program shall certify that an apprentice has satisfied the minimum instruction guidelines required in the standards of the apprenticeship program as described in WAC 308-20-080 at the time the final hours are reported to the department.

(5) The apprentice records shall be maintained by the shop during the training and by the Washington state apprenticeship and training committee for three years once training is completed. The apprentice records shall include documentation of apprentice training.

AMENDATORY SECTION (Amending WSR 13-24-042, filed 11/26/13, effective 1/1/14)

WAC 308-20-080 Minimum instruction guidelines for cosmetology, barbering, manicuring and esthetics training. The minimum instruction guidelines for training required for a student or apprentice to be eligible to take the license examination for the following professions shall include:

- (1) For cosmetology:
 - (a) Theory of the practice of cosmetology including business practices;
 - (b) At least 100 hours of skills in the application of manicuring and pedicuring services;
 - (c) At least 100 hours of skills in the application of esthetics services;
 - (d) Shampooing including draping, brushing, scalp manipulations, conditioning and rinsing;
 - (e) Scalp and hair analysis;
 - (f) Hair cutting and trimming including scissors, razor, thinning shears and clippers;
 - (g) Hair styling including wet, dry and thermal styling, braiding and styling aids;
 - (h) Cutting and trimming of facial hair including beard and mustache design and eyebrow, ear and nose hair trimming;

- (i) Artificial hair;
- (j) Permanent waving including sectioning, wrapping, preperm test curl, solution application, processing test curl, neutralizing and removal of chemicals;
- (k) Chemical relaxing including sectioning, strand test, relaxer application, and removal of chemicals;
- (l) Hair coloring and bleaching including predisposition test and strand test, and measurement, mixing, application and removal of chemicals;
- (m) (~~(Sanitizing)~~) Cleaning and disinfecting of individual work stations, individual equipment and tools and proper use and storage of linens;
- (n) Diseases and disorders of the scalp, hair, skin and nails;
- (o) Safety including proper use and storage of chemicals, implements and electrical appliances;
- (p) First aid as it relates to cosmetology; and
- (q) (~~(No more than twenty-five percent of skills training using mannequins.)~~) Not all training may be on mannequins.
- (2) For barbering:
 - (a) Theory of the practice of barbering services and business practices;
 - (b) Shampooing including draping, brushing, scalp manipulations, conditioning and rinsing;
 - (c) Scalp and hair analysis;
 - (d) Hair cutting and trimming including scissors, razor, thinning shears and clippers;
 - (e) Hair styling, wet, dry and thermal styling and styling aids;
 - (f) Cutting and trimming of facial hair including shaving, beard and mustache design and eyebrow, ear and nose hair trimming;
 - (g) Artificial hair;
 - (h) (~~(Sanitizing)~~) Cleaning and disinfecting of individual work stations, individual equipment and tools and proper use and storage of linens;
 - (i) Diseases and disorders of the skin, scalp and hair;
 - (j) Safety including proper use of implements and electrical appliances;
 - (k) First aid as it relates to barbering; and
 - (l) (~~(No more than twenty-five percent of skills training using mannequins.)~~) Not all training may be on mannequins.
- (3) For manicuring:
 - (a) Theory in the practice of manicuring and pedicuring services and business practices;
 - (b) Artificial nails including silk, linen, fiberglass, acrylic, gel, powder, extensions and sculpting, preparation, application, finish and removal;
 - (c) Cleaning, shaping and polishing of nails of the hands and feet and treatment of cuticles;
 - (d) (~~(Sanitizing)~~) Cleaning and disinfecting of individual work station, individual equipment and tools and proper use and storage of linens;
 - (e) Diseases and disorders of the nails of the hands and feet;
 - (f) Safety including proper use and storage of chemicals, implements and electrical appliances;
 - (g) First aid as it relates to manicuring and pedicuring; and

- (h) (~~(No more than twenty-five percent of skills training using mannequins.)~~) Not all training may be on mannequins.
- (4) For esthetics:
 - Theory in the practice of esthetics services and business practices (750 hours):
 - (a) Care of the skin compresses, massage, facials, wraps, masks, exfoliation, use of electrical or mechanical appliances or chemical compounds;
 - (b) Temporary removal of superfluous hair of the skin by means including tweezing, waxing, tape, chemicals, lotions, creams, sugaring, threading, mechanical or electrical apparatus and appliances;
 - (c) (~~(Sanitizing)~~) Cleaning and disinfecting of individual work stations, individual equipment and tools and proper use and storage of linens;
 - (d) Diseases and disorders of the skin (~~(of the face, neck and hands))~~);
 - (e) Safety including proper use and storage of chemicals, implements and electrical appliances;
 - (f) First aid as it relates to esthetics; and
 - (g) (~~(No more than twenty-five percent of skills training using mannequins.)~~) Not all training may be on mannequins.
 - (5) Master esthetics (450 additional hours):
 - Theory in the practice of master esthetics and business practices includes all of subsection (4) of this section and the following:
 - (a) (~~(Exfoliation and medical esthetic procedures;~~ ~~(b))~~) Laser, light frequency, radio frequency, ultrasound, and plasma practices;
 - (~~(c))~~ (b) Medium depth chemical peels;
 - (~~(d))~~ (c) Advanced client assessment, documentation, and indications/contraindications;
 - (~~(e))~~ (d) Pretreatment and post-treatment procedures;
 - (~~(f))~~ (e) Lymphatic drainage and advanced facial massage;
 - (~~(g))~~ (f) Advanced diseases and disorders of the skin; and
 - (~~(h))~~ (g) Advanced theories; alternative, touch, and spa body treatments.

AMENDATORY SECTION (Amending WSR 13-24-042, filed 11/26/13, effective 1/1/14)

WAC 308-20-110 Minimum safety and sanitation standards for schools, cosmetologists, manicurists, estheticians, master estheticians, barbers, instructors, salons/shops, mobile units and personal services. Every licensee shall maintain the following safety and sanitation standards. In addition, school instructors and apprentice trainers must assure persons training in a school or apprentice salon/shop will adhere to the following safety, sanitation and disinfection standards:

(1) Requirements and standards.

- (a) All locations where chemical services are provided to clients must have a dispensing sink with hot and cold running water. Dispensing sinks are used for mixing chemicals, and disinfecting supplies, tools, equipment, and other materials. Dispensing sinks must be labeled "not for public use."
- (b) On-site laundry facilities must be maintained in (~~(a sanitary))~~ clean condition.

(c) Single-use hand soap and disposable or single-use hand-drying towels for customers must be provided.

(d) Use of bar soap or a common towel is prohibited.

(e) ~~A licensee(§) must not perform or continue services on a client with ((visible parasites, open wounds, or signs of infection. If the licensee has reason to believe or observes that the client has a contagious condition such as head lice, nits, ringworm, an open wound or sore or signs of infection in the area to be serviced, the licensee must:~~

~~(i) Stop services immediately in a safe manner;~~

~~(ii) Inform the client of the reason the service was stopped;~~

~~(iii) Sanitize and disinfect all affected tools, work, and waiting areas.~~

~~(f) A licensee who has a contagious disease, visible parasite, or open wound of a nature that may be transmitted, must not perform services on a client until the licensee takes medically approved measures to prevent transmission of the disease.) visible open sores, inflamed skin, rash, or parasitic infestations.~~

~~(f) No licensee who knowingly has open sores, or who is exhibiting symptoms of an infectious or contagious disease or a disorder of the skin or a parasitic infestation shall provide services in cosmetology, manicuring, barbering, esthetics, or master esthetics while the licensee has the above mentioned symptoms.~~

If a licensee or a client has exhibited the symptoms mentioned in (e) and (f) of this subsection, the area in which the affected individual received or provided services, and all equipment and implements that could have possibly been touched by that individual shall be cleaned and disinfected, including the work and waiting areas.

(g) All liquids, creams, and other cosmetic preparations including paraffin wax and depilatory wax must be kept in clean and closed containers.

(h) All bottles and containers must be distinctly and correctly labeled to disclose their contents. All bottles and containers containing poisonous substances must be additionally and distinctly marked as such.

(i) Items subject to possible cross contamination such as liquids, creams and lotions, cosmetic preparations and chemicals including paraffin wax and depilatory wax must be dispensed in a way that does not contaminate the remaining portion by using a disposable, or sanitized and disinfected applicator. Applicators shall not be redipped in product. Liquids must be dispensed with a squeeze bottle ~~((or))~~ pump, or spray. Any product that ~~((becomes contaminated))~~ cannot be disinfected that comes in contact with the client shall be discarded after use on that particular client.

(j) Pencil cosmetics must be sharpened before each use. ~~((Sanitize))~~ Clean and disinfect or dispose of the sharpener after service on each client.

(k) A licensee must thoroughly wash his or her hands with soap and warm water or any equally effective cleansing agent immediately before providing services to each client, before checking a student's work on a client, or after smoking, eating, or using the restroom.

(l) A client's skin upon which services will be performed must be washed with soap and warm water or wiped and/or

sprayed with antiseptic or waterless hand cleanser approved for use on skin before a service ~~((on the hands and feet))~~.

(m) After service on each client, hair and nail clippings must immediately be placed in a closed covered waste container.

(2) Articles in contact with a client.

(a) A neck strip or towel must be placed around the client's neck to prevent direct contact between a multiple use haircloth or cape and the client's skin, and must be in place during entire service.

(b) All items, which come in direct contact with the client's skin that do not require disinfecting, must be ~~((sanitized; including reusable gloves))~~ discarded after each use.

(3) Materials in contact with a client.

(a) Paraffin wax and depilatory wax must be covered in a manner to prevent contamination except during the waxing service, and maintained at a temperature specified by the manufacturer's ~~((instructions))~~ directions.

(b) Paraffin wax and depilatory wax must be dispensed in a way that does not contaminate the remaining portion by using one of the following methods:

(i) Use a new spatula each time wax is removed from the pot;

(ii) Apply wax directly onto a disposable strip;

(iii) Use one dedicated spatula to remove wax from the pot, and then spread the wax with a second spatula. The first spatula should never come in contact with either the client's skin or the second spatula; or

(iv) Separate a quantity of wax from the main wax pot to use on a single client; this quantity should be placed in a small single-use container. Double-dipping is allowed ~~((as long as the remaining wax is not reused between clients. Once the waxing procedure is complete, any remaining wax, as well as the single use container, must be discarded))~~ from a single client-use container.

(c) All used wax that has been in contact with a client's skin shall not be reused under any circumstances and shall be disposed of immediately after each use.

(d) All wax pots shall be cleaned and disinfected according to manufacturer's ~~((recommendations))~~ directions. No applicators shall be left standing in wax at any time.

(4) Chemical use and storage.

(a) When administering services to a client that involve the use of chemicals or chemical compounds, all licensees must follow safety procedures according to manufacturer's ~~((instructions))~~ directions or ~~((material))~~ safety data sheets ~~((MSDSs))~~ (SDSs), to prevent injury to the client's person or clothing.

(b) Salon shops, personal service, mobile units and schools shall have in the immediate working area access to all ~~((material))~~ safety data sheets ~~((MSDSs))~~ (SDSs) provided by manufacturers for any chemical products used.

(c) Flammable chemicals must be stored away from potential sources of ignition.

(d) Chemicals which could interact in a hazardous manner such as oxidizers, catalysts, and solvents, must be stored per manufacturer's instruction.

(e) Licensees using chemicals or chemical compounds ~~((in))~~ when providing services to clients must store the chemicals so as to prevent fire, explosion, or bodily harm. All

chemicals must be stored in accordance with the manufacturer's directions.

(5) Refuse and waste material.

(a) All waste must be deposited in a covered waste disposal container. Containers located in the reception or office area, which do not contain waste relating to the performance of services, are exempt from having covers.

(b) All chemical, flammable, toxic or otherwise harmful waste material must be disposed of in the manner required by local hazardous waste management regulations.

(c) All waste containers must be emptied when full ~~((and at the end of each day and be kept clean by sanitizing or using plastic liners. Outer))~~. Surfaces of waste disposal containers must be kept clean.

(d) Any disposable sharp objects that come in contact with blood or other body fluids must be disposed of in a sealable rigid (puncture proof) labeled container that is strong enough to protect the licensee, client and others from accidental cuts or puncture wounds that could happen during the disposal process.

(e) Licensees must have sealable rigid containers available for use at all times services are being performed.

(6) Sanitation/disinfecting. Environmental Protection Agency (EPA) approved disinfectants are indicated by their registration number on the product label. The product's manufacturer's directions for use shall always be followed.

(a) All tools and implements must be ~~((sanitized))~~ cleaned and disinfected or disposed of after service on each client. Tools and implements not approved for disinfection and reuse under manufacturers' specifications must be given to the client or discarded after service on each client. These tools and implements include, but are not limited to: Nail files, cosmetic make-up sponges, buffer blocks, sanding bands, toe separators or sleeves, orangewood sticks, and disposable nail bits. Presence of used articles in the work area will be considered prima facie evidence of reuse.

(b) When used according to the manufacturer's ~~((instructions))~~ directions, each of the following is an approved method of disinfecting tools and implements after they are cleaned of debris:

(i) Complete immersion or spray with an EPA-registered ~~((hospital-grade))~~ disinfectant solution of the object(s) or portion(s) thereof to be disinfected; or

(ii) Steam sterilizer, registered and listed with the U.S. Food and Drug Administration; or

(iii) Dry heat sterilizer, registered and listed with the U.S. Food and Drug Administration, or Canadian certification.

(c) All ~~((sanitized))~~ cleaned and disinfected tools and implements must be stored in a closed nonairtight container or UV sterilizer. UV sterilizers shall be used only for clean storage of already ~~((sanitized))~~ cleaned and disinfected tools and implements.

(d) All disinfecting solutions and/or agents must be kept at manufacturer recommended strengths to maintain effectiveness, be free from foreign material and be available for immediate use at all times the location is open for business and changed daily.

(e) All articles, which come in direct contact with the client's skin that cannot be ~~((sanitized))~~ cleaned and disinfected,

must be disposed of in a waste receptacle immediately after service on each client. Presence of these articles in the work area will be considered prima facie evidence of reuse.

(f) Disposable protective gloves must be disposed of after service on each client.

(7) Disinfecting nonelectrical tools and implements.

(a) All tools and implements used within a field of practice must be ~~((sanitized))~~ cleaned and disinfected after service on each client in the following order:

(i) **Remove** all hair and/or foreign material;

(ii) ~~((Sanitize))~~ **Clean** thoroughly with soap or detergent and water;

(iii) **Rinse** thoroughly with clear, clean water; and

(iv) **Disinfect** with an EPA-registered ~~((hospital-grade))~~ disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity, used according to manufacturer's ~~((instructions))~~ directions or in a steam sterilizer or dry heat sterilizer under subsection (6)(b)(ii) and (iii) of this section.

(b) Tools and implements without sharp edges or points, including but not limited to combs, brushes, rollers, rods, etc., must be totally immersed in an EPA registered ~~((hospital-grade))~~ disinfectant according to manufacturer's ~~((instructions))~~ directions.

(c) Clips or other tools and instruments must not be placed in mouths, pockets or unsanitized holders.

(d) A client's personal tools and instruments must not be used in the establishment except when prescribed by a physician.

(8) Disinfecting electrical tools and implements. Electrical tools and implements must be disinfected after service on each client in the following order:

(a) Remove hair and/or foreign matter;

(b) Disinfect with an EPA ~~((hospital-grade))~~ disinfectant specifically made for electrical tools and implements.

(9) Storage of tools and implements.

(a) New and/or ~~((sanitized))~~ cleaned and disinfected tools and implements must be stored separately from all other items.

(b) Used tools and implements must be stored in a labeled drawer or container at the work station.

(c) Roller storage receptacles and contents must be ~~((sanitized))~~ cleaned and disinfected and free of foreign material.

(d) Storage cabinets, work stations and storage drawers for ~~((sanitized))~~ cleaned and disinfected tools and implements must be ~~((clean,))~~ free of debris and used only for ~~((sanitized))~~ cleaned and disinfected tools and implements.

(10) Cleaning and disinfecting foot spas.

(a) As used in this section, "foot spa" or "spa" is defined as any basin using circulating water.

(b) After each client:

(i) **Drain** the water from the foot spa basin and remove any visible debris;

(ii) **Clean** the surfaces of the foot spa with soap or detergent, rinse with clean water and drain;

(iii) **Disinfect** the surface with an EPA registered ~~((hospital-grade))~~ disinfectant according to the manufacturer's directions on the label. Surfaces must remain wet with disinfectant for ten minutes or the time stated on the label.

(c) Nightly:

(i) For whirlpool foot spas, air-jet basins, "pipeless" foot spas and other circulating spas:

(A) **Drain** the water from the foot spa basin or bowl and remove any visible debris.

(B) **Clean** the surfaces of the foot spa with soap or detergent, rinse with clean water and drain.

(C) **Disinfect** - Fill the basin with clean water, adding the appropriate amount of EPA registered ((~~hospital grade~~)) disinfectant. Turn the unit on to circulate the disinfectant for the entire contact time according to the manufacturer's directions on the label.

(D) **Drain and rinse** the basin with clean water and allow to air dry.

(ii) For foot spas with filter screens, inlet jets and other removable parts that require special attention during the disinfecting process.

(A) **Drain** the water from the foot spa basin and remove any visible debris.

(B) **Remove** the filter screen, inlet jets and all other removable parts from the basin and clean out any debris trapped behind or in them.

(C) **Scrub** the removable parts using a brush and soap or detergent.

(D) **Rinse** the removed parts with clean water and replace them in the basin.

(E) **Clean** the surfaces of the foot spa with soap or detergent, rinse with clean water and drain.

(F) **Disinfect** - Fill the basin with clean water, adding the appropriate amount of EPA registered ((~~hospital grade~~)) disinfectant. Turn the unit on to circulate the disinfectant for the entire contact time according to the manufacturer's directions on the label.

(G) **Drain and rinse** the basin with clean water and allow to air dry.

(d) ~~((Weekly: Once per week after the nightly cleaning and disinfecting as provided in (c) of this subsection, each foot spa must be cleaned and disinfected in the following order:~~

(i) ~~**Fill** the spa basin completely with water and one teaspoon of 5.25% bleach for each gallon of water, or a solution of sodium hypochlorite of approximately 50 ppm used according to manufacturer's instructions.~~

(ii) ~~**Flush** the spa system with the bleach and water solution or sodium hypochlorite solution for five to ten minutes and allow to sit for six to ten hours.~~

(iii) ~~**Drain** the spa system and flush with water before service on a client.~~

(~~e~~) A record must be made of the date and time of each cleaning and disinfecting as required by (c) and (d) of this subsection (~~, and indicate whether the cleaning was a daily or weekly cleaning~~). This record must be made at the time of cleaning and disinfecting. Cleaning and disinfecting records must be made available upon request by either a client or a department representative.

(~~f~~) (e) For simple basins and reusable liners (no circulation):

(i) **Drain** the basin and remove any visible debris.

(ii) **Scrub** the basin with a clean brush and soap or detergent following manufacturer's ~~((instructions))~~ directions.

(ii) **Rinse** the basin with clean water and drain.

(iv) **Disinfect** basin surfaces with an EPA registered ~~((hospital grade))~~ disinfectant following manufacturer's ~~((instructions))~~ directions. Surfaces must remain wet with disinfectant for ten minutes or the contact time stated on the label.

(v) **Drain and rinse** the basin with clean water and allow to **air dry**.

(11) **Headrests, shampoo bowls, and treatment tables.**

(a) The headrest of chairs must be ~~((sanitized))~~ cleaned and disinfected after service on each client.

(b) Shampoo trays and bowls must be ~~((sanitized))~~ cleaned and disinfected after each shampoo, kept in good repair and in a ~~((sanitary))~~ clean condition at all times.

(c) All treatment tables must be ~~((sanitized))~~ cleaned, disinfected and covered with ~~((sanitary))~~ clean linens or examination paper, which must be changed after each service on a client.

(12) **Walls, floors, and ceilings.** Walls, floors, and ceilings must be ~~((sanitized))~~ cleaned and disinfected as necessary and kept clean and free of excessive spots, mildew, condensation, or peeling paint.

(13) **Towels** ~~((or linens. Clean towels or linens must be used for each client in cosmetology, esthetics, manicuring and barbering services. Towels and linens must be sanitized and disinfected by washing with hot water, laundry detergent and chlorine bleach used according to manufacturer's instructions for disinfection purposes))~~, **linens, capes and robes.** No towels, linens, capes, or robes shall be used more than once without proper laundering as described in this section.

(14) All towels, linens, capes, robes, and similar items shall be laundered in a washing machine with laundry detergent and chlorine bleach used according to manufacturer's directions for disinfecting purposes. A closed dustproof cabinet with solid sides and a top shall be provided for cleaned towels, linens, capes and robes. A hamper with solid sides or a receptacle that is closed and ventilated shall be provided for all soiled cloth towels, linens, capes and robes and never left overnight.

~~((14))~~ **(15) Prohibited hazardous substances - Use of products.** No establishment or school may have on the premises cosmetic products containing hazardous substances which have been banned by the U.S. Food and Drug Administration for use in cosmetic products. Use of 100% liquid methyl methacrylate monomer and methylene chloride products are prohibited. No product must be used in a manner that is disapproved by the U.S. Food and Drug Administration.

~~((15))~~ **(16) Prohibited instruments or practices.** Any razor-edged tool, which is designed to remove calluses.

~~((16))~~ **(17) Blood spills.** If there is a blood spill or exposure to other body fluids during a service, licensees and students must stop and proceed in the following order:

(a) Stop service;

(b) Put on gloves;

(c) Clean the wound with an antiseptic solution;

(d) Cover the wound with a sterile bandage;

(e) If the wound is on a licensee hand in an area that can be covered by a glove or finger cover, the licensee must wear a clean, fluid proof protective glove or finger cover. If the

wound is on the client, the licensee providing service to the client must wear gloves on both hands;

(f) Discard all contaminated objects. Contaminated objects shall be placed in a sealed plastic bag (~~labeled "bio-hazard"~~) and that bag must be placed inside another plastic bag and discarded;

(g) All equipment, tools and instruments that have come into contact with blood or other body fluids must be (~~sani-~~itized) cleaned and disinfected or discarded;

(h) Remove gloves; and

(i) Wash hands with soap and water before returning to the service.

~~((17))~~ **(18) First-aid kit.** The establishment must have a first-aid kit that contains at a minimum:

- Small bandages;
- Gauze;
- Antiseptic; and
- A blood spill kit that contains:
 - Disposable bags;
 - Gloves(~~;~~and
 - ~~- Biohazard labels~~)).

~~((18))~~ **(19) Restroom.**

(a) All locations must have a restroom available. The restroom must be located on the premises or in adjoining premises, which is reasonably accessible.

(b) All restrooms located on the premises must be kept clean(~~;~~sanitary) and in proper working order at all times.

AMENDATORY SECTION (Amending WSR 13-24-042, filed 11/26/13, effective 1/1/14)

WAC 308-20-210 Fees. In addition to any third-party examinations fees, the following fees shall be charged by the professional licensing division of the department of licensing:

Title of Fee	Fee
Cosmetologist:	
License application	\$25.00
Reciprocity license	50.00
Renewal (two-year license)	55.00
Late renewal penalty	55.00
Duplicate license	15.00
Instructor:	
License application	25.00
Reciprocity license	50.00
Renewal (two-year license)	55.00
Late renewal penalty	55.00
Duplicate license	15.00
Manicurist:	
License application	25.00
Reciprocity license	50.00
Renewal (two-year license)	55.00
Late renewal penalty	55.00

Title of Fee	Fee
Duplicate	15.00
Esthetician:	
License application	25.00
Reciprocity license	50.00
Renewal (two-year license)	55.00
Late renewal penalty	55.00
Duplicate	15.00
Master esthetician:	
License application	25.00
Reciprocity license	50.00
Renewal (two-year license)	55.00
Late renewal penalty	55.00
Duplicate license	15.00
Barber:	
License application	25.00
Reciprocity license	50.00
Renewal (two-year license)	55.00
Late renewal penalty	55.00
Duplicate license	15.00
School:	
License application	300.00
Renewal (one-year license)	300.00
Late renewal penalty	175.00
Duplicate	15.00
Salon/shop:	
License application	110.00
<u>*Reduced license application (permanent cosmetics)</u>	<u>15.00</u>
Renewal (one-year license)	110.00
<u>*Reduced renewal (permanent cosmetics)</u>	<u>15.00</u>
Late renewal penalty	50.00
Duplicate license	15.00
Mobile unit:	
License application	110.00
<u>*Reduced license application (permanent cosmetics)</u>	<u>15.00</u>
Renewal (one-year license)	110.00
<u>*Reduced renewal (permanent cosmetics)</u>	<u>15.00</u>
Late renewal penalty	50.00
Duplicate license	15.00
Personal services:	
License application	110.00
<u>*Reduced license application (permanent cosmetics)</u>	<u>15.00</u>

Title of Fee	Fee
Renewal (one-year license)	110.00
<u>*Reduced renewal (permanent cosmetics)</u>	<u>15.00</u>
Late renewal penalty	50.00
Duplicate license	15.00

* If you have an individual artist license and an artist shop location license to practice permanent cosmetics under chapter 18.300 RCW, and an operator license under chapter 18.16 RCW you may qualify for a reduction of the license fee for your salon shop license if it is at the same location as your artist shop location license.

WSR 15-21-027

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed October 13, 2015, 1:43 p.m.]

The aging and long-term support administration requests the withdrawal of proposed rule-making notice filed as WSR 15-10-096 on May 6, 2015 (chapter 388-101 WAC) regarding certified community residential services and supports.

The aging and long-term support administration filed this proposed rule-making notice in error.

Katherine I. Vasquez
Rules Coordinator

WSR 15-21-033

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed October 14, 2015, 2:52 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-17-114.

Title of Rule and Other Identifying Information: Chapter 308-330 WAC, updating the model traffic ordinance (MTO) to incorporate recent legislative changes, update statutory citations, and make editing corrections.

Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia, WA 98507 (check in at counter on first floor), on November 25, 2015, at 3:00 p.m.

Date of Intended Adoption: November 30, 2015.

Submit Written Comments to: Clark J. Holloway, P.O. Box 9030, Olympia, WA 98507-9030, e-mail cholloway@dol.wa.gov, fax (360) 570-7048, by November 24, 2015.

Assistance for Persons with Disabilities: Contact Clark J. Holloway by November 24, 2015, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules amend WAC 308-330-197, 308-330-200, 308-330-305, 308-330-309, 308-330-316, 308-330-330, 308-330-360, 308-330-415, 308-330-425, 308-330-462, 308-330-464 and 308-

330-700, to incorporate references to newly created sections of statute pertaining to licensing of intermittent-use trailers and THC open container violations; and to update statutory citations and make editing corrections.

Reasons Supporting Proposal: Updating MTO will permit local governments to enforce the newly created sections of statute by reference through local traffic ordinances that adopt MTO by reference.

Statutory Authority for Adoption: RCW 46.90.010.

Statute Being Implemented: RCW 46.90.010.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Clark J. Holloway, Highways-Licenses Building, Olympia, Washington, (360) 902-3846; Implementation and Enforcement: Julie Knittle, Highways-Licenses Building, Olympia, Washington, (360) 902-3763.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement is not required pursuant to RCW 19.85.025(3).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

October 14, 2015

Damon Monroe

Rules Coordinator

AMENDATORY SECTION (Amending WSR 13-21-026, filed 10/8/13, effective 11/8/13)

WAC 308-330-197 RCW sections adopted—Off-road and nonhighway vehicles. The following sections of the Revised Code of Washington (RCW) pertaining to off road and nonhighway vehicles as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.09.310, 46.09.330, 46.09.350, 46.09.360, 46.09.-420, 46.09.440, ~~46.09.442, 46.09.444,~~ 46.09.450, ~~46.09.455, 46.09.457,~~ 46.09.460, 46.09.470, 46.09.480, ~~46.09.485, and 46.09.490((, 2013 e 23 s [§] 4, 2013 e 23 s [§] 5, 2013 e 23 s [§] 6, 2013 e 23 s [§] 7, and 2013 e 23 s [§] 9)).~~

AMENDATORY SECTION (Amending WSR 11-20-041, filed 9/28/11, effective 10/29/11)

WAC 308-330-200 RCW sections adopted—Snowmobiles. The following sections of the Revised Code of Washington (RCW) pertaining to snowmobiles as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.10.300, 46.10.310, 46.10.330, 46.10.460, 46.10.470, 46.10.480, 46.10.490, 46.10.495, and ~~((46.10.500 [46.10.500] 46.10.500.~~

AMENDATORY SECTION (Amending WSR 11-20-041, filed 9/28/11, effective 10/29/11)

WAC 308-330-305 RCW sections adopted—Vehicle licenses. The following sections of the Revised Code of Washington (RCW) pertaining to vehicle licenses as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.12.695, 46.16A.030, 46.16A.-140, 46.16A.160, 46.16A.175, 46.16A.180, 46.16A.200, 46.16A.320, 46.16A.350, 46.16A.405, 46.16A.420, 46.16A.-425, 46.16A.450, 46.16A.500, 46.16A.520, 46.16A.530, 46.16A.540, 46.16A.545, 2015 c 200 § 1, 46.18.200, 46.18.-205, 46.18.215, 46.18.220, 46.18.235, 46.18.275, 46.18.277, 46.18.285, 46.19.050, and 46.19.070.

AMENDATORY SECTION (Amending WSR 13-21-027, filed 10/8/13, effective 7/8/14)

WAC 308-330-309 RCW sections adopted—Uniform Commercial Driver's License Act. The following sections of the Revised Code of Washington (RCW) pertaining to the Uniform Commercial Driver's License Act as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.25.010, 46.25.020, 46.25.030, 46.25.-040, 46.25.050, 46.25.052, 46.25.055, 46.25.057, 46.25.110, 46.25.120, and 46.25.170(~~and 2013 e 224 s 5~~).

AMENDATORY SECTION (Amending WSR 13-21-026, filed 10/8/13, effective 11/8/13)

WAC 308-330-316 RCW sections adopted—Vehicle lighting and other equipment. The following sections of the Revised Code of Washington (RCW) pertaining to vehicle lighting and other equipment as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.37.010, 46.37.020, 46.37.030, 46.37.040, 46.37.-050, 46.37.060, 46.37.070, 46.37.080, 46.37.090, 46.37.100, 46.37.110, 46.37.120, 46.37.130, 46.37.140, 46.37.150, 46.37.160, 46.37.170, 46.37.180, 46.37.184, 46.37.185, 46.37.186, 46.37.187, 46.37.188, 46.37.190, 46.37.193, 46.37.196, 46.37.200, 46.37.210, 46.37.215, 46.37.220, 46.37.230, 46.37.240, 46.37.260, 46.37.270, 46.37.280, 46.37.290, 46.37.300, 46.37.310, 46.37.340, 46.37.351, 46.37.360, 46.37.365, 46.37.369, 46.37.375, 46.37.380, 46.37.390, 46.37.395, 46.37.400, 46.37.410, 46.37.420, 46.37.4215, 46.37.4216, 46.37.423, 46.37.424, 46.37.425, 46.37.430, 46.37.435, 46.37.440, 46.37.450, 46.37.465, 46.37.467, 46.37.470, 46.37.480, 46.37.490, 46.37.495, 46.37.500, 46.37.510, 46.37.513, 46.37.517, 46.37.518, 46.37.520, 46.37.522, 46.37.523, 46.37.524, 46.37.525, 46.37.527, 46.37.528, 46.37.529, 46.37.530, 46.37.535, 46.37.537, 46.37.539, 46.37.540, 46.37.550, 46.37.560, 46.37.570, 46.37.590, 46.37.600, 46.37.610, 46.37.620, 46.37.630, 46.37.640, 46.37.650, 46.37.660, 46.37.670, 46.37.671, 46.37.672, 46.37.673, 46.37.674, 46.37.675, 46.37.680, and ~~((2013 e 135 s 1))~~ 46.37.685.

AMENDATORY SECTION (Amending WSR 95-23-042, filed 11/13/95, effective 12/14/95)

WAC 308-330-330 RCW sections adopted—Motor vehicle wreckers. The following ~~((section[s]))~~ sections of the Revised Code of Washington (RCW) pertaining to motor vehicle wreckers as now or hereafter amended ~~((is [are]))~~ are hereby adopted by reference as a part of this chapter in all respects as though such ~~((section[s])sections)~~ were set forth herein in full: RCW 46.80.010 and 46.80.060.

AMENDATORY SECTION (Amending WSR 94-01-082, filed 12/13/93, effective 7/1/94)

WAC 308-330-360 Owner of record presumed liable for costs when vehicle abandoned—Exception. (1) The abandonment of any vehicle or automobile hulk shall constitute a prima facie presumption that the last owner of record is responsible for such abandonment and thus liable for any costs incurred in removing, storing, and disposing of any abandoned vehicle.

(2) A registered owner transferring a vehicle shall be relieved from personal liability under this section if ~~((within five days of the transfer he/she))~~ he or she transmits to the department a seller's report of sale ~~((on a form prescribed by the director))~~ as provided by RCW 46.12.650.

AMENDATORY SECTION (Amending WSR 10-18-058, filed 8/30/10, effective 9/30/10)

WAC 308-330-415 RCW sections adopted—Right of way. The following sections of the Revised Code of Washington (RCW) pertaining to vehicles and pedestrians use of roadways, right of way, rights and duties as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.61.100, 46.61.105, 46.61.110, 46.61.115, 46.61.120, 46.61.125, 46.61.130, 46.61.135, 46.61.140, 46.61.145, 46.61.150, 46.61.155, 46.61.160, 46.61.165, 46.61.180, 46.61.183, 46.61.184, 46.61.185, 46.61.190, 46.61.195, 46.61.200, 46.61.202, 46.61.205, 46.61.210, 46.61.212, 46.61.215, 46.61.220, 46.61.230, 46.61.235, 46.61.240, 46.61.245, 46.61.250, 46.61.255, 46.61.260, 46.61.261, 46.61.264, 46.61.266, and 46.61.269.

AMENDATORY SECTION (Amending WSR 11-20-041, filed 9/28/11, effective 10/29/11)

WAC 308-330-425 RCW sections adopted—Reckless driving, negligent driving, vehicular homicide and assault. The following sections of the Revised Code of Washington (RCW) pertaining to reckless driving, negligent driving, driving while under the influence of intoxicating liquor or any drug, vehicular homicide and assault as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.61.500, 46.61.502, 46.61.503, 46.61.504, 46.61.5054, 46.61.5055, 46.61.50571, 46.61.5058, 46.61.506, 46.61.513, 46.61.517, 46.61.519, 46.61.5191, 46.61.5195, 46.61.5249, 46.61.525, 46.61.526.

46.61.527, 46.61.530, 46.61.535, ((2011 e 372 s [§] 1,)) 2015 2nd ex.s. c 3 § 8, and 46.61.540.

AMENDATORY SECTION (Amending WSR 13-21-026, filed 10/8/13, effective 11/8/13)

WAC 308-330-462 RCW sections adopted—Stopping, standing, and parking. The following sections of the Revised Code of Washington (RCW) pertaining to vehicle stopping, standing, and parking as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: ((2013 e 60 s [§] 1,)) RCW 46.08.185, 46.61.560, 46.61.570, 46.61.575, 46.61.581, 46.61.582, 46.61.583, 46.61.585, 46.61.587, and 46.61.590.

AMENDATORY SECTION (Amending WSR 11-20-041, filed 9/28/11, effective 10/29/11)

WAC 308-330-464 RCW sections adopted—Operation and restrictions. The following sections of the Revised Code of Washington (RCW) pertaining to the operation of vehicles and the restriction of certain acts and practices of vehicle operators and passengers as now or hereafter amended are hereby adopted by reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.61.600, 46.61.605, 46.61.606, 46.61.608, 46.61.610, 46.61.611, 46.61.612, 46.61.614, 46.61.615, 46.61.620, 46.61.625, 46.61.630, 46.61.635, 46.61.640, 46.61.645, 46.61.655, 46.61.660, 46.61.665, 46.61.667, 46.61.668, 46.61.670, 46.61.675, 46.61.680, 46.61.685, 46.61.687, 46.61.688, 46.61.690, 46.61.700, 46.61.705, 46.61.710, 46.61.720, 46.61.723, 46.61.725, 46.61.730, 46.61.735, ((2011 e 121 s [§] 2, 2011 e 121 s 4,)) and 46.61.740.

AMENDATORY SECTION (Amending WSR 11-20-041, filed 9/28/11, effective 10/29/11)

WAC 308-330-700 RCW sections adopted—Disposition of traffic infractions. The following sections of the Revised Code of Washington (RCW) pertaining to the disposition of traffic infractions as now or hereafter amended are hereby adopted by such reference as a part of this chapter in all respects as though such sections were set forth herein in full: RCW 46.63.010, 46.63.020, 46.63.030, 46.63.040, 46.63.060, 46.63.070, 46.63.073, 46.63.075, 46.63.080, 46.63.090, 46.63.100, 46.63.110, 46.63.120, 46.63.130, 46.63.140, 46.63.151, 46.63.160, ((2011 e 375 s [§] 2, and)) 46.63.170, and 46.63.180.

WSR 15-21-044
PROPOSED RULES
ENVIRONMENTAL AND
LAND USE HEARINGS OFFICE

[Filed October 16, 2015, 1:31 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-12-016.

Title of Rule and Other Identifying Information: Chapter 242-03 WAC, Growth management hearings board (GMHB) rules of practice and procedure:

- Change to WAC 242-03-070 corrects the time for monthly board meetings.
- Changes to WAC 242-03-140, 242-03-230, and 242-03-240 respond to new mailing and communications technology and protocols.
- Changes to WAC 242-03-260, 242-03-270, 242-03-500, and 242-03-530 modify the case calendar to assist the board in meeting its statutory one hundred eighty day decision deadline.
- Changes to WAC 242-03-510, 242-03-520, and 242-03-640 improve clarity about evidence in the board's record.
- Changes to WAC 242-03-860, 242-03-970, and 242-03-990 clarify post-decision procedures.

Hearing Location(s): Environmental and Land Use Hearings Office (ELUHO), 1111 Israel Road S.W., Suite 301, Tumwater, WA 98501, on December 2, 2015, at 1:30 p.m.

Date of Intended Adoption: January 6, 2016.

Submit Written Comments to: Paulette Yorke, P.O. Box 40903, Tumwater, WA 98504, e-mail paulette.yorke@eluhu.wa.gov, fax (360) [(360)] 664-9171, by November 30, 2015.

Assistance for Persons with Disabilities: Contact Paulette Yorke by November 15, 2015, TTY (360) 664-9171 or (360) 664-9170.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal revises and clarifies the GMHB rules of practice and procedure, in light of court rulings, practitioner questions and advances in electronic communications.

Reasons Supporting Proposal: The GMHB was legislatively reorganized effective March 25, 2010, and substantially amended its rules of procedure (former chapter 242-02 WAC) to implement the reorganization. Since then, stakeholders have found some rules unclear.

Further, changes in mailing protocols and electronic communications have made some rules overly cumbersome or obsolete. At the same time, remote work locations of board members required tightening of case calendars to ensure that decision deadlines can be met.

Statutory Authority for Adoption: RCW 36.70A.270 (4) and (7).

Statute Being Implemented: Chapter 36.70A RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The proposed rule amendments require no statutory changes and have no fiscal impacts, internal or external. Implementing the amendments will be handled by agency staff and board members by revising templates for calendars and board orders. No supplemental budget is needed for this work.

In reviewing its rules of procedure and proposing amendments the board has taken into consideration, consid-

tency with the Administrative Procedure Act, and with relevant appellate court decisions. The board also posted notice on its web site, circulated inquiries to one hundred stakeholders, and considered nine written comments.

Name of Proponent: GMHB, governmental.

Name of Agency Personnel Responsible for Drafting: Margaret Pageler, Tumwater, (360) 664-9170; Implementation: Paulette Yorke, Tumwater, (360) 664-9171; and Enforcement: Not applicable.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule amendments are minor adjustments to adjudicatory procedures imposing no costs on businesses, school districts, or other parties.

A cost-benefit analysis is not required under RCW 34.05.328. ELUHO is not one of the agencies subject to the cost-benefit analysis - RCW 34.05.328 (5)(a). Further, the proposed rule amendments are "procedural rules," not "significant legislative rules" subject to cost-benefit review - RCW 34.05.328 (5)(c).

October 15, 2015

Paulette Yorke
Administrative Manager

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-070 Regular meetings. Regular meetings of the board will be held at the office of the growth management hearings board or a designated location on the first Wednesday of each month at ~~((10:00 a.m.))~~ 1:30 p.m. or following any scheduled hearing on that date. Meetings may be held telephonically.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-140 Signing of pleadings, motions, and legal memoranda. Every pleading, motion and legal memorandum of a party shall be dated and signed by the party, or the party's attorney or other authorized representative and include an address, telephone ~~((and fax numbers,))~~ and electronic mail address.

AMENDATORY SECTION (Amending WSR 13-01-026, filed 12/11/12, effective 1/11/13)

WAC 242-03-230 Petition for review—Filing and service. (1) Filing a petition for review. A petition for review shall be filed with the board by electronic mail, as provided in WAC 242-03-240, unless a petitioner does not have the technological capacity to do so. The original and three copies of the petition for review shall be filed with the board personally, or by ~~((first class, certified, or registered))~~ mail or commercial parcel delivery service. Filings may also be made with the board by ~~((telefacsimile))~~ fax transmission as provided in WAC 242-03-240. A petition for review is deemed filed on the date the board receives it by electronic mail or by ~~((telefacsimile))~~ fax transmission by 5:00 p.m. provided that the original and three copies are sent by mail or by a commercial

parcel delivery service postmarked ~~((and mailed))~~ on the same date as the electronic filing. See WAC 242-03-060 for contact information.

(2) Service of petition for review.

(a) A copy of the petition for review shall be served upon the named respondent(s) and must be received by the respondent(s) on or before the date filed with the board. Service of the petition for review may be by mail, ~~((or))~~ personal service, or a commercial parcel delivery service, so long as the petition is received by respondent on or before the date filed with the board.

(b) When a county is a respondent, the petition for review shall be served on the county auditor ~~((in noncharter counties and the agent designated by the legislative authority in charter counties))~~ or on the agent designated by the legislative authority of the county. When a city is a respondent, the mayor, city manager, or city clerk shall be served. When the state of Washington is a respondent, the office of the attorney general shall be served at its main office in Olympia unless service upon the state is otherwise provided by law. In a challenge to the adoption of, or amendment to, a shoreline master program approved by the department of ecology, the department of ecology shall be named as a respondent and served.

(3) Proof of service shall be filed with the board pursuant to WAC 242-03-245.

(4) The board may dismiss a case for failure to substantially comply with this section.

AMENDATORY SECTION (Amending WSR 13-01-026, filed 12/11/12, effective 1/11/13)

WAC 242-03-240 Filing and service of all other papers. (1) Filing of papers: All pleadings and briefs shall be filed with the board by electronic mail unless a petitioner does not have the technological capacity to do so. The original and three copies of all documents shall be filed with the board personally, or by ~~((first class, certified, or registered))~~ mail or commercial parcel delivery service and must be postmarked ~~((and mailed))~~ or sent on the same date as the electronic filing. Filings less than fifteen pages may be made by ~~((telefacsimile))~~ fax transmission. The original and three copies must be ~~((mailed))~~ postmarked or sent on the same date as the ~~((telefacsimile))~~ fax transmission to be deemed filed.

Filings made by electronic mail and/or ~~((telefacsimile))~~ fax transmission shall be deemed filed upon actual receipt during office hours of 8:00 a.m. to 5:00 p.m. excluding Saturdays, Sundays, and legal holidays. Any transmission not completed before 5:00 p.m. will be stamped received on the following business day. The date and time indicated by the board's ~~((telefacsimile))~~ fax machine or receiving computer shall be presumptive evidence of the date and time of receipt of transmission. All papers will be deemed filed with the board on the date received by electronic mail provided that the original document and three copies are ~~((mailed and))~~ postmarked or commercially sent on the same date as the ~~((telefacsimile))~~ fax transmission or electronic mail filing. See WAC 242-03-060 for contact information.

(2) Service: Parties shall serve copies of all filings on all other named parties by electronic mail, on or before the date

filed with the board, unless a party lacks technical capability. Service is accomplished when the document is transmitted electronically, or, by agreement among the parties or exception granted by the presiding officer, is ~~((deposited in the mail and))~~ postmarked or commercially sent by the required date.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-260 Amendments to petitions for review. (1) A petition for review may be amended as a matter of right until ~~((thirty))~~ fourteen days after its date of filing. Any such amendments shall be limited to amending the legal bases for challenging the matters raised in the original petition, but may not raise new challenges to the ordinance.

(2) Thereafter any amendments shall be requested in writing by motion, and will be made only after approval by the presiding officer. Amendments shall not be freely granted and may be denied upon a showing by the adverse party of unreasonable and unavoidable hardship, or by the presiding officer's finding that granting the same would adversely impact the board's ability to meet the time requirements of RCW 36.70A.300 for issuing a final order.

(3) At the prehearing conference the presiding officer will work with the parties to clarify the issues raised in the petition for review. The presiding officer may, upon motion of a party or upon its own motion, require a more complete or concise statement of the issues presented for resolution by the board.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-270 Intervention. (1) Upon motion, any person may request status as an intervenor in a case. The motion shall state the applicant's interests relating to the subject of the action, how disposition of the action may impair that interest, and whether that interest is adequately represented by existing parties. The motion shall specify the legal issue(s) in the case which the intervenor seeks to address and may not raise new issues beyond the issues already in the case. In determining whether a person qualifies as an intervenor, the presiding officer shall apply any applicable provisions of law. Granting intervention must be in the interests of justice and shall not impair the orderly and prompt conduct of the proceedings.

(2) The motion to intervene shall be filed at least thirty days prior to the deadline for filing the initial hearing brief, unless good cause is shown. The applicant should ~~((make an effort to))~~ contact the parties so that the motion may be filed without objection. ~~((The motion to intervene shall be filed at least ten days prior to the deadline for filing the petitioner's prehearing brief, unless good cause is shown.~~

~~((2) In determining whether a person qualifies as an intervenor, the presiding officer shall apply any applicable provisions of law and may consider the applicable superior court civil rules (CR) of this state. The granting of intervention must be in the interests of justice and shall not impair the orderly and prompt conduct of the proceedings.))~~

(3) If the person qualifies for intervention, the presiding officer may impose conditions upon the intervenor's participation in proceedings, either at the time that intervention is granted or at any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest as demonstrated by the motion;

(b) Requiring two or more intervenors to combine their presentations of evidence and argument, or requiring intervenor to combine its argument with the party whose position the intervenor supports; and

(c) Limiting the intervenor's role in settlement proceedings.

~~((4) The presiding officer shall timely grant or deny each motion and specify conditions, if any.~~

~~((5))~~ (4) Pleadings and briefs of an intervenor shall be filed and served in accordance with the deadlines applicable to the party whose position the intervenor supports, in accordance with the board's order on intervention.

(5) An intervenor is subject to dismissal pursuant to WAC 242-03-710.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-500 Notice of hearing. (1) Within ten days of the filing of a petition for review or of the filing of the last filed of consolidated petitions, unless ~~((a))~~ the petition for review has been dismissed pursuant to RCW 36.70A.290(3) or removed to superior court~~((or))~~ pursuant to WAC 242-03-290, the board or presiding officer will issue a notice of hearing.

(2) The notice of hearing shall identify the appeal to be heard, the names of the parties to the appeal and their attorneys or other authorized representatives, if any, and shall include the information specified in RCW 34.05.434.

(3) The notice of hearing will inform the parties of the presiding officer and the panel members designated to hear the matter.

(4) The notice of hearing will include an order setting a date and time for a prehearing conference. If the prehearing conference is to be held by teleconference, the notice shall so state.

(5) The notice of hearing shall contain a tentative schedule for the case prepared by the presiding officer for review and finalization at the prehearing conference. The notice of hearing shall contain a date for the hearing on the merits. The presiding officer will thereafter schedule a place for the hearing.

(6) The notice shall state that if a limited-English-speaking or hearing impaired party needs an interpreter, a qualified interpreter will be appointed and that there will be no cost to the party. The notice shall include a form for a party to indicate if an interpreter is needed and identification of the primary language, or if a participant is hearing impaired or has other disability to be accommodated.

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.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-510 Index of the record. (1) Within thirty days of service of a petition for review, the respondent shall file with the board and serve a copy on the parties of an index listing all material used in taking the action which is the subject of the petition for review, including materials submitted in public comment. The index shall contain sufficient identifying information to enable unique documents to be distinguished.

(2) Concurrent with the filing of the index, the respondent shall make all documents in the index reasonably available to the petitioners for inspection and copying without the necessity for a public records request. In addition, the written or ~~((tape recorded))~~ electronic record of the legislative proceedings where action was taken shall be available to the parties for inspection or transcription. Respondents may charge for the cost of copies of documents requested by other parties in accordance with RCW 42.56.120, as amended.

(3) Within seven days after the filing of the index, any other party may file a list of proposed additions to the index. To the extent such documents were submitted to the jurisdiction or a part of the jurisdiction's proceedings prior to the challenged action, they are presumed admissible subject to relevance. If the respondent objects to any proposed addition, the petitioner may bring a motion to supplement the record as provided in WAC 242-03-565.

(4) Respondent may file a corrected index to add, delete, or correct the listing of documents it considered, without the necessity for a motion to supplement the record, by no later than a week before the date for filing the petitioner's prehearing brief.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-520 Exhibits. Except as otherwise provided in these rules, the evidence in a case shall consist of the exhibits cited in the briefs or as exhibits allowed pursuant to a motion to supplement and attached thereto. Exhibits shall be documents, portions of documents, or transcriptions of ~~((proceedings))~~ electronic records listed in the index, unless a motion to supplement the record has been granted. Exhibits admitted on motion to supplement will be assigned a number by the presiding officer.

The relevant portion of any exhibit cited in a brief or motion must be attached to the brief or motion and identified by the exhibit's index of the record (or assigned) number and number of the page cited. When such attachment is redundant, the presiding officer may allow the participants to cross-reference to exhibits attached to previously submitted materials so long as they are identified in the same manner.

~~((Exhibits attached to motions to supplement shall be cross-referenced in briefs for the hearing on the merits. The presiding officer may, at her/his discretion, require copies of all exhibits to be attached to both the motion to supplement and the hearing on the merits brief, or may just allow the exhibits to be cross-referenced.))~~

This requirement will be stated in the order on motion to supplement.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-535 Prehearing conference—When held. The prehearing conference will be held ~~((thirty))~~ twenty-one days after the filing of the petition for review or as scheduled in the notice of hearing. The prehearing conference is conducted by the presiding officer and is ordinarily held telephonically.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-640 Official notice—Material facts. (1) In the absence of conflicting evidence, the board or presiding officer, upon oral or written request made by any party before or during a hearing, or upon the board's own motion, may officially notice the following kinds of material facts:

(a) Business customs. General customs and practices followed in the transaction of business.

(b) Notorious facts. Facts so generally and widely known to all well-informed persons as not to be subject to reasonable dispute or specific facts which are capable of immediate and accurate demonstration by resort to accessible sources of generally accepted authority, including, but not exclusively, facts stated in any publication authorized or permitted by law to be made by any federal or state officer, department, or agency.

(c) Technical or scientific facts. Facts of a technical or scientific nature ~~((Technical or scientific facts))~~ within the board's specialized knowledge.

~~((2) Request. Any party may request, orally or in writing, that official notice be taken of a material fact. The board or presiding officer may take official notice of a material fact on its own initiative.~~

~~((3) Notice.))~~ (2) Whenever official notice of material facts is requested, the requesting party, or board, if on its own motion, ((Parties)) shall ((be notified either before or during a hearing)) notify the other parties of the material fact(s) proposed to be officially noticed, and the other parties shall be afforded the opportunity to contest such facts and materials.

~~((4))~~ (3) Statement of official notice.

(a) In determining whether to take official notice of material facts, the presiding officer may consult any source of pertinent information, whether or not furnished by any party and whether or not admissible under the rules of evidence.

(b) If official notice of a material fact is taken, it shall be clearly and precisely stated and made part of the record.

(c) Where a decision of the board rests in whole or in part upon official notice of a material fact, such fact shall be clearly and precisely stated in such decision.

AMENDATORY SECTION (Amending WSR 12-05-110 [11-13-109], filed 2/22/12 [6/21/11], effective 3/24/12 [7/22/11])

WAC 242-03-860 Stay. ~~((The presiding officer pursuant to RCW 34.05.467 or the board pursuant to RCW 34.05.550(1) may stay the effectiveness of a final order upon motion for stay filed within ten days of filing an appeal to a reviewing court))~~ The board pursuant to RCW 34.05.550(1)

may stay the effectiveness of a final order upon motion for stay.

A stay may be granted if the presiding officer or board finds:

(1) An appeal is pending in court, the outcome of which may render the ~~((case moot))~~ city or county compliance efforts futile or unduly burdensome; and

(2) Delay in application of the board's order will not substantially harm the interest of other parties to the proceedings; and

(3)(a) Delay in application of the ~~((board's))~~ final order is not likely to result in actions that substantially interfere with ~~((the))~~ fulfillment of the goals of the GMA, including the goals and policies of the Shoreline Management Act~~(s))~~ or the State Environmental Policy Act; or

(b) The parties have agreed to halt implementation of the noncompliant ordinance and undertake no irreversible actions regarding the subject matter of the case during the pendency of the stay; and

(4) Delay in application of the ~~((board's))~~ final order furthers the orderly administration of justice.

The board's order granting a stay will contain appropriate findings and conditions. The board may require periodic status reports from the parties. An ~~((board))~~ order denying stay is not subject to judicial review.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 13-01-026 [12-05-110], filed 12/11/12 [2/22/12], effective 1/11/13 [3/24/12])

WAC 242-03-970 Appeals of a board's final decision.

(1) Any party aggrieved by a final decision of the board may appeal the decision to superior court as provided in RCW 34.05.514 and 34.05.542 or 36.01.050 within thirty days of service of the final decision of the board.

(2) The petition for review of a final decision of the board shall be served on the board, however, it is not necessary to name the board as a party.

~~((2))~~ (3) In the event that direct appellate review is sought, within thirty days of the filing of a petition for review in the superior court, a party may request a certificate of appealability for direct review by the court of appeals. If the issue on review is the jurisdiction of the board, the board may file an application for direct review. Application for direct review of a decision of the board is governed by the procedures and criteria of RCW 34.05.518.

Reviser's note: The bracketed material preceding the section above was supplied by the code reviser's office.

AMENDATORY SECTION (Amending WSR 11-13-109, filed 6/21/11, effective 7/22/11)

WAC 242-03-990 Procedure on remand. Within forty-five days of receipt of a reviewing court's ~~((final order))~~ mandate remanding a decision of the board, or final remand order in the case of a superior court decision, the presiding officer will ~~((schedule))~~ convene a conference of the parties

as necessary to determine the procedures required to resolve the matter in accordance with the mandate or final order.

WSR 15-21-045

PROPOSED RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2015-12—Filed October 16, 2015, 1:46 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-17-047.

Title of Rule and Other Identifying Information: Requiring each carrier and health plan to enter independence review organization's (IRO) final decision determination information into the commissioner's IRO online database.

Hearing Location(s): Office of the Insurance Commissioner (OIC), 5000 Capitol Boulevard S.E., Training Room (TR-120), Tumwater, WA 98504-0255, on November 24, 2015, at 1:00 p.m.

Date of Intended Adoption: November 25, 2015.

Submit Written Comments to: Stacy Middleton, P.O. Box 40258, Olympia, WA 98504-0258, e-mail rules coordinator@oic.wa.gov, fax (360) 586-3109, by November 24, 2015.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by November 17, 2015, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Washington's current IRO system is not conducive to collecting, analyzing, and making IRO information publicly available. The current system does not allow for accessible and usable IRO decision information, consistency in the IRO review process, or effective oversight, enforcement, and regulation of the IRO process. This proposed rule adds language requiring carriers to use the commissioner's online database in assigning IROs and adds a new paragraph to both WAC 284-43-550 and 284-43-630, requiring each carrier and health plan to submit final IRO decision determination information to OIC's online database within three days of receipt of the IRO's final decision. Decision information shall be submitted to the database in accordance with data requirements set forth by OIC.

Reasons Supporting Proposal: The intent is to direct health plan issuers to enter IRO final decision determination information into the commissioner's IRO online database within three days of receipt of final decision in order to keep the database current.

Statutory Authority for Adoption: RCW 48.02.060 and 48.43.530.

Statute Being Implemented: RCW 48.43.530, 48.43.535.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Stacy Middleton, 302 Sid Snyder Avenue, Olympia WA 98504-0258, (360) 725-9651; Implementation: Leslie Krier,

5000 Capitol Boulevard, Tumwater, WA 98504-0259, (360) 725-7216; and Enforcement: AnnaLisa Gellerman, 5000 Capitol Boulevard, Tumwater, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule imposes no new significant costs on any small businesses. The required reporting will utilize existing systems already in place.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Stacy Middleton, P.O. Box 40258, Olympia, WA 98504, phone (360) 725-9651, fax (360) 586-3109, e-mail rulescoordinator@oic.wa.gov.

October 16, 2015

Mike Kreidler
Insurance Commissioner

AMENDATORY SECTION (Amending WSR 12-23-005, filed 11/7/12, effective 11/20/12)

WAC 284-43-550 External review of adverse benefit determinations. When the internal review of an adverse benefit determination is final, or is deemed exhausted, the appellant may request an external independent review of the final internal adverse benefit determination. Carriers and health plans must inform appellants of their right to external independent review, and explain the process to exercise that right. If the appellant requests an external independent review of a final internal adverse determination, the carrier or health plan must cooperatively participate in that review.

(1) Appellants must be provided the right to external review of adverse benefit determinations based on medical necessity, appropriateness, health care setting, level of care, or that the requested service or supply is not efficacious or otherwise unjustified under evidence-based medical criteria. The carrier may not establish a minimum dollar amount restriction as a predicate for an appellant to seek external independent review.

(2) Carriers must use the rotational registry system of certified independent review organizations (IRO) established by the commissioner, and must select reviewing IROs in the rotational manner described in the rotational registry system, using the commissioner's online data base. A carrier may not make an assignment to an IRO out of sequence for any reason other than the existence of a conflict of interest, as set forth in WAC 246-305-030.

(3) The rotational registry system, a current list of certified IROs, IRO assignment instructions, and an IRO assignment form to be used by carriers, are available on the insurance commissioner's web site (www.insurance.wa.gov).

(4) In addition to the requirements set forth in RCW 48.43.535, the carrier and health plan must:

(a) Make available to the appellant and to any provider acting on behalf of the appellant all materials provided to an IRO reviewing the carrier's determination;

(b) Provide IRO review without imposing any cost to the appellant or their provider;

(c) Provide IROs with:

(i) All relevant clinical review criteria used by the carrier and other relevant medical, scientific, and cost-effectiveness evidence;

(ii) The attending or ordering provider's recommendations; and

(iii) A copy of the terms and conditions of coverage under the relevant health plan; and

(d) Within one day of selecting the IRO, notify the appellant of the name of the IRO and its contact information. This requirement is intended to comply with the federal standard that appellants receive notice of the IRO's identity and contact information within one day of assignment. The notice from the carrier must explain that the IRO will accept additional information in writing from the appellant for up to five business days after it receives the assignment. The IRO must consider this information when conducting its review.

(5) A carrier may waive a requirement that internal appeals must be exhausted before an appellant may proceed to an independent review of an adverse determination.

(6) Upon receipt of the information provided by the appellant to the IRO pursuant to RCW 48.43.535 and this section, a carrier may reverse its final internal adverse determination. If it does so, it must immediately notify the IRO and the appellant.

(7) Carriers must report to the commissioner each assignment made to an IRO not later than one business day after an assignment is made. Information regarding the enrollee's personal health may not be provided with the report.

(8) Each carrier and health plan must submit final independent review organization (IRO) decision determination information to the office of the insurance commissioner's online data base within three business days of receipt of the IRO's final decision. Data elements and procedures for submission are located on the office of the insurance commissioner's web site.

(9) The requirements of this section are in addition to the requirements set forth in RCW 48.43.535 and 43.70.235, and rules adopted by the department of health in chapter 246-305 WAC.

AMENDATORY SECTION (Amending WSR 08-07-101, filed 3/19/08, effective 4/19/08)

WAC 284-43-630 Independent review of adverse determinations. Carriers must use the rotational registry system of certified independent review organizations (IRO) established by the commissioner.

(1) Using the commissioner's online data base, carriers must select reviewing IROs in the rotational manner described in the rotational registry system. A carrier may not make an assignment to an IRO out of sequence for any reason other than the existence of a conflict of interest, as set forth in WAC 246-305-030.

(2) The rotational registry system, a current list of certified IROs, IRO assignment instructions, and an IRO assignment form to be used by carriers are set forth on the insurance commissioner's web site (www.insurance.wa.gov).

(3) In addition to the requirements set forth in RCW 48.43.535(4), carriers must:

(a) Make available to the covered person and to any provider acting on behalf of the covered person all materials provided to an independent review organization reviewing the carrier's determination; and

(b) Provide IROs with:

(i) All relevant clinical review criteria used by the carrier and other relevant medical, scientific, and cost-effectiveness evidence;

(ii) The attending or ordering provider's recommendations; and

(iii) A copy of the terms and conditions of coverage under the relevant health plan.

(4) Carriers must report to the commissioner each assignment made to an IRO not later than three business days after an assignment is made. Information regarding the enrollee's personal health should not be provided with the report.

(5) Each carrier and health plan must submit final IRO decision determination information to the office of the insurance commissioner's online data base within three business days of receipt of the IRO's final decision. Data elements and procedures for submission are located on the office of the insurance commissioner's web site.

(6) The requirements of this section are in addition to the requirements set forth in RCW 48.43.535 and 43.70.235, and rules adopted by the department of health in chapter 246-305 WAC.

**WSR 15-21-048
PROPOSED RULES**

**OFFICE OF
INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2015-09—Filed October 16, 2015, 1:58 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-15-132.

Title of Rule and Other Identifying Information: Credit for reinsurance.

Hearing Location(s): Insurance Commissioner's Office, 5000 Capitol Boulevard, TR 120, Tumwater, WA 98504-0255, on November 30, 2015, at 10:00 a.m.

Date of Intended Adoption: December 1, 2015.

Submit Written Comments to: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, e-mail rulescoordinator@oic.wa.gov, fax (360) 586-3109, by November 30, 2015.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by November 25, 2015, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules will amend the existing credit for reinsurance rules and add new rules to conform to the NAIC Credit for Reinsurance Model Regulation and amendments made by legislation enacted during the 2015 legislative session.

Reasons Supporting Proposal: In the 2015 legislative session, chapter 63, Laws of 2015, was enacted making changes to the credit for reinsurance statutes.

Statutory Authority for Adoption: RCW 48.02.060 and sections 7 (1)(b) and (c), (3)(b), (4), and (5), and 15, chapter 63, Laws of 2015.

Statute Being Implemented: Chapter 63, Laws of 2015.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Jim Tompkins, P.O. Box 98504-0258 [40258], Olympia, WA 98504-0258, (360) 725-7036; Implementation and Enforcement: Ron Pastuch, P.O. Box 98504-0259 [40259], Olympia, WA 98504-0259, (360) 725-7211.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The entities that must comply with the proposed rule are not small businesses, under chapter 19.85 RCW.

A cost-benefit analysis is required under RCW 34.05-328. A preliminary cost-benefit analysis may be obtained by contacting Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7036, fax (360) 586-3109, e-mail rulescoordinator@oic.wa.gov.

October 16, 2015

Mike Kreidler

Insurance Commissioner

AMENDATORY SECTION (Amending WSR 93-19-002, filed 9/1/93, effective 10/2/93)

WAC 284-13-500 Purpose. The purpose of ~~((this regulation))~~ WAC 284-13-500 through 284-13-590 is to set forth rules and procedural requirements which the commissioner deems necessary to carry out the provisions of ~~((RCW 48.42.160))~~ chapter 63, Laws of 2015. The actions and information required by ~~((this regulation))~~ WAC 284-13-500 through 284-13-590 are hereby declared to be necessary and appropriate in the public interest and for the protection of the ceding insurers in this state.

NEW SECTION

WAC 284-13-503 Severability clause. If any provision of WAC 284-13-500 through 284-13-590 or its application to any person or circumstances is held invalid, the remainder of WAC 284-13-500 through 284-13-590 to other persons or circumstances is not affected.

AMENDATORY SECTION (Amending WSR 93-19-002, filed 9/1/93, effective 10/2/93)

WAC 284-13-510 Credit for reinsurance—Reinsurer holding certificate of authority in this state. ~~((Pursuant to RCW 48.42.160))~~ Under section 3, chapter 63, Laws of 2015, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer~~((s))~~ that held a certificate of authority ~~((to transact that kind of insurance))~~ in this state as of ~~((the))~~ any date ~~((of the ceding insurer's))~~ on

which statutory financial statement credit for reinsurance is claimed.

NEW SECTION

WAC 284-13-516 Credit for reinsurance—Accredited reinsurers. (1) Under section 4, chapter 63, Laws of 2015, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is accredited as a reinsurer in this state as of the date on which statutory financial statement credit for reinsurance is claimed. An accredited reinsurer must:

(a) File a properly executed Form AR-1 as set forth in WAC 284-13-595 as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records;

(b) File with the commissioner a certified copy of a certificate of authority or other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;

(c) File annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and

(d) Maintain a surplus as regards policyholders in an amount not less than twenty million dollars, or obtain the affirmative approval of the commissioner upon a finding that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.

(2) If the commissioner determines that the assuming insurer has failed to meet or maintain any of these qualifications, the commissioner may upon written notice and opportunity for hearing, suspend or revoke the accreditation. Credit shall not be allowed a domestic ceding insurer under this section if the assuming insurer's accreditation has been revoked by the commissioner, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the commissioner.

NEW SECTION

WAC 284-13-517 Credit for reinsurance—Reinsurer domiciled in another state. (1) Under section 5, chapter 63, Laws of 2015, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that as of any date on which statutory financial statement credit for reinsurance is claimed:

(a) Is domiciled in, or in the case of a United States branch of an alien assuming insurer is entered through, a state that employs standards regarding credit for reinsurance substantially similar to those applicable under chapter 63, Laws of 2015, and WAC 284-13-500 through 284-13-590;

(b) Maintains a surplus as regards policyholders in an amount not less than twenty million dollars; and

(c) Files a properly executed Form AR-1 with the commissioner as evidence of its submission to this state's authority to examine its books and records.

(2) The provisions of this section relating to surplus as regards policyholders does not apply to reinsurance ceded and assumed under pooling arrangements among insurers in the same holding company system. As used in this section, "substantially similar" standards means credit for reinsurance standards that the commissioner determines equal or exceed the standards of chapter 63, Laws of 2015, and WAC 284-13-500 through 284-13-590.

AMENDATORY SECTION (Amending WSR 97-05-012, filed 2/10/97, effective 3/13/97)

WAC 284-13-520 Credit for reinsurance—Certain reinsurers maintaining trust funds. ~~((1) Pursuant to RCW 48.12.160 (1)(a)) Under section 6, chapter 63, Laws of 2015, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer ((described in sub-section (2) of this section which, as of the date of the ceding insurer's statutory financial statement)) which, as of any date on which statutory financial statement credit for reinsurance is claimed, and thereafter for so long as credit for reinsurance is claimed, maintains a trust fund in an amount prescribed ((below)) in WAC 284-13-530 through 284-13-538 in a qualified United States financial institution as ((provided in WAC 284-13-515)) defined in section 14(2), chapter 63, Laws of 2015, for the payment of the valid claims of its United States ((policyholders and)) domiciled ceding insurers, their assigns and successors in interest. The assuming insurer ((shall)) must report annually to the commissioner substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund.~~

~~((2) The trust fund for a group of insurers that includes incorporated and unincorporated underwriters shall consist of:~~

~~(a) For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after August 1, 1995, funds in trust in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled insurers to any member of the group;~~

~~(b) For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of this regulation, funds in trust in an amount not less than the group's several insurance and reinsurance liabilities attributable to business written in the United States; and~~

~~(c) In addition, the group shall maintain a trustee surplus of which one hundred million dollars shall be held jointly and exclusively for the benefit of the United States ceding insurers of any member of the group for all years of account. The group shall make available to the commissioner annual certifications by the group's domiciliary regulator and its independent public accountants of the solvency of each underwriter member of the group.~~

~~(3) The credit allowed for reinsurance shall not be greater than the amount of funds held in trust.~~

(4) The trust established shall comply with WAC 284-13-535.)

AMENDATORY SECTION (Amending WSR 97-05-012, filed 2/10/97, effective 3/13/97)

WAC 284-13-530 Credit for reinsurance—Certain alien reinsurers maintaining trust funds—Single alien insurer. ~~((1) Under RCW 48.12.160 (1)(b), the commissioner shall allow credit for reinsurance ceded by a domestic insurer to)) The trust fund for a single assuming alien insurer ((which, as of the date of the ceding insurer's statutory financial statement, maintains a trust fund)) must consist of funds in trust in an amount not less than the assuming ((alien)) insurer's liabilities attributable to reinsurance ceded by United States domiciled insurers ((plus)), and in addition, the assuming insurer must maintain a trustee surplus of not less than twenty million dollars, ((and the assuming alien insurer maintaining the trust fund has received a registration from the commissioner. The assuming alien insurer shall report on or before February 28 to the commissioner substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund. To be registered the assuming alien insurer must:~~

(a) ~~File a properly executed Form AR-1 under WAC 284-13-595 as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records under chapter 48.03 RCW.~~

(b) ~~File with the commissioner a certified copy of a letter or a certificate of authority or of compliance issued by the assuming alien insurer's alien domiciliary jurisdiction and the domiciliary jurisdiction of its United States reinsurance trust.~~

(c) ~~File with the commissioner within sixty days after its financial statements are due to be filed with its domiciliary regulator, a copy of the assuming alien insurer's annual financial report converted to United States dollars, and a copy of its most recent audited financial statement converted to United States dollars.~~

(d) ~~File annually with the commissioner on or before February 28, a statement of actuarial opinion in conformance with the NAIC's annual statement and instructions attesting to the adequacy of the reserves for United States liabilities which are backed by the trust fund. Unless the commissioner notifies the assuming alien insurer otherwise, the opinion may be given by an actuary of the assuming alien insurer, who is duly qualified to provide actuarial opinions in the domiciliary jurisdiction of the assuming alien insurer.~~

(e) ~~File and maintain with the commissioner a list of the assuming alien insurer's United States reinsurance intermediaries.~~

(f) ~~File and maintain with the commissioner copies of service and management agreements, including binding authorities, entered into by the assuming alien insurer.~~

(g) ~~File annually with the commissioner a holding company registration statement containing the information required by RCW 48.31B.025 (2)(a) through (e) in the form proscribed in WAC 284-18-920.~~

(h) ~~File annually with the commissioner the assuming alien insurer's account and report which reports the overall~~

business of the assuming alien insurer in United States dollars.

(i) ~~File other information, financial or otherwise, which the commissioner reasonably requests.~~

(2) ~~If the commissioner determines that the assuming alien insurer has failed to meet or maintain any of these qualifications, the commissioner may, consistent with chapters 48.04 and 34.05 RCW, revoke the registration of the assuming insurer maintaining the trust fund. No credit shall be allowed a domestic ceding insurer with respect to reinsurance ceded after December 31, 1997, if the assuming alien insurer's registration under this section has been denied or revoked by the commissioner.~~

(3) ~~The required amount of the trust shall be based upon the gross United States liabilities, including incurred but not reported claims (IBNR), of the assuming alien insurer reduced only for those liabilities for which specific collateralization has been provided to individual ceding companies, with such adjustments, if any, as the commissioner may from time to time consider appropriate.~~

(4) ~~The credit allowed for reinsurance shall not be greater than the amount of funds held in trust.~~

(5) ~~The trust established shall comply with WAC 284-13-535)) except as provided in WAC 284-13-531.~~

NEW SECTION

WAC 284-13-531 Credit for reinsurance—Certain alien reinsurers maintaining trust funds—Assuming insurer discontinuing business. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trustee surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and must consider all material risk factors, including when applicable, the lines of business involved, the stability of the incurred loss estimates and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trustee surplus may not be reduced to an amount less than thirty percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

NEW SECTION

WAC 284-13-532 Credit for reinsurance—Certain alien reinsurers maintaining trust funds—Group of incorporated and individual unincorporated underwriters. (1) The trust fund for a group including incorporated and individual unincorporated underwriters must consist of:

(a) For reinsurance ceded under reinsurance agreements with an inception, amendment or renewal date on or after August 1, 1995, funds in trust in an amount not less than the respective underwriters' several liabilities attributable to

business ceded by United States domiciled ceding insurers to any underwriter of the group;

(b) For reinsurance ceded under reinsurance agreements with an inception date on or before July 31, 1995, and not amended or renewed after that date, notwithstanding the other provisions of WAC 284-13-500 through 284-13-590, funds in trust in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and

(c) In addition to these trusts, the group must maintain a trusteed surplus of which one hundred million dollars must be held jointly for the benefit of the United States domiciled insurers of any member of the group for all the years of account.

(2) The incorporated members of the group must not be engaged in any business other than underwriting as a member of the group and are subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members. The group must, within ninety days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the commissioner:

(a) An annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or

(b) If a certification is unavailable, a financial statement, prepared by independent public accountants, of each underwriter member of the group.

NEW SECTION

WAC 284-13-533 Credit for reinsurance—Certain alien reinsurers maintaining trust funds—Group of incorporated insurers under common administration. (1) The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of ten billion dollars (calculated in substantially the same manner as prescribed by the annual statement instructions and accounting practices and procedures manual of the NAIC) and which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, must:

(a) Consist of funds in trust in an amount not less than the assuming insurers' several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group under reinsurance contracts issued in the name of the group;

(b) Maintain a joint trusteed surplus of which one hundred million dollars must be held jointly for the benefit of United States domiciled ceding insurers of any member of the group; and

(c) File a properly executed Form AR-1 as evidence of the submission to this state's authority to examine the books and records of any of its members and must certify that any member examined will bear the expense of the examination.

(2) Within ninety days after the statements are due to be filed with the group's domiciliary regulator, the group must file with the commissioner an annual certification of each underwriter member's solvency by the member's domiciliary

regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.

AMENDATORY SECTION (Amending WSR 97-05-012, filed 2/10/97, effective 3/13/97)

WAC 284-13-535 Trust fund requirements. ~~((The trust under RCW 48.12.160(1)(a), (b) or (c)(i) shall be established in a form filed with and approved by the commissioner and complying with that statute and this section. The trust instrument shall provide that:))~~

(1) Credit for reinsurance is not granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, under the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also must be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instruments must provide that:

(a) Contested claims ((shall)) must be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty days after entry of the final order of any court of competent jurisdiction in the United States.

~~((2))~~ (b) Legal title to the assets of the trust ((shall)) must be vested in the trustee for the benefit of the grantor's United States ((policyholders and)) ceding insurers, their assigns and successors in interest.

~~((3))~~ (c) The trust ((shall)) must be subject to examination as determined by the commissioner.

~~((4))~~ (d) The trust ((shall)) must remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, ((shall have)) has outstanding obligations under reinsurance agreements subject to the trust((-5)) ; and

(e) No later than February 28 of each year the trustees of the trust ((shall)) must report to the commissioner in writing setting forth the balance in the trust and listing the trust's investments at the preceding year end, and ((shall)) must certify the date of termination of the trust, if so planned, or certify that the trust ((shall)) does not expire prior to the ((next)) following December 31.

~~((6) Furnish to the commissioner a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter.~~

~~(7) At least sixty days, but not more than one hundred twenty days, prior to termination of the trust, written notification of termination shall be delivered by the trustee to the commissioner.~~

~~((8))~~ (2)(a) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by ((RCW 48.12.160, WAC 284-13-520 and 284-13-530)) this section or if the grantor(s) of the trust has been declared insolvent or placed in receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee ((shall)) must comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee

to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.

~~(b) The assets ((shall be applied)) must be distributed by and claims must be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled ((that are)) applicable to the liquidation of insurance companies.~~

~~(c) If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ((ceding insurers of the grantor(s))) beneficiaries of the trust, ((the assets or part thereof shall be returned by)) the commissioner with regulatory oversight over the trust must return the assets, or any part thereof, to the trustee for distribution ((in accordance with)) under the trust agreement.~~

~~((9) No amendment to the trust shall be effective unless:~~

~~(a) It has been reviewed and approved in advance by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust; and~~

~~(b) It has been filed with the commissioner and it has not been disapproved within thirty days of its receipt by the commissioner.~~

~~(10) The form of the trust and any amendments to the trust shall also be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled.) (d) The grantor must waive any right otherwise available to it under United States law that is inconsistent with this section.~~

NEW SECTION

WAC 284-13-536 Credit for reinsurance—Certain reinsurers maintaining trust funds—Liabilities defined. For purposes of WAC 284-13-520 through 284-13-538, liabilities means the assuming insurer's gross liabilities attributable to reinsurance ceded by United States domiciled insurers excluding liabilities that are not otherwise secured by acceptable means, and, must include:

(1) For business ceded by domestic insurers authorized to write accident and disability, and property and casualty insurance:

- (a) Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;
- (b) Reserves for losses reported and outstanding;
- (c) Reserves for losses incurred but not reported;
- (d) Reserves for allocated loss expenses; and
- (e) Unearned premiums.

(2) For business ceded by domestic insurers authorized to write life, disability and annuity insurance:

- (a) Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;
- (b) Aggregate reserves for accident and disability policies;
- (c) Deposit funds and other liabilities without life or disability contingencies; and
- (d) Liabilities for policy and contract claims.

NEW SECTION

WAC 284-13-537 Trust fund requirements—Assets.

Assets deposited in trusts established under sections 2 through 12, chapter 63, Laws of 2015, and WAC 284-13-520 through 284-13-538 must be valued according to their current fair market value and must consist only of cash in United States dollars, certificates of deposit issued by a United States financial institution as defined in section 14(1), chapter 63, Laws of 2015, clean, irrevocable, unconditional and "ever-green" letters of credit issued or confirmed by a qualified United States financial institution, as defined in section 14(1), chapter 63, Laws of 2015, and investments of the type specified in this section, but investments in or issued by an entity controlling, controlled by, or under common control with either the grantor or beneficiary of the trust must not exceed five percent of total investments. No more than twenty percent of the total investments in the trust may be foreign investments authorized under subsections (1)(e), (3), (6)(b), or (7) of this section, and no more than ten percent of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in United States dollars and representing rights conferred by a foreign security must be classified as a foreign investment denominated in foreign currency. The assets of a trust established to satisfy the requirements of sections 2 through 12, chapter 63, Laws of 2015, must be invested only as follows:

(1) Government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed or guaranteed by:

- (a) The United States or by any agency or instrumentality of the United States;
- (b) A state of the United States;
- (c) A territory, possession or other governmental unit of the United States;

(d) An agency or instrumentality of a government unit referred to in subsections (1)(b) and (c) of this section if the obligations shall by law (statutory or otherwise) payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this subsection if payable solely out of special assessments on properties benefited by local improvements; or

(e) The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

(2) Obligations that are issued in the United States, or that are dollar denominated and issued in a non-United States market, by a solvent United States institution (other than an insurance company) or that are assumed or guaranteed by a solvent United States institution (other than an insurance company) and that are not in default as to principal or interest if the obligations:

- (a) Are rated A or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structures

and other material respects to other obligations of the same institution that are so rated;

(b) Are insured by at least one authorized insurer (other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer) licensed to insure obligations in this state and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

(c) Have been designated as Class one or Class two by the Securities Valuation Office of the NAIC.

(3) Obligations issued, assumed or guaranteed by a solvent non-United States institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of United States corporations issued in a non-United States currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

(4) An investment made under subsections (1), (2), or (3) of this section are subject to the following additional limitations:

(a) An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities must not exceed five percent of the assets of the trust;

(b) An investment in any one mortgage-related security must not exceed five percent of the assets of the trust;

(c) The aggregate total investment in mortgage-related securities must not exceed twenty-five percent of the assets of the trust; and

(d) Preferred or guaranteed shares issued or guaranteed by a solvent United States institution are permissible investments if all of the institution's obligations are eligible as investments under subsection (2)(a) and (c) of this section, but must not exceed two percent of the assets of the trust.

(5) As used in WAC 284-13-500 through 284-13-590:

(a) "Mortgage-related security" means an obligation that is rated AA or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC that either:

(i) Represents ownership of one or more promissory notes or certificates of interest or participation in the notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of the notes, certificates, or participation of amounts payable under, the notes, certificates or participation), that:

(A) Are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in 42 U.S.C. Section 5402(6), whether the manufactured home is considered real or personal property under the laws of the state in which it is located; and

(B) Were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution that is supervised and examined by a federal or state housing authority, or by a mortgage approved by the Secretary of Housing and Urban Development under 12 U.S.C. Sections 1709 and 1715-b, or where

the notes involve a lien on the manufactured home, by an institution or by a financial institution approved for insurance by the Secretary of Housing and Urban Development under 12 U.S.C. Section 1703; or

(ii) Is secured by one or more promissory notes or certificates of deposit or participations in the notes (with or without recourse to the insurer of the notes) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, or notes meeting the requirements of subsection (5)(a)(i)(A) and (B) of this section.

(b) "Promissory note" when used in connection with a manufactured home, shall also include a loan, advance or credit sale as evidenced by a retail installment sales contract or other instrument.

(6) Equity interests.

(a) Investments in common shares or partnership interests of a solvent United States institution are permissible if:

(i) Its obligations and preferred shares, if any, are eligible as investments under this section; and

(ii) The equity interests of the institution (except an insurance company) are registered on a National Securities Exchange as provided in the Securities Exchange Act of 1934, 15 U.S.C. Sections 78a to 78kk or otherwise registered under the act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust must not invest in equity interests under this section an amount exceeding one percent of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company.

(b) Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development, if:

(i) All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and

(ii) The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development.

(c) An investment in or a loan upon any one institution's outstanding equity interests must not exceed one percent of the assets of the trust. The cost of an investment in equity made under this subsection, when added to the aggregate cost of other investments in equity interests then held under this subsection, must not exceed ten percent of the assets of the trust.

(7) Obligations issued, assumed or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

(8) Investment companies.

(a) Securities of an investment company registered under the Investment Company Act of 1940, 15 U.S.C. Section 80a, are permissible investments if the investment company:

(i) Invests at least ninety percent of its assets in the type of securities that qualify as an investment under subsections

(1), (2), or (3) of this section or invests in securities that are determined by the commissioner to be substantively similar to the type of securities set forth in subsections (1), (2), or (3) of this section; or

(ii) Invests at least ninety percent of its assets in the type of equity interests that qualify as an investment under subsection (6)(a) of this section.

(b) Investments made by a trust in investment companies under this subsection must not exceed the following limitations:

(i) An investment in an investment company qualifying under (a)(i) of this subsection must not exceed ten percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies must not exceed twenty-five percent of the assets in the trust; and

(ii) Investments in an investment company qualifying under (a)(ii) of this subsection must not exceed five percent of the assets in the trust and the aggregate amount of investment in qualifying investment companies must be included when calculating the permissible aggregate value of equity interests under subsection (6)(a) of this section.

(9) Letters of credit.

(a) In order for a letter of credit to qualify as an asset of the trust, the trustee must have the right and the obligation under the deed of trust or some other binding agreement (as duly approved by the commissioner), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

(b) The trust agreement must provide that the trustee is liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where the draw would be required is either negligence, willful misconduct, or both.

NEW SECTION

WAC 284-13-538 Specific securities provided to a ceding insurer. A specific security provided to a ceding insurer by an assuming insurer under WAC 284-13-53901 must be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer under WAC 284-13-520 through 284-13-538.

NEW SECTION

WAC 284-13-539 Credit for reinsurance—Certified reinsurers. (1) Under section 7, chapter 63, Laws of 2015, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this state at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed must be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commissioner. The security must be in a form consistent with sections 7 and 13, chapter 63, Laws of 2015, and WAC 284-13-

550, 284-13-560 or 284-13-570. The amount of security required in order for full credit to be allowed must correspond with the following requirements:

(a)

Ratings	Security Required
Secure - 1	0%
Secure - 2	10%
Secure - 3	20%
Secure - 4	50%
Secure - 5	75%
Vulnerable - 6	100%

(b) Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

(c) The commissioner must require the certified reinsurer to post one hundred percent, for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation or conservation against the ceding insurer.

(d) In order to facilitate the prompt payment of claims, a certified reinsurer is not required to post security for a catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophe occurrence as recognized by the commissioner. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophe occurrence will be included in the deferral:

- (i) Line 1: Fire.
- (ii) Line 2: Allied lines.
- (iii) Line 3: Farmowners multiple peril.
- (iv) Line 4: Homeowners multiple peril.
- (v) Line 5: Commercial multiple peril.
- (vi) Line 9: Inland marine.
- (vii) Line 12: Earthquake.
- (viii) Line 21: Auto physical damage.

(e) Credit for reinsurance under this section applies only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, is only subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

(f) Nothing in this section prohibits the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.

(2)(a) The commissioner shall post notice on the commissioner's web site promptly upon receipt of any application

for certification, including instructions on how members of the public may respond to the application. The commissioner may not take final action on the application until at least thirty days after posting the notice required by (a) of this subsection.

(b) The commissioner shall issue notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in the notice shall be the rating assigned the certified reinsurer under subsection (1) of this section. The commissioner shall publish a list of all certified reinsurers and their ratings.

(c) In order to be eligible for certification, the assuming insurer must meet the following requirements:

(i) The assuming insurer must be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner under subsection (3) of this section.

(ii) The assuming insurer must maintain capital and surplus, or its equivalent, of no less than two hundred fifty million dollars calculated under (d)(viii) of this subsection. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having a minimum capital and surplus equivalent (net of liabilities) of at least two hundred fifty million dollars and a central fund containing a balance of at least two hundred fifty million dollars.

(iii) The assuming insurer must maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner. These ratings must be based on interactive communication between the rating agency and the assuming insurer and must not be based solely on publicly available information. These financial strength ratings will be one factor used by the commissioner in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

- (A) Standard & Poor's;
- (B) Moody's Investors Service;
- (C) Fitch Ratings;
- (D) A.M. Best Company; or
- (E) Any other nationally recognized statistical rating organization.

(iv) The certified reinsurer must comply with any other requirements reasonably imposed by the commissioner.

(d) Each certified reinsurer must be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:

(i) The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The commissioner must use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from accept-

able rating agencies will result in loss of eligibility for certification:

Ratings	Best	S&P	Moody's	Fitch
Secure - 1	A++	AAA	Aaa	AAA
Secure - 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure - 3	A	A+, A	A1, A2	A+, A
Secure - 4	A-	A-	A3	A-
Secure - 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable - 6	B, B-, C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

(ii) The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

(iii) For certified reinsurers domiciled in the United States, a review of the most recent applicable NAIC annual statement blank, either schedule F (for property/casualty reinsurers) or schedule S (for life and disability reinsurers);

(iv) For certified reinsurers not domiciled in the United States, a review annually of Form CR-F (for property/casualty reinsurers) or Form CR-S (for life and disability reinsurers) set forth in WAC 284-13-59502 through 284-13-59508;

(v) The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than ninety days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

(vi) Regulatory actions against the certified reinsurer;

(vii) The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in (d)(viii) of this subsection;

(viii) For certified reinsurers not domiciled in the United States, audited financial statements (audited United States GAAP basis if available, audited IFRS basis statements are allowed but most include an audited footnote reconciling equity and net income to a United States GAAP basis, or, with the permission of the insurance commissioner, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company), regulatory filings, and actuarial opinions (as filed with non-United States jurisdiction supervisor). Upon the initial application for certification, the commissioner will consider audited financial statements for the last three years filed with its non-United States jurisdiction supervisor;

(ix) The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

(x) A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves United States ceding insurers. The commissioner must receive prior notice from a certified reinsurer that proposes

participation by the certified reinsurer in a solvent scheme arrangement; and

(xi) Any other information deemed relevant by the commissioner.

(e) Based on the analysis conducted under (d)(v) of this subsection of a certified reinsurer's reputation for prompt payment of claims, the commissioner may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers, provided that the commissioner must, at a minimum, increase the security the certified reinsurer is required to post by one rating level under (d)(i) of this subsection if the commissioner finds that:

(i) More than fifteen percent of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of ninety days or more which are not in dispute and which exceed one hundred thousand dollars for each cedent; or

(ii) The aggregate amount of reinsurance recoverables on paid losses which are not in dispute that are overdue by ninety days or more exceeds fifty million dollars.

(f) The assuming insurer must submit a properly executed Form CR-1 set forth under WAC 284-13-59501 as evidence of its submission to the jurisdiction of this state, appointment of the commissioner as an agent for service of process in this state, and agreement to provide security for one hundred percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment. The commissioner will not certify any assuming insurer that is domiciled in a jurisdiction that the commissioner has determined does not adequately and promptly enforce final United States judgments or arbitration awards.

(g) The certified reinsurer must agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis. The applicable information filing requirements are as follows:

(i) Notification within ten days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license or any change in rating by an approved rating agency, including a statement describing the changes and the reasons therefore;

(ii) Annually, Form CR-F or CR-S, as applicable per the instructions posted on the National Association of Insurance Commissioner's web site;

(iii) Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in (g)(iv) of this subsection;

(iv) Annually, audited financial statements (audited United States GAAP basis if available, audited IFRS basis statements are allowed but must include an audited footnote reconciling equity and net income to a United States GAAP basis, or, with the permission of the commissioner, audited IFRS statements with reconciliation to United States GAAP certified by an officer of the company), regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor). Upon the initial certification, audited financial statements for the last three years filed with the certified reinsurer's supervisor;

(v) At least annually, an audited list of all disputed and overdue reinsurance claims regarding reinsurance assumed from United States domestic ceding insurers;

(vi) A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

(vii) Any other information that the commissioner may reasonably require.

(h) Change in rating or revocation of certification.

(i) In the case of a downgrade by a rating agency or other disqualifying circumstance, the commissioner must upon notice assign a new rating to the certified reinsurer in accordance with the requirements of subsection (2)(d)(i) of this section.

(ii) The commissioner has the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commissioner to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

(iii) If the rating of a certified reinsurer is upgraded by the commissioner, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commissioner must require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the commissioner, the commissioner must require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

(iv) Upon revocation of the certification of a certified reinsurer by the commissioner, the assuming insurer is required to post security in accordance with WAC 284-13-540 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust under WAC 284-13-520 through 284-13-538, the commissioner may allow additional credit equal to the ceding insurer's pro rata share of the funds, discounted to reflect the risk of uncollectability and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commissioner to be at high risk of uncollectability.

(3)(a) If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-United States assuming insurer, the commissioner determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the commissioner must publish notice and evidence of the recognition in an appropriate manner. The commissioner may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

(b) In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner must evaluate the reinsurance supervisory system of the non-United States jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. The commissioner must determine the appropriate approach for evaluating the qualifications of the jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the commissioner as eligible for certification. A qualified jurisdiction must agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the commissioner include, but are not limited to, the following:

(i) The framework under which the assuming insurer is regulated.

(ii) The structure and authority of the domiciliary regulator with respect to solvency regulation requirements and financial surveillance.

(iii) The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.

(iv) The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.

(v) The domiciliary regulator's willingness to cooperate with United States regulators in general and the commissioner in particular.

(vi) The history of performance by assuming insurers in the domiciliary jurisdiction.

(vii) Any documented evidence of substantial problems with the enforcement of final United States judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the commissioner has determined that it does not adequately and promptly enforce final United States judgments or arbitration awards.

(viii) Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.

(ix) Any other matters deemed relevant by the commissioner.

(c) A list of qualified jurisdictions shall be published through the NAIC committee process. The commissioner shall consider the list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification with respect to the criteria provided under (b)(i) through (ix) of this subsection.

(d) United States jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program are recognized as qualified jurisdictions.

(4)(a) If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the commissioner has the discretion to defer to that jurisdiction's cer-

tification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed CR-1 and additional information as the commissioner requires. The assuming insurer is considered to be a certified reinsurer in this state.

(b) Any change in the certified reinsurer's status or rating in the other jurisdiction applies automatically in this state as of the date it takes effect in the other jurisdiction. The certified reinsurer must notify the commissioner of any change in its status or rating within ten days after receiving notice of the change.

(c) The commissioner may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with subsection (2)(h) of this section.

(d) The commissioner may withdraw recognition of the other jurisdiction's certification at any time, with notice to the certified reinsurer. Unless the commissioner suspends or revokes the certified reinsurer's certification under subsection (2)(h) of this section, the certified reinsurer's certification remains in good standing in this state for a period of three months, which is extended if additional time is necessary to consider the assuming insurer's application for certification in this state.

(5) In addition to the clauses required under WAC 284-13-580, reinsurance contracts entered into or renewed under this section must include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.

(6) The commissioner will comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

NEW SECTION

WAC 284-13-53901 Credit for reinsurance required by law. Under section 8, chapter 63, Laws of 2015, the commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of sections 3 through 7, chapter 63, Laws of 2015, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means state, district or territory of the United States and lawful national government.

AMENDATORY SECTION (Amending WSR 97-05-012, filed 2/10/97, effective 3/13/97)

WAC 284-13-540 ((Credit)) Asset or reduction from liability for reinsurance ceded to an unauthorized assuming insurer ((that does not have a certificate of authority)) not meeting the requirements of WAC 284-13-510 through 284-13-53901. ((Pursuant to RCW 48-12-160 (4)(e))) Under section 13, chapter 63, Laws of 2015, the commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of sections 2 through 12, chapter 63, Laws of 2015, in an amount not exceeding the liabilities

carried by the ceding insurer. ~~((Such))~~ The reduction shall (not be greater than) be in the amount of funds (or other assets that are of the types and amounts that are authorized under chapter 48.13 RCW, held subject to withdrawal by and under the control of the ceding insurer) held by or on behalf of the ceding insurer, including funds (or other such assets) held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with (such) the assuming insurer as security for the payment of obligations (thereunder. Such) under the reinsurance contract. The security must be held in ((a qualified) the United States ((financial institution as defined in WAC 284-13-515)) subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or in the case of a trust, held in a qualified United States financial institution as defined in section 4(2), chapter 63, Laws of 2015. This security may be in the form of any of the following:

(1) ~~((Deposits or funds that are assets of the types and amounts that are authorized under chapter 48.13 RCW; or~~

~~(2))~~ (a) Cash;

(b) Securities listed by the Securities Valuation Office of the NAIC, including those exempt from filing as defined by the purposes and procedures manual of the Securities Valuation Office, and qualifying as admitted assets;

(c) Clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in ((WAC 284-13-515)) section 14(1), chapter 63, Laws of 2015, effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust, the ceding ((company)) insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs(-); or

(d) Any other form of security acceptable to the commissioner.

(2) An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer ((pursuant to)) under this section ((shall be)) is allowed only when the requirements of WAC ((284-13-560 are met)) 284-13-580 and the applicable portions of WAC 284-13-550, 284-13-560, or 284-13-570 have been satisfied.

AMENDATORY SECTION (Amending WSR 97-05-012, filed 2/10/97, effective 3/13/97)

WAC 284-13-550 Trust agreements qualified under WAC 284-13-540. (1) As used in this section:

(a) "Beneficiary" means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator, or liquidator).

(b) "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the ~~((assuming alien insurer not holding a certificate of authority for that kind of business))~~ unlicensed, unaccredited insurer.

(c) "Obligations," as used in subsection (2)(k) of this section, means:

(i) Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;

(ii) Reserves for reinsured losses reported and outstanding;

(iii) Reserves for reinsured losses incurred but not reported; and

(iv) Reserves for allocated reinsured loss expenses and unearned premiums.

(2) Required conditions.

(a) The trust agreement ~~((shall))~~ must be entered into between the beneficiary, the grantor, and a trustee which ~~((shall))~~ must be a qualified United States financial institution as defined in ~~((WAC 284-13-515))~~ section 14(2), chapter 63, Laws of 2015.

(b) The trust agreement ~~((shall))~~ must create a trust account into which assets ~~((shall))~~ must be deposited.

(c) All assets in the trust account ~~((shall))~~ must be held by the trustee at the trustee's office in the United States.

(d) The trust agreement ~~((shall))~~ must provide that:

(i) The beneficiary ~~((shall))~~ must have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;

(ii) No other statement or document is required to be presented ~~((in order))~~ to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;

(iii) It is not subject to any conditions or qualifications outside of the trust agreement; and

(iv) It ~~((shall))~~ must not contain references to any other agreements or documents except as provided for under (k) and (l) of this subsection.

(e) The trust agreement ~~((shall))~~ must be established for the sole benefit of the beneficiary.

(f) The trust agreement ~~((shall))~~ must require the trustee to:

(i) Receive assets and hold all assets in a safe place;

(ii) Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate ~~((any such))~~ the assets, without consent or signature from the grantor or any other person or entity;

(iii) Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;

(iv) Notify the grantor and the beneficiary within ten days, of any deposits to or withdrawals from the trust account;

(v) Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title, and interest in the assets

held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and

(vi) Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw ~~((such))~~ the asset upon condition that the proceeds are paid into the trust account.

(g) The trust agreement ~~((shall))~~ must provide that at least thirty days, but not more than forty-five days, prior to termination of the trust account, written notification of termination ~~((shall))~~ must be delivered by the trustee to the beneficiary.

(h) The trust agreement ~~((shall))~~ must be made subject to and governed by the laws of the state in which the trust is ~~((established))~~ domiciled.

(i) The trust agreement ~~((shall))~~ must prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee. In order for a letter of credit to qualify as an asset of the trust, the trustee must have the right and the obligation under the deed of trust or some other binding agreement (as duly approved by the commissioner), to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

(j) The trust agreement ~~((shall))~~ must provide that the trustee ~~((shall be))~~ is liable for its own negligence, willful misconduct, or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances where the draw would be required is either negligence, or willful misconduct, or both.

(k) Notwithstanding other provisions of ~~((this regulation))~~ WAC 284-13-500 through 284-13-590, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities, and disability, where it is customary practice to provide a trust agreement for a specific purpose, ~~((such a))~~ the trust agreement may ~~((notwithstanding any other conditions in this regulation,))~~ provide that the ceding insurer ~~((shall))~~ must undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(i) To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;

(ii) To make payment to the assuming insurer of any amounts held in the trust account that exceed one hundred two percent of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or

(iii) Where the ceding insurer has received notification of termination of the trust ~~((account))~~ and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to

the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in ~~((WAC 284-13-515))~~ section 14(2), chapter 63, Laws of 2015, apart from its general assets, in trust for ~~((such))~~ the uses and purposes specified in (k)(i) and (ii) of this subsection as may remain executory after ~~((such))~~ the withdrawal and for any period after the termination date.

(l) Notwithstanding other provisions of ~~((this regulation))~~ WAC 284-13-500 through 284-13-590, when a trust agreement is established to meet the requirements of WAC 284-13-540 in conjunction with a reinsurance agreement covering life, annuities, and disability risks, where it is customary ~~((practice))~~ to provide a trust agreement for a specific purpose, ~~((such a))~~ the trust agreement may provide that the ceding insurer ~~((shall))~~ must undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, only for the following purposes:

(i) To pay or reimburse the ceding insurer for:

(A) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of the policies; and

(B) The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurer, under the terms and provisions of the policies reinsured under the reinsurance agreement.

(ii) To ~~((make payment))~~ pay to the assuming insurer ~~((of))~~ amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer; or

(iii) Where the ceding insurer has received notification of termination of the trust ~~((account))~~ and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of liabilities, to the extent that the liabilities have not been funded by the assuming insurer, and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution ~~((as defined in WAC 284-13-515))~~ apart from its general assets, in trust for such uses and purposes specified in (l)(i) and (ii) of this subsection as may remain executory after ~~((such))~~ withdrawal and for any period after the termination date.

(m) Either the reinsurance agreement ~~((entered into in conjunction with))~~ or the trust agreement ~~((may, but need not, contain the provisions required by subsection (4)(a)(ii) of this section, so long as these required conditions are included in the trust agreement.~~

~~((n) Notwithstanding any other provision in the trust instrument, if the grantor(s) of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or court of competent jurisdiction directing the trustee to trans-~~

fer to the commissioner with regulatory oversight or other designated receiver all of the assets of the trust fund. The assets shall be applied in accordance with the priority statutes and laws of the state in which the trust is domiciled applicable to the assets of insurance companies in liquidation. If the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy claims of the United States ceding insurers of the grantor(s) of the trust, the assets or any part thereof shall be returned to the trustee for distribution in accordance with the trust agreement.) must stipulate that assets deposited in the trust account must be valued according to their current fair market value and must consist only of cash in United States dollars, certificates of deposit issued by a United States bank and payable in United States dollars, and investments permitted by Title 48 RCW or any combination of the above, provided investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust must not exceed five percent of total investments. The agreement may further specify the types of investments to be deposited. If the reinsurance agreement covers life, annuities or accident and disability risks, then the provisions required by this subsection (2)(m) of this section must be included in the reinsurance agreement.

(3) Permitted conditions.

(a) The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than ninety days after ((receipt by)) the beneficiary and grantor ((of)) receive the notice((-)) and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than ninety days after ((receipt by)) the trustee and the beneficiary ((of)) receive the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

(b) The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any ((such)) interest or dividends ((shall)) must be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.

(c) The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions ((which)) that the trustee determines are at least equal in current fair market value to the assets withdrawn and that are consistent with the restrictions in subsection (4)(a)(ii) of this section.

(d) The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. ((Such)) Transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

(e) The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary ((shall)) must, with written approval by the beneficiary, be delivered over to the grantor.

(4) Additional conditions applicable to reinsurance agreements.

(a) A reinsurance agreement((, which is entered into in conjunction with a trust agreement and the establishment of a trust account,)) may contain provisions that:

(i) Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;

(ii) ((Stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender), and investments of the types permitted by Title 48 RCW or any combination of the above, provided that such investments are issued by an institution that is not the parent, subsidiary, or affiliate of either the grantor or the beneficiary. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities, and disability, then the trust agreement may contain the provisions described by this paragraph in lieu of including such provisions in the reinsurance agreement;

((iii)) Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations, or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;

((iv)) ((iii)) Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and

((v)) ((iv)) Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established ((pursuant to)) under the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and ((shall)) must be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver, or conservator of ((such)) the company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

(A) To pay or reimburse the ceding insurer for:

(I) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurer, to the owners of policies reinsured under the reinsurance agreement because of cancellations of ((such)) the policies;

(II) The assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer ((pursuant to)) under

the provisions of the policies reinsured under the reinsurance agreement; and

(III) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(B) To make payment to the assuming insurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(b) The reinsurance agreement may also contain provisions that:

(i) Give the assuming insurer the right to seek approval from the ceding insurer, which shall not be unreasonably or arbitrarily withheld, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

(A) The assuming insurer ~~((shall))~~ must, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a current fair market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or

(B) After withdrawal and transfer, the current fair market value of the trust account is no less than one hundred two percent of the required amount.

~~((The ceding insurer shall not unreasonably or arbitrarily withhold its approval.))~~

(ii) Provide for return of any amount withdrawn in excess of the actual amounts required for (a)~~((+))~~ (iv) of this subsection, and for interest payments at a rate not in excess of the prime rate of interest on the amounts ~~((held pursuant to (a)(v) of this subsection)).~~

(iii) Permit the award by any arbitration panel or court of competent jurisdiction of:

(A) Interest at a rate different from that provided in (b)(ii) of this subsection;

(B) Court or arbitration costs;

(C) Attorney's fees; and

(D) Any other reasonable expenses.

~~((+))~~ (5) Financial reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming ~~((then))~~ insurer in financial statements required to be filed with the insurance commissioner in compliance with the provisions of ~~((this regulation))~~ WAC 284-13-500 through 284-13-590 when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but ~~((such))~~ the reduction ~~((shall))~~ must be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

~~((+))~~ (6) Existing agreements. Notwithstanding the effective date of ~~((this regulation))~~ WAC 284-13-500 through 284-13-590, any trust agreement or underlying reinsurance agreement in existence prior to December 31, ~~((1996))~~ 2015, and which was in compliance with statutes and regulations in effect at that time, will continue to be acceptable until December ~~((30, 1997))~~ 31, 2016, at which time the agreements will have to be in full compliance with ~~((this regula-~~

~~tion))~~ WAC 284-13-500 through 284-13-590 for the trust agreement to be acceptable.

~~((+))~~ (7) The failure of any trust agreement to specifically identify the beneficiary as defined in subsection (1)(a) of this section shall not be construed to affect any actions or rights ~~((which))~~ that the commissioner may take or possess ~~((pursuant to))~~ under the provisions of the laws of this state.

AMENDATORY SECTION (Amending WSR 97-05-012, filed 2/10/97, effective 3/13/97)

WAC 284-13-560 Letters of credit qualified under WAC 284-13-540. (1) The letter of credit must be clean, irrevocable, and unconditional and issued or confirmed by a qualified United States financial institution as defined in ~~((WAC 284-13-515))~~ section 14(1), chapter 63, Laws of 2015. The letter of credit ~~((shall))~~ must contain an issue date and date of expiration and ~~((shall))~~ must stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit ~~((shall))~~ must also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself ~~((shall))~~ must not contain reference to any other agreements, documents, or entities, except as provided in subsection (8)(a) of this section. As used in this section, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator, or liquidator).

(2) The heading of the letter of credit may include a boxed section ~~((which contains))~~ containing the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section ~~((shall))~~ must be clearly marked to indicate that ~~((such))~~ the information is for internal identification purposes only.

(3) The letter of credit ~~((shall))~~ must contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

(4) The term of the letter of credit ~~((shall))~~ must be for at least one year and ~~((shall))~~ must contain an "evergreen clause" ~~((which))~~ that prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" ~~((shall))~~ must provide for a period of no less than thirty days' notice prior to ~~((expiry))~~ the expiration date or nonrenewal.

(5) The letter of credit ~~((shall))~~ must state whether it is subject to and governed by the laws of this state or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce ~~((Publication 500, or any successor publication))~~ Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), or any successor publication, and all drafts drawn thereunder ~~((shall))~~ must be presentable at an office in the United States of a qualified United States financial institution.

(6) If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (~~((Publication 500, or any successor publication))~~) Publication 600 (UCP 600) or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), or any successor publication, then the letter of credit (~~((shall))~~) must specifically address and (~~((make provision))~~) provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article (~~((19))~~) 36 of Publication (~~((500,))~~) 600 or any other successor publication occur.

(7) If the letter of credit ((shall be)) is issued by a financial institution authorized to issue letters of credit, other than a qualified United States financial institution ((authorized to issue letters of credit, pursuant to RCW 48.12.160 (1)(b)(ii)) as described in subsection (1) of this section, then the following additional requirements must be met:

(a) The issuing financial institution must formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts; and

(b) The "evergreen clause" must provide for thirty days' notice prior to the expiration date for nonrenewal.

(8) Reinsurance agreement provisions.

(a) The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions (~~((which))~~) that:

(i) Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover.

(ii) Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer (~~((pursuant to))~~) under the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and (~~((shall))~~) must be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:

(A) To pay or reimburse the ceding insurer for:

(I) The assuming insurer's share under the specific reinsurance agreement of premiums returned, but not yet recovered from the assuming insurers, to the owners of policies reinsured under the reinsurance agreement on account of cancellations of (~~((such))~~) the policies; (~~((and))~~)

(II) The assuming insurer's share under the specific reinsurance agreement of surrenders and benefits or losses paid by the ceding insurer, but not yet recovered from the assuming insurers, under the terms and provisions of the policies reinsured under the reinsurance agreement; and

(III) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the ceding insurer.

(B) Where the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a reduced amount and where the assuming insurer's entire obligations under the (~~((specific))~~) reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the assuming insurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the assuming insurer and exceed the amount of any reduced or replacement letter of credit, and deposit

those amounts in a separate account in the name of the ceding insurer in a qualified United States financial institution (~~((as defined in WAC 284-13-515))~~) apart from its general assets, in trust for (~~((such))~~) and purposes specified in (a)(ii)(A) of this subsection as may remain after withdrawal and for any period after the termination date.

(ii) All of the (~~((foregoing))~~) provisions of (a) of this subsection (~~((should))~~) must be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

(b) Nothing contained in (a) of this subsection shall preclude the ceding insurer and assuming insurer from providing for:

(i) An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held (~~((pursuant to))~~) under (a)(ii) of this subsection; (~~((and))~~) or

(ii) The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or any amounts that are subsequently determined not to be due.

~~((c) When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities, and disability, where it is customary practice to provide a letter of credit for a specific purpose, then the reinsurance agreement may, in lieu of (a)(ii) of this subsection, require that the parties enter into a "trust agreement" which may be incorporated into the reinsurance agreement or be a separate document.))~~

AMENDATORY SECTION (Amending WSR 97-05-012, filed 2/10/97, effective 3/13/97)

WAC 284-13-570 Other security. A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control. (~~((The credit shall not be greater than the funds held.))~~)

AMENDATORY SECTION (Amending WSR 05-02-075, filed 1/4/05, effective 2/4/05)

WAC 284-13-580 Reinsurance contract. (~~((The reinsurance agreement between any ceding insurer claiming credit))~~) Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance ((and an)) effected with assuming insurers ((that meets)) meeting the requirements of ((this regulation or)) WAC 284-13-510, 284-13-516, 284-13-517, 284-13-520, 284-13-530, 284-13-531, 284-13-532, 284-13-533, 284-13-535, 284-13-536, 284-13-537, 284-13-538, 284-13-539, or 284-13-540 or otherwise is in compliance with ((RCW 48.12.160 and 48.12.162 must include)) section 2 through 12, chapter 63, Laws of 2015, after the adoption of WAC 284-13-500 through 284-13-590 unless the reinsurance agreement:

(1) Includes a proper insolvency clause ((pursuant to RCW 48.12.162 (1)(b); and)), which stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding insurer under RCW 48.31.135;

(2) Includes a provision ((stating that)) under sections 2 through 12, chapter 63, Laws of 2015, whereby the assuming insurer, if an unauthorized assuming insurer((:

(a)) has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States((:

(b)) has agreed to comply with all requirements necessary to give such court or panel jurisdiction((:

(c)) has designated an agent upon whom service of process may be effected((; and

(d)) and has agreed to abide by the final decision of such court or panel; and

(3) Includes a proper reinsurance intermediary clause, if applicable, that stipulates that the credit risk for the intermediary is carried by the assuming insurer.

AMENDATORY SECTION (Amending WSR 97-05-012, filed 2/10/97, effective 3/13/97)

WAC 284-13-590 Contracts affected. All new and renewal reinsurance transactions entered into after December ((1, 1996, shall)) 31, 2015, must conform to the requirements of ((this regulation)) chapter 63, Laws of 2015, and WAC 284-13-500 through 284-13-590 if credit is to be given to the ceding insurer for ((such)) the reinsurance.

AMENDATORY SECTION (Amending WSR 97-05-012, filed 2/10/97, effective 3/13/97)

WAC 284-13-595 Form AR-1.

FORM AR-1

CERTIFICATE OF ASSUMING ((ALIEN)) INSURER

I, _____, _____
(name of officer) (title of officer)

of _____,
(name of assuming insurer)

the assuming ((alien)) insurer under a reinsurance agreement with one or more insurers domiciled in Washington, hereby certify that:

("Assuming Insurer"):
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in the State of Washington for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give ((such)) the court jurisdiction, and will abide by the final decision of ((such)) the court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the

reinsurance agreement to arbitrate their disputes if ((such an)) the obligation is created in the agreement.

2. Designates the Insurance Commissioner of the State of Washington as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement instituted by or on behalf of the ceding insurer.

3. Submits to the authority of the Insurance Commissioner of the State of Washington to examine its books and records and agrees to bear the expense of ((any such)) the examination.

4. Submits with this form a current list of insurers domiciled in the State of Washington reinsured by Assuming Insurer and undertakes to submit additions to or deletions from the list to the Insurance Commissioner at least once per calendar quarter.

Dated: _____
(name of assuming insurer)

BY: _____
(name of officer)

(title of officer)

NEW SECTION

WAC 284-13-59501 Form CR-1.

FORM CR-1

CERTIFICATE OF CERTIFIED REINSURER

I, _____, _____
(name of officer) (title of officer)

of _____,
(name of assuming insurer)

the assuming insurer under a reinsurance agreement with one or more insurers domiciled in Washington, in order to be considered for approval in this state, hereby certify that:

("Assuming Insurer"):
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in the State of Washington for the adjudication of any issues arising out of the reinsurance agreement, agrees to comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement to arbitrate their disputes if the obligation is created in the agreement.

NEW SECTION

WAC 284-13-59502 Form CR-F—PART 1.

Model Regulation Service—January 2012

Form CR-F - PART 1
Assumed Reinsurance as of December 31, Current Year (000 Omitted)

1 Company Code or ID Number	2	3 Name of Reinsured	4 Domiciliary Jurisdiction	5 Assumed Premium	Reinsurance On			9 Contingent Commissions Payable	10 Assumed Premiums Receivable	11 Unearned Premium	12 Funds Held By or Deposited With Reinsured Companies	13 Letters of Credit Posted	14 Amount of Assets Pledged or Complementing Balances to Secure Letters of Credit	15 Amount of Assets Pledged or Collateral Held in Trust
					6 Paid Losses and Loss Adjustment Expenses	7 Known Case Losses and LAE	8 Cols. 6 + 7							
999999 Totals														

NEW SECTION

WAC 284-13-59503 Form CR-F—PART 2.

Credit for Reinsurance Model Regulation

Form CR-F - PART 2
Ceded Reinsurance as of December 31, Current Year (000 Omitted)

1 Company Code or ID Number	2 Name of Reinsurer	3 Domiciliary Jurisdiction	4 Reinsurance Contracts Ceding 75% or More of Direct Premiums Written	5 Reinsurance Premiums Ceded	Reinsurance Recoverable On							Reinsurance Payable			18 Net Amount Recoverable From Reinsurers Cols. 16 - [16 + 17]	19 Funds Held by Company Under Reinsuran ce Treaties
					7 Paid Losses	8 Paid LAE	9 Known Case Loss Reserves	10 Known Case LAE Reserves	11 IBNR Loss Reserves	12 IBNR LAE Reserves	13 Unearned Premiums	14 Contingent Commissio ns	15 Cols 7 through 14 Totals	16 Ceded Balances Payable		
9999999 Totals																

© 2013 National Association of Insurance Commissioners

786-38

NEW SECTION

WAC 284-13-59508 Form CR-S—PART 3—SECTION 2.

Model Regulation Service—January 2012

Form CR-S – PART 3 – SECTION 2
 Reinsurance Ceded Accident and Health Insurance Listed by Reinsuring Company as of December 31, Current Year

1 Company Code or ID Number	2	3 Effective Date	4 Name of Company	5 Location	6 Type	7 Premiums	8 Unearned Premiums (Estimated)	9 Reserve Credit Taken Other than for Unearned Premiums	Outstanding Surplus Relief		12 Modified Consurance Reserve	13 Funds Withheld Under Consurance	
									10 Current Year	11 Prior Year			
Totals													

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 284-13-505 Actual reinsurance.
- WAC 284-13-515 Qualified United States financial institution.

**WSR 15-21-049
 PROPOSED RULES
 OFFICE OF
 INSURANCE COMMISSIONER**

[Insurance Commissioner Matter No. R 2015-07—Filed October 16, 2015,
 2:10 p.m.]
 Supplemental Notice to WSR 15-18-033.

Preproposal statement of inquiry was filed as WSR 15-13-101.

Title of Rule and Other Identifying Information: Sharing of commissions by licensed insurance producers.

Hearing Location(s): Insurance Commissioner's Office, 5000 Capitol Boulevard, TR 120, Tumwater, WA 98504-0255, on November 24, 2015, at 2:00 p.m.

Date of Intended Adoption: November 25, 2015.

Submit Written Comments to: Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, e-mail rules_coordinator@oic.wa.gov, fax (360) 586-3109, by November 23, 2015.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by November 23, 2015, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules will consider amending and/or adopting new rules to provide guidance to insurance producers regarding the sharing of commissions in conformance with new legislation (ESSB 5743).

Reasons Supporting Proposal: In August 2014 the commissioner adopted rules providing guidance to licensed insurance producers as to what may or may not constitute sharing commissions with nonlicensed persons. During the 2015 legislative session, legislation (ESSB 5743) was enacted that amended some of the statutes regarding what constitutes rebates and inducements, which in turn impacts the rules adopted in 2014.

Statutory Authority for Adoption: RCW 48.02.060 and 48.17.005.

Statute Being Implemented: RCW 48.17.490.

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Jim Tompkins, P.O. Box 98504-0258 [40258], Olympia, WA 98504-0258, (360) 725-7036; Implementation and Enforcement: John Hamje, P.O. Box 98504-0255 [40255], Olympia, WA 98504-0255, (360) 725-7262.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule replaces WAC 284-17-800, 284-17-820, and 284-17-830 in order to bring guidance regarding the sharing of commissions in conformance with SB [ESSB] 5743. The repealed sections had not gone into effect yet. The proposed rule will not cause producers to incur any noteworthy new costs and therefore does not require a small business economic impact statement under the provisions of RCW 19.85.025(3).

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Jim Tompkins, P.O. Box 40258, Olympia, WA 98504-0258, phone (360) 725-7036, fax (360) 586-3109, e-mail rulescoordinator@oic.wa.gov.

October 16, 2015
Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-17-805 Charitable contributions. (1) An insurance producer may pay or assign all or a portion of a commission, fee, or other consideration received in connection with the sale, solicitation, or negotiation of insurance to a bona fide charitable or nonprofit organization as defined in chapter 48.30 RCW if all of the following conditions are met:

(a) The insured or prospective insured has no influence over which bona fide charitable or nonprofit organization receives the payment or assignment;

(b) The payment or assignment is not made in the insured's or prospective insured's name;

(c) The insured or prospective insured is not entitled to a tax benefit for the payment or assignment; and

(d) The insured or prospective insured does not select or influence the selection of the person or persons who benefit from the bona fide charitable or nonprofit organization.

(2) An insurance producer may sponsor events for, or make contributions to a bona fide charitable or nonprofit organization if the sponsorship or contribution is not conditioned upon any person affiliated with or interested in the bona fide charitable or nonprofit organization applying for or obtaining insurance through the insurance producer.

(3) An insurance producer may not sponsor events for or make contributions to a bona fide charitable or nonprofit organization if the sponsorship or contribution is conditioned upon the referral of insurance business to the insurance producer or endorsement of the insurance producer or insurance product by the bona fide charitable or nonprofit organization.

NEW SECTION

WAC 284-17-825 Referrals. (1) An unlicensed individual who receives referral compensation under section 3(1) or a referral fee under section 3(4), chapter 272, Laws of 2015 is not selling, soliciting, or negotiating insurance if all of the following conditions are met:

(a) The referral compensation or fee does not depend upon whether the referral results in a purchase or sale;

(b) If insurance is purchased, the purchase is not a factor in determining the value of the referral compensation or the amount of the referral fee; and

(c) The recipient of the referral compensation or fee does not make representations to the prospective insured about the terms of or specific need for a policy.

(2) Referral compensation given to an individual under section 3(1), chapter 272, Laws of 2015 is limited to no more than one hundred dollars in value per referring individual in any consecutive twelve-month period.

NEW SECTION

WAC 284-17-835 Promotional games of chance. An insurance producer may conduct a promotional game of chance provided that:

(1) The promotional game of chance is undertaken solely for the purpose of advertising and promoting the insurance producer;

(2) No person eligible to receive the prize is required to apply for insurance, purchase insurance, refer a person to the

insurance producer, or pay any other consideration to enter the promotional game of chance;

(3) The promotional game of chance is open to the general public;

(4) The value of the prize is limited to one hundred dollars in value;

(5) No person receives a total of prizes exceeding one hundred dollars in value in the aggregate in any consecutive twelve-month period from the insurance producer; and

(6) The promotional game of chance complies with chapter 9.46 RCW and any and all other applicable Washington state statutes and rules.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 284-17-800 Charitable contributions.
 WAC 284-17-820 Referrals.
 WAC 284-17-830 Promotional games of chance.

WSR 15-21-058
PROPOSED RULES
CRIMINAL JUSTICE
TRAINING COMMISSION
 [Filed October 19, 2015, 11:01 a.m.]

Supplemental Notice to WSR 15-14-024.

Preproposal statement of inquiry was filed as WSR 15-10-047.

Title of Rule and Other Identifying Information: WAC 139-05-915 Guidelines for training of law enforcement and corrections dog handlers and canine teams.

Hearing Location(s): Washington State Criminal Justice Training Commission (WSCJTC), 19010 1st Avenue South, Burien, WA 98148, on Wednesday, December 9, 2015, at 10 a.m.

Date of Intended Adoption: December 9, 2015.

Submit Written Comments to: Sonja Hirsch, Rules Coordinator, 19010 1st Avenue South, Burien, WA 98148, e-mail speterson@cjtc.state.wa.us, fax (206) 835-7313, by December 2, 2015.

Assistance for Persons with Disabilities: Contact Sonja Hirsch, rules coordinator, by December 2, 2015, TTY (206) 835-7300 or (206) 835-7356.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Commission staff are not the source of expertise in this area, nor does the WSCJTC have the resources to staff a position; therefore, commissioners have motioned to repeal this WAC.

Currently, the canine certification request is voluntary and outside entities are conducting the training and staff review paperwork.

Reasons Supporting Proposal: Commission staff have no expertise in this area.

Statutory Authority for Adoption: RCW 43.101.080.

Statute Being Implemented: Not applicable.

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

Name of Proponent: WSCJTC staff, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Tisha Jones, Burien, Washington, (360) 486-2431.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Proposal is exempt under RCW 19.85.025.

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

October 19, 2015
 Sonja Peterson
 Rules Coordinator

REPEALER

The following section of the Washington Administrative Code is repealed:

- WAC 139-05-915 Requirements of training for law enforcement and corrections dog handlers and certification of canine teams.

WSR 15-21-060
PROPOSED RULES
DEPARTMENT OF
EARLY LEARNING
 [Filed October 19, 2015, 11:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-11-086.

Title of Rule and Other Identifying Information: Adding a new subsection title: Early Head Start—Child Care Partnership Slots; adding new sections WAC 170-290-2401 Eligible consumers, 170-290-2410 Application for early head start—Child care partnership slots, 170-290-2420 Copay for early head start—Child care partnership slots, 170-290-2426 Eligibility period for early head start—Child care partnership slots, 170-290-2430 Eligible early head start—Child care partnership slots providers, 170-290-2435 Subsidy payments for early head start—Child care partnership slots providers, 170-290-2440 Early achievers payments for partnership slots providers, 170-290-2445 Reapplication for early head start—Child care partnership slots, 170-290-2450 Deenrollment process for early head start—Child care partnership slots providers, 170-290-2455 Payment discrepancies for early head start—Child care partnership slots consumers, 170-290-2460 Payment discrepancies for early head start—Child care partnership slots providers, and 170-290-2465 Administrative hearings for early head start—Child care partnership slots.

Hearing Location(s): NEW ESD 101, Conference Center - Classroom 1, 4202 South Regal Street, Spokane, WA 99223, on November 24, 2015, at 9:00 a.m.; and at the Department of Early Learning (DEL), State Office, Room 130, 1110 Jefferson Street S.E., Olympia, WA 98501, on November 24, 2015, at 4:00 p.m.

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

Submit Written Comments to: Rules Coordinator, DEL, P.O. Box 40970, Olympia, WA 98504-0970, e-mail rules@del.wa.gov, fax (360) 725-4925, by November 24, 2015.

Assistance for Persons with Disabilities: Contact DEL rules coordinator, by November 16, 2015, (360) 725-4670.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these new proposed rules is to facilitate expanded availability of quality, comprehensive full day, full year early learning opportunities for infants and toddlers through layering of child care development fund moneys and early head start funds into partnership slots. This rule making accomplishes this by establishing in the WAC chapter concerning working connections child care (WCCC) rules specific to the partnership slots that distinguish them from the WCCC voucher program.

Reasons Supporting Proposal: The Federal Administration for Children and Families, as part of President Obama's Early Learning Initiative, has set aside substantial funds for new early head start-child care partnership grants that allow for the expansion. Furthermore, grantees have been selected for Washington state and they have partnered with programs in anticipation of a January 1, 2016, start date for their partnership slots.

Statutory Authority for Adoption: RCW 43.215.070, chapter 43.215 RCW.

Statute Being Implemented: Chapter 43.215 RCW.

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

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Matt Judge, Subsidy Policy Supervisor, DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 725-4665; Implementation and Enforcement: DEL licensing offices, statewide.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are not expected to impose new costs on businesses that are required to comply. If the rules result in costs, those costs are not expected to be "more than minor" as defined in chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328.

October 16, 2015
Ross Hunter
Director

Early Head Start—Child Care Partnership Slots

NEW SECTION

WAC 170-290-2401 Eligible consumers. (1) To be an eligible parent, the person applying must meet the requirements under WAC 170-290-0005, 170-290-0015 and 170-290-0020.

(2) To be an eligible child, the child must meet the requirements under WAC 170-290-0005, 170-290-0015 and 170-290-0020. Verification of citizenship and immigration status is not required for a child participating in the Early Head Start-Child Care Partnership Slots program.

NEW SECTION

WAC 170-290-2410 Application for Early Head Start—Child Care Partnership Slots. (1) Working connections child care (WCCC) benefits for an eligible consumer may begin when the following conditions are met:

(a) The consumer has completed the required WCCC application and verification process as described under WAC 170-290-0012 within thirty days of the date DSHS received the consumer's application;

(b) The consumer is working or participating in an approved activity under WAC 170-290-0040, 170-290-0045, 170-290-0050, or 170-290-0055;

(c) The consumer needs child care for work or approved activities within at least thirty days of the date of application for benefits;

(d) The consumer is participating in the early head start program; and

(e) The consumer's eligible provider (under WAC 170-290-0125) is caring for his or her children.

(2) If a consumer fails to turn in all information within thirty days from his or her application date, the consumer must restart the application process.

(3) The consumer's application date is whichever is earlier:

(a) The date the consumer's application is entered into DSHS' automated system; or

(b) The date the consumer's application is date stamped as received.

(4) Partnership-slot consumers have priority with the enactment of a wait list.

NEW SECTION

WAC 170-290-2420 Copay for Early Head Start—Child Care Partnership Slots. (1) If the consumer's family countable monthly income falls within the range below, then the copayment is:

If a Consumer's Income Is:	Then the Consumer's Copayment Is:
(a) At or below 82% of the federal poverty guidelines (FPG).	\$15
(b) Above 82% of the FPG up to 137.5% of the FPG.	\$65
(c) Above 137.5% of the FPG through 200% of the FPG.	The dollar amount equal to subtracting 137.5% of the FPG from countable income, multiplying by 50%, then adding \$65.00

If a Consumer's Income Is:	Then the Consumer's Copayment Is:
(d) Above 200% of the FPG, a consumer is not eligible for WCCC benefits.	

(2) DSHS does not prorate the copayment when a consumer uses care for part of a month.

(3) The copayment is per family, not per provider or child. If the consumer has a child receiving working connections child care (WCCC) and another child receiving partnership-slot child care, the consumer chooses which provider will receive the copayment.

(4) The consumer pays the minimum copayment when he or she is a minor parent, and:

(a) Receives temporary assistance for needy families (TANF); or

(b) Is part of the parent's or relative's TANF assistance unit.

(5) The consumer pays the copayment directly to the child care provider or arranges for a third party to pay the copayment directly to the provider.

(6) In cases of overdue or past due copayments, the consumer, as a condition of maintaining eligibility, must do one or more of the following:

(a) Pay past or overdue copayments.

(b) Give DSHS a written agreement between the provider and consumer to verify that copayment arrangements include one or more of the following:

(i) An installment payment plan;

(ii) A collection agency payment plan;

(iii) In-kind services in lieu of paying the copayment; or

(iv) Forgiveness of the copayment from the provider; or

(c) Provide proof that the consumer has attempted to pay a copayment to a licensed provider who is no longer in business. "Proof" includes, but is not limited to, a return receipt that was signed for and not responded to, or a returned document that was not picked up.

(7) The provider collects copayments directly from the consumer or the consumer's third-party payor, and report to DSHS if the consumer has not paid a copayment within the previous sixty days.

(8) The FPG is updated every year on April 1st. The WCCC eligibility level is updated at the same time every year to remain current with the FPG.

NEW SECTION

WAC 170-290-2426 Eligibility period for Early Head Start—Child Care Partnership Slots. (1) A consumer who meets all of the requirements of partnership-slot eligibility may receive partnership-slot subsidies for a twelve month certification period.

(2) The period begins when:

(a) The child participates in early head start with an eligible provider;

(b) The consumer completes the application and verification process.

(3) A consumer's eligibility may end sooner if:

(a) The consumer no longer wishes to participate in working connections child care (WCCC);

(b) The child no longer participates in early head start programs; or

(c) DSHS terminates the consumer's eligibility when:

(i) The consumer does not comply with the copayment requirements of WAC 170-290-0030 (3) and (4);

(ii) The consumer does not cooperate with the child care subsidy audit process or with the DSHS office of fraud and accountability (OFA).

(4) A consumer may be eligible for WCCC again beginning on the date that the consumer:

(a) Complies with the copayment requirements of WAC 170-290-0030 (3) and (4); and

(b) Cooperates with the child care subsidy audit process or with the DSHS OFA.

NEW SECTION

WAC 170-290-2430 Eligible Early Head Start—Child Care Partnership Slots providers. To receive payment a consumer's child care provider must:

(1) Be a licensed, certified, or DEL-contracted provider.

(a) Licensed providers are licensed as required by chapter 43.215 RCW and chapter 170-295, 170-296A, or 170-297 WAC.

(b) Certified providers are exempt from licensing but certified by DEL, such as:

(i) Tribal child care facilities that meet the requirements of tribal law;

(ii) Child care facilities on a military installation; and

(iii) Child care facilities operated on public school property by a school district.

(c) DEL-contracted seasonal day camp has a contract with DEL to provide subsidized child care.

(d) Meet Early Head Start-Child Care Partnership Slots provider requirements.

(2) Keep complete and accurate daily attendance records for children in their care, and allow access to DEL to inspect attendance records during all hours in which authorized child care is provided as follows:

(a) Current attendance records (including records from the previous twelve months) must be available immediately for review upon request by DEL.

(b) Attendance records older than twelve months to five years old must be provided to DSHS or DEL within two weeks of the date of a written request from either department.

(c) Failure to make available attendance records as provided in this subsection may:

(i) Result in the immediate suspension of the provider's subsidy payments; and

(ii) Establish a provider overpayment.

NEW SECTION

WAC 170-290-2435 Subsidy payments for Early Head Start—Child Care Partnership Slots providers. (1) DSHS will not authorize registration fees, field trip fees, or a nonstandard hours bonus.

(2) Providers who accept child care subsidies must invoice the state no later than one calendar year after the actual date of service.

(3) Providers who accept child care subsidies under the Early Head Start—Child Care Partnership Slots receive payment rates as outlined in the partnership slot provider agreement.

NEW SECTION

WAC 170-290-2440 Early achievers payments for partnership slots providers. To receive subsidy payment and be eligible for Early Head Start—Child Care Partnership Slots a new provider must:

(1) Effective January 1, 2016, enroll in early achievers within thirty days of the start date of the partnership agreement;

(2) Rate at a level three or higher within twelve months of enrollment;

(3) If the provider rates lower than a level three, complete remedial activities with the department and rate at a level three or higher within six months of the beginning of the remedial activities.

NEW SECTION

WAC 170-290-2445 Reapplication for Early Head Start—Child Care Partnership Slots. (1) If a consumer wants to receive child care benefits for another eligibility period, they must reapply for working connections child care (WCCC) benefits before the end of the current eligibility period. To determine if a consumer remains eligible, DSHS:

(a) Requests reapplication information before the end date of the consumer's current WCCC eligibility period; and

(b) Verifies the requested information for completeness and accuracy.

(2) A consumer may be eligible for benefits for a new eligibility period if:

(a) DSHS receives the consumer's reapplication information no later than the last day of the current eligibility period;

(b) The consumer's provider is eligible for payment under WAC 170-290-0125;

(c) The consumer participates in the early head start program; and

(d) The consumer remains eligible for WCCC.

(3) If DSHS determines that a consumer is eligible for WCCC benefits based on his or her reapplication information, DSHS notifies the consumer of the new eligibility period and copayment.

(4) When a consumer submits a reapplication after the last day of his or her current eligibility period, the consumer's benefits begin:

(a) On the date that the consumer's reapplication is date-stamped as received in DSHS' community service office or entered into the DSHS automated system, whichever date is earlier;

(b) When the consumer participates in the early head start program; and

(c) An eligible WCCC provider cares for the consumer's child.

NEW SECTION

WAC 170-290-2450 Deenrollment process for Early Head Start—Child Care Partnership Slots providers. (1) The partnership-slot provider may receive payment for up to thirty consecutive calendar days of vacancy.

(2) If the child does not attend by the fifteenth calendar day from the first day of absence, the provider must notify DSHS.

(3) DSHS will send a ten calendar day notice to the consumer that the child will be deenrolled and the authorization for the partnership-slot payment closed.

NEW SECTION

WAC 170-290-2455 Payment discrepancies for Early Head Start—Child Care Partnership Slots consumers. (1) DSHS establishes overpayments for past or current consumers when the consumer:

(a) Received benefits when he or she was not eligible;

(b) Used care for an unapproved activity or for children not in the WCCC household;

(c) Failed to report information to DSHS resulting in an error in determining eligibility, amount of care authorized, or copayment;

(d) Used a provider that was not eligible per WAC 170-290-0125; or

(e) Received benefits for a child who was not eligible per WAC 170-290-0015 or 170-290-0020.

(2) DEL or DSHS may request documentation from a consumer when preparing to establish an overpayment. The consumer has fourteen consecutive calendar days to supply any requested documentation.

(3) Consumers are required to repay any benefits paid by DSHS that they were not eligible to receive.

(4) If an overpayment was made through departmental error, the consumer is still required to repay that amount.

(5) If a consumer is not eligible under WAC 170-290-0032 and the provider has billed correctly, the consumer is responsible for the entire overpayment, including any absent days.

NEW SECTION

WAC 170-290-2460 Payment discrepancies for Early Head Start—Child Care Partnership Slots providers. (1) An overpayment occurs when a provider receives payment that is more than the provider is eligible to receive. Provider overpayments are established when a provider:

(a) Bills and receives payment for services not provided;

(b) Bills without attendance records that support their billing;

(c) Bills and receives payment for more than they are eligible to bill;

(d) Bills the state for more than the number of children they have in their licensed capacity;

(e) Is caring for a WCCC child outside their licensed allowable age range without a DEL-approved exception;

(f) Fails to notify DSHS within ten days of any suspension, revocation, or change to their license;

(g) Receives payment for a slot for which they were not eligible to bill:

(i) Payment for a slot left vacant over thirty consecutive days;

(ii) Duplicated payments for a contracted slot and WCCC units for care of the same child.

(2) DEL or DSHS may request documentation from a provider when preparing to establish an overpayment. The provider has fourteen consecutive calendar days to supply any requested documentation.

(3) Providers are required to repay any payments that they were not eligible to receive.

(4) If an overpayment was made through departmental error, the provider is still required to repay that amount.

NEW SECTION

WAC 170-290-2465 Administrative hearings for Early Head Start—Child Care Partnership Slots. (1) Consumers have a right to request a hearing under chapter 388-02 WAC on any action affecting benefits except for mass changes resulting from a change in policy or law.

(2) Early Head Start-Child Care Partnership Slots providers may request hearings under chapter 388-02 WAC only for overpayments.

(3) To request a hearing, a consumer or partnership-slot provider:

(a) Contacts the DSHS office which sent them the notice; or

(b) Writes to the Office of Administrative Hearings, P.O. Box 42489, Olympia, WA 98504-2489; and

(c) Makes the request for a hearing within:

(i) Ninety days of the date a decision is received for consumers;

(ii) Twenty-eight days of the date a decision is received for providers.

(4) The office of administrative hearings administrative law judge enters initial or final orders as provided in WAC 388-02-0217. Initial orders may be appealed to a DSHS review judge under chapter 388-02 WAC.

(5) A consumer may receive benefits pending the outcome of a hearing if he or she requests the hearing:

(a) On or before the effective date of an action; or

(b) No more than ten days after DSHS sends the consumer a notice of adverse action. As used in this section, "adverse action" means an action to reduce or terminate a consumer's benefits.

(6) If a consumer loses a hearing, any benefit that a consumer uses between the date of the adverse action and the date of the hearing decision is an overpayment to the consumer.

(7) A consumer may not receive benefits pending the outcome of a hearing if he or she requests payment to a provider who is not eligible under WAC 170-290-0125.

(8) A consumer may receive benefits for another eligible provider, pending the outcome of the hearing.

WSR 15-21-061

PROPOSED RULES

DEPARTMENT OF

EARLY LEARNING

[Filed October 19, 2015, 11:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-18-117.

Title of Rule and Other Identifying Information: WAC 170-03-0010 Purpose and scope, 170-03-0020 Definitions, 170-03-0160 Requirements that apply to decisions involving limited English-speaking parties, 170-03-0570 Appeal of the initial order, 170-03-0590 Petition for review, 170-03-0610 Decision process, 170-03-0620 Authority of the review judge, and 170-03-0660 Judicial review.

Hearing Location(s): NEW ESD 101, Conference Center - Classroom 1, 4202 South Regal Street, Spokane, WA 99223, on November 24, 2015, at 9:00 a.m.; and at the Department of Early Learning (DEL), State Office, Room 130, 1110 Jefferson Street S.E., Olympia, WA 98501, on November 24, 2015, at 4:00 p.m.

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

Submit Written Comments to: Rules Coordinator, DEL, P.O. Box 40970, Olympia, WA 98504-0970, e-mail rules@del.wa.gov, fax (360) 725-4925, by November 24, 2015.

Assistance for Persons with Disabilities: Contact DEL rules coordinator, by November 16, 2015, (360) 725-4670.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The majority of these revisions were a joint effort between the department and the office of administrative hearings (OAH) to update, correct and clarify the hearing rules chapter for easier administration by OAH. Other revisions were made in order to align the hearings chapter with recent changes made by the passage of the Early Start Act, specifically ensuring alignment with changes made to ECEAP and background check rule chapters.

Reasons Supporting Proposal: These changes update, streamline, and improve efficiencies for the department's hearing process and procedures.

Statutory Authority for Adoption: RCW 43.215.070, chapter 43.215 RCW.

Statute Being Implemented: Chapter 43.215 RCW.

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

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Mary Kay Quinlan, Statewide Licensing Administrator, DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 725-4665; Implementation and Enforcement: DEL licensing offices, statewide.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are not expected to impose new costs on businesses that are required to comply. If the rules result in costs, those costs are not expected to be "more than minor" as defined in chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328.

October 19, 2015
Ross Hunter
Director

AMENDATORY SECTION (Amending WSR 08-06-102, filed 3/5/08, effective 4/5/08)

WAC 170-03-0010 Purpose and scope. (1) **Application.** This chapter contains the procedural rules that apply to adjudicative proceedings involving the department of early learning (DEL) and:

(a) Individuals or entities who are applicants for child care licenses or who are licensees of DEL and are aggrieved by a DEL denial of an application or a revocation, suspension, or modification of a license;

(b) Applicants for employment (~~or employees of licensed child care agencies, child care providers, staff, volunteers, contracted providers, or other individuals who are required to meet background check standards before being authorized to care for or have unsupervised access to children in child care and~~), staff, volunteers and contracted providers who participate in DEL programs, including child care, that are required to meet background check standards and those who are disqualified by DEL;

(c) Individuals receiving child care subsidies under (~~the seasonal~~) a child care program who dispute a program decision or licensed/certified providers who dispute an overpayment under (~~the seasonal~~) a child care program.

(2) **Relation to statutes and rules.** The rules of this chapter are intended to supplement RCW 43.215.305, the statute governing hearing rights for applicants and licensees; the Administrative Procedure Act (APA), chapter 34.05 RCW; and the model rules, chapter 10-08 WAC, adopted by the office of administrative hearings (OAH). If a provision of this chapter conflicts with a provision in any chapter containing a procedural or substantive rule, the provision in the chapter containing the procedural or substantive rule governs.

(3) **Relation to actions and rules of other agencies.** Actions of DEL sometimes rely in part on actions taken by other agencies, most notably the department of social and health services (DSHS), or are taken in conjunction with the actions of other agencies. For example, DSHS's division of licensed resources/child protective services (DLR/CPS) has statutory responsibility for investigating allegations of child abuse or neglect in licensed child care agencies. If DLR/CPS finds child abuse or neglect occurred in a child care facility, the person who is the subject of the finding will have a right to a hearing to challenge that finding under DSHS rules. If the subject is a licensed provider, the child care license may be denied, revoked, suspended, or modified as a result of the circumstances and finding and the provider also would have a right to a hearing under DEL hearing rules. To the extent the child abuse or neglect case and the licensing case can be consolidated or combined in one hearing, they should be combined.

(4) **Application and amendments.** This chapter and any amendments to this chapter apply to cases pending at the time of the adoption of the rule or amendment, unless the amendment or rule-making order specifically states that it does not apply to pending cases. An amendment to this chapter does not require that anything already done be redone in order to comply with the amendment, unless the amendment expressly says so.

(5) **Effective date.** This chapter is initially effective July 3, 2006. In addition to cases arising on or after the effective date, this chapter, and not its DSHS predecessor, applies to all pending DEL cases that have not gone to a full hearing before an ALJ by July 3, 2006, and to cases in which an initial decision is subject to review, but in which a petition for review has not been filed by July 3, 2006. This chapter does not apply to cases in which the hearing was held or begun prior to July 3, 2006, and/or which are awaiting initial decisions; Provided, Parts VIII and IX of this chapter, governing review of initial and final orders, will apply to review of any initial orders mailed after the effective date of this chapter.

AMENDATORY SECTION (Amending WSR 08-06-102, filed 3/5/08, effective 4/5/08)

WAC 170-03-0020 Definitions. The following definitions apply to this chapter:

(1) **"Adjudicative proceeding"** means a hearing before an administrative law judge concerning an appeal of department action pursuant to RCW 43.215.305.

(2) **"Administrative law judge" or "ALJ"** means an impartial decision-maker who is an attorney and presides at an administrative hearing. The office of administrative hearings (OAH), which is a state agency, employs the ALJs. (~~ALJs are not DEL employees or DEL designees.~~)

(3) **"Business days"** means all days except Saturdays, Sundays and legal holidays.

(4) **"Calendar days"** means all days including Saturdays, Sundays and legal holidays.

(5) **"Case"** means the entire proceeding following the filing of a request for hearing with OAH.

(6) **"Continuance"** means a change in the date or time of a prehearing conference, hearing or deadline for other action.

(7) **"DEL" or "department"** means the department of early learning.

(8) **"Documents"** means papers, letters, writings, or other printed or written items.

(9) **"Ex parte contact"** means a written or oral communication with an ALJ or review judge about something related to the hearing when the other parties are not present. Procedural questions are not considered an ex parte contact. Examples of procedural questions include clarifying the hearing date, time, or location or asking for directions to the hearing location.

(10) **"Final order"** means an order that is the final DEL decision. An ALJ's initial order becomes a final order if the ALJ's initial order is not appealed to a review judge. If an ALJ's initial order is appealed to a review judge, the review judge's order is DEL's final decision.

(11) **"Good cause"** means a substantial reason or legal justification for an action or for failing to appear, act, or respond to an action required under these rules.

(12) **"Hearing"** means a proceeding before OAH that gives an aggrieved party an opportunity to be heard in disputes resulting from actions taken against the party by DEL. 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 170 of the Washington Administrative Code, chapter 10-08 WAC, or other law.

(13) **"Initial order"** is a decision made by an ALJ that may be reviewed by a review judge.

(14) **"OAH"** means the office of administrative hearings. This is a separate agency and not part of DEL.

(15) **"Party"** means a person or entity to whom a DEL adverse action is directed and who has a right to be involved in the hearing process. DEL also is a party.

(16) **"Representative"** means the person selected by a party to represent that party in an administrative hearing. **"Lay representative"** means a person or advocate who is assisting a party in presenting that party's case in administrative hearings. **"DEL representative"** means an employee of DEL, a DEL contractor, or an employee of the office of the attorney general authorized to represent DEL in an administrative hearing.

(17) **"Record"** means the official documentation of the hearing process. The record includes tape recordings or transcripts, admitted exhibits, decisions, briefs, notices, orders, and other filed documents.

(18) **"Review"** means the act of reviewing initial orders and issuing the DEL final order as provided by RCW 34.05.-464.

(19) **"Review judge"** (~~or "DEL review judge"~~) means an attorney employed by or designated by DEL to act as the reviewing officer and who is authorized to review initial orders and to prepare and enter the final agency order.

(20) **"Rule"** means a state regulation, including a licensing standard. Rules are found in the Washington Administrative Code (WAC).

(21) **"Stay"** means an order temporarily halting the DEL decision or action.

(22) Words of command such as **"will," "shall,"** and **"must"** are words that impose a mandatory obligation on a participant in the hearing process. The word **"may"** is used when referring to a discretionary act to be taken by a participant in the hearing process.

AMENDATORY SECTION (Amending WSR 08-06-102, filed 3/5/08, effective 4/5/08)

WAC 170-03-0160 Requirements that apply to decisions involving limited-English-speaking parties. (1) When an interpreter is used at a hearing (~~involving limited English-speaking parties, the ALJ~~), the administrative law judge (ALJ) must explain that ((the decision will be)) decisions are written in English ((but)) and that ((a party using an interpreter may contact)) the office of administrative hearings (OAH) will provide an interpreter for an oral translation of the decision at no cost to that party.

(2) (~~Interpreters must provide a telephone number where they can be reached to the ALJ and to the LES party. This number must be included in any decision or order mailed to the parties~~) OAH must provide the party needing interpretation services information about how to obtain those services. Information about how to access interpretation services must be attached to the decision or order. The individual who provides the interpretation service does not need to be the same individual who provided the interpreter services at the hearing.

(3) OAH or the review judge must (~~mail~~) send a copy of a decision or order to (~~the~~) an interpreter for use in oral (~~translation~~) interpretation.

AMENDATORY SECTION (Amending WSR 08-06-102, filed 3/5/08, effective 4/5/08)

WAC 170-03-0570 Appeal of the initial order. (1) Review of the initial order may occur when a party disagrees with or wants a change in an initial order, other than correcting a clerical error.

(2) A party must request review of an initial order from the (~~DEL~~) review judge as provided in WAC 170-03-0580 through 170-03-0640.

(3) If more than one party requests review, each request must meet the deadlines in WAC 170-03-0580.

(4) The review judge considers the request, the initial order, and record, before deciding if the initial order may be changed.

(~~(5) Review does not include another hearing by the DEL review judge.~~)

AMENDATORY SECTION (Amending WSR 08-06-102, filed 3/5/08, effective 4/5/08)

WAC 170-03-0590 Petition for review. (1) A party must make the review request (petition for review) in writing and clearly identify the:

(a) Parts of the initial order with which the party disagrees; and

(b) Arguments supporting the party's position.

(2) The petition for review must be filed with the review judge and a copy sent to the other parties and their representatives.

(3) The review judge can be contacted at the following address or at the address stated on the letter containing instructions for obtaining review mailed with the initial order:

Review Judge

(~~Department of Early Learning~~)

~~P.O. Box 40970~~

~~Olympia, WA 98504-0970~~

~~360-725-4665~~) Office of Administrative Hearings

P.O. Box 42488

2420 Bristol Court S.W.

Olympia, WA 98504-2488

Phone: 360-407-2700

Fax: 360-586-6563

(4) After receiving a party's review request, the review judge will send a copy to the other parties, their representatives and ~~((OAH))~~ the administrative law judge who entered the initial order.

AMENDATORY SECTION (Amending WSR 08-06-102, filed 3/5/08, effective 4/5/08)

WAC 170-03-0610 Decision process. (1) After the response deadline, the record on review is closed unless there is a good cause to reopen the record.

(2) ~~((A review judge is assigned to the review after the record is closed.~~

~~((3))~~ (3) The review judge only considers evidence given at the original hearing unless the review judge has reopened the record pursuant to subsection (1) of this section.

~~((4))~~ (3) The review judge will decide the appeal without oral argument, unless the review judge determines that oral argument is necessary for resolution of the appeal.

~~((5))~~ (4) The review judge enters a final order that affirms, changes, dismisses or reverses the initial order, or remands (returns) the case to ~~((OAH))~~ the administrative law judge for further specified action.

AMENDATORY SECTION (Amending WSR 08-06-102, filed 3/5/08, effective 4/5/08)

WAC 170-03-0620 Authority of the review judge. (1) The review judge has the same decision-making authority as an ALJ, but must consider the ALJ's opportunity to observe the witnesses.

(2) The review judge's order is the DEL final order in the case. If the review judge's final order upholds the department's adverse action, the appealing party must comply with the final order unless the appealing party obtains a stay of the effectiveness of the final order from the ~~((review judge))~~ superior court after filing a petition for judicial review in accordance with WAC 170-03-0660.

AMENDATORY SECTION (Amending WSR 08-06-102, filed 3/5/08, effective 4/5/08)

WAC 170-03-0660 Judicial review. (1) Judicial review is the process of appealing a final order to a court.

(2) Any party, except DEL, may appeal a final order by filing a written petition for judicial review that meets the requirements of RCW 34.05.546. The petition must be properly filed and served within thirty calendar days of the date ~~((OAH or))~~ the review judge mails the final order in the case.

(3) Filing an appeal of a final order does not stay the effectiveness of the final order.

(4) RCW 34.05.510 through 34.05.598 contain further details of the judicial review process.

WSR 15-21-065
PROPOSED RULES
DEPARTMENT OF ECOLOGY

[Order 15-03—Filed October 19, 2015, 3:24 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-10-039.

Title of Rule and Other Identifying Information: Chapter 173-900 WAC, Electronic products recycling program.

Hearing Location(s): Department of Ecology, 300 Desmond Drive, Lacey, WA 98503, on December 3, 2015, at 2:00 p.m.

Date of Intended Adoption: February 16, 2016.

Submit Written Comments to: Miles Kuntz, Department of Ecology, P.O. Box 47600, Olympia, WA 98504, e-mail miles.kuntz@ecy.wa.gov, fax (360) 407-6102, by December 10, 2015.

Assistance for Persons with Disabilities: Contact waste 2 resources program main reception by December 1, 2015, TTY (877) 833-6341 or (360) 407-6900.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In response to changes in the law adopted by the 2013 legislature, ecology is proposing to revise the rule (chapter 173-900 WAC) to account for each manufacturer's financial obligation to the stewardship program based totally on market share and eliminating all references to return share calculations in the existing rule. Market share refers to each manufacturer's share of covered electronic products (TVs, computers, monitors, e-readers and portable DVD players) sold in Washington, and return share refers to each manufacturer's share of those products in the recycling stream.

As a result, some manufacturers may pay more than they are now to support the recycling program and some may pay less. The impact on individual manufacturers, if any, will depend on each manufacturer's sales of consumer electronics (market share) in Washington state.

Also in response to 2013 legislation, ecology is proposing to expand the reporting requirements for organizations operating recycling programs for electronic products. In addition to the information currently required in the rule for annual reports on the operation of a recycling program, those reports would also be required to include: (1) An estimate of each type of material recovered from the recycling of electronics including cathode ray tube glass, circuit boards, batteries, mercury-containing devices, plastics, and metals; (2) an estimate of the weight of all collected products that are ultimately reused, recycled, or end up as residual waste that is disposed; (3) a description of program revenues and costs including the average cost of the program per pound of covered electronic product collected, and costs for education and promotional efforts, collection, transportation, processing and labor, and program administration; and (4) a description of the methods used to collect, transport and process covered electronic products.

Proposed changes also clarify that retailers of covered electronic products must provide take-home information on the recycling of electronics to consumers at the time of purchase of a covered electronic product. Most retailers provide take-home information to consumers now through a variety

of methods. Under this change posting a placard at the check-out stand does not meet the requirement for retailers to provide consumers with recycling information.

In addition, proposed changes and edits include, but are not limited to, allowing ecology to provide notifications electronically to the organizations operating recycling programs rather than by certified mail, and updating references to the ecology oversight program from the old name, the solid waste and financial assistance program, to the current program name, the waste 2 resources program.

Reasons Supporting Proposal: This rule making is required following the passage of legislation in 2013 and it is generally supported by the manufacturers of electronics who will be impacted by these requirements.

Statutory Authority for Adoption: RCW 70.95N.230.

Statute Being Implemented: Chapter 70.95N RCW.

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

Name of Proponent: Washington state department of ecology, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Miles Kuntz, Lacey, Washington, (360) 407-7157.

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

Small Business Economic Impact Statement

Note: Due to size limitations relating to the filing of documents with the code reviser, the small business economic impact statement (SBEIS) does not contain full explanation of ecology's analysis. Additionally, it does not contain raw data or all summaries of data used in the analysis, or all of ecology's analysis of this data. However, this information is being placed in the rule-making file, and is available upon request for the rule file. A full analysis of compliance costs is available in the associated cost-benefit analysis for this rule.

Executive Summary: This report presents the economic analysis performed by the Washington state department of ecology (ecology) to estimate the degree of disproportionate impact on small businesses caused by the proposed amendments to the *electronic products recycling program* (chapter 173-900 WAC; E-Cycle; the rule). This analysis - SBEIS - are based on the best available information at the time of publication.

The Washington Regulatory Fairness Act (RFA; chapter 19.85 RCW) requires ecology to evaluate whether the proposed rule imposes disproportionate impacts (via compliance costs) on small businesses as compared to the largest ten percent of businesses required to comply with the rule. If disproportionate impact is found, ecology must mitigate it as long as doing so is legal and feasible.

The proposed rule amendments make the following discretionary changes:

- Eliminate Tier 7 manufacturer registration renewal.
- Direct ecology to send "notices of approval" electronically, rather than by mail.
- Direct ecology to send "notices of failure to provide service" electronically, rather than by mail.

- Require retailers to provide take-home information about the E-Cycle program to consumers making in-person purchases (not online). Expand the list of example methods retailers may use to comply with the requirement to provide customers information on where and how to recycle covered electronics, to include receipt information and stickers.

In this analysis, we estimated constant ranges of costs:

- \$0 to \$250 thousand, depending on the compliance route chosen to provide take-home recycling information. The least-cost compliance approach would use receipt information and have minimal costs as part of regular business practice, as compared to using stickers.

Dividing these constant costs by a smaller number of employees inherently results in higher per-employee costs at smaller retailers.

Ecology was limited in the scope of this rule making in its ability to mitigate any disproportionate impacts on small businesses, as the proposed rule making was limited to making changes required by law, and improving adequate consumer information about where and how to recycle covered electronic products. Reducing the take-home information requirement for small businesses would not have fulfilled the intent of the authorizing statute. However, the E-Cycle program works to facilitate retailer compliance without imposing excessive burden, with assistance such as the Retailer Toolkit (<http://www.ecy.wa.gov/programs/swfa/eproductrecycle/docs/RetailerToolkit.pdf>).¹

¹E-Cycle Washington Retailers Toolkit (2012). Updated 9/11/12. <http://www.ecy.wa.gov/programs/swfa/eproductrecycle/docs/RetailerToolkit.pdf>

We estimated that the proposed rule, based on the OFM-IO model, would likely result in the net loss of between zero and 1.2 jobs in the state economy. Zero job loss corresponds to minimal costs incurred using receipt-based information for consumers. 1.2 jobs lost corresponds to the highest estimated sticker cost being transferred from retailers of covered electronic products to the printing industry creating the custom stickers.

Chapter 1: Background and Introduction:

1.1 Introduction: This report presents the economic analysis performed by ecology to estimate the degree of disproportionate impact on small businesses caused by the proposed amendments to the *electronic products recycling program* (chapter 173-900 WAC; E-Cycle; the rule). This analysis - SBEIS - are based on the best available information at the time of publication.

The Washington Regulatory Fairness Act (RFA; chapter 19.85 RCW) requires ecology to evaluate whether the proposed rule imposes disproportionate impacts (via compliance costs) on small businesses as compared to the largest ten percent of businesses required to comply with the rule. If disproportionate impact is found, ecology must mitigate it as long as doing so is legal and feasible.

1.1.1 The Electronic Products Recycling Program: The E-Cycle program is Washington's free, convenient, and environmentally responsible electronics recycling program. It has been operational since January 1, 2009, after ecology

completed a rule making (chapter 173-900 WAC) implementing the electronic product recycling law (chapter 70.95N RCW). Products accepted at E-Cycle Washington drop-off sites are: Computers, monitors, laptops, tablet computers, televisions, portable DVD players and e-readers.

The E-Cycle program requires product manufacturers to pay for this recycling program. Through the program, registered collection sites and processors are compensated for their roles in the process of recycling the electronics made by manufacturers selling in Washington state. Registered collection sites must accept covered electronics from households at no cost. There may be a charge for at-home pick-up, curbside services, or other premium services.

For more information about producer responsibility, visit the Northwest Product Stewardship web site at www.productstewardship.net.

Since its creation, the E-Cycle program has collected over two hundred eighty-two million pounds of electronics for recycling. This is the amount of largely valuable and/or toxic material kept out of landfills and illegal dump sites.

1.1.2 Coverage: The rule covers the actions of the following types of entities that sell covered electronics or operate as part of E-Cycle, in Washington state:

- Manufacturers
- Retailers
- Collectors
- Transporters
- Processors
- Local governments.

Covered electronics include:

- Televisions
- Computers
- Computer monitors
- Portable or laptop computers including "tablet computers"
- E-readers (also called e-book readers)
- Portable DVD players.

1.2 Summary of the Proposed Rule Amendments:

The proposed rule amendments make the following discretionary changes:

- Eliminate Tier 7 manufacturer registration renewal.
- Direct ecology to send "notices of approval" electronically, rather than by mail.
- Direct ecology to send "notices of failure to provide service" electronically, rather than by mail.
- Require retailers to provide take-home information about the E-Cycle program to consumers making in-person purchases (not online). Expand the list of example methods retailers may use to comply with the requirement to provide customers information on where and how to recycle covered electronics, to include receipt information and stickers.

The proposed rule amendments also make the following changes, driven explicitly by the law:

- Eliminate the requirement for the authority to mail two paper copies of the annual report to ecology (RCW 43.17.095).
- Allow local governments to submit satisfaction reports either electronically or by mail, instead of both (RCW 43.17.095).
- Allow nonprofit or charitable organizations to submit annual reports either electronically or by mail, instead of both (RCW 43.17.095).
- Allow reporting entities to submit either an electronic or paper copy, instead of both (RCW 43.17.095).
- Base manufacturer share on current market share (chapter 70.95N RCW).

1.3 Reasons for the Proposed Rule Amendments: This proposed rule making is required following the passage of legislation in 2013 (chapter 305, Laws of 2013; ESB 5699). The *electronic products recycling program* is supported by fees paid to a stewardship organization by producers of consumer electronics subject to the rule. Most notably, the legislature directed ecology to implement a market-share based system to determine manufacturer responsibility from which fees will be calculated by the stewardship organization. Manufacturers' responsibility for recycling electronics will be based entirely on current sales (market share), rather than on the amount of products that were sold in the past and are just now being turned in for recycling.

This proposed rule making also makes changes to the requirements for the annual report filed by the authority or authorized party for the manufacturers of electronic products. This follows the passage of chapter 292, Laws of 2013 (SHB 1498) that amended chapter 70.95N RCW. In addition, other changes are needed for clarification of sufficient compliance behaviors, and clarity and editing. A legal requirement to provide an option of electronic submittal of forms also motivated elements of this rule making.

Chapter 2: Analysis of Compliance Costs for Washington Businesses:

2.1 Introduction: We analyzed the impacts of the proposed rule relative to the baseline of the existing rule, within the context of all existing requirements (federal and state laws and rules). This context for comparison is called the baseline, and reflects the most likely regulatory circumstances that entities would face if the proposed rule were not adopted. It is discussed in Section 2.2, below.

2.2 Baseline: The baseline for our analyses generally consists of existing rules and laws, and their requirements. For economic analyses, the baseline also includes the implementation of those regulations, including any guidelines and policies that result in behavior changes and real impacts. This is what allows us to make a consistent comparison between the state of the world with or without the proposed rule amendments.

For this proposed rule making, the baseline includes:

- Existing requirements in chapter 173-900 WAC, Electronic product recycling (rule): Sets out existing requirements under the rule.

- Chapter 70.95N RCW, Electronic product recycling (law): Requires manufacturer shares of responsibility to be based on current market share.
- RCW 43.17.095, option to submit document, form, or payment electronically: Requires agencies to provide the option of electronic submittal of documents, forms, and payments.

2.3 Proposed Rule Amendments: The proposed rule amendments that differ from the baseline and are not specifically dictated elsewhere in law or rule, and impose a cost, include:

- Requiring retailers to provide take-home information on the E-Cycle program. Expanding the list of example methods retailers may use to comply with the requirement to provide customers information on where and how to recycle covered electronics, to include receipt information and stickers.

2.4 Take-Home Information at the Point of Sale: The proposed rule adds the requirement that the information retailers provide to customers at the point of sale of covered electronics be take-home information. It also provides additional examples of compliance with this requirement, such as stickers or information on sales receipts. We estimated a range of costs for this proposed amendment, allowing for both receipts and stickers.²

²Ecology analyses typically take into account twenty year present values. Twenty year present values are a way to translate costs and benefits that occur at different points in time, such as the cost of reducing the release of toxins, resulting in benefits of reduced cancers and other health impacts in human and animal populations far into the future. In the case of the proposed rule, both costs and benefits can be represented in annual terms, because costs and benefits are not likely to occur over significantly different time frames. Specifically, take-home information provided now may not even be the reason a person recycles the purchased electronic product at the end of its life, but rather may be the reason a person recycles the product being replaced, such as an old monitor or laptop.

It is important to note that a large number of retailers have already been in compliance with the proposed rule through their compliance with the existing rule. Many retailers already provide information on receipts, as this is a very low-cost means of providing this information, in the same way many retailers provide other business information, promotions, and surveys. Many other retailers provide a sticker on the packaging for take-home electronics. Other retailers, however, provide on-site information, or fail to provide compliant information at all.

To provide a highly conservative overestimate of costs, we made our cost estimate based on the assumption that no retailers currently provide take-home information, or on-site information. This means actual costs of the proposed rule are undoubtedly smaller than the range estimated in this analysis.

2.4.1 Receipts as Take-Home Information: The incremental cost of adding or changing information provided on receipts is likely to be minimal, as part of regular business practices. Retailers regularly provide other information on their receipts, and inclusion of the required E-Cycle information as part of this process is not likely to incur greater than minimal costs. If retailers decide to comply with the proposed rule using receipt information for sales of covered electronics at physical locations (take-home information is not required

for online sales), the likely cost is near zero. This estimate is the bottom end of our estimated cost range.

2.4.2 Stickers as Take-Home Information: We estimated the annual cost of using stickers as take-home information based on:

- Retail costs of large-volume custom sticker purchases, for a two inch round sticker, printed with web site and phone number information designed and provided by ecology on its web site. The average per-unit retail price was approximately six cents.³

³Ecology review of large-volume sales offers of two inch round stickers with two colors, including: Office Max, Office Depot, Sticker Giant, Sticker Mule. As of September 2015.

- Average units sold per year from the 2011 - 2013 time frame, of approximately four million units. This includes online sales.⁴

⁴Ecology records of retailer sales under the 2011, 2012, and 2013 E-Cycle program.

- Between thirty-seven percent and ninety-nine percent of units being sold at physical locations (not online), based respectively on:
 - o The sixty-three percent of sales online in 2013 (most recent available) at electronic shopping and mail order houses. (Assumes the majority of retail sales are not in-person.)⁵

⁵US Census Bureau (2015). U.S. Retail Trade Sales - Total and E-commerce: 2013 - 1998. Based on data from the Annual Retail Trade Survey.

- o The one percent of sales online in 2013 (most recent available) at electronics and appliance stores. (Assumes the majority of retail sales are in-person, in-store pickup, or through physical stores' web sites.)⁶

⁶Ibid.

Using the above inputs, we estimated a range of costs for the proposed rule between \$93 thousand and \$250 thousand per year.

2.5 Summary of the Likely Costs of the Proposed Rule Amendments: We estimated the costs of the rule relative to the baseline (both discussed in depth in Chapter 2 of this document). Likely costs included:

- Minimal costs of giving customers take-home information on the E-Cycle program using receipts. **OR**
- \$93 thousand - \$250 thousand per year costs of giving consumers take-home information on the E-Cycle program using stickers.

These are two possible ways retailers might comply with the take-home information requirement. They have been added to the list of example means of compliance explicitly stated in the proposed rule.

The estimated cost of using stickers is overestimated, because it assumes no retailers currently provide take-home information of any sort (though many do), and the upper end of the range assumes that ninety-nine percent of purchases are made in person, although this number is based on elec-

tronics and appliance stores as a group (per available survey data), and various appliances may be purchased in-person more frequently than covered electronics.

The overall range of likely costs is between minimal and \$250 thousand, depending on the compliance route chosen to provide take-home recycling information.

Chapter 3: Quantification and Cost Ratios:

3.1 Introduction: This chapter discusses the comparison of the compliance costs per employee at small versus large businesses. The affected businesses are various retailers selling covered electronic products in Washington state. We

describe, in this chapter, the affected businesses, and make the required comparison of costs of the proposed rule amendments per employee at large businesses, compared to the costs per employee at small businesses.

3.2 Affected Businesses: The businesses affected by the costs created by the proposed rule are retailers selling covered electronic products under the E-Cycle program in Washington state. These businesses vary in size as defined by number of employees, and may fall into a number of industry groups, as many types of stores may sell covered electronics.

NAICS	Industry	Size 1-4	Size 5-9	Size 10-19	Size 20-49	Size 50-99	Size 100-249	Size 250-499	Size 500-999	Size 1000 +
443	Electronics and appliance stores	453	249	100	45	26	11	0	0	0
452	General merchandise stores	67	48	64	172	118	154	84	*	*
453	Miscellaneous store retailers	1,471	509	313	191	35	6	*	0	0
454	Nonstore retailers	458	112	82	42	15	12	*	3	*

*Undisclosed by data source.⁷

⁷WA Employment Security Department (2015). Establishment Size by Number of Employees, 2014. Based on the Quarterly Census of Employment and Wages, 2014.

3.3 Cost-to-Employee Ratios: In this analysis, we estimated constant ranges of costs:

- \$0 to \$250 thousand, depending on the compliance route chosen to provide take-home recycling information. The least-cost compliance approach would use receipt information and have minimal costs as part of regular business practice, as compared to using stickers.

Dividing these constant costs by a smaller number of employees inherently results in higher per-employee costs at smaller retailers.

Whether retailers use receipt information or stickers may depend on a number of factors. Some retailers may not have receipt printers that can add information, and may choose to use stickers instead of changing equipment. In either case, costs will depend on sales at each establishment, in units of covered electronic products sold. Comprehensive information on units sold by each retailer was not available at the time of this publication.

Even if we were able to scale costs by unit sales, sales of covered electronic product units are not likely to be uniformly correlated with the number of employees at a retailer. **Ecology therefore chose to conservatively conclude that the proposed rule is likely to impose disproportionate costs on small businesses.**

Chapter 4: Actions Taken to Reduce the Impact of the Rule on Small Businesses:

4.1 Introduction: If the proposed rule is likely to impose disproportionate costs on small businesses, ecology is required by the Regulatory Fairness Act (chapter 19.85 RCW) to reduce those disproportionate impacts to the extent that is legal and feasible.

4.2 Actions Taken to Reduce Disproportionate Impacts: Ecology was limited in the scope of this rule making in its ability to mitigate any disproportionate impacts on small businesses, as the proposed rule making was limited to making changes required by law, and improving adequate consumer information about where and how to recycle covered electronic products. Reducing the take-home information requirement for small businesses would not have fulfilled the intent of the authorizing statute. However, the E-Cycle program works to facilitate retailer compliance without imposing excessive burden, with assistance such as the Retailer Toolkit (<http://www.ecy.wa.gov/programs/swfa/eproductrecycle/docs/RetailerToolkit.pdf>).⁸

⁸E-Cycle Washington Retailers Toolkit (2012). Updated 9/11/12. <http://www.ecy.wa.gov/programs/swfa/eproductrecycle/docs/RetailerToolkit.pdf>

The toolkit provides flexible suggestions for how retailers can comply with rule requirements. Small businesses do not need to design their own E-Cycle information or graphics as these are provided in the Toolkit as logo print files. If they choose to provide alternative information, short blurbs and minimum requirements are provided as well. This reduces design and management costs, or contractor costs, that might otherwise be incurred.

Chapter 5: The Involvement of Small Businesses and Local Government in the Development of the Proposed Rule: Ecology is involving small businesses in the development of this rule making. Local governments are not

impacted in any way by the proposed rule and will not be specifically contacted.

Small businesses will be involved through the following actions by the waste 2 resources program (W2R):

1. Interested parties on the Washington recycles electronics listserv will be notified of the rule making.
2. W2R staff will attend a meeting of the board of directors of the WA Materials Management and Financing Authority to discuss the rule making and its impact on manufacturers including small businesses.
3. A national industry trade group, the Consumer Electronics Association will be notified of the rule making.
4. The WA Retail Association will be notified of the rule making.
5. The Association of WA Business will be notified of the rule making.

Small businesses or their representatives will be able to comment on the proposed rule as part of the official public comment period following rule proposal.

Chapter 6: The SIC (NAICS) Codes of Impacted Industries: The SIC (Standard Industry Classification) system has long been replaced by the North American Industry Classification System (NAICS).⁹ The proposed rule imposes likely costs on retailers that sell covered electronic products. These include stores selling specifically electronics, as well as stores selling covered electronics as part of a broader inventory of goods. These stores are likely to be in the following NAICS code groups:

- 443 - Electronics and Appliance Stores
- 452 - General Merchandise Stores
- 453 - Miscellaneous Store Retailers
- 454 - Nonstore Retailers (if they have any physical sales locations)

⁹US Census Bureau (2012). North American Industry Classification System. <http://www.census.gov/eos/www/naics/>

Chapter 7: Impacts on Jobs: We used the Washington state office of financial management's 2007 Washington input-output model (OFM-IO) to estimate the proposed rule's secondary impact on jobs across the state.¹⁰ This methodology estimates the impact as reductions or increases in spending in certain sectors of the state economy flow through to purchases, suppliers, and demand for other goods. Compliance costs incurred by an industry are entered in the OFM-IO model as a decrease in spending and investment. If that money is spent in another industry (on stickers, for example), it is entered in the model as an increase in production.

¹⁰WA Office of Financial Management (2014). 2007 Washington Input-Output Model. Last Revised September 2014. <http://www.ofm.wa.gov/economy/io/2007/default.asp>

We estimated that the proposed rule, based on the OFM-IO model, would likely result in the net loss of between zero and 1.2 jobs in the state economy. Zero job loss corresponds to minimal costs incurred using receipt-based information for consumers. 1.2 jobs lost corresponds to the highest estimated sticker cost being transferred from retailers of covered electronic products to the printing industry creating the custom stickers.

Sources:

Consumer Electronics Association (2014). Importance of Recycling: CEA Study Says More People are Recycling Electronics. Arlington, VA - 11/20/2014. Sources their Recycling and Reuse Study, 2014 Edition.

Ecology records for 2015 Tier establishment calculations.

Ecology records of retailer sales under the 2011, 2012, and 2013 E-Cycle program.

Ecology review of large-volume sales offers of two inch round stickers with two colors, including: Office Max, Office Depot, Sticker Giant, Sticker Mule. As of September 2015.

E-Cycle Washington Retailers Toolkit (2012). Updated 9/11/12. <http://www.ecy.wa.gov/programs/swfa/eproduct/ecycle/docs/RetailerToolkit.pdf>

E-Cycle Washington (2015). E-Cycle Washington Standard Plan 2014 Annual Report.

US Bureau of Labor Statistics (2014). May 2014 State Occupational Employment and Wage Estimates: Washington. http://www.bls.gov/oes/current/oes_wa.htm.

US Census Bureau (2012). North American Industry Classification System. <http://www.census.gov/eos/www/naics/>

US Census Bureau (2015). U.S. Retail Trade Sales - Total and E-commerce: 2013 - 1998. Based on data from the Annual Retail Trade Survey.

US Postal Service (2015). Postal Price Calculator for flat rate envelope mailed within Washington. <http://postcalc.usps.com/>

WA Employment Security Department (2015). Establishment Size by Number of Employees, 2014. Based on the Quarterly Census of Employment and Wages, 2014.

WA Office of Financial Management (2014). 2007 Washington Input-Output Model. Last Revised September 2014. <http://www.ofm.wa.gov/economy/io/2007/default.asp>.

A copy of the statement may be obtained by contacting Kirsten Miller, Washington State Department of Ecology, Waste 2 Resources Program, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6707, fax (360) 407-6102, e-mail kirsten.miller@ecy.wa.gov.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Kirsten Miller, Washington State Department of Ecology, Waste 2 Resources Program, P.O. Box 47600, Olympia, WA 98504-7600, phone (360) 407-6707, fax (360) 407-6102, e-mail kirsten.miller@ecy.wa.gov.

October 19, 2015

Polly Zehm

Deputy Director

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-030 Definitions. "Authority" means the Washington materials management and financing authority.

"Authorized party" means a manufacturer who submits an individual independent plan or the entity authorized

to submit an independent plan for more than one manufacturer.

"Board" means the board of directors of the Washington materials management and financing authority.

"Brand" means a name used to identify an electronic product in the consumer marketplace which attributes the electronic product to the owner of the name as the manufacturer.

"Brand label" typically includes, but is not limited to, name, logos, trademarks, and other visual elements including fonts, color schemes, shapes, symbols, and icons, which, when set in a special typeface or arranged in a particular way, differentiate electronic products by their manufacturers and brand owners.

"Cathode ray tube" or **"CRT"** means a vacuum tube, composed primarily of glass, which is the visual or video display component of an electronic device. A used, intact CRT means a CRT whose vacuum has not been released. A used, broken CRT means glass removed from its housing or casing whose vacuum has been released.

"Certified" means certified by signature on a form or other "hard copy," or by electronic signature or certification by a means implemented and approved by ecology, to be sent by mail or faxed or otherwise submitted to ecology.

"Charity" means an organization that qualifies for a taxation exemption under section 501 (c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 501 (c)(3)).

"Collection services" include drop-off collection sites or alternative collection services such as residential at-home pick-up services, curbside collection, or premium services such as those provided when performing system up-grades at small businesses.

"Collector" means an entity that is licensed to do business in Washington state and that gathers unwanted covered electronic products from households, small businesses, school districts, small governments, and charities for the purpose of recycling and meets the registration and collector performance standard requirements in Part IV, WAC 173-900-400 through 173-900-490.

"Component" includes, but is not limited to, televisions, computers, laptops, portable computers, monitors, keyboards, mice, and external hard drives.

"Computer" means a machine, used by one user at a time, designed for manipulating data according to a list of instructions known as a program, and are generally known as desktops, laptops, and portable computers. **"Computer"** does not include any of the following:

(a) ~~((A machine capable of supporting two or more work stations simultaneously for computing;~~

~~(b))~~ Computer servers marketed to professional users; or

~~((c))~~ (b) Retail store terminals or cash registers, used at customer checkout in the retail industry.

"Contract for services" means an instrument executed by the authority and one or more persons or entities that delineates collection, transportation, processing and recycling services, in whole or in part, that will be provided to the citizens of Washington state within service areas as described in the approved standard plan.

"Covered electronic product" or **"CEP"** includes any one of the following four types of products that has been used in Washington state by any covered entity, regardless of original point of purchase:

(a) Any monitor having a viewable area greater than four inches when measured diagonally;

(b) A desktop computer;

(c) A laptop or a portable computer; or

(d) Any video display device having a viewable area greater than four inches when measured diagonally.

"Covered electronic product" does not include:

(a) A motor vehicle or replacement parts for use in motor vehicles or aircraft, or any computer, computer monitor, or television that is contained within, and is not separate from, the motor vehicle or aircraft;

(b) Monitoring and control instruments or systems;

(c) Medical devices;

(d) Products including materials intended for use as ingredients in those products as defined in the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or the Virus-Serum-Toxin Act of 1913 (21 U.S.C. Sec. 151 et seq.), and regulations issued under those acts;

(e) Equipment used in the delivery of patient care in a health care setting;

(f) A computer, computer monitor, or television that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier; automatic teller machines, vending machines or similar business transaction machines; or

(g) Hand-held portable voice or data devices used for commercial mobile services as defined in 47 U.S.C. Sec. 332 (d)(1).

"Covered entity" means any household, charity, school district, small business, or small government located in Washington state.

"Curbside service" means a collection service providing regularly scheduled pickup of covered electronic products from households or other covered entities in quantities generated from households.

"Desktop" is a computer designed for nonportable use.

"Direct processor" means a processor contracted with a CEP recycling plan to provide processing services for the plan.

"Ecology" means the department of ecology.

"Electronic product" includes any monitor having a viewable area greater than four inches when measured diagonally; a desktop computer; a laptop or portable computer; or any video display device having a viewable area greater than four inches when measured diagonally.

"Equivalent share" means the weight in pounds of covered electronic products identified for an individual manufacturer as described in Part IX, WAC 173-900-930, 173-900-940, and 173-900-950.

"Existing manufacturers" are those entities whose covered electronic products are offered for sale or sold in or into Washington state, through any sales method, ~~((as of))~~ on or before December 8, 2006.

"Household" means a single detached dwelling unit or a single unit of a multiple dwelling unit and appurtenant structures.

"Implement" or **"plan implementation"** means that collection, transportation, processing, and recycling services and other plan requirements are fully operational as described in the approved CEP recycling plan.

"Independent plan" means a plan for the collection, transportation, processing and recycling of unwanted covered electronic products that is developed, implemented, and financed by an individual manufacturer or by an authorized party.

"Laptop" is a computer.

"Manufacturer" means the person who:

(a) Has legal ownership of the brand, brand-name or cobrand of covered electronic products sold in or into Washington state;

(b) Imports an electronic product branded by a manufacturer that meets (a) of this subsection and that manufacturer has no physical presence in the United States of America; ((or))

(c) Sells at retail a covered electronic product acquired from an importer that is the manufacturer as described in (b) of this subsection, and elects to register in lieu of the importer((-

~~**"Manufacturers whose CEPs are not directly sold in or into Washington state"** are those entities who have never sold or offered for sale covered electronic products in or into Washington state and whose CEP brand names are identified on the return share list or their CEPs are returned for recycling by a covered entity.~~

~~**"Manufacturers who previously manufactured"** are those entities that previously manufactured covered electronic products but no longer do so and whose brand names of CEPs are identified on the return share list or their CEPs are returned for recycling by a covered entity); or~~

(d) Beginning in program year 2016, elects to assume the responsibility and register in lieu of a manufacturer as defined under this section. In the event the entity that assumes responsibility fails to comply, the manufacturer as defined under (a) through (c) of this subsection remains fully responsible.

"Market share" means a percent of covered electronic products by weight sold in Washington state representing the manufacturer's share of all covered electronic products sold in Washington state assigned to a registered manufacturer based on the calculations in WAC 173-900-280.

"Material" means processed CEPs, components, and parts.

"Materials of concern" are any of the following:

(a) Any devices, including fluorescent tubes, containing mercury or PCBs;

(b) Batteries;

(c) CRTs and leaded glass; and

(d) Whole circuit boards.

"Monitor" is a video display device without a tuner that can display pictures and sound and is used with a computer.

"New entrant" means:

(a) A manufacturer of televisions that have been sold in Washington state for less than ten consecutive years; or

(b) A manufacturer of desktop computers, laptop and portable computers, or computer monitors that have been sold in Washington state for less than five consecutive years;

(c) However, a manufacturer of both televisions and computers or a manufacturer of both televisions and computer monitors that is deemed a new entrant under either only (a) or (b) of this subsection is considered an existing manufacturer and not a new entrant for purposes of this chapter.

"New manufacturers to Washington state" are those entities whose covered electronic products are offered for sale or sold in or into Washington state for the first time after December 8, 2006. These manufacturers become existing manufacturers for all program years after participation the first year.

"Nonprofit organization" means an organization that qualifies for a taxation exemption under section 501 (c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. Sec. 501 (c)(3)).

"Offering for sale" means providing electronic products for purchase, in or into Washington state, regardless of sales method.

"Orphan product" means a covered electronic product that lacks a manufacturer's brand or for which the manufacturer is no longer in business and has no successor in interest, or is a brand for which ecology cannot identify an owner.

"Part" means whole pieces out of CEPs, or components such as but not limited to processors, chips, or cathode ray tubes.

"Person" means any individual, business, manufacturer, transporter, collector, processor, retailer, charity, nonprofit organization, or government agency.

"Plan" means a CEP recycling plan.

"Plan's equivalent share" means the weight in pounds of covered electronic products for which a plan is responsible. A plan's equivalent share is equal to the sum of the equivalent shares of each manufacturer participating in that plan.

"Plan's ((return)) market share" means the sum of the ((return)) market shares of each manufacturer participating in that plan.

"Portable computer" is a computer.

"Preferred status" means that a direct processor is conforming with the performance standards for electronic product recycling as described in ecology's publication *"Environmentally Sound Management and Performance Standards for Direct Processors."*

"Premium service" means services such as at-location system upgrade services provided to covered entities and at-home pickup services offered to households or any handling requirements imposed by the covered entity in excess of those required in this chapter. (("))Premium service((")) does not include curbside service.

"Processing facility" means a facility where the processing of CEPs for a plan is conducted by a direct processor.

"Providing processing services" means disassembling, dismantling, or shredding electronic products to recover materials contained in the CEPs received from registered collectors or transporters and preparing those materials for reclaiming or reuse in accordance with processing standards established by this chapter.

"Processor" means an entity:

(a) Engaged in disassembling, dismantling, or shredding electronic products to recover materials contained in the electronic products and preparing those materials for reclaiming or reuse in new products in accordance with processing standards established by this chapter; and

(b) That may salvage CEPs, components, and parts to be used ~~(in new products)~~ as or in a salvaged or restored CEP.

"Product type" means one of the following categories: Computer monitors; desktop computers; laptop and portable computers; and televisions.

"Program" means the collection, transportation, processing and recycling activities conducted to implement an independent plan or the standard plan. Programs can vary for different areas of the state.

"Program year" means each full calendar year after the program has been initiated.

"Recycling" means transforming or remanufacturing unwanted electronic products, components, and by-products into usable or marketable materials for use other than landfill disposal or incineration. **"Recycling"** does not include energy recovery or energy generation by means of combusting unwanted electronic products, components, and by-products with or without other waste. Smelting of electronic materials to recover metals for reuse in conformance with all applicable laws and regulations is not considered disposal or energy recovery.

"Residual" means leftover materials from processing CEPs, components, parts and materials. Residuals cannot be used for their original function or cannot be recycled and are sent by a processor to a disposal facility.

"Retailer" means a person who offers covered electronic products for sale at retail through any means including, but not limited to, remote offerings such as sales outlets, catalogs, or the internet, but does not include a sale that is either reused products or a wholesale transaction with a distributor or a retailer.

~~("Return share" means the percentage of covered electronic products by weight identified for an individual manufacturer, as determined by ecology.)~~

"Reuse" means any operation by which an electronic product or a component of a covered electronic product changes ownership and is used, as is, for the same purpose for which it was originally purchased.

"Sell" or **"sold"** means an electronic product is purchased regardless of sales method.

"Small business" means a business in Washington state employing less than fifty people.

"Small government" means a city in Washington state with a population less than fifty thousand, a county in Washington state with a population less than one hundred twenty-five thousand, and special purpose districts in Washington state.

"Standard plan" means the plan for the collection, transportation, processing and recycling of unwanted covered electronic products developed, implemented, and financed by the authority on behalf of manufacturers participating in the authority.

"Television" is an enclosed video display device with a tuner able to receive and output frequency waves or digital signals to display pictures and sounds.

"Transporter" means an entity that transports covered electronic products from collection sites or services to processors or other locations for the purpose of recycling, but does not include any entity or person that hauls their own unwanted electronic products.

"Unwanted electronic product" means a covered electronic product that has been discarded or is intended to be discarded by its owner.

"White box manufacturer" means a person who manufactured unbranded covered electronic products offered for sale in Washington state within ten consecutive years prior to a program year for televisions or within five consecutive years prior to a program year for desktop computers, laptop or portable computers, or computer monitors.

"Video display devices" include units capable of presenting images electronically on a screen, with a viewable area greater than four inches when measured diagonally, viewed by the user and may include cathode ray tubes, flat panel computer monitors, plasma displays, liquid crystal displays, rear and front enclosed projection devices, and other similar displays that exist or may be developed. Televisions and monitors are video display devices.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-200 Manufacturers who must register and participate in a CEP recycling plan. (1) The following manufacturers must register with ecology and participate in a CEP recycling plan:

Table 200
Type of Manufacturer

Type of Manufacturer		Initial Registration Due Date	Must be Listed as a Plan Participant By:
Existing manufacturers	Those entities whose CEPs are offered for sale or sold in or into Washington state, as of December 8, 2006.	On or before January 1, 2007.	No later than February 1, 2008.

Type of Manufacturer		Initial Registration Due Date	Must be Listed as a Plan Participant By:
New manufacturers to Washington state	Those entities whose CEPs are offered for sale or sold in or into Washington state for the first time after December 8, 2006.	Prior to the offering for sale of their CEPs in or into WA.	Within thirty days of ecology approving registration.
((Manufacturers whose CEPs are not directly sold in or into Washington state	If a CEP brand is identified in the Washington state return share list or is returned for recycling by a covered entity, a manufacturer must register even if that manufacturer has never sold or offered for sale the identified brands directly in or into Washington state.	Within sixty days of receiving notice from ecology that the manufacturer must register.	Within thirty days of ecology approving registration.
Manufacturers who previously manufactured	Those entities that previously manufactured CEPs but no longer do so and whose brand names of CEPs are identified in the Washington state return share list or their CEPs are returned for recycling by a covered entity.	Within sixty days of receiving notice from ecology that the manufacturer must register.	Within thirty days of ecology approving registration.))

- (2) A manufacturer is registered under this chapter when:
- (a) Ecology has determined the manufacturer's registration form is complete and accurate; and
 - (b) The manufacturer has paid the required administrative fee (see WAC 173-900-280).
- (3) Registration under this chapter is only for purposes of administering the electronic product recycling program, and does not constitute endorsement by ecology of a particular registrant.
- (4) A manufacturer must participate in either the standard plan or, if approved, an independent plan.
- (5) In the event that the plan fails to meet the manufacturers' obligations under this chapter, each manufacturer participating in the plan retains responsibility and liability, including financial liability, for the collection, transportation, processing, and recycling of the manufacturer's equivalent share of CEPs as described in this chapter.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-215 Initial CEP manufacturer registration.

Step 1: Complete the manufacturer registration form.

- (1) CEP manufacturers must use the online or paper manufacturer registration form provided by ecology.
- (2) A manufacturer must provide all of the following information to ecology:
 - (a) The name, contact, and billing information of the manufacturer;
 - (b) The manufacturer's brand names of CEPs, including:
 - (i) All brand names sold in Washington state in the past, including the years each brand was sold;
 - (ii) All brand names currently being sold in Washington state, including the year the manufacturer started using the brand name;

- (c) All brand names of electronic products for which the registrant assembles but does not have legal ownership of the brand name placed on the product;
- (d) When a word or phrase is used as the label, the manufacturer must include that word or phrase and a general description of the ways in which it may appear on the manufacturer's electronic products;
- (e) When a logo, mark, or image is used as a label, the manufacturer must include a graphic representation of the logo, mark, or image and a general description of the logo, mark, or image as it appears on the manufacturer's electronic products;
- (f) The method or methods of sale used in or into Washington state; and
- (g) CEP recycling plan participation information.

Step 2: Submit the manufacturer registration form.

(3) The individual responsible for implementing the manufacturer's requirements under this chapter must sign the form. The signature means the manufacturer has provided accurate and complete information on the form and reviewed their responsibilities under the electronic product recycling program.

(4) The manufacturer must submit the form using one of the three options below:

- (a) The online registration form;
- (b) The original paper version through the U.S. Postal Service:

Department of Ecology
 Electronic Product Recycling
 ((Solid Waste and Financial Assistance))
Waste 2 Resources Program
 P.O. Box 47600
 Olympia, WA 98504-7600

- (c) The original paper version through a courier:

Department of Ecology
 Electronic Product Recycling
 ((~~Solid Waste and Financial Assistance~~))
Waste 2 Resources Program
 300 Desmond Drive
 Lacey, WA 98503

Step 3: Pay the administrative fee.

(5) The following manufacturers must pay an annual administrative fee to ecology (see WAC 173-900-280 and ecology's web site for administrative fee schedule):

- (a) Existing manufacturers;
- (b) New manufacturers.

(6) Starting in 2007, ecology will send out billing statements by November 1 of each year to all registered manufacturers. The billing statement will include the amount of the administrative fee owed by the manufacturer.

(7) **New manufacturers** must send ecology the required administrative fee so that ecology receives the fee within sixty days of the date on the billing statement.

(8) **Existing manufacturers** must send ecology the appropriate administrative fee so that ecology receives it no later than January 1 of each calendar year.

(9) The manufacturer must send payment to one of the following addresses:

For U.S. Postal Service:

Department of Ecology
 ((~~Electronic Product Recycling Program~~))
Cashiering Unit
 P.O. Box ((~~5128~~
 Lacey, WA 98509-5128)) 47611
Olympia, WA 98504-7611

For Courier to:

Department of Ecology
 Attn: ((~~Fiscal~~)) Cashiering
 300 Desmond Drive
 Lacey, WA 98503

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-230 Annual manufacturer registration. (1) After initial registration, to remain registered, manufacturers must submit a registration form and required administrative fee to ecology each year.

(2) Annual registration is due no later than January 1 of each calendar year for the next program year.

(3) The manufacturer must submit the annual registration form using one of the options below:

- (a) Submit the manufacturer's online registration form;
- (b) Submitting a paper version through:

U.S. Postal Service:

Department of Ecology
 Electronic Product Recycling
 ((~~Solid Waste and Financial Assistance~~))
Waste 2 Resources Program
 P.O. Box 47600

Olympia, WA 98504-7600

Courier Service:

Department of Ecology
 Electronic Product Recycling
 ((~~Solid Waste and Financial Assistance~~))
Waste 2 Resources Program
 300 Desmond Drive
 Lacey, WA 98503

(4) Ecology will review manufacturer registration forms submitted for annual registration under the process described in WAC 173-900-220.

(5) For annual registrations, if ecology denies the manufacturer's registration form, the manufacturer will be removed from the "manufacturer registration list."

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-240 Updates to manufacturer registration. (1) If there are any changes to the information on the manufacturer's registration approved by ecology, a registered manufacturer must submit an updated form within fourteen days of when any change occurs.

(2) The manufacturer must submit updates using one of the options below:

- (a) Updating the manufacturer's registration information using the online form;
- (b) Submitting a paper version of the form with updated information through:

U.S. Postal Service to:

Department of Ecology
 Electronic Product Recycling
 ((~~Solid Waste and Financial Assistance~~))
Waste 2 Resources Program
 P.O. Box 47600
 Olympia, WA 98504-7600

Courier Service to:

Department of Ecology
 Electronic Product Recycling
 ((~~Solid Waste and Financial Assistance~~))
Waste 2 Resources Program
 300 Desmond Drive
 Lacey, WA 98503

(3) Ecology will review manufacturer's updated registration forms under the process described in WAC 173-900-220.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-255 Manufacturer violations. (1) A manufacturer is in violation of this chapter when there is a:

- (a) Registration violation;
- (b) Labeling violation; or
- (c) Plan violation((~~=or~~
- (d) ~~Return share violation~~)).

Manufacturer registration violations:

(2) A manufacturer is in "registration violation" of this chapter if any of the following occurs:

(a) The manufacturer does not submit an updated registration form within fourteen days of changes in the registration information.

(b) A manufacturer offers for sale or sells its brand of CEPs in or into Washington state and:

(i) The manufacturer's brand is not listed as in "in compliance" or "pending" status on the "manufacturer registration list"; or

(ii) The manufacturer's brand name is not listed as part of the manufacturer's registration.

(c) A retailer offers for sale or sells a manufacturer's brand of CEP in or into Washington state and on the date the products were ordered from the manufacturer or their agent:

(i) The manufacturer's brand was not listed as in "in compliance" or "pending" status on the "manufacturer registration list";

(ii) The brand name of the CEP was not listed as in "in compliance" or "pending" status on the "manufacturer registration list."

(3) A manufacturer may notify retailers, in writing, if the manufacturer's brand of CEPs cannot be offered for sale or sold in or into Washington state. The manufacturer must provide ecology a copy of this notice to avoid a registration violation.

(4) Each unregistered CEP unit offered for sale or sold is a separate violation by the manufacturer.

Manufacturer labeling violation:

(5) A manufacturer is in "labeling violation" of this chapter if any of the following occurs:

(a) The manufacturer offers for sale or sells a manufacturer's electronic product in or into Washington state that does not have a permanently affixed or readily visible label with the manufacturer's brand name.

(b) A retailer offers for sale or sells the manufacturer's electronic product in or into Washington state that the manufacturer has not labeled with the manufacturer's brand name.

(6) Each of the manufacturer's unlabeled units offered for sale or sold is a separate violation by the manufacturer.

Manufacturer plan violation:

(7) Starting February 1, 2008, a manufacturer is in "plan violation" of this chapter if any of the following occurs, the manufacturer:

(a) Has not met the manufacturer's financial obligations to its plan; or

(b) Is not participating in a plan or complying with the manufacturer's responsibilities as described in their ecology approved plan; or

(c) Is participating in a plan that is not fully implemented and the authority or authorized party has not taken action approved by ecology to correct violations.

~~((Return share violation:~~

~~(8) It is a "return share violation" when the manufacturer's brands of CEPs are identified on ecology's return share list posted on the agency web site and:~~

~~(a) Within sixty days of receiving notice from ecology, the manufacturer has not registered with ecology; or~~

~~(b) Within thirty days of registering is not participating in a plan.))~~

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-260 Warnings and penalties for manufacturer violations.

**Table 260
Manufacturer Warning and Penalties**

Type of Violation	Written Warning	First Penalty	Second and Subsequent Penalties
Registration Violation	Warning Letter	Up to \$1,000	Up to \$2,000
Labeling Violation	Warning Letter	Up to \$1,000	Up to \$2,000
Plan Violation	Warning Letter	Up to \$10,000	Up to \$10,000
((Return Share Violation	Warning Letter	Up to \$10,000 plus the percentage of their return share of the costs of operating the standard plan.	Up to \$10,000 plus the percentage of their return share of the costs of operating the standard plan.))

Warning letter:

(1) When ecology issues a written warning letter via certified mail, for any violation, the warning will include a copy of the requirements to let the manufacturer know what the manufacturer must do to be in compliance status.

Penalties:

(2) **First penalties:** If the manufacturer does not meet the compliance requirements in the warning letter within thirty days of receipt of the warning, ecology will assess a first penalty, as defined in Table 260 above and do one of the following:

(a) Change the manufacturer's status to "in violation";

(b) Add the manufacturer to the "manufacturer registration list" and put them in "in violation."

(3) **Second and subsequent penalties:** Ecology will issue second and subsequent penalties as defined in Table

260 no more often than every thirty days for the same violation.

(4) Ecology will deposit all penalties collected under this section into the electronic products recycling account created under RCW 70.95N.130.

Appeals:

(5) Violations and penalties may be appealed to the pollution control hearings board, pursuant to chapter 43.21B RCW.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-270 Corrective actions for manufacturer violations. (1) If a manufacturer is in "in violation" status, ecology will not return them to "in compliance" status until the manufacturer corrects the violation.

Corrective actions for manufacturer registration violations:

(2) To correct a registration violation the manufacturer must:

- (a) Provide evidence that the violation has been corrected; and
- (b) Pay or settle any penalties to ecology.

Corrective actions for manufacturer labeling violations:

(3) To correct a labeling violation the manufacturer must:

- (a) Meet the requirements in WAC 173-900-210;
- (b) Correct any other violations; and
- (c) Pay or settle any penalties due to ecology.

Corrective actions for plan violations:

- (4) To correct a plan violation the manufacturer must:
 - (a) Join and participate in an approved plan or a plan currently under review for approval;
 - (b) Correct any other violations; and
 - (c) Pay or settle any penalties due to ecology.

~~**Corrective actions for return share violations:**~~

~~(5) To correct a return share violation the manufacturer must:~~

- ~~(a) Join and participate in an approved plan or a plan currently under review for approval;
 (b) Correct any other violations; and
 (c) Pay or settle any penalties due to ecology.~~

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-280 Administrative fee. (1) **Legislative mandate.** The administrative fee covers ecology's administrative costs related to implementing the electronic product recycling program authorized under chapter 70.95N RCW. It does not include the fees for ecology's review of the standard plan or independent plans.

(2) Data.

(a) Ecology will use data collected to extrapolate Washington market shares, and to calculate manufacturer ((unit)) sales, either by unit or weight. Ecology will use market share and/or CEP ((unit)) sales to assign each manufacturer to an administrative fee tier. Ecology may use any of, or a combination of, the following data:

- (i) Generally available market research data;
- (ii) CEP unit sales data supplied by manufacturers for brands they manufacture or sell; or
- (iii) CEP ((unit)) sales data, either by unit or weight, supplied by retailers for brands they sell.

(b) Ecology may put the data directly into the data base. Ecology will aggregate the data in sets of at least three companies for confidentiality when published.

(3) Distribution:

(a) Ecology will establish a fee schedule to distribute administrative fees on a sliding scale, based on tiers, that are representative of annual sales of CEPs in Washington state.

(b) Fees will be distributed to each tier in order to spread costs based on the estimated ((unit)) sales, either by unit or weight, given the number of manufacturers and the amount of revenue that needs to be generated to cover ecology's administrative costs.

(c) Tier 7 will have no fee amount associated with it(~~; but the manufacturers assigned to this tier must still complete the registration form (see WAC 173-900-215) and join a plan~~)).

**Table 280
Market Share Tiers**

Tiers	Manufacturer's Market Share
Tier 1	5% or greater
Tier 2	1% to < 5%
Tier 3	0.1% to < 1%
Tier 4	0.03% to < 0.1%
Tier 5	0.01% to < 0.03%
Tier 6	< 0.01%
Tier 7	Manufacturers who previously manufactured Manufacturers whose CEPs are not directly sold in or into Washington state

(4) **Calculating the administrative fee:** Ecology will calculate the tiers based on the combined ((unit)) sales, either by unit or weight, of CEPs sold under manufacturer brands as a percentage of the total sales of electronic products sold in or into Washington state.

(a) **Administrative fee tier calculations for program year 2007:** For administrative fees due January 1, 2007, ecology will base fees on the amount appropriated in the budget for the electronic product recycling program by the legislature. Year one includes start-up costs and it funds the first eighteen months of operations. This amount is four hundred seventy-five thousand dollars.

(b) **Administrative fee tier calculations for program year 2008 and future years:**

(i) For administrative fees due January 1, 2008, and thereafter, ecology will base the fee on the expenditure authority for the electronic product recycling program which for program year 2008 is two hundred twenty-one thousand five hundred dollars.

(ii) The total administrative fee amount will be adjusted ~~((biannually))~~ biennially by the fiscal growth factor (FGF) as calculated under chapter 43.135 RCW (Fee_{FGF}).

(5) Tier placement:

(a) **Existing manufacturers:** Ecology will place existing manufacturers in the appropriate tier based on data obtained or received as described in subsection (2) of this section. If ecology has no data, ecology will place the manufacturer in ~~((Tier 4))~~ the same tier it was assigned in the previous year.

(b) **New manufacturers to Washington state:** Ecology will assign these manufacturers to Tier 6 for their initial program year. After the initial program year, ecology will treat these manufacturers as an existing manufacturer (see (a) of this subsection).

(c) **Manufacturers whose CEPs are not directly sold in or into Washington state:** Ecology will assign these manufacturers to Tier 7.

(d) **Manufacturers who previously manufactured:** Ecology will assign these manufacturers to Tier 7.

(6) Publication of tier assignment:

(a) **Tiers for fees due January 1, 2007:** Ecology will publish the final tier schedule on ecology's web site by November 15, 2006, for fees due January 1, 2007. The tiers will be based on data available to ecology and received from manufacturers and retailers prior to November 9, 2006. When providing data to ecology, manufacturers must meet the requirements of subsection (7)(a) of this section prior to November 9, 2006.

(b) **Tiers for fees due January 1, 2008, and future years:** For administrative fees for 2008, and future years, ecology will publish a preliminary tier schedule for review and a final tier schedule.

(i) **Preliminary tier schedule:** For program years 2008 through 2015, ecology will publish the preliminary tier schedule on ecology's web site by September 1 of each calendar year. For program year 2016 and future years, ecology will publish the preliminary tier schedule on ecology's web site by June 1 of each calendar year.

(A) This preliminary tier schedule will include the tiers and a list of manufacturers assigned to each tier.

(B) Ecology will also publish the estimated total percentage share of the market attributable to each tier and a list of the brand names for each manufacturer, which form the basis for the estimates used in the tier assignment.

(C) For program years 2008 through 2015, manufacturers will have until October 1 to submit a request for tier reassignment if they believe they are assigned to the wrong tier. (See subsection (7)(b) of this section.) For program year 2016 and future years, manufacturers will have until July 1 to submit a request for tier reassignment if they believe they are assigned to the wrong tier.

(ii) **Final tier schedule:** For program years 2008 through 2015, ecology will publish the agency's final tier schedule on ecology's web site by November 1 of each calendar year. For

program year 2016 and future years, ecology will publish the agency's final tier schedule on ecology's web site by August 1 of each calendar year. This final tier schedule will reflect ecology's evaluation of all available data including but not limited to tier reassignment requests.

(7) Tier reassignment requests:

(a) **Requests for tier reassignment submitted for fees due January 1, 2007.** Manufacturers may request to be assigned to a different tier for fees due January 1, 2007.

(i) To submit a request for tier reassignment the manufacturer must, on or before November 9, 2006, do one of the following:

(A) Submit or update their online manufacturer registration form. The manufacturer must provide the number of units of CEPs, sold in the prior year, in or into Washington state;

(B) Send a written letter to ecology including the number of units of CEPs sold in the prior year in or into Washington state; or

(C) Submit a complete tier request form available on ecology's web site.

(ii) If CEP unit sales data is provided, ecology will exempt this data from public disclosure in accordance with RCW 42.56.270(13).

(iii) In addition to submitting information about CEP unit sales as described above, ecology may request that the manufacturer submit the CEP unit sales data in writing certified by a certified public accountant. Ecology may request this if ecology finds the data gives a different market share than the national data collected and/or the information changes the tier assignment distribution.

(b) **Requests for tier reassignment for fees due after January 1, 2007.** If submitting a tier reassignment request:

(i) For program years 2008 through 2015, existing manufacturers must submit the request on or before October 1 prior to the next billing cycle and must follow the steps in (c) of this subsection. For program year 2016 and future years, existing manufacturers must submit the request on or before July 1 prior to the next billing cycle and must follow the steps in WAC 173-900-925 (5) and (6).

(ii) **New manufacturers** to Washington state may not submit a tier reassignment request for their first program year. Requests for tier reassignment for future program years must follow the process for existing manufacturers.

(iii) **Manufacturers whose CEPs are not directly sold in or into Washington state** may request to be assigned to a different tier at any time and must follow the steps in (c) of this subsection.

(iv) **Manufacturers who previously manufactured** may request to be assigned to a different tier at any time and must follow the steps in (c) of this subsection.

(c) **Submitting tier reassignment requests:** To request tier reassignment, the manufacturer must ~~((do one of the following:~~

~~(i) Submit or update their online manufacturer registration form. The manufacturer must provide the number of units of CEPs, sold in the prior calendar year, in or into Washington state; or~~

(ii) Send a letter to ecology including the number of units of CEPs sold in the prior calendar year in or into Washington state.

(iii)) follow the steps in WAC 173-900-925 (5) and (6). If CEP unit sales data is provided, ecology will exempt this data from public disclosure in accordance with RCW 42.56.-270(13).

~~((iv) In addition to submitting information about CEP unit sales as described above, ecology may request that the manufacturer submit the CEP unit sales data in writing including a basis for the alternative unit sales number and may request this information is certified by a certified public accountant. Ecology may request this if the CEP unit sales data results in a different market share than the national data collected and/or the information changes the tier assignment distribution.))~~

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-300 Covered electronic product (CEP) recycling plans. (1) CEP recycling plans (plans) must provide a program for the collection, transportation, processing, and recycling of CEPs produced by any manufacturer from covered entities in Washington state.

(2) All plans intending to begin implementation on or before January 1, 2009, must be submitted to ecology no later than February 1, 2008.

(3) The authority or authorized party of a plan must:

(a) Provide collectors with information that can be shared with covered entities about how and where CEPs received into the program are recycled.

(b) Ensure that any CEP that is reused after being received by the processor is not included in any weight counts or used to satisfy an equivalent share.

(4) Collection, transportation, processing, and recycling systems and services for a plan:

(a) To implement the program described in the CEP recycling plan the authority or authorized party must only use the services of registered collectors, transporters, and processors that are in "in compliance" status.

(b) Processing services: The authority shall accept and use any processor that:

(i) Meets the requirements of this chapter; and

(ii) Meets any requirements described in the authority's operating plan or through contractual arrangements.

(c) Collection services: The authority of the standard plan must accept CEPs from registered collectors who meet the requirements of this chapter. The authority must compensate registered collectors for the reasonable costs associated with collection of CEPs. If a collector offers premium or curbside services, the compensation paid by the standard plan does not have to cover additional costs associated with those services.

(d) A plan must provide for the processing of large quantities of CEPs at no charge to small businesses, small governments, charities, and school districts.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-310 An independent plan. (1) A single manufacturer or a group of manufacturers may submit an independent plan to ecology for approval if:

(a) ~~((The manufacturers participating in the proposed plan represent at least five percent return share of CEPs))~~ For program year 2016 and all subsequent program years, the manufacturers participating in the proposed plan represent at least five percent market share of CEPs; and

(b) No manufacturer participating in the proposed plan is a new entrant or a white box manufacturer.

(2) For program year 2016 and all subsequent program years, if an independent plan does not represent five percent ((return)) market share for two consecutive program years, ecology will dissolve the independent plan (see WAC 173-900-360).

(3) **Individual independent plan:** A single manufacturer submitting an independent plan to ecology is responsible for collecting, transporting, processing, and recycling its equivalent share of CEPs.

(4) **Collective independent plan:** Manufacturers collectively submitting an independent plan are responsible for collecting, transporting, processing, and recycling the sum of the equivalent shares of all manufacturers participating in the collective independent plan.

(5) Individual or collective groups of manufacturers submitting an independent plan must designate an "authorized party" that is responsible for submitting the independent plan to ecology. A letter of certification from each of the manufacturers designating the authorized party must be submitted to ecology together with their independent plan.

(6) Prior to beginning implementation of an independent plan, the authorized party for that plan must receive plan approval from ecology.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-325 CEP recycling plan submittal, approval, and implementation.

Step 1: Format of the CEP recycling plan.

(1) All plans must use the "CEP recycling plan template" provided by ecology.

(2) The authority or authorized party must submit paper copies of their plan in a three-ring binder so that individual pages can be submitted and replaced when updates or revisions are required.

Step 2: Submit the CEP recycling plan.

(3) The authority or authorized party must submit one paper copy and one usable electronic copy of their plan to ecology.

(4) All plans intending to begin implementation on or before January 1, 2009, must be submitted to ecology no later than February 1, 2008.

(a) The one paper copy must be submitted by mail to one of the following addresses:

For U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
(~~(Solid Waste and Financial Assistance)~~)
Waste 2 Resources Program
P.O. Box 47600
Olympia, WA 98504-7600

For Courier:

Department of Ecology
Electronic Product Recycling
(~~(Solid Waste and Financial Assistance)~~)
Waste 2 Resources Program
300 Desmond Drive
Lacey, WA 98503

(b) The electronic copy may be submitted by e-mail or other electronic format usable by ecology that allows electronic editing and commenting by ecology.

(5) The following section of a plan may be submitted to ecology for review and approval separate from the rest of the plan:

- Standard plan participant assessment of charges or apportionment of costs.

When submitting a section separate from the rest of the plan, the authority must follow the process described in this section.

Step 3: Approval process.

(6) Within ninety days after receipt of a complete plan, ecology will determine whether the plan complies with this chapter. Ecology will determine if the plan is:

(a) **Approved.** If approved, ecology will send a letter of approval to the authority or authorized party via certified mail. The approval letter will include an expiration date for the plan.

(b) **Disapproved.** If disapproved, ecology will send a letter of disapproval to the authority or authorized party via certified mail. The disapproval letter will provide ecology's reasons for not approving the plan.

(i) The authority or authorized party must submit a new or revised plan within sixty days after receipt of the disapproval letter.

(ii) Ecology then has an additional ninety days to review the new or revised plan.

(c) Ecology will approve plans for no more than five years. If an independent plan does not represent five percent (~~(return)~~) market share for two consecutive program years, ecology will dissolve the independent plan (see WAC 173-900-360).

(7) **Approval criteria:** Ecology will consider the following when reviewing a plan for approval:

- The plan submittal dates were met;
- The plan meets the requirements in this chapter;
- The plan contains all of the information required in this chapter and provides descriptive information sufficient to allow ecology to determine that the implementation of the plan will be in compliance with this chapter;

(d) When reviewing a plan for service level, ecology may contact the local government or community identified in the plan; and

(e) The plan, when implemented, would meet or exceed required collection service levels (see WAC 173-900-355).

(8) Ecology may ask for additional information or clarification during the review of a plan.

(9) Ecology will post all plans on the agency web site.

(10) Proprietary information submitted to ecology under this chapter is exempt from public disclosure under RCW 42.56.270.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-345 Changing CEP recycling plan participation. (1) After January 1, 2008, no manufacturer may change CEP recycling plans for program year 2009.

(2) For program year 2010 and thereafter, registered CEP manufacturers may change participation in plans if the manufacturer meets the requirements in this section.

The following is the process for changing plan participation:

(3) The plan the manufacturer is joining must, by August 1 prior to the program year for which the change will take effect, submit:

(a) For an existing plan, an update or revision under WAC 173-900-335; or

(b) For a new independent plan, a plan that meets the requirements of WAC 173-900-310.

(4) Ecology will review the plan under the process described in WAC 173-900-325 or 173-900-335, as appropriate. If approved, ecology will send notice, via certified mail, to:

(a) The manufacturer requesting the change; and

(b) The authorized party(ies) and the authority affected by the change.

(5) If ecology does not approve the submitted plan or plan update by January 1 of the program year for which the change was submitted, the change cannot be implemented that program year. Ecology may still review the plan or plan update for approval for the following program year.

(6) Within fourteen days of receiving plan approval notice from ecology, the manufacturer must submit an updated registration form to ecology (see Part II, WAC 173-900-240).

(7) Within sixty days of receiving the notice, the plan the manufacturer left must submit a plan revision to ecology that meets the requirements in WAC 173-900-335.

(8) If an independent plan does not represent five percent (~~(return)~~) market share after the manufacturer leaves the plan, the independent plan has until the end of the following program year to increase participation to represent the five percent (~~(return)~~) market share. If the independent plan does not represent five percent (~~(return)~~) market share at that time, the remaining members will then become members of the standard plan (see WAC 173-900-360).

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-360 Dissolving an independent plan.

(1) If an independent plan does not represent five percent (~~(return))~~ market share for two consecutive program years, ecology will dissolve the independent plan.

(2) After August 1 but prior to the start of the next program year, ecology will dissolve any independent plan that does not meet the independent plan criteria in WAC 173-900-310.

(a) Ecology will send notice, via certified mail, informing all participants in the plan that they must join the standard plan and update their manufacturer registration form (see Part II, WAC 173-900-240).

(b) If a manufacturer does not submit their updated registration form within fourteen days of receiving the notice, it is a registration violation (see WAC 173-900-255) and ecology will follow the warning and penalty procedures in Part II, WAC 173-900-255, 173-900-260, and 173-900-270 of this chapter.

(3) If ecology determines that this change may significantly alter the program described in the standard plan, the authority must submit an updated plan to ecology (see WAC 173-900-335).

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-370 Authority or authorized party violations. (1) The authority or authorized party is in violation of this chapter when there is:

- (a) A plan violation; or
- (b) An annual report violation; or
- (c) A performance standards violation.

(2) **Plan violation:** As of January 1, 2009, it is a plan violation if the authority or authorized party:

- (a) Does not implement the plan so that the plan meets the requirements in this chapter (see Part III of this chapter);
- (b) Uses a collector, transporter, that is not in "in compliance" status; or

(c) Uses a direct processor for processing services that is not registered or has not updated their registration as required under this chapter.

~~((d) Does not implement return share sampling as required in WAC 173-900-900.))~~

(3) **Annual report violation.**

As of March 1, 2010, it is an authority or authorized party violation if the plan's annual report is not submitted to ecology and approved under WAC 173-900-800.

(4) **Performance standards violation.**

As of January 1, 2009, it is an authority or authorized party "performance standards" violation if the plan uses a direct processor that does not meet the minimum performance standards in WAC 173-900-650.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-410 Initial registration as a CEP collector.

Step 1: Complete the collector registration form.

(1) Each collector must complete the online or paper registration form provided by ecology and must include all of the following:

- (a) Name of individual responsible for implementing the collector requirements;
- (b) Contact and location information;
- (c) Business license information;
- (d) Permit information, when applicable;
- (e) Description of services provided; and
- (f) Geographic areas where services are provided.

Step 2: Submit the collector registration form.

(2) The individual responsible for implementing the collector requirements must sign the form. Signing the form means the collector has provided accurate and complete information on the form and will comply with the collector performance standards in WAC 173-900-450.

(3) The collector must submit the form using one of the following options:

- (a) Online registration;
- (b) Submitting the original paper version through:

U.S. Postal Service to:

Department of Ecology
Electronic Product Recycling
~~((Solid Waste and Financial Assistance))~~
Waste 2 Resources Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service to:

Department of Ecology
Electronic Product Recycling
~~((Solid Waste and Financial Assistance))~~
Waste 2 Resources Program
300 Desmond Drive
Lacey, WA 98503

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-430 Annual renewal of collector registration. (1) A collector must submit its annual registration renewal form to ecology between June 1 and September 1 of each calendar year for the next program year.

(2) If a collector does not submit an annual registration renewal form, ecology will remove the collector from the "collector registration list."

(3) The collector must submit their annual registration form using one of the options below:

- (a) Submit the online registration form;
- (b) Submit a paper version of a form through:

U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
~~((Solid Waste and Financial Assistance))~~
Waste 2 Resources Program

P.O. Box 47600
Olympia, WA 98504-7600

Courier Service:

Department of Ecology
Electronic Product Recycling
~~((Solid Waste and Financial Assistance))~~
Waste 2 Resources Program
300 Desmond Drive
Lacey, WA 98503

(4) Ecology will review collector registration forms submitted for annual registration under the process described in WAC 173-900-420.

(5) For annual registrations, if ecology denies the collector's registration form, ecology will remove the collector from the "collector registration list." In order to resume collecting CEPs for a plan, the collector must resubmit an initial registration (WAC 173-900-410) and receive registration approval from ecology.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-440 Updates to collector registration.

(1) A registered collector must submit an updated registration form to ecology within fourteen days of any change to the information provided in its registration form.

(2) The collector must submit updates to its registration form by using one of the options below:

(a) Updating the collector's registration information using the online form;

(b) Submitting a paper version of the form with updated information through:

U.S. Postal Service to:

Department of Ecology
Electronic Product Recycling
~~((Solid Waste and Financial Assistance))~~
Waste 2 Resources Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service to:

Department of Ecology
Electronic Product Recycling
~~((Solid Waste and Financial Assistance))~~
Waste 2 Resources Program
300 Desmond Drive
Lacey, WA 98503

(3) Ecology will review collector updated registration forms under the process described in WAC 173-900-420.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-450 Performance standards for collectors. (1) CEPs collected for a plan must be collected from covered entities free of charge except for the following services:

(a) Premium services as described in an approved plan to cover the costs not paid by the standard or independent plans;

(b) Curbside collection services to cover the costs not paid by the standard or independent plans; or

(c) Collection of large quantities of CEPs from small businesses, small governments, charities, and school districts as defined in WAC 173-900-355(7).

(2) A registered collector must not process CEPs, or components, for purposes of recycling or disposal, unless they also meet the direct processor performance standards and are a registered direct processor under this chapter.

(3) In addition to the requirements in this chapter, all registered collectors must comply with all applicable environmental laws, rules, and local ordinances.

(4) When providing collection services for a plan, the registered collector must:

(a) Staff the site during operating hours.

(b) Notify the authority and/or authorized party of any changes in hours and days of operation and types of CEPs accepted if the collection services provided are identified in an ecology approved plan.

(c) Cooperate with CEP sampling efforts conducted by CEP recycling programs approved under this chapter.

(d) Provide enclosed storage areas with impervious floors so that the CEPs and components collected are protected from the weather.

(e) Collectors must post, in a readily visible location, information that can be shared with covered entities about how and where CEPs received into the program are recycled. Recycling information is provided by the plan(s) for which the collector is providing services.

(f) If a registered collector also gleans CEPs or components for reuse, they must notify the covered entity.

~~((5))~~ ~~((A registered collector must allow access to ecology or their authorized third party representative for purposes of conducting sampling to determine return share.~~

~~((6))~~ A registered collector must allow access to ecology for inspections to determine compliance with the requirements in this chapter.

~~((7))~~ ~~((6))~~ No entity shall claim to be collecting CEPs for a plan unless the entity is registered as a collector and submits all collected CEPs to a plan. Except fully functional CEPs and components may be gleaned for reuse. Collectors shall not include gleaned CEPs and components for reuse in the weight totals for plan compensation.

~~((8))~~ ~~((7))~~ A registered collector must notify the authority and authorized parties for all plans that the collector submits CEPs if the collector's days/hours of operations change or the collector changes the CEPs collected.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-510 Initial registration as a CEP transporter.

Step 1: Complete the transporter registration form.

(1) Each transporter must use the form provided by ecology and must include all of the following:

(a) Contact and location information;

- (b) Business license information;
- (c) Permit information;
- (d) Description of services provided; and
- (e) Geographic areas where services are provided.

Step 2: Submit the registration form.

(2) The individual responsible for implementing the transporter requirements must sign the form. Signing the form means the transporter has provided accurate and complete information on the form and will comply with the transporter standards in WAC 173-900-550.

(3) The transporter must submit the form using one of the options below:

- (a) Online registration;
- (b) The original paper version through:

U.S. Postal Service:

Department of Ecology
 Electronic Product Recycling
 ((Solid Waste and Financial Assistance))
 Waste 2 Resources Program
 P.O. Box 47600
 Olympia, WA 98504-7600

Courier Service:

Department of Ecology
 Electronic Product Recycling
 ((Solid Waste and Financial Assistance))
 Waste 2 Resources Program
 300 Desmond Drive
 Lacey, WA 98503

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-530 Annual renewal of transporter registration. (1) A transporter must submit its annual renewal registration form to ecology between June 1 and September 1 of each calendar year for the next program year.

(2) If a transporter does not submit a renewal registration form, ecology will remove the transporter from the "transporter registration list."

(3) The transporter must submit its annual registration form using one of the options below:

- (a) Submit the online registration form;
- (b) Submit a paper version through:

U.S. Postal Service to:

Department of Ecology
 Electronic Product Recycling
 ((Solid Waste and Financial Assistance))
 Waste 2 Resources Program
 P.O. Box 47600
 Olympia, WA 98504-7600

Courier Service to:

Department of Ecology
 Electronic Product Recycling
 ((Solid Waste and Financial Assistance))
 Waste 2 Resources Program

300 Desmond Drive
 Lacey, WA 98503

(4) Ecology will review transporter registration forms submitted for annual registration under the process described in WAC 173-900-520.

(5) For annual registrations, if ecology denies the transporter's registration form, ecology will remove the transporter from the "transporter registration list." In order to resume transporting CEPs for a plan, the transporter must resubmit an initial registration (WAC 173-900-510) and receive registration approval from ecology.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-540 Updates to transporter registration. (1) A registered transporter must submit an updated registration form to ecology within fourteen days of a change to the information provided in a registration form.

(2) The transporter must submit updates to its registration form by using one of the options below:

- (a) Updating the transporter's registration information using the online form;
- (b) Submitting a paper version of the form with updated information through:

U.S. Postal Service to:

Department of Ecology
 Electronic Product Recycling
 ((Solid Waste and Financial Assistance))
 Waste 2 Resources Program
 P.O. Box 47600
 Olympia, WA 98504-7600

Courier Service to:

Department of Ecology
 Electronic Product Recycling
 ((Solid Waste and Financial Assistance))
 Waste 2 Resources Program
 300 Desmond Drive
 Lacey, WA 98503

(3) Ecology will review transporter updated registration forms under the process described in WAC 173-900-520.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-550 Performance standards for transporters. (1) All registered transporters must comply with all applicable laws, rules, and local ordinances.

(2) ~~((A registered transporter must allow access to ecology or their authorized third party representative for purposes of conducting sampling to determine return share.~~

~~(3))~~ A registered transporter must allow access to ecology for inspections to determine compliance with the requirements in this chapter.

~~((4))~~ (3) Transporters must deliver CEPs for a plan to registered direct processors.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-610 Initial registration for direct processors.

**Table 610
Direct Processor Registration Types**

Type of Registration	Definition	Due Date
Initial registration	Direct processor is not currently registered with ecology under this chapter.	Submit registration form to ecology at any time.
Annual renewal	Direct processor is currently registered with ecology under this chapter.	Submit renewal form to ecology between June 1 and September 1 of each year.

At least thirty days prior to receiving CEPs for processing, the direct processor must submit a registration form to ecology and may not begin processing until ecology places the direct processor in "in compliance" status on the "direct processor registration list" on ecology's web site.

Step 1: Complete a direct processor registration form.

- (1) Each direct processor must complete a registration form which includes all the following:
 - (a) Contact and location information;
 - (b) Business license information;
 - (c) Documentation of any necessary operating permits issued as required by local, state, or national authorities;
 - (d) Description of services provided;
 - (e) Geographic areas from which electronic products are accepted; and
 - (f) The names of plans the direct processor is contracted to provide processing services to meet the requirements of this chapter.

Step 2: Submit the direct processor registration form.

- (2) The person responsible for implementing the direct processor requirements under this chapter must sign the registration form. The signature certifies the company has provided accurate and complete information on the form and is complying with all applicable state, local, and national laws and regulations.
- (3) The person must submit the form to ecology. When mailing in an original paper copy, the person must use one of the addresses below:

U.S. Postal Service:
 Department of Ecology
 Electronic Product Recycling
 ((Solid Waste and Financial Assistance))
 Waste 2 Resources Program
 P.O. Box 47600

Olympia, WA 98504-7600
 Courier Service:
 Department of Ecology
 Electronic Product Recycling
 ((Solid Waste and Financial Assistance))
 Waste 2 Resources Program
 300 Desmond Drive
 Lacey, WA 98503

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-630 Annual renewal of direct processor registration. (1) Direct processors must submit their annual renewal registration form to ecology between June 1 and September 1 of each calendar year for the next program year.

- (2) If an annual renewal registration form is not received during this time period, and subsequently approved by ecology, the direct processor will be removed from the "direct processor registration list" and must not process CEPs for a plan until a registration form is submitted and approved.
- (3) When mailing in the original paper copy, the direct processor must use one of the addresses below:

U.S. Postal Service:
 Department of Ecology
 Electronic Product Recycling
 ((Solid Waste and Financial Assistance))
 Waste 2 Resources Program
 P.O. Box 47600
 Olympia, WA 98504-7600

Courier Service:
 Department of Ecology
 Electronic Product Recycling
 ((Solid Waste and Financial Assistance))
 Waste 2 Resources Program
 300 Desmond Drive
 Lacey, WA 98503

- (4) Ecology will review direct processor registration forms submitted for annual renewal under the process described in WAC 173-900-620.
- (5) For annual registrations, if ecology denies the direct processor's registration form, ecology will remove the direct processor from the "direct processor registration list." In order to resume processing services for a plan, the processor must resubmit an initial registration (WAC 173-900-610) and receive registration approval from ecology.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-640 Updates to direct processor registration. (1) A direct processor must submit an updated registration form to ecology thirty days prior to providing new, additional, or reducing processing services for a plan.

- (2) When mailing in the original paper copy, the direct processor must use one of the addresses below:

U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
~~((Solid Waste and Financial Assistance))~~
Waste 2 Resources Program
P.O. Box 47600
Olympia, WA 98504-7600

Courier Service:

Department of Ecology
Electronic Product Recycling
~~((Solid Waste and Financial Assistance))~~
Waste 2 Resources Program
300 Desmond Drive
Lacey, WA 98503

(3) Ecology will review direct processor updated registration forms under the process described in WAC 173-900-620.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-800 CEP recycling plan annual reports. (1) By March 1, 2010, and each program year thereafter, the authority and each authorized party must file an annual report with ecology for the preceding year's program. Ecology will review the report and notify the authority or authorized party of any deficiencies that need to be addressed.

(2) **Annual report content:** The annual report must include the following information:

(a) The total weight in pounds of each type of CEP~~((s))~~, including orphans, for the preceding program year including documentation verifying collection and processing of that material for:

- (i) CEPs collected, reported by county, not including CEPs gleaned for reuse;
- (ii) CEPs recycled;
- (iii) Nonrecycled residuals from CEPs; and
- (iv) Final destination for the processing of CEPs and components and final destination for disposal of residuals.

(b) The total weight in pounds of CEPs received from each nonprofit charitable organization primarily engaged in the business of reuse and resale used by the plan;

(c) The total weight in pounds of CEPs that were received in large quantities from small businesses, small governments, charities and school districts;

(d) The collection services provided in each county and for each city with a population greater than ten thousand including a list of all collection sites and services operating in the state in the prior program year and the parties who operated them;

(e) Processor information:

- (i) A list of all direct processors used;
- (ii) The weight of CEPs processed by each direct processor;
- (iii) A description of the processes and methods used by each direct processor to recycle the CEPs including a description of the processing and facility locations; and

(iv) A compliance audit report meeting the requirements in WAC 173-900-365 for each direct processor listed in the authority or authorized party's ecology approved plan;

(f) A list of subcontractors used by the direct processor including their facility addresses;

(g) An estimate of the weight of each type or material recovered as a result of the processing of recycled CEPs including, at a minimum:

(i) Cathode ray tube glass;

(ii) Circuit boards;

(iii) Batteries;

(iv) Mercury containing devices;

(v) Plastics; and

(vi) Metals;

(h) An estimate of the percentage, by weight, of all CEPs that ultimately are reused, recycled, or end up as residual waste that is disposed;

(i) Educational and promotional efforts that were undertaken to inform covered entities about where and how to reuse and recycle their CEPs;

~~((h))~~ (j) For program years 2009 through 2014, the results of sampling as required in WAC 173-900-900;

~~((i))~~ (k) The amount of unwanted electronic products, electronic components, and electronic scrap that have been exported from Washington state to countries that are not members of the organization for economic cooperation and development or the European Union;

~~((j))~~ (l) The list of manufacturers that are participating in the plan;

~~((k))~~ (m) A description of the program revenues and costs, including:

(i) The total cost of the program; and

(ii) The average cost of the program per pound of CEP collected;

(n) A detailed accounting of the following costs of the program:

(i) Program delivery, including:

(A) Education and promotional efforts;

(B) Collection;

(C) Transportation;

(D) Processing and labor; and

(ii) Program administration;

(o) A description of the methods used by the program to collect, transport, recycle, and process CEPs;

(p) Signature of the authority or the authorized party;

~~((h))~~ (q) Any other clarifying information deemed necessary by ecology to determine compliance with this chapter; and

~~((m))~~ (r) Documentation of work done with the processors used by the plan to promote and encourage the design of electronic products that are less toxic and contain components that are more recyclable.

(3) **Submittal:** The authority or authorized party must submit(=

~~((a))~~ one electronic copy in a format usable by ecology that allows electronic editing and commenting(=and

~~((b))~~ two paper copies to one of the following addresses:

For U.S. Postal Service:

Department of Ecology

~~Electronic Product Recycling
Solid Waste and Financial Assistance Program
P.O. Box 47600
Olympia, WA 98504-7600~~

~~Or~~

~~For Courier:~~

~~Department of Ecology
Electronic Product Recycling
Solid Waste and Financial Assistance Program
300 Desmond Drive
Lacey, WA 98503~~

~~(e) Faxes are not accepted)).~~

(4) All reports must use the "CEP recycling report template" provided by ecology.

(5) **Review and approval:** Ecology will review each report within ninety days of receipt and will notify the authority or authorized party of any need for additional information or documentation, or any deficiency in its program or the report.

(a) Within five business days of receipt of the report, ecology will notify the authority or authorized party that the report has been received and it is under review.

(b) If ecology determines that there are no deficiencies in the report, a written notice of approval will be sent ~~((via certified mail))~~ electronically or by U.S. Postal Service.

(c) If ecology determines that additional information is needed, the authority or authorized party must submit the additional information to ecology within thirty days of receipt of the notice.

(d) If ecology determines that there are deficiencies in the authority's or authorized party's program, the authority or authorized party must submit an updated plan to ecology following the process in WAC 173-900-335.

(6) Ecology will post all reports on the agency web site.

(7) Proprietary information submitted to ecology under this chapter is exempt from public disclosure under RCW 42.56.270.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-810 Local government and community satisfaction reports. (1) Starting January 1, 2010, local governments and local communities are encouraged to submit an annual satisfaction report to ecology by March 1 of each calendar year.

(2) The entity responsible for preparing the solid waste management plan for an area is responsible for submitting the satisfaction report to ecology.

(3) **Report content:** If submitting a report to ecology, the report must include information about local government and community satisfaction with the services provided by plans in their community including:

- (a) Accessibility and convenience of services;
- (b) How services are working in their community;
- (c) What services are not working and why;
- (d) Suggestions for improvements to the services being provided by plans;

(e) Description of public outreach and education; and
(f) Any other information the local government determines is important to include.

(4) **Submittal:** If submitting a report, the submitting entity must submit:

(a) One electronic copy, by e-mail or other electronic means, in a format usable by ecology that allows electronic editing and commenting; ~~((and))~~ or

(b) One paper copy by mail to one of the following addresses:

For U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
~~((Solid Waste and Financial Assistance))~~
Waste 2 Resources Program
P.O. Box 47600
Olympia, WA 98504-7600

Or

For Courier:

Department of Ecology
Electronic Product Recycling
~~((Solid Waste and Financial Assistance))~~
Waste 2 Resources Program
300 Desmond Drive
Lacey, WA 98503

(5) All reports must use the "local government satisfaction report template" prescribed by ecology.

(6) **Review and approval:** Ecology will review each report within ninety days of receipt and will notify the submitting entity of any need for additional information or documentation.

~~((a) Within five business days of receipt of the report, ecology will notify the submitting entity that the satisfaction report has been received and it is under review.~~

~~(b) If ecology determines that no additional information is needed, ecology will send a written notice of approval to the submitting entity.~~

~~((c))~~ If ecology determines that additional information is needed, the submitting entity must submit the additional information to ecology within thirty days of receipt of the notice.

(7) If a report is submitted, ecology will use the information provided in these reports when reviewing plan updates and revisions.

(a) Reports indicating dissatisfaction will be sent to the authority or authorized party.

(b) The authority or authorized party has sixty days to respond to the report submittee(s) and ecology addressing issues raised in the report.

(c) If based on this response, ecology determines that the plan is failing to provide service in a community, ecology will send written notice, ~~((via certified mail))~~ electronically or by U.S. Postal Service, to the authority or authorized party.

(d) The authority or authorized party will have sixty days from receipt of the notice to submit an updated plan to ecology (see WAC 173-900-335).

(8) At any time, communities may submit comments to ecology about the CEP recycling programs in their area.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-820 Nonprofit charitable organization collection reports. (1) Starting in 2010, and every calendar year thereafter, nonprofit charitable organizations that are primarily engaged in the business of reuse and resale that collect CEPs for a plan must submit an annual report to ecology by March 1.

(2) The report must indicate and document the weight of CEPs sent for recycling during the previous program year attributed to each plan that the nonprofit charitable organization is participating in.

(3) **Submittal:** The nonprofit charitable organization must submit:

(a) One electronic copy, by e-mail or other electronic means, in a format usable by ecology that allows electronic editing and commenting; ~~((and))~~ or

(b) One paper copy by mail to one of the following addresses:

For U.S. Postal Service:

Department of Ecology
Electronic Product Recycling
~~((Solid Waste and Financial Assistance))~~
Waste 2 Resources Program
P.O. Box 47600
Olympia, WA 98504-7600

Or

For Courier:

Department of Ecology
Electronic Product Recycling
~~((Solid Waste and Financial Assistance))~~
Waste 2 Resources Program
300 Desmond Drive
Lacey, WA 98503

(4) All reports must use the "nonprofit charitable organization report template" prescribed by ecology.

(5) **Review and approval:** Ecology will review each report within ninety days of receipt and will notify the nonprofit charitable organization of any need for additional information or documentation.

(a) ~~((Within five business days of receipt of the report, ecology will notify the nonprofit charitable organization that the collection report has been received and it is under review.~~

(b) If ecology determines no additional information is needed, ecology will send written notice to the nonprofit charitable organization.

(c) If ecology determines that additional information is needed, the nonprofit charitable organization must submit the additional information to ecology within thirty days of receipt of the notice.

~~((d))~~ (b) If a nonprofit charitable organization used by a plan does not submit an annual collection report, that is

approved by ecology, the plan cannot receive the five percent credit for using that organization as a collector.

PART IX

~~((SAMPLING, RETURN SHARE,))~~ CALCULATING MARKET SHARE AND EQUIVALENT SHARE

NEW SECTION

WAC 173-900-925 Calculation of market shares. (1) For program year 2016, and all subsequent program years, ecology will determine market share by weight for all manufacturers using any combination of the following data:

- (a) Generally available market research data;
- (b) CEP sales data supplied by manufacturers for brands they manufacture or sell; or
- (c) CEP sales data provided by retailers for brands they sell.

(2) Ecology will determine each manufacturer's percentage of market share by dividing each manufacturer's total pounds of CEPs sold in or into Washington by all manufacturers.

(3) If CEP sales data is provided by manufacturers under subsection (1) or (6) of this section, ecology will exempt this data from public disclosure in accordance with RCW 42.56.-270(13).

(4) Ecology will notify each registered manufacturer of their preliminary market share determination by June 1 of each calendar year.

(5) Manufacturers may challenge their preliminary market share determination by written petition to ecology. The petition must be received by ecology within thirty days of the date of publication of the preliminary market shares.

- (6) The petition must contain:
 - (a) A detailed explanation of the grounds for the challenge;
 - (b) Detailed CEP sales data supporting the challenge; and

(c) Complete contact information for requests for additional information or clarification.

(7) Ecology will notify each registered manufacturer of their final market share determination by August 1 of each calendar year.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-930 Calculating the total equivalent share.

Step 1: Calculating individual manufacturer equivalent share.

(1) ~~((Ecology must determine the total equivalent share for each manufacturer in the standard plan or an independent plan by dividing the return share percentage for each manufacturer by one hundred, then multiplying the quotient by the sum of total weight in pounds of CEPs collected, not including any CEPs, components or parts gleaned for reuse, for that program year and any additional credited pounds under WAC~~

~~173-900-940.)) For program year 2016, and all subsequent program years, ecology will determine the total equivalent share for each manufacturer in the standard plan or an independent plan by dividing the market share percentage for each manufacturer by one hundred, then multiplying the quotient by the total weight in pounds of CEPs collected for that program year not including any CEPs, components or parts gleaned for reuse, for that program year and any additional credited pounds under WAC 173-900-940.~~

(2) The manufacturer is responsible for distributing responsibility for equivalent share among its past and present licensees.

Step 2: Calculating a plan's equivalent share.

(3) A plan's equivalent share is equal to the total of the equivalent shares for all manufacturers participating in the plan.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-970 Collecting and paying share payments.

Billing share payments.

(1) By June 1 of each program year, ecology will bill any authorized party or authority that has not attained its plan's equivalent share as determined in WAC 173-900-930 (~~share payments~~). The authorized party or authority must remit its share payment to ecology within sixty days from the billing date.

Ecology payment of share payments.

(2) By September 1 of each program year, ecology must pay any authorized party or authority that exceeded its plan's equivalent share.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-980 Public outreach.

Independent and standard plans:

(1) Public outreach and marketing requirements: An independent plan and the standard plan must inform covered entities about where and how to reuse and recycle their CEPs at the end of the product's life. At a minimum, the plan must:

(a) Include a web site or a toll-free number that gives information about the recycling program in sufficient detail to educate covered entities regarding how to return their CEPs for recycling;

(b) Describe the method or methods used to provide outreach to covered entities; and

(c) Ensure outreach throughout the state.

Ecology:

(2) Ecology will promote CEP recycling by:

(a) Posting information describing where to recycle unwanted CEPs on its web site;

(b) Providing information about recycling CEPs through a toll-free telephone service; and

(c) Developing and providing artwork for use by others in flyers, signage, web content, and other advertising mechanisms.

(3) Ecology will determine the effectiveness of the public outreach and education campaign based on information supplied in the reports required under this chapter.

Local governments:

(4) Local governments must promote CEP recycling, including listings of local collection sites and services, through existing educational methods typically used by each local government.

Retailers:

(5) A retailer who sells new CEPs must provide take-home information to consumers describing where and how to recycle CEPs and opportunities and locations for the convenient collection or return of the products at the point of sale. Providing ecology's toll-free telephone number and web site will fulfill this requirement. This (~~outreach~~) may include:

(a) Use of ecology's artwork in advertisements such as on flyers, shelf-tags, stickers, or brochures for this program(~~(b) Providing ecology's toll-free telephone number and web site.~~

(~~e~~)); and

(b) Providing information about how to recycle CEPs in Washington either in, on, or with the packaging(~~(c)~~), or on sales receipts.

(6) Remote sellers may include the information in a visible location on their web site or on sales receipts as fulfillment of this requirement.

Collaboration:

(7) Manufacturers, state government, local governments, retailers, and collection sites and services must collaborate in the development and implementation of the public information campaign.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-993 Appointing the board of the authority. The board of directors of the authority is comprised of eleven participating manufacturers:

(1) (~~Five board positions are reserved for representatives of the top ten brand owners by return share of covered electronic products.~~

(2) ~~Six board positions are reserved for representatives of other brands. At least one of these board positions is reserved for a manufacturer who is also a retailer selling their own private label.~~

(3)) For program years 2016 and beyond, five board positions are reserved for representatives of the top ten brand owners by market share of covered electronic products and six board positions are reserved for representatives of other brands. At least one of these board positions is reserved for a manufacturer who is also a retailer selling their own private label.

(2) The board must have representation from both television and computer manufacturers.

~~((4))~~ (3) The board of directors is appointed by the director of the department of ecology.

(a) Manufacturers will indicate their interest in serving on the board of directors to ecology.

(b) Manufacturers expressing interest will be asked to submit the name of their representative.

(c) Ecology will select board members from the candidates that have expressed interest using the following criteria:

~~(i) ((Five from the top ten brand owners by return share of CEPs willing to participate on the board;))~~ For program year 2016 and beyond, five of the top ten brand owners by market share willing to participate on the board:

(ii) One retailer that is also a manufacturer;

(iii) Representation of manufacturers from eastern Washington;

(iv) Representation from small, in-state manufacturers;

(v) Balance between manufacturers whose business is primarily that of television manufacturing and those whose business is primarily that of computer manufacturing; and

(vi) At least one manufacturer that is a new market entrant.

~~((5))~~ (4) The first board will be appointed from those manufacturers expressing interest in serving on the board in the first registration of manufacturers.

~~((6))~~ (5) The first board of directors will serve a term of one year.

~~((7))~~ (6) Subsequent appointments to the board of directors will be made on intervals established in the authority by-laws created by the board.

AMENDATORY SECTION (Amending WSR 07-21-013, filed 10/5/07, effective 11/5/07)

WAC 173-900-997 The standard plan's assessment of charges and apportionment of costs. (1) Manufacturers participating in the standard plan must pay the authority to cover all administrative and operational costs associated with the collection, transportation, processing, and recycling of covered electronic products within the state of Washington incurred by the standard program operated by the authority to meet the standard plan's equivalent share obligation.

(2) The authority must assess charges on each manufacturer participating in the standard plan and collect funds from each participating manufacturer for the manufacturer's portion of the costs in subsection (1) of this section.

~~(a) ((Such apportionment must be based on return share, market share, any combination of return share and market share, or any other equitable method.))~~ For program years 2016 and beyond, such apportionment must be based on market share.

(b) The authority's apportionment of costs to manufacturers participating in the standard plan may not include nor be based on electronic products imported through the state and subsequently exported outside the state.

(c) Charges assessed under this section must not be formulated in such a way as to create incentives to divert imported electronic products to ports or distribution centers in other states.

(d) The authority must adjust the charges to manufacturers participating in the standard plan as necessary in order to ensure that all costs associated with the identified activities are covered.

(3) The authority may require financial assurances or performance bonds for manufacturers participating in the standard plan, including but not limited to new entrants and white box manufacturers, when determining equitable methods for apportioning costs to ensure that the long-term costs for collecting, transporting, and recycling of a covered electronic product are borne by the appropriate manufacturer in the event that the manufacturer ceases to participate in the program.

(4) Nothing in this section authorizes the authority to assess fees or levy taxes directly on the sale or possession of electronic products.

(5) If a manufacturer has not met its financial obligations as determined by the authority, the authority must notify ecology that the manufacturer is not participating in the standard plan (see WAC 173-900-350).

(6) The authority must submit its plan for assessing charges and apportioning cost on manufacturers as part of the standard plan (see Part III, WAC 173-900-320).

(7) **Appeals:** Any manufacturer participating in the standard plan may appeal an assessment of charges or apportionment of cost as collected by the authority.

(a) The manufacturer must pay their charges or apportionment to the authority and submit a written petition to the director of the department of ecology within fourteen calendar days of receipt of notification of charges or apportionment. The written petition must include proof that:

(i) The authority's assessments or apportionment of costs were an arbitrary administrative decision;

(ii) An abuse of administrative discretions is proven; or

(iii) It is not an equitable assessment of apportionment of costs.

(b) Within thirty calendar days of receipt of the written petition, the director or the director's designee will review the appeal.

(c) The director will reverse any assessments of charges or apportionment of costs if the appeal is determined to be correct.

(d) If the director reverses an assessment of charges, the authority must:

(i) Redetermine the assessment or apportionment of costs and submit a plan revision as described in WAC 173-900-335, CEP recycling plan update; and

(ii) Once the revision is approved by ecology, send refunds or assess additional charges to standard plan participants per the revision.

(8) **Arbitration:** Disputes regarding the final decision by the director or the director's designee may be challenged through arbitration.

(a) The director shall appoint one member to serve on the arbitration panel.

(b) The challenging party shall appoint one member to serve on the arbitration panel.

(c) These two members shall choose a third person to serve. If the two persons cannot agree on a third person, the

presiding judge of the Thurston county superior court shall choose a third person.

(d) The decision of the arbitration panel shall be final and binding, subject to review by the superior court solely upon the question of whether the decision of the panel was arbitrary or capricious.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 173-900-900 Return share sampling.
- WAC 173-900-910 Calculating return share.
- WAC 173-900-920 Use and publication of CEP return shares.

**WSR 15-21-071
PROPOSED RULES
DEPARTMENT OF
FINANCIAL INSTITUTIONS**
(Division of Credit Unions)
[Filed October 20, 2015, 11:18 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-18-039.

Title of Rule and Other Identifying Information: Amending the rules (chapter 208-418 WAC) under the Washington State Credit Union Act (WCUA) (chapter 31.12 RCW).

Hearing Location(s): Department of Financial Institutions, 150 Israel Road S.W., Tumwater, WA 98501, (360) 902-8700, on November 24, 2015, at 11:00 a.m. - 1:00 p.m.

Date of Intended Adoption: November 30, 2015.

Submit Written Comments to: Allison Kohlhorst, P.O. Box 41200, Olympia, WA 98504-1200, e-mail allison.kohlhorst@dfi.wa.gov or dcu@dfi.wa.gov, fax (877) 330-6870, by October 14, 2015.

Assistance for Persons with Disabilities: Contact Allison Kohlhorst by November 20, 2015, (360) 902-8718.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of amending the rules is to implement changes to the frequency of asset assessment fees from being collected on a quarterly basis to semiannual.

Reasons Supporting Proposal: This is consistent with the billing schedule currently in place for the department of financial institutions, division of banks, and will bring state assessment fee practices closer to the federal assessment practice.

Statutory Authority for Adoption: RCW 31.12.516, 43.320.040.

Statute Being Implemented: Chapter 31.12 RCW.

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

Name of Proponent: Department of financial institutions, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Linda Jekel, Tumwater, Washington, (360) 902-8778.

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

A cost-benefit analysis is not required under RCW 34.05.328. This proposed change only affects the timing of the asset assessment collections.

October 16, 2015
Linda K. Jekel, Director
Division of Credit Unions

AMENDATORY SECTION (Amending WSR 01-12-004, filed 5/23/01, effective 6/23/01)

WAC 208-418-020 Collection of fees. Chapter 31.12 RCW authorizes the director to charge fees to credit unions and certain other persons in order to cover the costs of the operation of the division of credit unions and to establish a reasonable reserve for the division. As set forth in more detail in this chapter, the fees for this purpose shall consist of:

- (1) ~~((Quarterly))~~ Semiannual asset assessments charged to credit unions;
- (2) Charges to a credit union for costs incurred by the division for certain types of attorney general or special counsel assistance in regard to the credit union; and
- (3) Certain other fees charged by the director.

The director may waive all or any portion of any fee payable by a credit union or other person.

AMENDATORY SECTION (Amending WSR 10-06-050, filed 2/24/10, effective 3/27/10)

WAC 208-418-040 ~~((Quarterly))~~ Semiannual asset assessments. (1) The director will charge each credit union a ~~((quarterly))~~ semiannual asset assessment at the rate set forth in subsection (2) of this section. Asset assessments will be due on January ~~((1, April 1,))~~ 1st and July ((1, and October 1)) 1st. Asset assessments must be paid no later than thirty days after their due date. The assessments will be computed on total assets as of the prior June 30th for the ~~((October 1 and))~~ January 1st assessments, and as of the prior December 31st for the ~~((April 1 and))~~ July 1st assessments.

(2)

Credit Union's Total Assets	((Quarterly)) <u>Semiannual</u> Asset Assessment
over \$500M	(((21,163 + (.00001729)) <u>42,326 + (.00003458 x total</u> assets over \$500M)
over \$100M up to \$500M	(((5,883 + (.00003819)) <u>11,766 + (.00007638 x total</u> assets over \$100M)
over \$25M up to \$100M	((0.00005883)) <u>.00011766 x total assets</u>

Credit Union's Total Assets	((Quarterly)) <u>Semiannual</u> Asset Assessment
over \$10M up to \$25M	\$((1,296)) <u>2,592</u>
over \$2M up to \$10M	\$((863)) <u>1,726</u>
over \$500K up to \$2M	\$((575)) <u>1,150</u>
up to \$500K	\$0

M = Million K = Thousand

(3) ~~((Quarterly))~~ Semiannual asset assessments are charged for the ~~((calendar quarter))~~ semiannual period that begins on the due date of the assessment. No rebates will be made to credit unions that cease to be state-chartered during the ~~((quarter))~~ assessment period. A credit union converting to state charter will pay a prorated ~~((quarterly))~~ semiannual asset assessment for the ~~((quarter))~~ six months during which the conversion is completed.

(4) From time to time, the director may determine that asset assessments on an out-of-state credit union or foreign credit union are inappropriate relative to the level of examination and supervision of that credit union by the division. In that event, the director may charge the credit union hourly fees for examination and supervision of the credit union, including, but not limited to, ~~((offsite))~~ off-site monitoring, in lieu of asset assessments. Such fees are due upon receipt of billing from the division.

WSR 15-21-072
PROPOSED RULES
DEPARTMENT OF LICENSING

[Filed October 20, 2015, 11:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-17-087.

Title of Rule and Other Identifying Information: Chapter 308-20 WAC, Cosmetology—Barber—Manicurist—Esthetician rules, to implement SHB 1063.

Hearing Location(s): Department of Licensing, Business and Professions Division, Building 2, Conference Room 209, 405 Black Lake Boulevard S.W., Olympia, WA 98502, on December 4, 2015, at 11:00 a.m.

Date of Intended Adoption: December 10, 2015.

Submit Written Comments to: Cameron Dalmas, Department of Licensing, Cosmetology Program, P.O. Box 9026, Olympia, WA 98507, e-mail plssunit@dol.wa.gov, fax (360) 664-6643, by December 4, 2015.

Assistance for Persons with Disabilities: Contact Cameron Dalmas by December 4, 2015, TTY (360) 664-0116 or (360) 664-6643.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department will amend chapter 308-20 WAC to:

- Implement a new hair design license;
- Allow an instructor-trainee to submit documentation that provides evidence of experience as a licensed cosmetologist, hair designer, barber, manicurist, esthetician, or master esthetician for competency evaluation toward credit of not more than three hundred hours of instructor training; and
- Change the state cosmetology, barbering, esthetics, and manicuring advisory board to the cosmetology, hair design, barbering, esthetics, and manicuring advisory board.

Amending WAC 308-20-010 Definitions, 308-20-080 Minimum instruction guidelines for cosmetology, barbering, manicuring and esthetics training, 308-20-090 Student credit for training in a licensed school, and 308-20-210 Fees.

Reasons Supporting Proposal: SHB 1063 was passed during the 2015 legislative session giving the department authority to make changes to chapter 308-20 WAC.

Statutory Authority for Adoption: RCW 18.145.050, 43.24.023.

Statute Being Implemented: Chapter 18.16 RCW.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Susan Colard, Administrator, 405 Black Lake Boulevard S.W., Olympia, WA 98502, (360) 664-6647.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are exempt under RCW 34.05.310 (4)(g)(ii).

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 does not apply to this proposed rule under the provisions of RCW 34.05.328 (5)(a)(i).

October 20, 2015
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-06-092, filed 3/2/10, effective 4/2/10)

WAC 308-20-010 Definitions. (1) "Chemical compounds formulated for professional use only" are those compounds containing hazardous chemicals in a form not generally sold to the public; including but not limited to, bulk concentrates of permanent wave solution, neutralizers, chemical relaxers, oxidizing agents, flammable substances, facial creams, or approved chemical compounds. These compounds must be designated for use on the hair, face, neck, skin, or scalp.

(2) "Monthly student report" are forms provided by the school, approved by the department, preprinted with the school name. The report must include the month, year and daily activities of the student in each subject, (i.e., number of shampoos, haircuts, perms, colors, etc.) within each course (i.e., barbering, manicuring, cosmetology, hair design, esthetics, master esthetics, or instructor-trainee).

(3) "Completed and graduated" is the completion of the school curriculum and the state approved minimum hourly course of training.

(4) "Apprentice salon/shop" is a location certified by the Washington state apprenticeship and training committee, that provides training for individuals accepted into the apprenticeship program. Apprentice salon/shops shall not receive payment from the apprentice for training.

(5) "Apprentice trainer" is a person that is currently licensed and in good standing. This person provides training in a licensed shop approved for the apprenticeship program, who must have received journey level training and have held a license in the curriculum for which he or she is providing training for a minimum of three years.

(6) "Journey level training" is the completion of three years working as a licensed cosmetologist, hair designer, barber, manicurist ~~((and))~~, esthetician, or master esthetician.

(7) "Completion of the apprenticeship training" is the completion of the apprentice salon/shop curriculum that includes the state approved hourly course of training as described in WAC 308-20-080.

(8) "Monthly apprentice report" forms provided by the apprentice shop, approved by the department, printed with the shop name, for use in recording apprentice training hours and activities.

(9) "Online training" means an approved electronic learning environment through a licensed school in which a student is enrolled. This training is limited to theory only. Online training may be used for up to twenty-five percent of the approved course of study.

AMENDATORY SECTION (Amending WSR 13-24-042, filed 11/26/13, effective 1/1/14)

WAC 308-20-080 Minimum instruction guidelines for cosmetology, hair design, barbering, manicuring ~~((and))~~, esthetics and master esthetics training. The minimum instruction guidelines for training required for a student or apprentice to be eligible to take the license examination for the following professions shall include:

- (1) For cosmetology:
 - (a) Theory of the practice of cosmetology including business practices and basic human anatomy and physiology;
 - (b) At least 100 hours of skills in the application of manicuring and pedicuring services;
 - (c) At least 100 hours of skills in the application of esthetics services;
 - (d) Shampooing including draping, brushing, scalp manipulations, conditioning and rinsing;
 - (e) Scalp and hair analysis;
 - (f) Hair cutting and trimming including scissors, razor, thinning shears and clippers;
 - (g) Hair styling including wet, dry and thermal styling, braiding and styling aids;
 - (h) Cutting and trimming of facial hair including beard and mustache design and eyebrow, ear and nose hair trimming;
 - (i) Artificial hair;

(j) Permanent waving including sectioning, wrapping, preperm test curl, solution application, processing test curl, neutralizing and removal of chemicals;

(k) Chemical relaxing including sectioning, strand test, relaxer application, and removal of chemicals;

(l) Hair coloring and bleaching including predisposition test and strand test, and measurement, mixing, application and removal of chemicals;

(m) Sanitizing and disinfecting of individual work stations, individual equipment and tools and proper use and storage of linens;

(n) Diseases and disorders of the scalp, hair, skin and nails;

(o) Safety including proper use and storage of chemicals, implements and electrical appliances;

(p) First aid as it relates to cosmetology; and

(q) ~~((No more than twenty-five percent of skills training using))~~ Not all training may be on mannequins.

(2) For hair design:

(a) Theory of the practice of hair design including business practices and basic human anatomy and physiology;

(b) Shampooing including draping, brushing, scalp manipulations, conditioning and rinsing;

(c) Scalp and hair analysis;

(d) Hair cutting and trimming including scissors, razor, thinning shears and clippers;

(e) Hair styling including wet, dry and thermal styling, braiding and styling aids;

(f) Cutting and trimming of facial hair including beard and mustache design and eyebrow, ear and nose hair trimming;

(g) Artificial hair;

(h) Permanent waving including sectioning, wrapping, preperm test curl, solution application, processing test curl, neutralizing and removal of chemicals;

(i) Chemical relaxing including sectioning, strand test, relaxer application, and removal of chemicals;

(j) Hair coloring and bleaching including predisposition test and strand test, and measurement, mixing, application and removal of chemicals;

(k) Cleaning and disinfecting of individual work stations, individual equipment and tools and proper use and storage of linens;

(l) Diseases and disorders of the scalp and hair;

(m) Safety including proper use and storage of chemicals, implements and electrical appliances;

(n) First aid as it relates to hair design; and

(o) Not all training may be on mannequins.

(3) For barbering:

(a) Theory of the practice of barbering services ~~((and))~~, business practices and basic human anatomy and physiology;

(b) Shampooing including draping, brushing, scalp manipulations, conditioning and rinsing;

(c) Scalp and hair analysis;

(d) Hair cutting and trimming including scissors, razor, thinning shears and clippers;

(e) Hair styling, wet, dry and thermal styling and styling aids;

(f) Cutting and trimming of facial hair including shaving, beard and mustache design and eyebrow, ear and nose hair trimming;

(g) Artificial hair;

(h) Sanitizing and disinfecting of individual work stations, individual equipment and tools and proper use and storage of linens;

(i) Diseases and disorders of the skin, scalp and hair;

(j) Safety including proper use of implements and electrical appliances;

(k) First aid as it relates to barbering; and

(l) ~~((No more than twenty-five percent of skills training using mannequins.~~

~~(3))~~ Not all training may be on mannequins.

(4) For manicuring:

(a) Theory in the practice of manicuring and pedicuring services ~~((and))~~, business practices and basic human anatomy and physiology;

(b) Artificial nails including silk, linen, fiberglass, acrylic, gel, powder, extensions and sculpting, preparation, application, finish and removal;

(c) Cleaning, shaping and polishing of nails of the hands and feet and treatment of cuticles;

(d) Sanitizing and disinfecting of individual work station, individual equipment and tools and proper use and storage of linens;

(e) Diseases and disorders of the nails of the hands and feet;

(f) Safety including proper use and storage of chemicals, implements and electrical appliances;

(g) First aid as it relates to manicuring and pedicuring; and

(h) ~~((No more than twenty-five percent of skills training using mannequins.~~

~~(4))~~ Not all training may be on mannequins.

(5) For esthetics:

Theory in the practice of esthetics services ~~((and))~~, business practices and basic human anatomy and physiology (750 hours):

(a) Care of the skin, compresses, massage, facials, wraps, masks, exfoliation, use of electrical or mechanical appliances or chemical compounds;

(b) Temporary removal of superfluous hair of the skin by means including tweezing, waxing, tape, chemicals, lotions, creams, sugaring, threading, mechanical or electrical apparatus and appliances;

(c) Sanitizing and disinfecting of individual work stations, individual equipment and tools and proper use and storage of linens;

(d) Diseases and disorders of the skin of the face, neck and hands;

(e) Safety including proper use and storage of chemicals, implements and electrical appliances;

(f) First aid as it relates to esthetics; and

(g) ~~((No more than twenty-five percent of skills))~~ Not all training using mannequins.

~~((5))~~ (6) Master esthetics (450 additional hours):

Theory in the practice of master esthetics ~~((and))~~, business practices ~~((includes))~~, and basic human anatomy and

physiology including all of subsection (4) of this section and the following:

~~((a))~~ ~~((Exfoliation and medical esthetic procedures; (b)))~~ Laser, light frequency, radio frequency, ultrasound, and plasma practices;

~~((c))~~ (b) Medium depth chemical peels;

~~((d))~~ (c) Advanced client assessment, documentation, and indications/contraindications;

~~((e))~~ (d) Pretreatment and post-treatment procedures;

~~((f))~~ (e) Lymphatic drainage and advanced facial massage;

~~((g))~~ (f) Advanced diseases and disorders of the skin; and

~~((h))~~ (g) Advanced theories; alternative, touch, and spa body treatments.

(7) Online training curriculums must be approved by the department.

AMENDATORY SECTION (Amending WSR 13-24-042, filed 11/26/13, effective 1/1/14)

WAC 308-20-090 Student credit for training in a licensed school. (1) A maximum of twenty students per instructor is required within a licensed school.

(2) Only those hours of instruction a student is given under the direction of a licensed instructor of the licensed school in which the student is enrolled and in the courses listed in WAC 308-20-080 and 308-20-105 or hours earned under WAC 308-20-091 shall be credited toward completion of the course of study required in RCW 18.16.100.

(3) When all of a school's requirements have been met by a student and within thirty days of a student leaving a school, the school shall provide to the student a certified copy of the student's final report and refer the student for examination(s) in a manner and format prescribed by the department.

(4) Students may transfer between the schools and apprenticeship salon/shops licensed under chapter 18.16 RCW and may receive credit toward completion of the curriculum in the new school or apprenticeship salon/shop. In order to enroll a transfer student or apprentice, the new school or apprentice salon/shop shall do the following:

(a) Confirm that the student is available for transfer through the student registration process in a manner and format prescribed by the department;

(b) Evaluate the certified final student report provided by the student or apprentice and compare the report with the new school or apprentice salon/shop curriculum requirements; and

(c) The new school or apprentice salon/shop may accept or reject the final student or apprentice report in part or in total from the previous school or salon/shop and shall prepare a monthly report that documents the amount of instructions being accepted.

(5) Both the transferring and receiving school or salon/shop shall maintain student or apprentice records including the transfer record as required in WAC 308-20-040(4).

(6) Licensed instructors must be physically present where the students are training with the exception of approved online theory training.

(7) Certified training hours expire three years after the last day of attendance. Any hours earned by a student that are more than three years old are considered by the department to be expired and will not be considered valid towards initial licensure.

(8) Documentation providing evidence of experience as a licensed cosmetologist, hair designer, barber, manicurist, esthetician or master esthetician credited towards instructor training shall be included in the student record as required in WAC 308-20-040(4).

AMENDATORY SECTION (Amending WSR 13-24-042, filed 11/26/13, effective 1/1/14)

WAC 308-20-210 Fees. In addition to any third-party examinations fees, the following fees shall be charged by the professional licensing division of the department of licensing:

Title of Fee	Fee
Cosmetologist:	
License application	\$25.00
Reciprocity license	50.00
Renewal (two-year license)	55.00
Late renewal penalty	55.00
Duplicate license	15.00
Hair design:	
<u>License application</u>	<u>25.00</u>
<u>Reciprocity license</u>	<u>50.00</u>
<u>Renewal (two-year license)</u>	<u>55.00</u>
<u>Late renewal penalty</u>	<u>55.00</u>
<u>Duplicate license</u>	<u>15.00</u>
Instructor:	
License application	25.00
Reciprocity license	50.00
Renewal (two-year license)	55.00
Late renewal penalty	55.00
Duplicate license	15.00
Manicurist:	
License application	25.00
Reciprocity license	50.00
Renewal (two-year license)	55.00
Late renewal penalty	55.00
Duplicate	15.00
Esthetician:	
License application	25.00
Reciprocity license	50.00
Renewal (two-year license)	55.00
Late renewal penalty	55.00
Duplicate	15.00

Title of Fee	Fee
Master esthetician:	
License application	25.00
Reciprocity license	50.00
Renewal (two-year license)	55.00
Late renewal penalty	55.00
Duplicate license	15.00
Barber:	
License application	25.00
Reciprocity license	50.00
Renewal (two-year license)	55.00
Late renewal penalty	55.00
Duplicate license	15.00
School:	
License application	300.00
Renewal (one-year license)	300.00
Late renewal penalty	175.00
Duplicate	15.00
Salon/shop:	
License application	110.00
Renewal (one-year license)	110.00
Late renewal penalty	50.00
Duplicate license	15.00
Mobile unit:	
License application	110.00
Renewal (one-year license)	110.00
Late renewal penalty	50.00
Duplicate license	15.00
Personal services:	
License application	110.00
Renewal (one-year license)	110.00
Late renewal penalty	50.00
Duplicate license	15.00

**WSR 15-21-073
PROPOSED RULES
DEPARTMENT OF LICENSING**

[Filed October 20, 2015, 11:56 a.m.]

Original Notice.
Preproposal statement of inquiry was filed as WSR 15-13-047.
Title of Rule and Other Identifying Information: WAC 308-96A-065 Personalized license plates and 308-96A-550 Vehicle special collegiate license plates.
Hearing Location(s): Highways-Licenses Building, Conference Room 413, 1125 Washington Street S.E., Olympia,

WA (check in at counter on first floor), on December 14, 2015, at 2:30 p.m.

Date of Intended Adoption: December 15, 2015.

Submit Written Comments to: Brady Horenstein, P.O. Box 9030, Olympia, WA 98507-9030, e-mail bhorenstei@dol.wa.gov, fax (360) 570-7048, by December 11, 2015.

Assistance for Persons with Disabilities: Contact Brady Horenstein by December 11, 2015, TTY (360) 664-0116.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to update the personalized plate configuration restrictions and make technical corrections in WAC 308-96A-065 and 308-96A-550.

Reasons Supporting Proposal: This rule making is necessary to update the personalized plate configuration restrictions and make technical corrections.

Statutory Authority for Adoption: RCW 46.01.110, 46.18.020.

Statute Being Implemented: RCW 46.16A.200, 46.16A.-020, 46.16A.110, 46.17.200, 46.18.130, 46.18.140.

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

Name of Proponent: Department of licensing, governmental.

Name of Agency Personnel Responsible for Drafting: Brady Horenstein, Highways-Licenses Building, Olympia, Washington, (360) 902-3835; Implementation and Enforcement: Cindy Taber-Lowry, Highways-Licenses Building, Olympia, Washington, (360) 902-3839.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposed rule making does not impose more than a minor cost on businesses in the industry. Thus, a small business impact statement is not required under RCW 19.85.030 (1)(a).

A cost-benefit analysis is not required under RCW 34.05.328. The contents of the proposed rules are explicitly and specifically dictated by statute.

October 20, 2015
Damon Monroe
Rules Coordinator

AMENDATORY SECTION (Amending WSR 15-10-005, filed 4/22/15, effective 5/23/15)

WAC 308-96A-065 Personalized license plates. (1) What is a personalized license plate? Personalized license plates are plates reflecting the registered owner's chosen format or designation and are limited to those described in RCW 46.04.385 and 46.18.275.

(2) Are there any restrictions on the use of letters and numbers on personalized license plates? Personalized license plates may be issued with one to seven characters. Motorcycles and motorcycle trailers can have up to six characters. The letters "I" and "O" and the numbers "1" (one) and "0" (zero) may not be issued as single-digit plates.

(3) When may the department deny an application for or cancel personalized plates?

(a) The department may deny an application for personalized license plates or cancel personalized license plates previously issued if it determines the plate configuration to be:

- (i) Offensive to good taste and decency;
- (ii) Potentially misleading;
- (iii) Vulgar, profane, or sexually suggestive in nature;
- (iv) A racial, ethnic, lifestyle, or gender slur;
- (v) Related to ~~((alcohol or to))~~ intoxicating substances or illegal activities ((or substances));
- (vi) ~~((Blasphemous;~~
- ~~((vii)))~~ Derogatory;
- ~~((viii)))~~ (vii) Slanderous;
- ~~((ix)))~~ (viii) A duplication of license plate or decal numbers provided in chapter 46.09, 46.10 or 46.16A RCW; or
- ~~((x)))~~ (ix) The personalized message appears to replicate the standard configuration for a special license plate; or
- ~~((xi)))~~ (x) Contrary to the department's mission to promote highway safety.

(b) If the personalized license plates are canceled due to one or more reasons specified in subsection (3) of this section, the vehicle owner may:

- (i) Apply for a refund for the fee paid under RCW 46.17.210 and 46.68.435 for such license plates; or
- (ii) Instead of a refund, apply for and upon approval be issued personalized license plates with a different configuration without payment of additional personalized license plate fees.

(c) The department may cancel personalized license plates if they are:

- (i) Not renewed by the owner within forty-five days of the vehicle expiration; or
 - (ii) Removed from a vehicle and not transferred to a replacement vehicle within thirty days; or
 - (iii) Transferred to a new owner who does not make proper application for the plates within twenty-five days.
- (4) What special plates cannot be personalized?**
- (a) Medal of honor;
 - (b) Horseless carriage;
 - (c) Restored;
 - (d) Collector vehicle;
 - (e) Ham and Mars license plates;
 - (f) Former prisoner of war;
 - (g) Pearl Harbor survivor;
 - (h) Disabled veteran;
 - (i) Exempt license plates.

(5) If my registration for personalized license plates has elapsed, how do I get them reinstated or reissued?

(a) If you are an owner of a personalized license plate and do not renew it within forty-five days, you must reapply and pay the original personalized license plate fee in order to reinstate the plate.

(b) If you purchase a vehicle with a personalized plate and do not transfer the ownership of the personalized plate within twenty-five days, you forfeit ownership of the plate. The department will make that personalized plate available to the first applicant for that plate configuration.

(c) If you are the owner of a personalized license plate who does not transfer the plate as described in (b) of this subsection, you must reapply and pay the original personalized license plate fee in order to reinstate the plate.

(6) **Can I transfer my personalized license plate?** Yes, if you are the owner(s) of a vehicle with personalized license plates and sell, trade, or otherwise transfer ownership of the vehicle, you may transfer the plates to another vehicle within thirty days; (the personalized license plates may be transferred at any vehicle licensing office or through a vehicle dealer if the owner wishes to transfer a plate to a dealer-purchased vehicle) or transfer the plates to a new owner. If the plates are transferred to a new owner, the current owner must provide the new owner with a notarized or certified release of interest for the plates. The new owner must make application to the department within twenty-five days, including payment of the original personalized license plate fee.

(7) **How do I dispose of my personalized vehicle license plates?**

(a) You may turn the plates in to the department with a notarized release of interest from the owner(s) relinquishing the right to that personalized license plate configuration; or

(b) If your vehicle has personalized license plates and is sold to a wrecker or you accept a total loss claim from your insurance company and you choose not to retain the salvage, you must either transfer the plates to another vehicle within thirty days or turn the plates in to the department with a notarized release of interest from all registered owner(s) relinquishing the right to that personalized license plate.

Note: If the license plate has been reported as stolen or if the department record indicates the vehicle has been stolen, the same number and letter combination will not be issued.

AMENDATORY SECTION (Amending WSR 15-10-005, filed 4/22/15, effective 5/23/15)

WAC 308-96A-550 Vehicle special collegiate license plates. (1) **What are the criteria for establishing collegiate license plates?** Application for license plate series from an institution of higher education under RCW 46.18.225 may be submitted to the department through the process established in RCW 46.18.100 and 46.18.110. In addition the following criteria must be satisfied:

(a) The plates will consist of numbers, letters, colors, and a symbol or artwork approved by the department.

(b) The numbers and letters combination may not exceed seven positions.

(c) The plate series will not conflict with existing license plates.

(d) The plate design must provide at least four positions to accommodate serial numbering.

(e) The plate must not carry connotations which are offensive to good taste or decency, which may be misleading or vulgar in nature, a racial, ethnic, lifestyle, or gender slur, related to intoxicating substances or illegal activities (~~(or substances, blasphemous)~~), contrary to the department's mission to promote highway safety, or a duplication of other license plates provided in chapter 46.16A RCW.

(f) The plate must be designed so that it is legible and clearly identifiable by law enforcement personnel as an official Washington state issued license plate. A collegiate license plate design may not be issued in combination with any other license plate configuration including special, personalized, or exempt license plate(s). A collegiate license

plate design may be issued in combination with a personalized plate as described in RCW 46.18.277.

(2) **How is the design for a collegiate plate determined?** The institution of higher education must provide a design, including color and dimension specifications of the logo requested on the special collegiate license plate series, with their application. Design services may be purchased through the department. The design must be legible and clearly identifiable as a Washington state plate to be approved by the department, Washington state patrol, and the legislature.

(3) **Who may apply for the special collegiate license plate?** Upon receipt of all applicable fees, the special collegiate license plate will be issued to a registered owner of the vehicle.

(4) **When ownership of a vehicle issued collegiate license plates is sold, traded, or otherwise transferred, what happens to the plates?** The owner may relinquish the plates to the new vehicle owner or remove the plates from the vehicle for transfer to a replacement vehicle. If the plates are removed from the vehicle, a transfer fee to another vehicle shall be charged as provided in RCW 46.17.200(1).

(5) **Will any new fees be charged when the collegiate license plates are sold, traded, or otherwise transferred?** If the registration expiration date for the new vehicle exceeds the old vehicle registration expiration date, an abated fee for the collegiate plate will be charged at the rate of one-twelfth of the annual collegiate plate fee for each exceeding month and partial month. If the new registration expiration date is sooner than the old expiration date, a refund will not be made for the remaining registration period.

(6) **Will I be able to retain my current collegiate license plate number and letter combination if my plate is lost, defaced, or destroyed?** Yes. Upon the loss, defacement, or destruction of one or both collegiate license plates, the owner will make application for new collegiate plates or other license plates and pay the fees described in RCW 46.17.200 as applicable. See note following subsection (8) of this section.

(7) **How does the department define "current license plate registration"?** For the purposes of this section, a current license plate registration is defined as: A registration that has not expired or a registration where it is less than one year past the expiration date.

(8) **When I am required to replace my collegiate license plate, will I receive the same license plate number and letter combination?** Yes. In addition to the license plate replacement fee, you may pay an additional plate retention fee to retain the same number and letter combination as shown on the current vehicle computer record as long as the plate meets a current approved license plate configuration and background.

WSR 15-21-076
PROPOSED RULES
PENINSULA COLLEGE
 [Filed October 20, 2015, 1:51 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-08-042.

Title of Rule and Other Identifying Information: Code of student rights and responsibilities.

Hearing Location(s): Peninsula College, Cornaby Center, A-12, 1502 East Lauridsen Boulevard, Port Angeles, WA 98362, on November 30, 2015, at 2:00 - 3:00 p.m.

Date of Intended Adoption: January 2, 2016.

Submit Written Comments to: Pattie Fischer, 1502 East Lauridsen Boulevard, Port Angeles, WA 98362, e-mail pfischer@pencol.edu, fax (360) 417-6220, by November 30, 2015.

Assistance for Persons with Disabilities: Contact Melissa Delikat at TTY (360) 417-6339 or mdelikat@pencol.edu.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The current student rights and responsibilities rule was adopted in May 2014, the changes are needed to update misconduct and incorporate new Title IX and Violence Against Women Act requirements.

Reasons Supporting Proposal: The proposed rules are in line with current practice and existing laws.

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

Statute Being Implemented: RCW 28B.50.140(13) and 42.56.040.

Rule is necessary because of federal law, 42 U.S.C. Ch. 136, Subchapter III:20 U.S.C. Sec. 1681 et seq.

Name of Proponent: Peninsula College, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Jack Huls, 1502 East Lauridsen Boulevard, Port Angeles, WA 98362, (360) 417-6231.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose costs on businesses in industry.

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

October 20, 2015

Pattie Fischer
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-15-008, filed 7/2/14, effective 8/2/14)

WAC 132A-125-015 Definitions. The following definitions shall apply for the purposes of this student conduct code:

(1) "Business day" means a weekday, excluding weekends and college holidays.

(2) "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.

(3) "Conduct review officer" is the vice-president for student services or other college administrator designated by the president to be responsible for receiving and for reviewing or referring appeals of student disciplinary actions in accordance with the procedures of this code. The president is

authorized to reassign any and all of the conduct review officer's duties or responsibilities, as set forth in this chapter, as may be reasonably necessary.

(4) "Disciplinary action" is the process by which the student conduct officer imposes discipline against a student for a violation of the student conduct code.

(5) "Disciplinary appeal" is the process by which an aggrieved student can appeal the discipline imposed by the student conduct officer. Disciplinary appeals from a suspension in excess of ten instructional days or an expulsion, are heard by the student conduct appeals board. Appeals of all other appealable disciplinary action shall be reviewed through brief adjudicative proceedings.

(6) "Filing" is the process by which a document is officially delivered to a college official responsible for facilitating a disciplinary review. Unless otherwise provided, filing shall be accomplished by:

(a) Hand delivery of the document to the specified college official or college official's assistant; or

(b) 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.

(7) "Respondent" is the student against whom disciplinary action is initiated.

(8) "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.

(9) "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."

(10) "Student conduct officer" is a college administrator designated by the president or vice-president for student services to be responsible for implementing and enforcing the student conduct code. The president or vice-president for student services is authorized to reassign any and all of the student conduct officer's duties or responsibilities, as set forth in this chapter, as may be reasonably necessary.

(11) "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.

AMENDATORY SECTION (Amending WSR 14-15-008, filed 7/2/14, effective 8/2/14)

WAC 132A-125-030 Prohibited student conduct. The college may impose disciplinary sanctions against a student who commits, ~~((or))~~ attempts to commit, 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 any attempt to 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. Prohibited conduct may also include the unauthorized submission for credit of academic work that has been submitted for credit in another course.

(c) 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.

(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.

(4) **Assault, intimidation, harassment.** Assault, physical abuse, verbal abuse, threat(s), intimidation, harassment, bullying, stalking or other conduct that 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 severe or pervasive 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 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.** 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, holding, wearing, transporting, storage, or presence of any firearm, dagger, sword, knife or other cutting or stabbing instrument, club, explosive device, or any other weapon apparently capable of producing bodily harm is prohibited on the college campus, subject to the following exceptions:

(a) Commissioned law enforcement personnel or legally authorized military personnel while in performance of their duties; or

(b) A student with a valid concealed weapons permit may store a firearm in his or her vehicle parked on campus in accordance with RCW 9.41.050 (2) or (3), provided the vehicle is locked and the weapon is concealed from view; or

(c) The president or his or her designee may ~~((authorize possession of))~~ grant permission to bring a weapon on campus upon a ~~((showing))~~ determination that the weapon is reasonably related to a legitimate pedagogical purpose. Such permission shall be in writing and shall be subject to such terms or conditions incorporated ~~((therein))~~ in the written permission; or

(d) This policy does not apply to the possession and/or use of disabling chemical sprays when possessed and/or used for self-defense.

(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))~~ observably 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~~) observably under the influence of marijuana or the psychoactive compounds found in marijuana and intended for human consumption, regardless of form. While state law permits the recreational use of marijuana, federal law prohibits such use on college premises or in connection with college activities.

(c) **Drugs.** The use, possession, delivery, sale, or being observably 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.** (~~(Tobacco, electronic cigarettes, and related products:))~~ The use of tobacco, electronic cigarettes, and related products in any building owned, leased or operated by the college or in any location where such use is prohibited, including twenty-five feet from entrances, exits, windows that open, and ventilation intakes of any building owned, leased, or operated by the college. "Related products" include, but are not limited to, cigarettes, pipes, bidi, clove cigarettes, waterpipes, hookahs, chewing tobacco, and snuff.

(11) **Lewd conduct.** Conduct that is lewd or obscene.

(12) **Discriminatory conduct.** Discriminatory conduct that 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.

(13) **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 violence in a dating and/or domestic relationship. 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 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.

(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.

(14) **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.

(15) **Retaliation.** Retaliation 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.

(16) **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 college's electronic use policy.

(17) **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.

(18) **Safety violations.** Safety violation includes 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.

(19) **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.

(20) **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 as 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 14-15-008, filed 7/2/14, effective 8/2/14)

WAC 132A-125-035 Disciplinary sanctions—Terms—Conditions. The following disciplinary sanctions may be imposed upon students found to have violated the student conduct code.

(1) **Disciplinary warning.** A verbal statement to a student that there is a violation and that continued violation may be cause for further disciplinary action.

(2) **Written reprimand.** Notice in writing that the student has violated one or more terms of this code of conduct and that continuation of the same or similar behavior may result in more severe disciplinary action.

(3) **Disciplinary 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.

(4) **Disciplinary suspension.** Dismissal from the college and from student status for a stated period of time. There will be no refund of tuition or fees for the quarter in which the action is taken.

(5) **Dismissal.** The revocation of all rights and privileges of membership in the college community and exclusion from the campus and college-owned or controlled facilities without any possibility of return. There will be no refund of tuition or fees for the quarter in which the action is taken.

(6) Disciplinary terms and conditions that may be imposed in conjunction with the imposition of a disciplinary sanction include, but are not limited to, the following:

(a) **Restitution.** Reimbursement for damage to or misappropriation of property, or for injury to persons, or for reasonable costs incurred by the college in pursuing an investigation or disciplinary proceeding. This may take the form of monetary reimbursement, appropriate service, or other compensation.

(b) **Professional evaluation.** Referral for drug, alcohol, psychological or medical evaluation by an appropriately certified or licensed professional may be required. The student may choose the professional within the scope of practice and with the professional credentials as defined by the college. The student will sign all necessary releases to allow the college access to any such evaluation. The student's return to college may be conditioned upon compliance with recom-

recommendations set forth in such a professional evaluation. If the evaluation indicates that the student is not capable of functioning within the college community, the student will remain suspended until future evaluation recommends that the student is capable of reentering the college and complying with the rules of conduct.

(7) **Not in good standing.** A student may be deemed "not in good standing" with the college. If so, the student shall be subject to the following restrictions:

(a) Ineligible to hold an office in any student organization recognized by the college or to hold any elected or appointed office of the college.

(b) 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.

(8) **No contact order.** An order directing a student to have no contact with a specified student, college employee, a member of the college community, or a particular college facility.

AMENDATORY SECTION (Amending WSR 14-15-008, filed 7/2/14, effective 8/2/14)

WAC 132A-125-055 Brief adjudicative proceedings—Initial hearing. (1) Brief adjudicative proceedings shall be conducted by a conduct review officer (~~designated by the president~~). The conduct review officer shall not participate in any case in which he or she is a complainant or witness, or in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity.

(2) Before taking action, the conduct review officer shall conduct an informal hearing and provide each party:

(a) An opportunity to be informed of the agency's view of the matter; and

(b) An opportunity to explain the party's view of the matter.

(3) The conduct review officer shall serve an initial decision upon both the parties within ten days of consideration of the appeal. The initial decision shall contain a brief written statement of the reasons for the decision and information about how to seek administrative review of the initial decision. If no request for review is filed within twenty-one days of service of the initial decision, the initial decision shall be deemed the final decision.

(4) If the conduct review officer, upon review, determines that the respondent's conduct may warrant imposition of a disciplinary suspension of more than ten instructional days or expulsion, the matter shall be referred to the student conduct committee for a disciplinary hearing.

AMENDATORY SECTION (Amending WSR 14-15-008, filed 7/2/14, effective 8/2/14)

WAC 132A-125-070 Student conduct committee proceedings. (1) The student conduct committee shall consist of five members:

(a) Two full-time students appointed by the student government;

(b) Two faculty members appointed by the president;

(c) One (~~administrative staff member~~) faculty member or administrator (other than an administrator serving as a student conduct or conduct review officer~~(s)~~)) appointed by the president at the beginning of the academic year.

(2) The (~~administrative staff~~) faculty member or administrator appointed on a yearly basis shall serve as the chair of the committee and may take action on preliminary hearing matters prior to convening the committee. The chair shall receive annual training on protecting victims and promoting accountability in cases involving allegations of sexual misconduct.

(3) Hearings may be heard by a quorum of three members of the committee, so long as one faculty member and one student are included on the hearing panel. Committee action may be taken upon a majority vote of all committee members attending the hearing.

(4) Members of the student conduct committee shall not participate in any case in which they are a party, complainant, or witness, in which they have direct or personal interest, prejudice, or bias, or in which they have acted previously in an advisory capacity. Any party may petition for disqualification of a committee member pursuant to RCW 34.05.425(4).

AMENDATORY SECTION (Amending WSR 14-15-008, filed 7/2/14, effective 8/2/14)

WAC 132A-125-090 Student conduct committee proceedings—Appeal of initial decision. (1) A respondent who is aggrieved by the findings or conclusions issued by the student conduct committee may appeal the committee's initial decision to the president by filing a notice of appeal with the president's office within twenty-one days of service of the committee's initial decision. Failure to file a timely appeal constitutes a waiver of the right and the initial decision shall be deemed final.

(2) The notice of appeal must identify the specific findings of fact and/or conclusions of law in the initial decision that are challenged and must contain argument why the appeal should be granted. If necessary to aid review, the president may ask for additional briefing from the parties on issues raised on appeal. The president's review shall be restricted to the hearing record made before the student conduct committee and will normally be limited to a review of those issues and arguments raised in the notice of appeal.

(3) The president shall provide a written decision to all parties within forty-five days after receipt of the notice of appeal. The president's decision shall be final and shall include a notice of any rights to request reconsideration and/or judicial review.

(4) (~~The president may, at his or her discretion, suspend any disciplinary action pending review of the merits of the findings, conclusions, and disciplinary actions imposed.~~

~~(5))~~ The president shall not engage in an ex parte communication with any of the parties regarding an appeal.

AMENDATORY SECTION (Amending WSR 14-15-008, filed 7/2/14, effective 8/2/14)

WAC 132A-125-105 Supplemental definitions. The following supplemental definitions shall apply for purposes

of student conduct code proceedings involving allegations of sexual misconduct by a student:

(1) A "complainant" is an alleged victim of sexual misconduct, as defined in subsection (2) of this section

(2) "Sexual misconduct" ~~((is prohibited sexual or gender-based conduct by a student including, but not limited to:~~

~~(a) Sexual activity for which clear and voluntary consent has not been given in advance;~~

~~(b) Sexual activity with someone who is incapable of giving valid consent because, for example, she or he is underage, sleeping, or otherwise incapacitated due to alcohol or drugs;~~

~~(c) Sexual harassment;~~

~~(d) Sexual violence which includes, but is not limited to, sexual assault, domestic violence, intimate violence, and sexual or gender-based stalking; and~~

~~(e) Nonphysical conduct such as sexual or gender-based digital media stalking, sexual or gender-based online harassment, sexual or gender-based cyberbullying, nonconsensual recording of a sexual activity, and nonconsensual distribution of a recording of a sexual activity)) has the meaning ascribed to this term in WAC 132A-125-030(13).~~

AMENDATORY SECTION (Amending WSR 14-15-008, filed 7/2/14, effective 8/2/14)

WAC 132A-125-110 Supplemental complaint process. The following supplemental procedures shall apply with respect to complaints or other reports of alleged sexual misconduct by a student:

(1) The college's Title IX ~~((compliance officer))~~ coordinator or designee shall investigate complaints or other reports of alleged sexual misconduct by a student. Investigations will be completed in a timely manner and the results of the investigation shall be referred to the student conduct officer for disciplinary action.

(2) Informal dispute resolution shall not be used to resolve sexual misconduct complaints without written permission from both the complainant and the respondent. 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.

(3) College personnel will honor requests to keep sexual misconduct complaints confidential to the extent this can be done without unreasonably risking the health, safety, and welfare of the complainant or other members of the college community or compromising the college's duty to investigate and process sexual harassment and sexual violence complaints.

(4) The student conduct officer, prior to initiating disciplinary action, will make a reasonable effort to contact the complainant to discuss the results of the investigation and possible disciplinary sanctions and/or conditions, if any, that may be imposed upon the respondent if the allegations of sexual misconduct are found to have merit.

(5) The student conduct officer, on the same date that a disciplinary decision is served on the respondent, will serve a written notice informing the complainant whether the allegations of sexual misconduct were found to have merit, and

describing any disciplinary sanctions and/or conditions imposed upon the respondent for the complainant's protection, including disciplinary suspension or dismissal of the respondent. The notice will also inform the complainant of his or her appeal rights. If protective sanctions and/or conditions are imposed, the student conduct officer shall make a reasonable effort to contact the complainant to ensure prompt notice of the protective disciplinary sanctions and/or conditions.

WSR 15-21-077

PROPOSED RULES

SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed October 20, 2015, 2:02 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-18-119.

Title of Rule and Other Identifying Information: The office of superintendent of public instruction (OSPI) is proposing to amend WAC 392-140-600 Special education safety net—Applicable provisions, 392-140-608 Special education safety net—Safety net application—Timing, 392-140-617 Special education safety net funding—Standards—Community impact applications, 392-140-643 Special education safety net—Definition—State oversight committee—Procedures, 392-140-646 Special education safety net—State oversight committee actions, and 392-140-656 Special education safety net—Request for review and reconsideration of an action.

Hearing Location(s): OSPI, 600 Washington Street S.E., Policy Conference Room, Olympia, WA 98504, on November 24, 2015, at 1:00 p.m.

Date of Intended Adoption: November 30, 2015.

Submit Written Comments to: Douglas H. Gill, Assistant Superintendent, Special Education, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, Attn: Special Education Section, e-mail spced@k12.wa.us (please put "2015 Rulemaking" in the subject line), fax (360) 786-0247, by November 24, 2015, 5:00 p.m.

Assistance for Persons with Disabilities: Contact Kristin Murphy by November 17, 2015, TTY (360) 664-3631 or (360) 725-6133.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to update regulatory language in response to a legislative change regarding the timing of safety net award determinations for the Washington State School for the Blind and the Center for Childhood Deafness and Hearing Loss. Additionally, the proposed rule would make minor changes to ensure consistent language throughout the rules.

Reasons Supporting Proposal: OSPI must ensure that its rules align with relevant authorizing statutes. Under prior law, OSPI was required to make all special education safety net award determinations in August of each school year. The legislature changed that in the 2015-16 operating budget, ESSB 6052 (507)(7)(b), moving the determination

date from August to July for the Washington State School for the Blind and the Center for Childhood Deafness and Hearing Loss. The proposed rules reflect this legislative change.

Statutory Authority for Adoption: RCW 28A.155.090.

Statute Being Implemented: Chapter 28A.155 RCW.

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

Name of Proponent: OSPI, governmental.

Name of Agency Personnel Responsible for Drafting: Mary Ellen Parrish, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, (360) 725-6075; Implementation and Enforcement: Douglas H. Gill, OSPI, P.O. Box 47200, Olympia, WA 98504-7200, (360) 725-6075.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The joint administrative [administrative] rules review committee has not requested the preparation of a small business economic impact statement. Section 1, chapter 201, Laws of 2012, applies only to rules proposed by the state board of education.

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

October 20, 2015

Randy Dorn

State Superintendent
of Public Instruction

AMENDATORY SECTION (Amending WSR 13-05-054, filed 2/13/13, effective 3/16/13)

WAC 392-140-600 Special education safety net—Applicable provisions. The provisions of WAC 392-140-600 through 392-140-685 apply to the determination of safety net awards of state special education funds and Individuals with Disabilities Education Act (IDEA) federal funds for the 2012-13 school year and thereafter. Beginning with the 2010-11 school year award cycle, the office of the superintendent of public instruction shall make award determinations for safety net funding in August of each year, except that the superintendent of public instruction shall make award determinations for state safety net funding in July of each school year for the Washington state school for the blind and for the center for childhood deafness and hearing loss. Determinations on school district eligibility for state safety net awards shall be based on analysis of actual expenditure data from the current school year.

AMENDATORY SECTION (Amending WSR 13-05-054, filed 2/13/13, effective 3/16/13)

WAC 392-140-608 Special education safety net—Safety net application—Timing. Safety net applications shall be submitted and reviewed pursuant to the schedule of dates published by the office of the superintendent of public instruction in the annual safety net bulletin. Applications not received by the published dates and times in the bulletin will not be accepted (~~and no applications for the school year will be accepted after the final application due date~~).

AMENDATORY SECTION (Amending WSR 15-18-078, filed 8/28/15, effective 9/28/15)

WAC 392-140-617 Special education safety net—Standards—Community impact applications. For applicants requesting state safety net awards to meet the extraordinary costs associated with communities that draw a larger number of families with children in need of special education services, the applicant must meet the standards of WAC 392-140-605 (1)(a) through (j) and convincingly demonstrate that:

(1) Demographic, environmental, sociological or other factor(s) cause the district's or charter school's special education enrollment to be disproportional by category of disability or the overall number of students identified as eligible for special education; and

(2) The unique factor(s) identified by the applicant is not the result of district or charter school philosophy, service delivery choice, or accounting practice; and

(3) The identified factor(s) creates an adverse documentable fiscal impact upon the applicant's special education program (~~and~~

~~(4) The applicant summarizes the steps the applicant has taken or plans to take in response to the factors identified in the application).~~

AMENDATORY SECTION (Amending WSR 13-05-054, filed 2/13/13, effective 3/16/13)

WAC 392-140-643 Special education safety net—Definition—State oversight committee—Procedures. (1) The state safety net oversight committee will review applications as deemed necessary by the office of superintendent of public instruction pursuant to WAC 392-140-608.

(2) All applications received by the state safety net oversight committee no later than the dates published in the annual Safety Net Bulletin will be reviewed for completeness by the state safety net oversight committee manager or designee. Applications must include all necessary forms, worksheets, and attachments described in the annual bulletin published by the office of superintendent of public instruction. Incomplete applications will not be considered by the committee.

(3) The state safety net oversight committee manager or designee will forward to the committee members copies of the applications for review in a timely manner.

(4) The state safety net oversight committee manager or designee will be responsible for presenting each application for consideration to the committee.

(5) State safety net oversight committee members shall review and discuss the applicant's request for safety net awards for completeness and accuracy.

(6) The state safety net oversight committee may require that an applicant provide clarifying information.

(7) State safety net oversight committee members will individually indicate their agreement, disagreement, or abstention with the action of the committee pursuant to WAC 392-140-646.

(8) A majority vote by the state safety net oversight committee members shall be sufficient to determine the committee action.

(9) The state safety net oversight committee manager will ensure that notes are taken which summarize the discussion related to each application. A decision summary for each application shall include the amount of the initial request, funding adjustments applied by the committee, the amount of any award to be made, and the reasons for the action taken by the state safety net oversight committee.

(10) Voting members of the state safety net oversight committee shall each sign the decision summary.

(11) The state safety net oversight committee manager, on behalf of the state safety net oversight committee, will notify the applicant in writing of the determination of the committee. The applicant will be provided a copy of the decision summary.

(12) All applications received by the state safety net oversight committee will be retained by the office of the superintendent of public instruction for use in the evaluation of the safety net award process and to provide the office of the superintendent of public instruction with information with which to make future decisions regarding the safety net process.

AMENDATORY SECTION (Amending WSR 13-05-054, filed 2/13/13, effective 3/16/13)

WAC 392-140-646 Special education safety net—State oversight committee actions. The state oversight committee shall review all safety net applications.

(1) An application reviewed during an application cycle may be:

- (a) Approved;
- (b) Adjusted and approved; or
- (c) Disapproved.

(2) The amount approved shall not exceed the amount for which application was made or adjusted.

(3) The state oversight committee may not approve an application if there are unresolved audit issues related to special education that are material to the application. For purposes of this section, "audit" means an examination of a sub-recipient to determine compliance with the state or federal laws and regulations governing the operation of a specific program and includes program audits, single audits, or any special purpose audit consistent with chapter 392-115 WAC and WAC 392-140-630. "Unresolved" means that the sub-recipient has exhausted the audit resolution process described in chapter 392-115 WAC as amended.

(4) Awards approved by the state oversight committee are subject to recovery pursuant to WAC 392-140-675 through 392-140-685.

AMENDATORY SECTION (Amending WSR 13-05-054, filed 2/13/13, effective 3/16/13)

WAC 392-140-656 Special education safety net—Request for review and reconsideration of an action. An applicant may request review and reconsideration of an action of the state oversight committee made pursuant to WAC 392-140-646.

(1) The applicant shall make the request in writing to the oversight committee manager within twenty calendar days of the date (~~that~~) of the state oversight committee's written

determination (~~is sent~~) letter to the applicant pursuant to WAC 392-140-643(11). All requests for review and reconsideration not received within twenty days of the written determination letter will not be accepted.

(2) The applicant shall request reconsideration of the original submission of the state oversight (~~committee's action~~) committee. The request for review and reconsideration of the committee's action must be based on one or more of the following grounds:

- (a) The action was outside the statutory authority of the committee;
- (b) The action failed to follow prescribed procedures;
- (c) The action erroneously interpreted or applied the law;
- (d) The action was not supported by substantial evidence; or
- (e) The action was inconsistent with the agency rules regarding safety net funding.

(3) If the office of the superintendent of public instruction finds grounds for reconsideration pursuant to subsection (2) of this section, OSPI shall request reconsideration of the action by the state oversight committee. OSPI shall state the grounds for reconsideration supported by the facts considered.

WSR 15-21-078

PROPOSED RULES

OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2015-04—Filed October 20, 2015, 2:26 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-12-107.

Title of Rule and Other Identifying Information: Adjusting rate and form filing procedures for life and disability insurers to comply with SSB 5023 (chapter 19, Laws of 2015, effective July 24, 2015).

Hearing Location(s): Insurance Building, Capitol Campus, 302 Sid Snyder Avenue S.W., Suite 200, Olympia, WA 98504, on Tuesday, November 24, 2015, at 11:00 a.m.

Date of Intended Adoption: November 25, 2015.

Submit Written Comments to: Bianca Stoner, P.O. Box 40260, Olympia, WA 98504-0260, e-mail rulescoordinator@oic.wa.gov, fax (360) 586-3109, by November 24, 2015.

Assistance for Persons with Disabilities: Contact Lorie Villaflores by November 23, 2015, TTY (360) 586-0241 or (360) 725-7087.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule deletes two sections from chapter 284-43 WAC, Subchapter I (WAC 284-43-920 and 284-43-950) and moves them to a new subchapter in chapter 284-43 WAC called Subchapter J, while modifying the language from WAC 284-43-920 (now contained in proposed WAC 284-43-6560) to incorporate the requirements of SSB 5023. The new subchapter contains the filing requirements for large group health plans, stand-alone dental plans and stand-alone vision plans. In particular, proposed WAC 284-43-6560 contains the language from SSB

5023 that says when group health plans other than small group plans and stand-alone dental and stand-alone vision plans must file contract forms or rates.

Reasons Supporting Proposal: During the 2015 legislative session, the state legislature passed SSB 5023, which became effective on July 24, 2015. The intent of the new law is to create regulatory uniformity for the filing requirements for large group health benefit plans, including large group disability plans, as well as stand-alone dental plans and stand-alone vision plans. To implement this law, the office of insurance commissioner is adding a new subchapter to chapter 284-43 WAC.

Statutory Authority for Adoption: RCW 48.02.060, 48.44.050, 48.46.200, 48.44.020 (2)(d), 48.44.022, 48.44.-023, 48.46.060 (3)(d) and (5), 48.46.064, and 48.46.066.

Statute Being Implemented: SSB 5023 (chapter 19, Laws of 2015, effective July 24, 2015).

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

Name of Proponent: Mike Kreidler, insurance commissioner, governmental.

Name of Agency Personnel Responsible for Drafting: Bianca Stoner, P.O. Box 40260, Olympia, WA 98504-0260, (360) 725-7041; Implementation: Molly Nollette, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7117; and Enforcement: AnnaLisa Gellerman, P.O. Box 40255, Olympia, WA 98504-0255, (360) 725-7050.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The entities that must comply with the proposed rule are not small businesses under chapter 19.85 RCW.

A cost-benefit analysis is required under RCW 34.05.-328. A preliminary cost-benefit analysis may be obtained by contacting Bianca Stoner, P.O. Box 40260, Olympia, WA 98504-0260, fax (360) 586-3109, e-mail rulescoordinator@oic.wa.gov.

October 20, 2015

Mike Kreidler

Insurance Commissioner

SUBCHAPTER J

HEALTH PLANS, STAND-ALONE DENTAL PLANS AND STAND-ALONE VISION PLANS—FILING REQUIREMENTS

NEW SECTION

WAC 284-43-6500 Applicability and scope. This subchapter is adopted under the general authority of RCW 48.02.060. This subchapter applies to health benefit plans as defined in RCW 48.43.005 and contracts for limited health care services as defined in RCW 48.44.035. This subchapter also applies to plans issued or renewed on or after January 1, 2016, offered by carriers under the requirements of chapter 19, Laws of 2015.

NEW SECTION

WAC 284-43-6520 Definitions. For the purpose of this subchapter:

(1) "Contract" means an agreement to provide health care services or pay health care costs for or on behalf of a "subscriber" or group of "subscribers" and such eligible dependents as may be included therein.

(2) "Contract form" means the prototype of a "contract" and any associated riders and endorsements filed with the commissioner by a carrier.

(3) "Covered person" or "enrollee" has the same meaning as that contained in RCW 48.43.005.

(4) "Dependent" has the same meaning as that contained in RCW 48.43.005.

(5) "Health carrier" or "carrier" means an insurer that issues disability insurance regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, or a health maintenance organization as defined in RCW 48.46.020, and includes "issuers" as that term is used in the federal Patient Protection and Affordable Care Act (Public Law 111-148).

(6) "Large group contracts" or "large group plans" include group health benefit plans and stand-alone dental plans or stand-alone vision plans that are not small group plans and are not individual plans.

(7) "Limited health care service contractor" means a health care service contractor that offers one and only one limited health care service.

(8) "Negotiated contract" form means a health benefit plan or stand-alone dental plan or stand-alone vision plan where benefits and other terms and conditions, including the applicable rate schedules, are negotiated and agreed to by the carrier or limited health care service contractor and the policy or contract holder. The only plans that carriers can negotiate are large group plans. The negotiated policy form and associated rate schedule must otherwise comply with state and federal laws governing the content and schedule of rates for the negotiated plans.

(9) "Premium" means all sums charged, received, or deposited as consideration for a contract or the continuance of a contract. Any assessment, or any "membership," "policy," "survey," "inspection," "service," or similar fee or charge made by the carrier in consideration for a contract is part of the premium. Premium does not include amounts paid as enrollee point-of-service cost-sharing.

(10) "Rate" or "rates" means all classification manuals, rate manuals, rating schedules, class rates, and rating rules.

(11) "Rate schedule" means the schedule of rates that includes the description of methodology used to obtain the premium rate for a specific individual or group, if given the necessary information such as the demographic data and plan design of the individual or group. For a single negotiated contract form, the rate schedule also includes the premium for the employer.

(12) "Small employer" means an employer that fits within the definition of small employer as that term is used in the federal Patient Protection and Affordable Care Act (Public Law 111-148).

(13) "Small group plans" means the class of "group contracts" issued to "small employers." For the purposes of this

section, "small group contracts" and "small group plans" also apply to stand-alone dental plans or stand-alone vision plans.

(14) "Stand-alone dental plan" means coverage for a set of benefits limited to oral care including, but not necessarily limited to, pediatric oral care.

(15) "Stand-alone vision plan" means coverage for a set of benefits limited to vision care including, but not necessarily limited to, materials.

(16) "Subscriber" means a person on whose behalf a "contract" or "certificate" is issued.

NEW SECTION

WAC 284-43-6540 Summary for group contract filings other than small group contract filings.

Groups Other Than Small Groups Filing Summary

Carrier Name _____	
Address _____	
Contract Holder/Pool Category and Name (Check One Box)	<input type="checkbox"/> Single Employer Group: Employer Name: _____ <input type="checkbox"/> Multiemployer other than Association/Trust Groups Group Pool Name: _____ <input type="checkbox"/> Association/Trust Groups Association/Trust Group Name: _____
Contract Form Number _____	
Rate Form Number (if different from Contract Form Number) _____	
Product Name _____	

If additional space is required to list the contract/rate form number and product name, attach a separate sheet.

Rate Renewal Period: From: _____ To: _____
Date Submitted: _____
Type of Filing (Check One Box) <input type="checkbox"/> New Group Contract <input type="checkbox"/> Revision of Existing Group Contract

Proposed Rate Schedules: Attach a separate sheet to list all proposed tier rates.

Rate Summary

Current Rate (Composite per employee or per member)	\$ _____ per member per month
Percentage Rate Change	_____ %
New Rate	\$ _____ per member per month
Average Number of Enrollees Each Month During the Experience Period (If the average number of enrollees is equal to or less than fifty, explain why this is not a small group, as defined in RCW 48.43.005.)	_____
Anticipated Loss Ratio	_____ %

Portion of carrier's total enrollment affected	_____ %
Portion of carrier's total premium revenue affected	_____ %

Summary of Contract Experience

	Experience Period	First Prior Period	Second Prior Period
	From To	From To	From To
Member Months			
Billed Premium			
Incurred Claims			
Expenses			
Gain/Loss			
Experience Refund/Credit or Recoupment			
Earned Premium (Billed Premium +/- Refund/Credit or Recoupment)			
Loss Ratio Percentage			

Attach comments or additional information.
Preparer's Information
Name: _____
Title: _____
Telephone Number: _____

NEW SECTION

WAC 284-43-6560 When a carrier is required to file.

(1) All rates and forms of group health benefit plans other than small group plans and all stand-alone dental and stand-alone vision plans offered by a health carrier or limited health care service contractor as defined in RCW 48.44.035 and modification of a contract form or rate must be filed before the contract form is offered for sale to the public and before the rate schedule is used.

(2) Filings of negotiated contract forms for groups other than small groups, and applicable rate schedules, that are placed into effect at time of negotiation or that have a retroactive effective date are not required to be filed in accordance with subsection (1) of this section, but must be filed within thirty working days after the earlier of:

(a) The date group contract negotiations are completed; or

(b) The date renewal premiums are implemented.

(3) When a carrier submits a late filing, the carrier must include an explanation on the filing document describing why the carrier submitted the filing late.

(4) The negotiated policy form and associated rate schedule must otherwise comply with state and federal laws governing the content and schedule of rates for the negotiated plans.

(5) Stand-alone dental plans and stand-alone vision plans offered by a disability insurer to out-of-state groups specified by RCW 48.21.010(2) may be negotiated, but may not be

offered in this state before the commissioner finds that the stand-alone dental plan or stand-alone vision plan otherwise meets the standards set forth in RCW 48.21.010 (2)(a) and (b).

October 20, 2015

Pattie Fischer

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 284-43-920 When a carrier is required to file.
 WAC 284-43-950 Summary for group contract filings other than small group contract filings.

WSR 15-21-080**PROPOSED RULES****PENINSULA COLLEGE**

[Filed October 20, 2015, 2:32 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-03-069.

Title of Rule and Other Identifying Information: WAC 132A-350-015, 132A-350-020, 132A-350-040 and 132A-350-050, Peninsula College antidiscrimination policies and procedures.

Hearing Location(s): Peninsula College, Cornaby Center, A-12, 1502 East Lauridsen Boulevard, Port Angeles, WA 98362, on November 30, 2015, at 2:00 - 3:00 p.m.

Date of Intended Adoption: January 2, 2016.

Submit Written Comments to: Pattie Fischer, 1502 East Lauridsen Boulevard, Port Angeles, WA 98362, e-mail pfischer@pencol.edu, fax (360) 417-62220 [417-6220], by November 30, 2015.

Assistance for Persons with Disabilities: Contact Bonnie Cauffman by November 25, 2015, TTY (360) 417-6339 or (360) 417-6212.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The current anti-discrimination rules are out of compliance with current federal and state law.

Reasons Supporting Proposal: The proposed rules are in line with current practice and existing laws.

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

Statute Being Implemented: RCW 28B.50.140(13).

Rule is necessary because of federal law, Title IX of Education Amendments of 1972.

Name of Proponent: Peninsula College, public.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Bonnie Cauffman, 1502 East Lauridsen Boulevard, Port Angeles, WA 98362, (360) 417-6212.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rule would not impose costs on businesses in industry.

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

AMENDATORY SECTION (Amending WSR 05-14-142, filed 7/5/05, effective 8/5/05)

WAC 132A-350-015 ((Peninsula College antidiscrimination)) Nondiscrimination and antiharassment policy. ((1) Preamble. Peninsula College is committed to protecting the rights and dignity of each individual in the campus community and will not tolerate any form of discrimination. All Peninsula College employees and students may report alleged discriminatory behavior without fear of restraint, reprisal, interference, or coercion. No employee's or student's status with the college shall be adversely affected in any way because he or she utilizes the following procedures: Peninsula College's informal and formal grievance procedures are designed to ensure fairness and consistency in the college's relations with its employees and students. Nothing in these procedures shall be construed as abridging the right of an employee or student to allege discrimination in exercising constitutional or statutory rights which may be available.

(2) Informal review procedures. Any employee or student is urged to communicate his or her discrimination grievance to the appropriate supervisor. Every effort should be made to resolve the grievance informally within the department. However, should an employee or student feel that he or she is unable to discuss the grievance with the appropriate supervisor, then that employee or student should go to the major administrator for that unit, department, or division to discuss the problem. The employee or student may also wish to exercise his or her rights to pursue an informal resolution, which may include mediation with the assistance of the affirmative action officer.

(3) Formal review procedures. The following formal review procedures have been established for those kinds of discrimination problems which remain unresolved after informal review has occurred and when the informal procedure has failed to resolve the conflict to the satisfaction of the parties:

(a) Any employee or student who believes he or she has been discriminated against in connection with a violation of the college's affirmative action policy may, after the informal procedures have failed, file a formal complaint in writing with the college's affirmative action officer, stating the grievance and requesting a remedy. Within five working days of the filing, the affirmative action officer shall serve a copy of the complaint to the respondent and notify the respondent's major administrator. The respondent has five working days in which to respond to the allegations in the complaint in writing and submit the reply to the affirmative action officer. Within five working days of the receipt of the reply, the affirmative action officer shall show the reply to the complainant, and ask both the complainant and respondent if they will mediate the complaint. If so, the affirmative action officer will initiate the mediation within ten working days of receiving the reply, unless availability of the parties involved necessitates an extension.

(b) If the complaint is unresolved after mediation, or if either party refuses to mediate, the affirmative action officer,

or a qualified designee shall then investigate the complaint. Depending upon the circumstances, this investigation may include meetings with the employee, the immediate supervisor, the major administrator, and any other person who may be involved. A finding of probable cause or no probable cause shall be given to the employee or student by the affirmative action officer within sixty working days of the filing of the complaint. This time may be extended by mutual agreement between the complainant and the respondent.

(e) If the complainant or respondent is not satisfied with the results of the review as indicated above, that person may appeal to the college president. All information regarding the complaint shall be forwarded to the president by the affirmative action officer, and the complainant or respondent may submit any further information desired. The president shall, within ten working days, communicate in writing to the complainant or respondent a decision, with a copy to the affirmative action officer. Again, the time may be extended by mutual agreement. The decision of the president shall be the college's final decision.) Peninsula College provides equal opportunity in education and employment and does not discriminate on the basis of race, color, national origin, age, perceived or actual physical or mental disability, pregnancy, genetic information, sex, sexual orientation, gender identity, marital status, creed, religion, honorably discharged veteran or military status, or use of a trained guide dog or service animal, as required by Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, Sections 504 and 508 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and ADA Amendment Act, the Age Discrimination Act of 1975, the Violence Against Women Reauthorization Act, and Washington state law against discrimination, chapter 49.60 RCW and their implementing regulations. Employees are also protected from discrimination for filing a whistleblower complaint with the Washington state auditor.

(1) Definitions.

(a) Harassment: A form of discrimination consisting of physical or verbal conduct that denigrates or shows hostility toward individuals 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 substantially interferes with the individual's employment, education, or access to college programs, activities and opportunities.

(b) 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.

(c) Sexual violence. "Sexual violence" is a type of sexual discrimination and harassment. Nonconsensual sexual intercourse, nonconsensual sexual contact, domestic violence, dating violence, and stalking are all types of sexual violence.

(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.

(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.

(2) Designees. The following college officials are designated to handle inquiries regarding this policy:

Title: Director of Human Resources, Title IX/EEO Coordinator

Contact: titleixcrd@pencol.edu

Address: 1502 E. Lauridsen Blvd.
Port Angeles, WA 98362

Phone: 360-417-6212

Title: Director of Financial Aid and Enrollment Services, Title IX/EEO Deputy Coordinator

Contact: titlexdcrd@pencol.edu

Address: 1502 E. Lauridsen Blvd.

Port Angeles, WA 98362

Phone: 360-417-6393

AMENDATORY SECTION (Amending WSR 99-15-072, filed 7/20/99, effective 8/20/99)

WAC 132A-350-020 (~~(Grievance procedure—Sexual harassment, sex discrimination.))~~ **Discrimination and harassment complaint procedure.** ~~((+) Preamble. It is the policy of Peninsula College to provide an environment in which employees can work free from sexual harassment and sexual intimidation. Sexual harassment is a form of sex discrimination. As such it is a violation of Title VII of the 1964 Civil Rights Act and Title IX of the 1972 Education Amendments.~~

~~(2) **Definitions.** Sexual harassment of an employee is defined as unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct when:~~

~~(a) Submission to the conduct is either explicitly or implicitly a term or condition of an individual's education, employment or career advancement; and/or~~

~~(b) Submission to or rejection of such conduct by an individual is used as the basis for education or employment decisions or any other decisions affecting that individual; and/or~~

~~(c) Such conduct has the purpose or effect of unreasonably interfering with an individual's education or work or has the effect of creating an intimidating, hostile, or offensive environment.~~

~~(3) **Procedure.** A person who believes he or she has experienced gender discrimination or sexual harassment in the college environment may discuss the issue with a gender equity advisor who will help the claimant determine whether to proceed with mediation, formal hearing, or appeal. The advising process shall be designed to promote free discussion between the claimant and the advisor. Every attempt shall be made to protect the privacy of the individuals during the advising process.~~

~~(a) **Mediation.** After the advising process the claimant may request mediation among parties involved in his or her grievance. Both parties have the option to bring a support person to the mediation. A mutually agreed upon mediator will be selected from a list of mediators appointed by the president.~~

~~(b) **Formal hearing.** Any party may request a formal hearing by submitting a claim on Peninsula College's Complaint/Grievance Form to the affirmative action officer, who shall forward the claim to the sexual harassment investigative team appointed by the president and composed of classified student, faculty, and administrative representatives. At the conclusion of the investigation, the investigative team shall issue a written report which will include recommendations to the claimant, the respondent, and the college president. All parties are entitled to legal representation.~~

~~(c) **Appeal.** The claimant and respondent are entitled to file an appeal in writing to the college president within ten~~

~~working days following receipt of the formal hearing report. Within ten working days after receipt of the written appeal, the college president shall conduct an appeal hearing and report the findings in writing to both the claimant and respondent. The decision of the college president shall be the college's final decision.))~~ Peninsula 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, or honorably discharged veteran or military status, or use of trained guide dog or service animal, as required by Titles VI and VII of the Civil Rights Act of 1964, Title IX of the Educational Amendments of 1972, Sections 504 and 508 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and ADA Amendment Act, the Age Discrimination Act of 1975, the Violence Against Women Reauthorization Act, and Washington state law against discrimination, chapter 49.60 RCW and their implementing regulations. Employees are also protected from discrimination for filing a whistleblower complaint with the Washington state auditor. To this end, Peninsula College has enacted policies prohibiting discrimination against any 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. Any employee, student, applicant, or visitor who believes that he or she has been the subject of discrimination or harassment should report the incident or incidents to the college's Title IX/EEO coordinator/deputy identified below. If the complaint is against that coordinator/deputy, the complainant should report the matter to the president's office for referral to an alternate designee.

The college encourages the timely reporting of any incidents of discrimination or harassment. Complaints may be submitted in writing or verbally. For complainants who wish to submit a written complaint, a formal complaint form is available online at <http://www.pencol.edu/student-rights-and-policies/informational-stop-discrimination>. Hardcopies of the complaint form are available in the human resource office, C34.

Role of the Title IX/EE Coordinator and/or Deputy Coordinator:

Title: Title IX/EEO Coordinator

Contact: titlexdcrd@pencol.edu

Address: 1502 E. Lauridsen Blvd.

Port Angeles, WA 98362

Phone: 360-417-6393

Title: Title IX/EEO Deputy Coordinator

Contact: titlexdcrd@pencol.edu

Address: 1502 E. Lauridsen Blvd.

Port Angeles, WA 98362

Phone: 360-417-6393

The Title IX/EEO Coordinator/Deputy Coordinator or 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; and
- May recommend specific corrective measures to stop, remediate, and prevent the recurrence of inappropriate conduct.

(1) Definitions.

(a) Complainant: Employee(s), applicant(s), student(s), or visitor(s) of Peninsula 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: Conduct that 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. Harassment is a form of discrimination.

(e) Harassment: A form of discrimination consisting of physical or verbal conduct that denigrates or shows hostility toward individuals 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:

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

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

• Making, posting, e-mailing, texting, or otherwise circulating demeaning or offensive pictures, cartoons, graffiti, notes or other materials that relate to race, ethnic origin, gender or any other protected class.

(f) Protected class: 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.

(j) 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 violence in a dating and/or domestic relationship. 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 causes.

(2) Who may file a complaint. Any employee, applicant, student, or visitor of Peninsula 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.pencol.edu/student-rights-and-policies/informational-stop-discrimination>. Hardcopies

of the complaint form are available at the human resource office. C34. Any person submitting a discrimination complaint shall be provided with a written copy of the college's antidiscrimination policies and procedures.

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

(a) Confidentiality requests and sexual violence complaints: The Title IX/EEO coordinator/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 Title IX/EEO coordinator/designee will inform the complainant that maintaining confidentiality may limit the college's ability to respond fully to the allegations and that retaliation by the respondent and/or others is prohibited. If the complainant still insists that his or her name not be disclosed or that the college not investigate, the Title IX/EEO coordinator/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.

(b) Factors to be weighed during this determination may include, but are not limited to:

- (i) The seriousness of the alleged sexual violence;
- (ii) The age of the complainant;
- (iii) Whether the sexual violence was perpetrated with a weapon;
- (iv) Whether the respondent has a history of committing acts of sexual violence or violence or has been the subject of other sexual violence complaints;
- (v) Whether the respondent threatened to commit additional acts of sexual violence against the complainant or others; and
- (vi) Whether relevant evidence can be obtained through other means (e.g., security cameras, other witnesses, physical evidence).

If the college is unable to honor a complainant's request for confidentiality, the Title IX/EEO coordinator/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 Title IX/EEO coordinator/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.

(4) Investigation procedure. Upon receiving a discrimination complaint, the college shall commence an impartial

investigation. The Title IX/EEO coordinator/designee shall be responsible for overseeing all investigations. Investigations may be conducted by the Title IX/EEO coordinator or his or her designee. If the investigation is assigned to someone other than the Title IX/EEO coordinator, the Title IX/EEO coordinator/designee shall inform the complainant and respondent(s) of the appointment of an investigator.

(a) Interim measures: The Title IX/EEO coordinator/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 reasonable time, normally sixty days barring exigent circumstances. At the conclusion of the investigation, the investigator shall set forth his or her findings and recommendations in writing. If the investigator is a designee, the investigator shall send a copy of the findings and recommendations to the Title IX/EEO coordinator/designee. The Title IX/EEO coordinator/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 Title IX/EEO coordinator/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. The complainant shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint, if any, only to the extent that such findings, actions, or recommendations directly relate to the complainant, such as a finding that the complaint is or is not meritorious or a recommendation that the accused not contact the complainant. The complainant may be notified generally that the matter has been referred for disciplinary action. The respondent shall be informed in writing of the findings and of actions taken or recommended to resolve the complaint and shall be notified of referrals for disciplinary action. Both the complainant and the respondent are entitled to review any final findings, conclusions, and recommendations, subject to any FERPA confidentiality requirements.

(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 and/or reconsideration: Either the complainant or the respondent may seek reconsideration of the decision by the Title IX/EEO coordinator/designee. Requests for reconsideration shall be submitted in writing to the Title IX/EEO coordinator/designee within seven calendar 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 calendar days, the decision becomes final. If a request for reconsideration is received, the college president or designee shall respond within fourteen calendar days. The president or designee shall either deny the request or, if the president or designee determines that the request for reconsideration has merit, issue an amended decision. Any amended decision is final and no further reconsideration is available.

(5) 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.

(6) Limits to authority. Nothing in this procedure shall prevent the college president or designee from taking immediate disciplinary action in accordance with Peninsula College policies and procedures, and federal, state, and municipal rules and regulations.

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

(8) Criminal complaints. Discriminatory or harassing conduct may also be, or occur in conjunction with, criminal conduct. Criminal complaints may be filed with the following law enforcement authorities:

City of Port Angeles Police Department

321 East 5th Street

Port Angeles, WA 98362

Phone: 360-452-4545

<http://wa-portangeles.civicplus.com/288/Police-Department>

City of Forks Police Department

500 East Division Street

Forks, WA 98331

Phone: 360-374-2223

<http://forkswashington.org/police-and-corrections>

City of Port Townsend Police Department

1925 Blain Suite 100

Port Townsend, WA 98368

Phone: 360-385-2322

<http://cityofpt.us/police.htm>

Clallam County Sheriff Department

223 East 4th Street

Port Angeles, WA 98362

Phone: 360-417-2459

<http://www.clallam.net/sheriff/>

Jefferson County Sheriff Department

79 Elkins Road

Port Hadlock, WA 98339

Phone: 360-385-3831

<http://www.jeffersonsheriff.org/>

The college will proceed with an investigation of harassment and discrimination complaints regardless of whether the underlying conduct is subject to civil criminal prosecution.

(9) 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. Dept. of Education Office for Civil Rights

<http://www2.ed.gov/about/offices/list/ocr/index.html>

Equal Employment Opportunity Commission

<http://www.eeoc.gov/>

AMENDATORY SECTION (Amending WSR 99-15-072, filed 7/20/99, effective 8/20/99)

WAC 132A-350-040 Reasonable accommodations/academic adjustment for persons with disabilities. ((Persons with disabilities have the right to request reasonable accommodations/academic adjustments that:

(1) Are necessary to ensure that employment/academic requirements do not discriminate based on disability or have the effect of discriminating based on disability against a qualified individual; and

(2) Do not impose an undue hardship on the college or require alteration of essential program requirements-)) Peninsula College shall provide to individuals qualifying with a disability an equal opportunity to access the benefits, rights, and privileges of college services, programs, activities, and employment in the most integrated setting appropriate to the individual's needs, in compliance with the Americans with Disabilities Act (ADA) of 1990, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act Amendment Act (ADAAA) of 2008, the state of Washington laws against discrimination, and appropriate collective bargaining agreements. No individual shall, based on disability, be excluded from participation in, be denied the benefits of, or

otherwise be subject to discrimination in any program or activity.

In accordance with the ADAAA of 2008, persons with disabilities have the right to request and receive reasonable accommodations that:

(1) Are necessary to ensure that employment/academic requirements do not discriminate or have the effect of discriminating against a qualified individual with a disability based on that disability; and

(2) Do not impose an undue hardship on the college or require alteration of academic requirements demonstrated as essential to the program of instruction being pursued.

It shall be the obligation of the individual with a disability to request reasonable accommodation.

AMENDATORY SECTION (Amending WSR 99-15-072, filed 7/20/99, effective 8/20/99)

WAC 132A-350-045 Definitions. ~~((1) Academic adjustment means modifications to academic requirements as necessary to ensure that such requirements do not discriminate against students with disabilities or have the effect of excluding a student solely on the basis of a disability.~~

~~(2) Individual with a disability is a student, employee, applicant, or visitor who has a physical, mental or sensory impairment that substantially limits one or more major life activities, has a record of such an impairment, is perceived to have such an impairment, or has an abnormal condition that is capable of being medically diagnosed.~~

~~(3) Reasonable accommodations means modifications or adjustments to academic procedures and job or work environment, policies, or practices that enable qualified individuals with disabilities to enjoy equal opportunities.)~~ **Essential functions:** The fundamental job duties of the position that the individual with a disability holds or desires.

Essential requirements: The fundamental student learning outcomes and course curriculum requirements or activities.

Qualified student: A student with a disability who, with or without reasonable accommodations, meets the academic and technical standards required for admission to, participation in, and/or fulfills the essential requirements of college programs or activities.

Qualified employee: An employee with a disability who meets the skill, experience, education, and other job related requirements for the position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of the job.

AMENDATORY SECTION (Amending WSR 99-15-072, filed 7/20/99, effective 8/20/99)

WAC 132A-350-050 Reasonable accommodations/academic adjustment disputes. ~~((The college shall not be mandated to furnish the requested accommodation, but will confer with the requester in an effort to achieve reasonable appropriate accommodations. If an individual believes the special needs coordinator or the counselor for students with disabilities has not identified or provided reasonable accommodations/academic adjustment or auxiliary aids, the individual may seek review of the action by contacting the vice~~

~~president of educational services for academic adjustments or the vice president of administrative services for reasonable accommodations. The individual shall submit the appeal in writing to the appropriate vice president. The vice president shall review the individual's position and respond within five working days. If resolution is not reached, the vice president will refer the appeal to the college president. The president shall review the dispute and make recommendations in writing for appropriate resolution. The decision of the president shall be the final decision.))~~ Reasonable accommodation shall be provided to any qualified individual with a disability for accessing the benefits, rights and privileges of college services, programs, activities, and employment in the most integrated setting appropriate to the individual's needs. Employees and campus visitors should go to the human resources office to request reasonable accommodation. Enrolled students should go to the services for students with disabilities office to request reasonable accommodation.

(1) Reasonable accommodation

Any individual who requests reasonable accommodation shall:

(a) Provide timely notice and documentation of the nature and extent of the disability and the accommodation requested to the college's disability support staff. Since some accommodation may require considerable time to arrange, requests should be made well in advance of need. Lack of advance notice may delay the availability of an accommodation.

(b) Provide any additional documentation on the nature and extent of the disability that the college may require in order to determine appropriate accommodation. This may include a second opinion from a health care professional of the college's choosing and at the college's expense.

(c) Cooperate with the college's disability support staff to develop an appropriate plan for reasonable accommodation. The individual must:

(i) Accept the plan as developed. Any problems encountered in receiving the agreed-upon accommodation must be promptly reported to the college's disability support staff (human resources office for employees and campus visitors/services for students with disabilities office for students); or

(ii) Decline the proposed accommodation. If the individual refuses an accommodation and cannot perform the essential function of the job/program without the accommodation, the individual may not be considered a qualified individual with a disability.

(2) Process of accommodation

(a) For employees or applicants for employment:

(i) Essential job functions shall be determined when a position is established, when it becomes vacant, or when duties are changed. The process of selecting reasonable accommodation for each qualified individual with a disability shall be made on a case-by-case basis, appropriate to the essential job functions of the position and the nature and extent of the individual's disability.

(ii) Possible accommodation shall be developed jointly with the individual requesting accommodation and the disability support staff. If there are two or more effective accommodations that would allow the individual with a disability to perform the essential job functions, the college shall consider

the preference of the individual with a disability before selecting the accommodation(s) to be provided.

(iii) When an accommodation in an employee's present position is not reasonable or would cause an undue hardship, the college shall attempt to accommodate the employee through reassignment to another vacant position, at the same pay range or lower, for which the employee is qualified. The employee is responsible for identifying types of jobs he/she is interested and qualified for and shall work on the accommodation with human resources.

(b) For students: Possible accommodation shall be developed jointly with the person requesting accommodation and the services for students with disabilities office. The request for accommodation must be made to the services for students with disabilities office. The process of selecting accommodation(s) for each qualified student with a disability shall be made on a case-by-case basis, appropriate to the nature and extent of the student's qualified disability.

(3) Course equivalency

The college recognizes that certain disabilities may preclude a student from successfully completing a specific course requirement for a degree even when reasonable accommodation(s) are in place. The college recognizes its obligation to accommodate students with disabilities without compromising the integrity of the academic program. Therefore, every student enrolled in a degree program is required to meet the academic requirements demonstrated as essential to the program of instruction being pursued.

The college recognizes that altered methods of course delivery and/or providing reasonable accommodations will enable most students with disabilities to successfully complete course requirements except in unusual circumstances. Once given reasonable accommodation(s), the student must attempt to complete the required course. If the student attempted and was unable to complete the course, the student may request a course equivalency under this procedure.

Course equivalency shall only be approved when such equivalency is consistent with the academic requirements demonstrated as essential to the program of instruction being pursued. Requests for equivalency for a required course shall only be considered when a qualified student with a disability has demonstrated that, even with accommodations provided by the college, the student is unable to complete the course solely because of a disability.

All requests for course equivalency shall be submitted to the services for students with disabilities office within a year from the academic quarter that the course was attempted and shall include the following information:

(a) A description of the accommodations previously provided to the student for the course;

(b) An explanation of the relationship of the student's disability to the lack of success in completing the course;

(c) A proposed substitute course, if known;

(d) A statement by the student that a good faith effort has been made to complete the required course with accommodations; and

(e) A release signed by the student, authorizing the special needs academic advisory committee to review the documentation on the student's disability and to contact the evaluating doctor or psychologist.

The dean of student services shall forward the request, with documentation, for review by the special needs academic advisory committee.

(4) Special needs academic advisory committee

All requests for course equivalency shall be submitted to the special needs academic advisory committee. The student or designated advocate requesting equivalency shall have an opportunity to address the committee.

The special needs academic advisory committee is comprised of the following:

- An instructional services administrator;

- A faculty member from the department in which the course is offered;

- A faculty member from a department other than the department in which the course is offered;

- A student services administrator; and

- A representative of the services for students with disabilities office.

Requests for course equivalency shall be approved if the committee agrees that the student has made a good faith effort to complete the required course with accommodations and if the proposed equivalency meets the learning objectives of the degree requirement.

The committee shall respond in writing to all requests for course equivalency within ten instructional days after receiving the request. The decision of the special needs academic advisory committee may be appealed to a senior level administrator within fifteen instructional days after receiving the decision to review it was not arbitrary or capricious. The decision of the senior level administrator's review is the final decision of the college.

(5) Reasonable assurance disputes

It is recommended but not required, that student and/or employee complainants who disagree with an accommodation request a review of the accommodation given or not given by first attempting, via an informal meeting to resolve the issue in the following manner, before seeking the formal grievance procedure in the following manner:

(a) Informal meeting. In an attempt to informally resolve the dispute, the complainant may request a meeting with the employee believed to have not been provided the reasonable accommodation or to request a meeting with the employee's supervisor or in his/her absence, a person designated by the president.

(b) Formal grievance procedure. If a complainant believes the human resources officer (for employees), the coordinator for students with disabilities, or an employee of the college, has not identified and/or has not provided reasonable accommodations, the complainant may seek review of the action by contacting the employee's supervisor. In this case, the following formal grievance procedure will be followed:

(i) The complainant will submit a written appeal to the supervisor within ninety calendar days of the incident(s);

(ii) The supervisor will review the complainant's position, and respond within five working days;

(iii) The response will be the decision of the college, or a notification that the college will need additional time to come to a decision and the amount of time needed to respond;

(iv) If resolution is not reached by the complainant and the supervisor, the supervisor will refer the appeal to his/her appropriate administrator.

(v) The senior level administrator will review the dispute and make recommendations in writing for appropriate resolution.

The decision of the senior level administrator is the final decision of the college. If desired, inquiries or appeals beyond the institutional level may be directed to:

Equal Employment Opportunity Commission at 800-669-4000

Washington State Human Rights Commission at 800-233-3247

Office of Civil Rights, Department of Education at 206-220-7900

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 132A-350-030 Disciplinary action.

WSR 15-21-087
PROPOSED RULES
UTILITIES AND TRANSPORTATION
COMMISSION

[Docket TE-151080—Filed October 21, 2015, 8:43 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-13-130.

Title of Rule and Other Identifying Information: The party bus rule making in Docket TE-151080 proposes rules limited to the provisions of SSB 5362, passed and signed into law in the 2015 legislative session. The rule making affects chapter 480-30 WAC relating to charter bus companies; specifically,

- Defines "party bus."
- Removes the current exemption for buses operating within a single city.
- Regulates alcohol served or consumed on party buses.
- Prohibits smoking on charter buses.
- Changes the due date for charter bus regulatory fees.
- Defines charter party services to include certain advertising activities.
- Allows a penalty up to \$5,000 for operating without a permit.

Hearing Location(s): Commission Hearing Room 206, Second Floor, Richard Hemstad Building, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504-7250, on December 15, 2015, at 9:30 a.m.

Date of Intended Adoption: December 15, 2015.

Submit Written Comments to: Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., P.O. Box 47250, Olympia, WA 98504-7250, e-mail records@utc.wa.gov, fax (360) 586-1150, by November

23, 2015. Please include "Docket TE-151080" in your comments.

Assistance for Persons with Disabilities: Contact Debbie Aguilar by December 1, 2015, TTY (360) 586-8203 or (360) 664-1132.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules implement the provisions of SSB 5362. Under chapter 81.70 RCW, the Washington utilities and transportation commission (commission) regulates passenger charter bus carriers operating within Washington state for public safety. The 2015 legislature passed legislation (SSB 5362) requiring chapter 81.70 RCW to include transportation of persons by party bus over any public highway within the state as a charter party carrier.

- If alcoholic beverages are served or consumed aboard a charter party carrier vehicle, a responsible party must first obtain a liquor permit. The holder of the permit must be on the vehicle or reasonably proximate and available, must monitor and control party activities to prevent driver distraction and assume responsibility for compliance with the alcohol permit. If the carrier is the permit holder, then the carrier must have a person other than the driver satisfy the alcohol permit holder requirements. If the carrier believes the conditions aboard the vehicle are unsafe, the carrier must remove all alcoholic beverages and lock them in the trunk or other compartment. Any carrier violating these provisions is subject to a penalty up to \$5,000.
- A carrier may not knowingly allow any passenger to smoke aboard a carrier's vehicle. Smoke is defined in RCW 70.160.202 as the carrying or smoking of any kind of lighted pipe, cigar, cigarette, or any other lighted smoking equipment.
- Engaging in the business of a charter party carrier or excursion service carrier is clarified to include certain advertising activities. Engaging in the business without a valid UTC certificate could result in a penalty up to \$5,000 per violation.
- Fees paid to the commission under this chapter must be submitted by May 1 rather than December 31 of any calendar year.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: Chapters 81.04, 81.70 RCW; specifically, RCW 81.70.020, 81.70.030, 81.70.220, 81.70.260, 81.70.270, 81.70.320, 81.70.350, and 81.70.360.

Statute Being Implemented: Not applicable.

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

Name of Proponent: Washington utilities and transportation commission, governmental.

Name of Agency Personnel Responsible for Drafting: Suzanne Stillwell, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1224; Implementation and Enforcement: Steven V. King, 1300 South Evergreen Park Drive S.W., Olympia, WA 98504, (360) 664-1115.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules will not result in or impose more than minor costs. Because there

will not be more than minor increases in costs resulting from the proposed rule changes, a small business economic impact statement is not required under RCW 19.85.030(1).

A cost-benefit analysis is not required under RCW 34.05.328. The commission is not an agency to which RCW 34.05.328 applies. The proposed rules are not significant legislative rules of the sort referenced in RCW 34.05.328(5).

October 21, 2015
Steven V. King
Executive Director
and Secretary

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

WAC 480-30-011 Exempt operations. ~~((+))~~ The commission does not regulate the following passenger transportation operations under this chapter:

~~((a))~~ Operations conducted wholly within the limits of an incorporated city or town.

~~((b))~~ (1) Auto transportation company operations from a point in a city or town in the state of Washington for a distance of not more than three road miles beyond the corporate limits of the city or town in which the trip began. The operations must not be part of a journey beyond the three-mile limit, either alone or in conjunction with another vehicle or vehicles.

~~((c))~~ (2) Commuter ride sharing or ride sharing for persons with special transportation needs under RCW 46.74.-010, provided the ride-sharing operation does not compete with nor infringe upon comparable service that was actually provided by an auto transportation company under chapter 81.68 RCW before the ride-sharing operation started.

~~((d))~~ (3) Municipal corporations and other government entities.

~~((e))~~ (4) Public transit agencies.

~~((f))~~ (5) Persons operating vehicles under exclusive contract to a public transit agency.

~~((g))~~ (6) Persons owning, operating, controlling, or managing taxi cabs, hotel buses, or school buses, when operated as such.

~~((h))~~ (7) Passenger vehicles carrying passengers on a noncommercial basis, including but not limited to, nonprofit corporations.

~~((i))~~ (8) Private carriers who, in their own vehicles, transport passengers as an incidental adjunct to some other established private business owned or operated by them in good faith.

~~((j))~~ (9) Transporting transient air flight crew or in-transit airline passengers between an airport and temporary hotel accommodations under an arrangement between the airline carrier and the passenger transportation company.

~~((k))~~ (10) Substituting ground transportation for air transportation under an arrangement between the airline carrier and the passenger transportation company in emergency situations arising from the inability of the air carrier to perform air transportation due to adverse weather conditions, equipment failure, or other causes.

~~((l))~~ (11) Transporting passengers who have had or will have had a prior or subsequent movement by air under a

through ticket or common arrangement with an airline or with a connecting out-of-state passenger transportation company.

~~((m))~~ (12) Any other carrier or company that does not come within the term:

~~((+))~~ (a) "Auto transportation company" as defined in RCW 81.68.010;

~~((+))~~ (b) "Charter party carrier ~~((of passengers))~~" as defined in RCW 81.70.020; or

~~((+))~~ (c) "Excursion service carrier" as defined in RCW 81.70.020.

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

WAC 480-30-036 Definitions, general. (1) See WAC 480-30-261 for definition of terms used primarily in tariffs and time schedules and WAC 480-30-216 for definitions used in driver and vehicle safety rules.

(2) Unless the language or context indicates that a different meaning is intended, the following definitions apply:

"**Agent**" means a person authorized to transact business for, and in the name of, another.

"**Airporter service**" means an auto transportation service that starts or ends at a station served by another type of transportation such as, air or rail transportation. Airporter service is often a premium service that involves handling luggage. Although stops may be made along the way, they are usually limited to picking up or discharging passengers, luggage, and/or express freight bound to or from the airport or depot served.

"**Alternate arrangements for passengers**" means the travel arrangements made by an auto transportation company that has accepted a trip booking or reservation from a passenger and that is unable to provide the agreed transportation. The alternate arrangements may require travel by another carrier or mode of transportation at no additional cost to the passenger beyond what the passenger would have paid for the original transportation arrangement.

"**Application docket**" means a commission publication providing notice of all applications requesting auto transportation operating authority, with a description of the authority requested. The commission sends this publication to all persons currently holding auto transportation authority, to all persons with pending applications for auto transportation authority, to affected local jurisdictions or agencies, and to all other persons who asked to receive copies of the application docket.

"**Area**" means a defined geographical location. Examples include, but are not limited to:

(a) A specified city or town;

(b) A specified county, group of counties, or subdivision of the state, e.g., western Washington;

(c) A zone, e.g., company designated territory; or

(d) A route, e.g., area within four road miles of Interstate 5.

"**Auto transportation company**" means every person owning, controlling, operating, or managing any motor-propelled vehicle not usually operated on or over rails, used in the business of transporting persons over any public highway

in this state between fixed termini or over a regular route, and not operating exclusively within the incorporated limits of any city or town.

"Between fixed termini or over a regular route" means the fixed points between which an auto transportation company provides service or the route over which an auto transportation company ordinarily operates any motor-propelled vehicle, even though there may be variance whether the variance is periodic or irregular.

"Bus" means a motor vehicle designed, constructed, and/or used for the transportation of passengers.

"Business days" means days of the week excluding Saturdays, Sundays, and official state holidays.

"By-reservation-only service" means transportation of passengers by an auto transportation company, with routes operated only if passengers have made prior reservations.

"Certificate" means:

(a) The certificate of public convenience and necessity issued by the Washington utilities and transportation commission under the provisions of chapter 81.68 RCW to operate as an auto transportation company; or

(b) The certificate issued by the Washington utilities and transportation commission under chapter 81.70 RCW to operate as a charter and excursion carrier in the state of Washington.

"Certificated authority" means:

(a) The territory and services granted by the commission and described in an auto transportation company's certificate of public convenience and necessity; or

(b) Operations in the state of Washington for charter and excursion service carriers.

"Charter party carrier ((of passengers))" or "charter carrier" means every person engaged in the transportation of a group of persons who, pursuant to a common purpose and under a single contract, have acquired the use of a motor bus to travel together as a group to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartering group after having left the place of origin, or who is engaged in the transportation of persons by party bus over any public highway in this state.

"Claim" means a demand made on a company for payment resulting from a loss sustained through the company's negligence or for inadequate service provided by the company.

"Closed-door service" means a portion of a route or territory in which an auto transportation company is not allowed to pick up or deliver passengers. Closed-door service restrictions must be clearly stated in an auto transportation company's certificate.

"Common purpose" means that a group of persons is traveling together to achieve a common goal or objective. For example, a group of persons traveling together to attend a common function or to visit a common location. For the purposes of these rules it does not mean a group of persons who have no common goal other than transportation to, or from, the airport.

"Commission" means the Washington utilities and transportation commission.

"Common carrier" means any person who transports passengers by motor vehicle over the public highways for compensation.

"Company" means an entity authorized by the commission to transport passengers, for compensation, using a motor vehicle, over the public highways of the state.

"Complaint" means one of two types of actions by a person against a passenger transportation company that the commission regulates:

(a) **"Informal complaints"** are those complaints filed with the commission under the provisions of WAC 480-07-910. Informal complaints are normally investigated and resolved by commission staff.

(b) **"Formal complaints"** are those complaints filed with the commission under the provisions of WAC 480-07-370. In a formal complaint, the burden of proof resides with the complaining party who must prove its assertions in a formal commission proceeding.

"Connecting service" means an auto transportation company service over a route, or routes, that require passengers to transfer from one vehicle to another vehicle operated by either the same company or a different company before reaching the ending point.

"Contract carrier" means a person holding a certificate issued by the commission authorizing transportation of passengers under special and individual contracts or agreements.

"Customer" means a person who purchased transportation services from an auto transportation company or a person, corporation, or other entity that prearranges for transportation services with a charter party carrier or purchases a ticket for transportation services aboard an excursion service carrier.

"Direct route" means an auto transportation company service over a route that goes from the beginning point to the ending point with limited, if any, stops along the way, and traveling only to points located on the specific route without requiring a passenger to transfer from one vehicle to another.

"Discontinuance of service":

(a) **"Permanent discontinuance of service"** means that a company holding auto transportation authority issued by the commission is unable to continue to provide all, or part of, the service authorized by the company's certificate, filed tariff, or filed time schedule and requests commission permission to permanently discontinue all, or part of, its service and relinquish that certificate or portion of that certificate. See WAC 480-30-186.

(b) **"Temporary discontinuance of service"** means that a company holding auto transportation authority issued by the commission is unable to continue to provide all, or part of, the service authorized by the company's certificate, filed tariff, or filed time schedule and requests commission permission to discontinue all, or part of, its service for a specified, limited period of time.

"Door-to-door service" means an auto transportation company service provided between a location identified by the passenger and a point specifically named by the company in its filed tariff and time schedule.

"Double-decker bus" means a motor vehicle with more than one passenger deck.

"Excursion service carrier" or "excursion carrier" means every person engaged in the transportation of persons for compensation over any public highway in the state from points of origin within any city, town, or area, to any other location within the state of Washington and returning to that origin. The service will not pick up or drop off passengers after leaving and before returning to the area of origin. The excursions may or may not be regularly scheduled. Compensation for the transportation offered must be computed, charged, or assessed by the excursion service company on an individual fare basis.

"Express freight/package service" means transportation of freight and packages, other than packages or baggage carried or checked by passengers, offered by a passenger transportation company.

"Express passenger service" means auto transportation company service provided between fixed points or stations with few, if any, stops along the route, and is designed to get passengers from origin to destination more quickly than normally scheduled passenger service.

"Federal Motor Carrier Safety Administration" means an agency of the United States Department of Transportation (USDOT) and successor agency to the former Interstate Commerce Commission.

"Filing" means any application, petition, tariff proposal, annual report, comment, complaint, pleading, or other document submitted to the commission.

"Fixed termini" means points of origin and destination that are set, static locations or defined geographic areas. Examples include a city or town, a building or an airport. In addition "fixed termini" can include service between an airport and unlimited points within a defined geographic area.

"Flag stops" means a point along an auto transportation company's normally traveled routes where the company stops only if it receives notification that a passenger wishes to board the vehicle at that point. An auto transportation company must list available flag stops in the company's tariffs and time schedules. Flag stops may only be named at points that provide waiting passengers safe access to the vehicle.

"Group" means:

- (a) Two or more passengers traveling together;
- (b) A class of passengers to whom special rates and/or rules apply. For example, active military personnel.

"Intermediate point" means a point located on a route between two other points that are specifically named in an auto transportation company's certificate or tariff.

"Intermediate service" means service to an intermediate point.

"Interruption in service" means a period of time during which an auto transportation company cannot provide service listed in its certificate, its filed tariff, or its filed time schedule. An interruption in service is normally short lived, lasting no more than a few hours or a few days.

"Leasing":

(a) **"Leasing authority"** means one auto transportation company allowing another person to operate all, or a portion, of the authority granted to the first company by the commission. A joint application to, and approval from, the commission is required to lease authority. See WAC 480-30-141.

(b) **"Leasing equipment"** means the act of a passenger transportation company to supplement its fleet by acquiring a vehicle(s) from a third party for a specified period of time under contract. See WAC 480-30-236.

"Liquor permit holder" means a holder of an appropriate special permit to provide liquor issued under chapter 66.20 RCW, who is twenty-one years of age or older and who is responsible for compliance with the requirements of WAC 480-30-244 and chapter 66.20 RCW during the provision of transportation services.

"Motor vehicle" or "vehicle" means:

(a) As related to auto transportation companies: Every self-propelled vehicle used on the public highways, for the transportation of persons for compensation.

(b) As related to charter and excursion carriers: Every self-propelled vehicle with a manufacturer's seating capacity for eight or more passengers, including the driver, used on the public highways, for the transportation of persons for compensation.

"Named points" means cities, towns, or specific locations that are listed in an auto transportation company's certificate, tariff, or time schedule.

"Nonstop service" means transportation of passengers from point of origin to point of destination without stopping at any intermediate points.

"On-call service" means unscheduled auto transportation company service provided only to those passengers that have by prior arrangement requested service prior to boarding.

"Party bus" means any motor vehicle whose interior enables passengers to stand and circulate throughout the vehicle because seating is placed around the perimeter of the bus or is nonexistent and in which food, beverages, or entertainment may be provided. A motor vehicle configured in the traditional manner of forward-facing seating with a center aisle is not a party bus.

"Passenger facility" means a location at which an auto transportation company stations employees and at which passengers can purchase tickets or pay fares for transportation service.

"Passenger transportation company" means an auto transportation company or charter and excursion carrier.

"Person" means an individual, firm, corporation, association, partnership, lessee, receiver, trustee, consortium, joint venture, or commercial entity.

"Premium service" means a type of service provided by an auto transportation company that is outside normal service. Examples include express service, direct route service, and nonstop door-to-door service.

"Private carrier" means a person who transports passengers in the person's own vehicle purely as an incidental adjunct to some other established private business owned or operated by that person in good faith.

"Private motor vehicle" means a vehicle owned or operated by a private carrier.

"Public highway" means every street, road, or highway in this state.

"Public transit agency" means a municipal corporation or agency of state or local government formed under the laws of the state of Washington for the purpose of providing trans-

portation services including, but not limited to, public transportation benefit areas, regional transit authorities, municipal transit authorities, city and county transit agencies.

"Residence" means the regular dwelling place of an individual or individuals.

"Route" means a highway or combination of highways over which an auto transportation company provides passenger service. There are two types of routes:

(a) **"Irregular route"** means travel between points named in an auto transportation company's certificate via any highway or combination of highways the company wishes to operate over. The certificate issued to the company does not list highways to be used, but the company defines routes in its tariffs and time schedules.

(b) **"Regular route"** means an auto transportation company providing passenger transportation over a route named in the certificate issued to the company by the commission.

"Scheduled service" means an auto transportation company providing passenger service at specified arrival and/or departure times at points on a route.

"Single contract" means an agreement between a charter carrier and a group of passengers to provide transportation services at a set price for the group or trip. Under a single contract, passengers are not charged individually.

"Small business" means any company that has fifty or fewer employees.

"Special or promotional fares" means temporary fares for specific services offered for no more than ninety days.

"State" means the state of Washington.

"Subcontracting - Auto transportation company" means that an auto transportation company holding authority from the commission contracts with a second auto transportation company to provide service that the original company has agreed to provide, but finds it is unable to provide. See WAC 480-30-166.

"Subcontracting - Charter and excursion carrier" means that a charter and excursion carrier holding authority from the commission contracts with a second charter and excursion carrier to provide service that the original carrier has agreed to provide, but finds it is unable to provide.

"Substitute vehicle" means a vehicle used to replace a disabled vehicle for less than thirty days.

"Suspension" means an act by the commission to temporarily revoke a company's certificated authority; or an act by the commission to withhold approval of an auto transportation company's tariff filing.

"Tariff" or "tariff schedule" means a document issued by an auto transportation company containing the services provided, the rates the company must assess its customers for those services, and the rules describing how the rates apply.

"Tariff service territory" means a company-defined geographic area of its certificated authority in which a specific tariff applies.

"Temporary certificate" means the certificate issued by the Washington utilities and transportation commission under RCW 81.68.046 to operate as an auto transportation company for up to one hundred eighty days or pending a decision on a parallel filed auto transportation company certificate application.

"Temporary certificate authority" means the territory and services granted by the commission and described in an auto transportation company's temporary certificate.

"Ticket agent agreements" means a signed agreement between an auto transportation company and a second party in which the second party agrees, for compensation, to sell tickets to passengers on behalf of the auto transportation company. See WAC 480-30-391.

"Time schedule" means a document filed as part of an auto transportation company's tariff, or as a separate document, that lists the routes operated by the company including the times and locations at which passengers may receive service and any rules specific to operating those routes.

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

WAC 480-30-076 Regulatory fees. A regulatory fee is an annual assessment paid by each company to cover the costs of regulation.

(1) **Auto transportation company regulatory fees.** The maximum auto transportation company regulatory fee is set by statute at two-fifths of one percent of gross intrastate operating revenue.

(a) The maximum regulatory fee is assessed each year, unless the commission issues an order establishing the regulatory fee at an amount less than the statutory maximum.

(b) The minimum fee that an auto transportation company must pay is twenty dollars.

(c) The twenty dollar minimum regulatory fee is waived for any auto transportation company with less than five thousand dollars in gross intrastate operating revenue.

(d) Each auto transportation company must pay its regulatory fee by May 1st of each year.

(2) **Charter and excursion carrier regulatory fees.** The charter and excursion carrier regulatory fee is established by commission order.

(a) The minimum fee a charter and excursion carrier must pay is the amount established for a single vehicle.

(b) Each charter and excursion carrier must pay its regulatory fee on or before ~~((December 31))~~ May 1st of each year ~~((to cover the ensuing year beginning February 1)).~~

(3) **Extension of time to pay regulatory fees.** The commission cannot grant extensions for payment of regulatory fees.

(4) **Penalties for late fees.** If a company does not pay its regulatory fee by the due date established in this rule, the commission will assess an automatic late fee of two percent of the amount due, plus one percent interest for each month the fee remains unpaid.

(5) The commission may take action to suspend or cancel a certificate, if a company fails to pay its regulatory fee.

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

WAC 480-30-086 Certificates, general. (1) **Certificate required.** A person must have a certificate from the commission before operating as a passenger transportation company in the state of Washington.

(2) **Company name.** The company name is the name of the certificate holder.

(a) A company electing to conduct operations under a trade name must first register the trade name with the commission.

(b) A company must conduct all operations under the company name, a registered trade name, or both. ~~((The term "Operations" includes, but is not limited to, advertising, ticketing, and identifying vehicles.~~

(c) A company may not operate under a company name or trade name that is similar to that of another company if use of the similar name misleads the public or results in unfair or destructive competitive practices.

(3) **Display.** A company must keep its original certificate on file at its principal place of business open to inspection by any customer, law enforcement officer, or authorized commission representative who asks to see it.

(4) **Replacement.** The commission will replace a lost or destroyed original certificate at no charge.

(5) **Description of certificated authority.** When a company's certificate authority includes boundaries such as cities, towns, streets, avenues, roads, highways, townships, ranges or other descriptions, the boundaries remain established as they existed at the time the commission granted the authority.

(6) **Operating within certificated authority.**

(a) A company must operate strictly within the authority described in its certificate.

(b) The commission may take administrative action against a company operating outside its certificated authority. Refer to WAC 480-30-241 for information regarding the commission's compliance policy.

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

WAC 480-30-216 Operation of motor vehicles, general. (1) **Discrimination prohibited.** No company operating motor vehicles under the provisions of this chapter will operate a vehicle in intrastate commerce on which the seating of passengers is based on race, color, creed, or national origin.

(2) **Inspection of baggage and other materials passengers wish to be carried in or on a motor vehicle.** Auto transportation companies are responsible for the safety and comfort of all passengers transported. To ensure the safety and comfort of passengers and employees it may be necessary for companies to inspect baggage and other materials to be transported in or on motor vehicles.

(a) Companies must include in their filed tariffs, in information provided to passengers, and on their tickets, information that advises passengers that all baggage and other materials to be carried in or on a motor vehicle is subject to inspection by the company.

(b) The information required by (a) of this subsection must include a list of examples of materials that will not be accepted for transportation. Examples may include, but are not limited to, the following items:

(i) Articles whose transportation as baggage are prohibited by law or regulation;

(ii) Fragile or perishable articles;

(iii) Articles whose dimensions exceed the size limitations in the company's filed tariff;

(iv) Packages, bags, or parcels that are leaking;

(v) Firearms;

(vi) Articles that have foul and obnoxious odors; or

(vii) Items that cause annoyance, discomfort, or harm to persons or property.

(3) **Service requirement.**

(a) An auto transportation company is a public service company with an obligation to provide service to the satisfaction of the commission to all customers within its certificated authority.

(b) Except to the extent allowed by WAC 480-30-451, no driver or operator of a motor vehicle used in the transportation of passengers by an auto transportation company shall refuse to carry any person presenting him or herself at a regular stopping place who tenders the appropriate fare. Exception: Companies limiting operations to passengers with prior reservations are not subject to this provision.

(4) **Passenger loading capacity.** No motor vehicle used in the transportation of passengers will carry more passengers than can be carried safely. In no case will a motor vehicle transport more than one hundred fifty percent of its rated seating capacity.

(5) **Standing passengers.** No passenger will be permitted to stand unless the vehicle is equipped with devices designed and permanently installed to provide stability and safety for standing passengers. Even if the vehicle is properly equipped, no passenger will be permitted to stand for a distance exceeding thirty-five miles.

(6) **Double-decker bus.** Any company that operates a double-decker bus must comply with the maximum height vehicle requirement of RCW 46.44.020.

(7) **Reserve equipment.** All auto transportation companies must maintain sufficient reserve equipment to insure the reasonable operation of established routes and fixed time schedules.

~~((7))~~ (8) **Smoking on motor vehicles.**

(a) Smoking or carrying lit cigars, cigarettes, or other smoking materials is prohibited on vehicles ~~((operated by auto transportation companies))~~.

(b) Each ~~((auto transportation))~~ company must post signs in its vehicles informing passengers that smoking is not permitted.

NEW SECTION

WAC 480-30-244 Liquor permit required. (1) A charter party carrier or excursion service carrier operating a party bus must be in compliance with the requirements of section 8, chapter 233, Laws of 2015.

(2) A charter party carrier or excursion service carrier operating a party bus must be in compliance with Title 66 RCW.

(3) A copy of the liquor permit obtained by any party under Title 66 RCW must be maintained with the contract of carriage for at least six months from the ending date of the trip.

AMENDATORY SECTION (Amending WSR 06-13-006, filed 6/8/06, effective 7/9/06)

WAC 480-30-246 Sanctions for operating without a valid certificate. (1) Operating without a certificate—Auto transportation companies.

(a) If a representative of the commission or other law enforcement agency observes a company operating as a passenger transportation company without a certificate from the commission, that company is subject to a gross misdemeanor citation, for which the company must appear in court.

(b) If the commission receives information that a company is operating as a passenger transportation company without a certificate, and a commission representative or other law enforcement agency has not observed those operations, the commission may:

(i) Issue a citation through the court; or

(ii) Contact the company and provide education and technical assistance concerning applicable regulations. This includes giving the company a copy of the applicable laws, rules, and certificate application forms.

(c) If the company continues to operate without a certificate after commission education and technical assistance is offered, the commission may begin an administrative proceeding to classify the company as a regulated company under RCW 81.04.510. If, as a result of that proceeding, the commission formally classifies the company as an auto transportation company or a charter and excursion carrier operating without the required certificate, the commission will issue a cease and desist order under RCW 81.04.510.

(d) If a company operates in violation of a commission order, the commission may impose penalties and/or take legal action in court.

(2) Operating without a certificate—Charter and excursion service carriers.

(a) For the purposes of this section, "engage in the business of a charter party carrier or excursion service carrier" includes advertising or soliciting, offering or entering into an agreement to provide such service.

(b) Each advertisement reproduced, broadcast or displayed via a particular medium constitutes a separate violation.

(c) Any person who engages in the business of a charter party carrier or excursion service carrier in violation of (a) of this subsection is subject to a penalty of up to five thousand dollars per violation.

(3) Operating while certificate is suspended—Auto transportation company. A company that operates after the commission suspends the company's certificate is subject to:

(a) Misdemeanor or gross misdemeanor citations, for which the company must appear in district court;

(b) Monetary penalty assessments or other commission administrative actions; or

(c) Commission proceedings to cancel the company's certificate.

~~((3))~~ **(4) Operating after certificate is canceled—Auto transportation company.** A company that continues to operate after the commission cancels the company's certificate is subject to:

(a) Misdemeanor or gross misdemeanor citations, for which the company must appear in district court; and

(b) Enforcement proceedings in superior court.

(5) Operating while certificate is suspended or canceled—Charter party or excursion service carriers.

(a) Operations includes advertising or soliciting, offering or entering into an agreement to provide such service.

(b) Each advertisement reproduced, broadcast, or displayed via a particular medium constitutes a separate violation.

(c) Any person who engages in the business of a charter party carrier or excursion service carrier in violation of subsection (2)(a) of this section is subject to a penalty of up to five thousand dollars per violation.

WSR 15-21-088

PROPOSED RULES

PUBLIC DISCLOSURE COMMISSION

[Filed October 21, 2015, 8:58 a.m.]

Supplemental Notice to WSR 15-17-133.

Preproposal statement of inquiry was filed as WSR 15-09-101.

Title of Rule and Other Identifying Information: Supplemental information to WSR 15-17-133:

Withdrawn proposals: Proposed new WAC 390-37-056 is withdrawn. It has been renumbered and is now submitted as proposed new WAC 390-37-061. Proposed new WAC 390-37-058 is withdrawn. It has been renumbered and is now submitted as proposed new WAC 390-37-075. Proposed new WAC 390-37-055 and 390-37-057 are withdrawn and are not being resubmitted.

Proposed new rules: WAC 390-37-061 Alternative responses to noncompliance—Goals and objectives—Factors to be considered and 390-37-075 Deferred enforcement—Process.

Revisions to proposed amended rules: WAC 390-37-010 Enforcement procedures—General, 390-37-050 Enforcement procedures—Respondent's notice of complaint, 390-37-060 Enforcement procedures—Investigation of complaints—Initiation of hearing, 390-37-070 Enforcement procedures—Complaints dismissed by executive director, 390-37-090 Informal settlement—Cases resolvable by stipulation prior to an enforcement hearing (adjudicative proceeding) or by other alternative dispute mechanisms, and 390-37-103 Commission options following receipt of a staff report on alleged violations.

No changes to proposals submitted under WSR 15-17-133: WAC 390-37-030, 390-37-140, 390-37-142, 390-37-155, 390-37-160, 390-37-165, 390-37-170, 390-37-175, 390-37-182, and 390-32-030.

Hearing Location(s): 711 Capitol Way, Rom [Room] 206, Olympia, WA, on December 3, 2015, at 9:30 a.m.

Date of Intended Adoption: December 3, 2015.

Submit Written Comments to: Lori Anderson, P.O. Box 49098, Olympia, WA 98504-0908 (mail), 711 Capitol Way, Room 206, Olympia, WA (physical), e-mail lori.anderson@pdc.wa.gov, fax (360) 753-1112, by December 1, 2015.

Assistance for Persons with Disabilities: Contact Jana Greer by phone (360) 586-0544.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: During the September 24, 2015, hearing to consider adopting the proposed rules identified in WSR 15-17-133, comment was received that the proposals appeared to improperly delegate the commission's authority to determine whether a violation of chapter 42.17A RCW has occurred or to assess penalties for such violation. The commission makes the following revisions to the proposed rules:

Revisions (1) clarify that the executive director is not determining whether a violation occurred by permitting a complaint to be resolved through the application of an alternative resolution, (2) require commission consent for deferred enforcement, and (3) expand what records are available to the public related to a pending investigation to include a copy of the respondent's initial response.

Reasons Supporting Proposal: See WSR 15-17-133.

Statutory Authority for Adoption: RCW 42.17A.110(1).

Statute Being Implemented: RCW 42.17A.105(8).

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: No increased costs to the agency are expected.

Name of Agency Personnel Responsible for Drafting: Tony Perkins, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 586-1042; Implementation and Enforcement: Evelyn Lopez, 711 Capitol Way, Room 206, Olympia, WA 98504, (360) 664-2735.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The implementation of these rules has minimal impact on small businesses. The public disclosure commission (PDC) is not subject to the requirement to prepare a school district fiscal impact statement per RCW 24A.305.135 and 34.05.320.

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

October 21, 2015

Lori Anderson
Communications and
Training Officer

AMENDATORY SECTION (Amending WSR 85-22-029, filed 10/31/85)

WAC 390-32-030 Complaint~~(s)~~ publication—Fair Campaign Practices Code—Alternative to investigation or adjudicative proceeding. (1) Written and signed complaints alleging a violation of one or more specific provisions of ~~((the Fair Campaign Practices Code for candidates and political committees (WAC 390-32-010)))~~ WAC 390-32-010. The Fair Campaign Practices Code may be submitted to the ~~((public disclosure))~~ commission by any person.

~~((2) Upon))~~ (a) Subject to the limitations in subsection (4) of this section, upon receipt of a complaint under subsec-

tion (1) of this section, the executive director shall forward a copy of the complaint to the ~~((complainee))~~ respondent within twenty-four hours, accompanied by a request for a response to the complaint returned within five days from the date of mailing.

~~((3))~~ (b) Upon receipt of ~~((the complainee's))~~ any response, the executive director shall forward a copy of the response to the complainant. A copy of the complaint and the response shall be sent to news media at the expiration of the five days for response. The complaint and the response shall be available at the commission office for public inspection and copying. If ~~((the complainee does not respond))~~ no response is received within five days, the complaint shall be made public without a response.

(c) The commission will not issue comments or opinions about complaints or responses received under this subsection.

(2) As provided by WAC 390-37-055, and considering the factors set forth in WAC 390-37-056, the executive director may authorize the processing of a complaint alleging violations of chapter 42.17A RCW or Title 390 WAC according to the complaint publication process provided in this section.

(a) Subject to the limitations in subsection (4) of this section, upon receipt of a complaint authorized by the executive director for processing under this subsection, the executive director shall forward a copy of the complaint to the respondent, accompanied by a request for a response to the complaint to be returned within five days from the date of mailing.

(b) Complaints authorized by the executive director for processing under this subsection shall be forwarded to the respondent within ten business days of receipt, or eight days prior to the date that ballots must be available under RCW 29A.40.070(1), whichever is earlier.

(c) Upon receipt of any response, the executive director shall forward a copy of the response to the complainant. A copy of the complaint and the response shall be sent to news media at the expiration of the five days for response. The complaint and the response shall be available at the commission office for public inspection and copying. If no response is received within five days, the complaint shall be made public without a response.

(d) Except as provided under (a) or (b) of this subsection, the publication of complaints or responses under this subsection shall constitute the final disposition of complaints authorized by the executive director for processing under this section.

(3) Following the processing of a complaint under subsection (2) of this section, the executive director shall review the complaint and any response received. Whenever a complaint and response indicate that a material violation of chapter 42.17A RCW may have occurred and/or the respondent may not be in substantial compliance with the relevant statutes and rules, considering the factors set forth in WAC 390-37-056, the executive director may:

(a) Dispose of the complaint through an additional alternative response as provided in WAC 390-37-055; or

(b) Direct a formal investigation be conducted.

(4) The commission will make no attempt to secure a reply to and will make no public release of complaints

received within eight days of ~~((an election))~~ the date that ballots must be mailed to voters under RCW 29A.40.070(1).

~~(5) ((The commission will not issue comments or opinions about complaints or responses.~~

~~(6) In the absence of any contrary intention as expressed by the complainant,))~~ The filing of a complaint with the commission under this section or any provision of chapter 390-37 WAC constitutes implied consent to have the complainant's identity disclosed.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-37-010 Enforcement procedures—General. This chapter provides the procedures for adjudicative proceedings (enforcement hearings) in compliance cases under the commission's jurisdiction. The procedures are also governed by RCW 42.17A.755, and the adjudicative proceedings provisions of chapter 34.05 RCW. Unless they differ or are otherwise specifically addressed in this chapter, the procedure, are supplemented by the model rules of procedure in chapter 10-08 WAC. In lieu of holding an adjudicative proceeding or issuing an order as a result of such a proceeding, the commission may refer the matter to the attorney general or other law enforcement agency pursuant to RCW 42.17A.105(5) and 42.17A.755.

In addition, the procedures for requesting a hearing on a petition to modify or suspend reporting requirements are provided in RCW 42.17A.120 and chapters 390-24 and 390-28 WAC.

The policy of the commission (~~((shall be))~~ is) to facilitate the resolution of compliance matters in a fair and expeditious manner. The commission encourages the parties to consider alternative resolution or partial resolution procedures (~~((such as stipulations under WAC))~~ as set forth in WAC 390-37-060, 390-37-075, or 390-37-090, when appropriate. Informal settlements are encouraged by RCW 34.05.060.

AMENDATORY SECTION (Amending WSR 03-22-065, filed 11/4/03, effective 12/5/03)

WAC 390-37-050 Enforcement procedures—Respondent's notice of complaint. Within ten business days of receipt by the commission of a complaint which on its face appears to have merit, the commission shall notify the respondent that a complaint has been filed. The notice shall set forth the nature of the complaint and its origin (citizen complaint, commission or other) and the statutory provision alleged to have been violated. If an alternative response to the alleged violation has been issued as provided by this chapter, the notice shall also describe that response, including any conditions the respondent is required to meet.

AMENDATORY SECTION (Amending WSR 12-18-015, filed 8/24/12, effective 9/24/12)

WAC 390-37-060 Enforcement procedures—Alternative responses to noncompliance—Investigation of complaints—Initiation of ((hearing-)) adjudicative proceeding((s)). (1) Upon receipt of a complaint, the ~~((following will occur:~~

~~(a) The))~~ executive director will conduct an initial review of the complaint to determine ~~((if it is obviously unfounded or frivolous or appears on its face to have merit))~~ what action will be taken. An initial review is a preliminary investigation to determine whether the allegations are limited to minor or technical violations of chapter 42.17A or if there is sufficient ground indicating that a material violation of chapter 42.17A RCW may have occurred ~~((and/or the respondent may not be in substantial compliance with the relevant statutes and rules.~~

~~((b))~~ so as to warrant a formal investigation.

(a) The executive director shall return any complaint that is obviously unfounded or frivolous. The executive director will inform the complainant why the complaint is returned.

(b) The executive director may resolve any complaint that alleges minor or technical violations of chapter 42.17A by issuing a formal written warning. If the resolution is conditioned upon the respondent reaching or maintaining compliance, specific expectations and any deadlines should be clearly explained in the written warning. A respondent's failure to meet conditions may result in a complaint being reopened.

(c) The executive director may use the complaint publication process set out in WAC 390-32-030 to resolve any complaint that alleges minor or technical violations of chapter 42.17A RCW.

(d) The director shall initiate a formal investigation whenever an initial review of a complaint indicates that a material violation of chapter 42.17A RCW may have occurred ~~((and/or the respondent may not be in substantial compliance with the relevant statutes and rules, the executive director may direct a formal investigation be conducted.~~

~~((e))~~.

(2) If the executive director determines a formal investigation will require the expenditure of substantial resources, the executive director may request review and concurrence by the commission before proceeding.

~~((2))~~ (3) The executive director shall initiate an adjudicative proceeding or provide a report to the commission whenever ((an)) a formal investigation reveals facts that the executive director has reason to believe are a material violation of chapter 42.17A RCW and do not constitute substantial compliance.

~~((3))~~ (4) The respondent and complainant shall be notified of the date of the adjudicative proceeding or a report on an enforcement matter no later than ten calendar days before that date. The notice shall contain the information required by RCW 34.05.434 ~~((The complainant shall also be provided a copy of this notice)),~~ the staff investigative report, and any charges to be adjudicated. The notice, whenever possible, will be delivered electronically.

~~((4))~~ (5) It is the policy of the commission during the course of any investigation that all records generated or collected as a result of that investigation are exempt from public inspection and copying under RCW 42.56.240(1).

(a) The records are exempt until:

(i) ~~((The enforcement matter is scheduled for an adjudicative proceeding;~~

(ii) ~~After receiving a report on an enforcement matter, the commission accepts the investigation as complete and~~

~~moves the matter forward to an adjudicative proceeding, or dismisses the complaint, or refers the matter to law enforcement authorities under RCW 42.17A.105 or 42.17A.755(3);~~

~~(iii) The commission or chair concur in a dismissal by the executive director; or~~

~~(iv) The commission or executive director otherwise finally disposes of the complaint.)~~ A final staff investigative report is submitted; or

(ii) The executive director issues a final disposition of the complaint through an alternative response as provided in this section.

(b) Without waiving any exemptions from public disclosure that are otherwise available for pending investigations, the commission may make public:

(i) A copy of a complaint filed with or submitted to the commission, including any attachments; ~~((and))~~

(ii) A copy of the respondent's initial response to a complaint; and

(iii) Materials concerning an enforcement matter that are placed on the commission's web site with a commission meeting agenda.

(c) If a request is made for any such record that implicates the privacy of an individual as defined in RCW 42.56-050, written notice of the records request may be provided to the individual in order that such individual may request a protective order from a court under RCW 42.56.540.

(d) Certain documents provided to the commission shall be returned to candidates, campaigns, or political committees as required by RCW 42.17A.105 within seven calendar days of the commission's final action upon completion of an audit or field investigation.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-37-070 Enforcement procedures—Complaints dismissed by executive director. The executive director, with the concurrence of the chair or the chair's designee commissioner, at any time prior to consideration by the commission, may dismiss a complaint which on its face, or as shown by investigation, does not show reason to believe that a material violation of the sections of chapter 42.17A RCW that are enforced by the commission has occurred ~~((and/or))~~, shows that the respondent is in substantial compliance with the relevant statutes or rules, or shows that formal enforcement action is not warranted.

AMENDATORY SECTION (Amending WSR 06-14-057, filed 6/29/06, effective 7/30/06)

WAC 390-37-090 ~~((Informal settlement—))~~ Cases resolvable by stipulation prior to an enforcement hearing (adjudicative proceeding), or by other alternative dispute mechanisms. (1) RCW 34.05.060 authorizes agencies to establish by rule specific procedures for attempting and executing informal settlement of matters. The following procedures are available for informal dispute resolution prior to an adjudicative proceeding that may make more elaborate proceedings under the Administrative Procedure Act unnecessary.

(a) Any enforcement matter before the commission which has not yet been heard in an adjudicative proceeding may be resolved by settlement. The respondent shall communicate his or her request to the executive director or designee (commission staff), setting forth all pertinent facts and the desired remedy. Settlement negotiations shall be informal and without prejudice to rights of a participant in the negotiations.

(b) When the executive director and respondent agree to terms of any stipulation of facts, violations, and/or penalty, commission staff shall prepare the stipulation for presentation to the commission.

(c) Any proposed stipulation shall be in writing and signed by each party to the stipulation or his or her representative. The executive director shall sign for commission staff. Any stipulation to facts ~~((and))~~, violations, or penalty shall be provided ~~((prior to or at the hearing. Stipulations to penalty shall be provided))~~ by 4:00 p.m. ~~((the))~~ three business days preceding the hearing. The commission has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the commission accepts the stipulation or modifies the stipulation with the agreement of the opposing party, the commission shall enter an order in conformity with the terms of the stipulation. If the commission rejects the stipulation or the opposing party does not agree to the commission's proposed modifications to the stipulation, and if no revised stipulation or staff report is presented to the commission, then an adjudicative proceeding shall be scheduled and held.

(2) Parties are encouraged to be creative in resolving cases without further litigation where appropriate.

(3) Following a stipulation of facts or law, if the commission determines certain sanctions or other steps are required by the respondent as a result of the alternative dispute resolution including stipulations and that it intends to enter an order, and the respondent does not timely raise an objection at the hearing, it shall be presumed that the respondent has waived objections and appeals, and agrees to the entry of the order.

AMENDATORY SECTION (Amending WSR 12-01-047, filed 12/14/11, effective 1/14/12)

WAC 390-37-103 Commission options following receipt of a staff report on alleged violations. Upon receipt of a staff report concerning alleged violations of those sections of chapter 42.17A RCW that the commission enforces, the commission may:

~~(1) ((Schedule the matter for a hearing (adjudicative proceeding)); or~~

~~(2) Issue an order; or~~

~~(3))~~ Direct the executive director to issue an alternative response as provided in WAC 390-37-060;

(2) Defer enforcement as provided in WAC 390-37-075;

(3) Issue an order; or

(4) Refer the matter or apparent violations to the attorney general or other enforcement agency pursuant to RCW 42.17A.105(5) and 42.17A.750.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-37-140 Brief enforcement hearings (adjudicative proceedings)—Authority. (1) The commission may provide a brief adjudicative proceeding for violations of the sections of chapter 42.17A RCW that it enforces in which the facts are undisputed, the violations appear to be relatively minor in nature, and a penalty no greater than ~~\$(500)~~ 1,000 will be assessed for the violations. Typical matters to be heard in a brief adjudicative proceeding include, but are not limited to, the following:

- (a) Failure to file or late filing of required reports~~(:);~~
 - (b) Failure to report or accurately report campaign contributions or expenditures or funds spent in lobbying~~(:);~~
 - (c) Use of public office facilities in election campaigns when the value of public funds expended was minimal~~(:);~~
 - (d) Infractions of political advertising law regarding sponsor identification or political party identification.
- (2) The commission may utilize a penalty schedule for brief adjudicative proceedings.
- (3) Brief adjudicative proceedings are set forth in RCW 34.05.482 through 34.05.494.

AMENDATORY SECTION (Amending WSR 03-22-065, filed 11/4/03, effective 12/5/03)

WAC 390-37-142 Brief enforcement hearing (adjudicative proceeding)—Procedure. (1) A brief adjudicative proceeding may be presided over by the chair, or a member of the commission designated by the chair.

- (2) When a violation, as described in WAC 390-37-140, is alleged, before taking action, the executive director shall send the alleged violator notice, which shall include:
- (a) Alleged violation;
 - (b) The maximum amount of the penalty that can be imposed at the hearing, relevant penalty schedules, and the amount of any proposed fine; and

AMENDATORY SECTION (Amending WSR 03-22-065, filed 11/4/03, effective 12/5/03)

WAC 390-37-155 Electronic filing brief enforcement hearing penalty schedule.

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to electronically file by date required.	\$(250) <u>350</u>	\$(350) <u>650</u>	\$(500) <u>1,000</u>	Full commission consideration

Provisos:

- (1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer including, but not limited to, payment of the nonsuspended portion of the penalty within five business days of the date of entry of the order in that case.
- (2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.
- (3) The presiding officer may direct a matter to the full commission if the officer believes ~~((five hundred))~~ one thousand dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(c) Person's right to respond either in writing or in person to explain his/her view of the matter.

(3) As provided in RCW 34.05.050, a respondent who has been notified of a brief adjudicative proceeding may waive the hearing by providing the following prior to the hearing:

- (a) A signed statement of understanding;
 - (b) Any missing required reports; and
 - (c) A penalty payment specified by the executive director in accordance with the penalty authority of WAC 390-37-140 and the brief enforcement hearing penalty schedules of this chapter.
- (4) As used in this section, the term "statement of understanding" means a written statement signed by the respondent that:
- (a) Acknowledges a violation of chapter 42.17A RCW and any relevant rules; and
 - (b) Expresses the respondent's understanding that the commission will not hold any adjudicative proceeding concerning the violation.

(5) At the time of the hearing if the presiding officer believes alleged violations are of such magnitude as to merit penalties greater than ~~\$(500)~~ 1,000, the presiding officer shall immediately adjourn the hearing and direct the matter be scheduled for an adjudicative proceeding by the full commission.

~~((4))~~ (6) At the time any unfavorable action is taken, within ten business days the presiding officer shall serve upon each party a written statement describing the violation, the reasons for the decision, the penalty imposed, and their right to request review by the commission. The executive director is authorized to sign the decision on behalf of the presiding officer.

~~((5))~~ (7) The written decision of the presiding officer is an initial order. If no review is taken of the initial order, the initial order shall be the final order.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may impose a penalty not to exceed the amount of the outstanding penalty, up to ~~((five hundred))~~ one thousand dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

AMENDATORY SECTION (Amending WSR 05-04-038, filed 1/27/05, effective 2/27/05)

WAC 390-37-160 Statement of financial affairs (F-1) penalty schedule.

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file report by date of enforcement hearing.	\$(150) <u>250</u>	\$(300) <u>500</u>	\$(500) <u>1,000</u>	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Did not pay settlement amount.	\$(100) <u>150</u>	\$(200) <u>300</u>	\$(400) <u>600</u>	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Provided written explanation or appeared at the hearing to explain mitigating circumstances. Did not pay settlement amount.	\$(0-100) <u>0 - \$150</u>	\$(100-200) <u>150 - \$300</u>	\$(200-400) <u>300 - \$600</u>	Full commission consideration

Provisos:

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer including, but not limited to, payment of the nonsuspended portion of the penalty within five business days of the date of entry of the order in that case.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes (~~five hundred~~) one thousand dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may

impose a penalty not to exceed the amount of the outstanding penalty, up to (~~five hundred~~) one thousand dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

(6) Cases will automatically be scheduled before the full Commission for an enforcement action when the person:

(a) Was found in violation during a previous reporting period(;) and

(b) The violation remains in effect following any appeals(;) and

(c) The person has not filed the disclosure forms that were the subject of the prior violation at the time the current hearing notice is being sent.

AMENDATORY SECTION (Amending WSR 05-04-038, filed 1/27/05, effective 2/27/05)

WAC 390-37-165 Candidate registration statement (C-1)/candidate statement of financial affairs (F-1) penalty schedule.

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file F-1 and/or C-1 by date of enforcement hearing.	\$(150) <u>250</u> per report	\$(300) <u>500</u> per report, up to \$(500) <u>1,000</u>	Full commission consideration	Full commission consideration
Filed reports after hearing notice but before enforcement hearing. Did not pay settlement amount.	\$(100) <u>150</u> per report	\$(200) <u>300</u> per report	\$(400) <u>600</u> per report, up to <u>\$1,000</u>	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Provided written explanation or appeared at the hearing to explain mitigating circumstances. Did not pay settlement amount.	\$(0-100) <u>0 - \$150</u> per report	\$(100-200) <u>150 - \$300</u> per report	\$(200-400) <u>300 - \$600</u> per report, up to <u>\$1,000</u>	Full commission consideration

Provisos:

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration including, but not limited to, payment

of the nonsuspended portion of the penalty within five business days of the date of entry of the order in that case.

(3) The presiding officer may direct a matter to the full commission if the officer believes (~~five hundred~~) one thousand dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise

prescribe for the current violation, the presiding officer may impose a penalty not to exceed the amount of the outstanding penalty, up to ~~((five hundred))~~ one thousand dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

(6) Cases will automatically be scheduled before the full Commission for an enforcement action when the person:

(a) Was found in violation during a previous reporting period~~((:))~~;

(b) The violation remains in effect following any appeals~~((:))~~; and

(c) The person has not filed the disclosure forms that were the subject of the prior violation at the time the current hearing notice is being sent.

AMENDATORY SECTION (Amending WSR 05-04-038, filed 1/27/05, effective 2/27/05)

WAC 390-37-170 Lobbyist monthly expense report (L-2) penalty schedule.

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file report by date of enforcement hearing.	\$ ((+50)) <u>250</u>	\$ ((300)) <u>500</u>	\$ ((500)) <u>1,000</u>	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Did not pay settlement amount.	\$ ((+100)) <u>150</u>	\$ ((200)) <u>300</u>	\$ ((400)) <u>600</u>	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Provided written explanation or appeared at the hearing to explain mitigating circumstances. Did not pay settlement amount.	\$ ((0-\$100)) <u>0 - \$150</u>	\$ ((100-\$200)) <u>0 - \$300</u>	\$ ((200-\$400)) <u>300 - \$600</u>	Full commission consideration

Provisos:

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer including, but not limited to, payment of the nonsuspended portion of the penalty within five business days of the date of entry of the order in that case. Except in rare circumstances, the nonsuspended portion of the penalty will not be less than the original settlement offer.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes ~~((five hundred))~~ one thousand dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise

prescribe for the current violation, the presiding officer may impose a penalty not to exceed the amount of the outstanding penalty, up to ~~((five hundred))~~ one thousand dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

(6) Cases will automatically be scheduled before the full Commission for an enforcement action when the person:

(a) Was found in violation during a previous reporting period~~((:))~~;

(b) The violation remains in effect following any appeals~~((:))~~; and

(c) The person has not filed the disclosure forms that were the subject of the prior violation at the time the current hearing notice is being sent.

AMENDATORY SECTION (Amending WSR 05-04-038, filed 1/27/05, effective 2/27/05)

WAC 390-37-175 Lobbyist employer report (L-3) penalty schedule.

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Failed to file report by date of enforcement hearing.	\$ ((+50)) <u>250</u>	\$ ((300)) <u>500</u>	\$ ((500)) <u>1,000</u>	Full commission consideration
Filed report after hearing notice but before enforcement hearing. Did not pay settlement amount.	\$ ((+100)) <u>150</u>	\$ ((200)) <u>300</u>	\$ ((400)) <u>600</u>	Full commission consideration

Status	1st Occasion	2nd Occasion	3rd Occasion	4th Occasion
Filed report after hearing notice but before enforcement hearing. Provided written explanation or appeared at the hearing to explain mitigating circumstances. Did not pay settlement amount.	\$(0-\$100) 0 - \$150	\$(100-\$200) 150 - \$300	\$(200-\$400) 300 - \$600	Full commission consideration

Provisos:

(1) The presiding officer has authority to suspend all or a portion of relevant penalty under the conditions to be determined by that officer including, but not limited to, payment of the nonsuspended portion of the penalty within five business days of the date of entry of the order in that case.

(2) If on the 3rd occasion, a filer has outstanding penalties or judgments, the matter will be taken to the full commission for consideration.

(3) The presiding officer may direct a matter to the full commission if the officer believes ~~((five hundred))~~ one thousand dollars would be an insufficient penalty or the matter warrants consideration by the full commission.

(4) If previously imposed penalties remain unpaid and exceed the amount this penalty schedule would otherwise prescribe for the current violation, the presiding officer may impose a penalty not to exceed the amount of the outstanding penalty, up to ~~((five hundred))~~ one thousand dollars.

(5) "Occasion" means established violation. At the 4th occasion, among other factors, the commission may consider if any prior violations and penalties were stipulated to by the respondent, in determining the amount of the penalty.

(6) Cases will automatically be scheduled before the full Commission for an enforcement action when the person:

(a) Was found in violation during a previous reporting period~~(:);~~;

(b) The violation remains in effect following any appeals~~(:);~~ and

(c) The person has not filed the disclosure forms that were the subject of the prior violation at the time the current hearing notice is being sent.

AMENDATORY SECTION (Amending WSR 13-05-014, filed 2/7/13, effective 3/10/13)

WAC 390-37-182 Penalty factors. (1) In assessing a penalty, the commission considers the purposes of chapter 42.17A RCW, including the public's right to know of the financing of political campaigns, lobbying and the financial affairs of elected officials and candidates as declared in the policy of RCW 42.17A.001; and, promoting compliance with the law. The commission also considers and applies RCW 42.17A.755 and may consider any of the additional factors described in subsection (3) of this section.

(2) Under RCW 42.17A.755, the commission:

(a) May waive a penalty for a first-time violation;

(b) Shall assess a penalty for a second violation of the same rule by the same person or individual, regardless if the person or individual committed the violation for a different political committee;

(c) Shall assess successively increased penalties for succeeding violations of the same rule.

(3) In addition to the requirements of RCW 42.17A.755, the commission may consider the nature of the violation and any relevant circumstances, including the following factors:

(a) The respondent's compliance history, including whether the noncompliance was isolated or limited in nature, indicative of systematic or ~~((on-going))~~ ongoing problems, or part of a pattern of violations by the respondent, or in the case of a political committee or other entity, part of a pattern of violations by the respondent's officers, staff, principal decision makers, consultants, or sponsoring organization;

(b) The impact on the public, including whether the non-compliance deprived the public of timely or accurate information during a time-sensitive period, or otherwise had a significant or material impact on the public;

(c) Sophistication of respondent ~~((, or respondent's organization, or size of campaign))~~ or the financing, staffing, or size of the respondent's campaign or organization;

(d) Amount of financial activity by the respondent during the statement period or election cycle;

(e) Whether the noncompliance resulted from a knowing or intentional effort to conceal, deceive or mislead, or violate the law or rule, or from collusive behavior;

(f) Whether the late or unreported activity was significant in amount or duration under the circumstances, including in proportion to the total amount of expenditures by the respondent in the campaign or statement period;

(g) Whether the respondent or ~~((anyone else benefitted))~~ any person, including an entity or organization, benefited politically or economically from the noncompliance;

(h) Personal emergency or illness of the respondent or member of his or her immediate family;

(i) Other emergencies such as fire, flood, or utility failure preventing filing;

(j) Commission staff or equipment error, including technical problems at the agency preventing or delaying electronic filing;

(k) The respondent's demonstrated good-faith uncertainty concerning staff guidance or instructions;

(l) Corrective action or other remedial measures initiated by respondent prior to enforcement action, or promptly taken when noncompliance brought to respondent's attention (e.g., filing missing reports, amending incomplete or inaccurate reports, returning prohibited or overlimit contributions);

~~((+))~~ (m) Whether the respondent is a first-time filer;

~~((+))~~ (n) Good faith efforts to comply, including consultation with commission staff prior to initiation of enforcement action and cooperation with commission staff during enforcement action, and a demonstrated wish to acknowledge and take responsibility for the violation;

~~((+))~~ (o) Penalties imposed in factually similar cases; and~~(:)~~

~~((+))~~ (p) Other factors relevant to a particular case.

(4) The commission, and the presiding officer in brief adjudicative proceedings, may consider the factors in ~~((1)-(3))~~ subsections (1) through (3) of this section in determining whether to suspend a portion or all of a penalty upon identified conditions, and whether to accept, reject, or modify a stipulated penalty amount recommended by the parties.

(5) The presiding officer in brief adjudicative proceedings may consider whether any of the factors in ~~((1)-(3))~~ subsections (1) through (3) of this section are factors that warrant directing a case to the full commission.

AMENDATORY SECTION (Amending WSR 12-03-002, filed 1/4/12, effective 2/4/12)

WAC 390-37-030 Enforcement procedures—Citizen complaints filed with the commission. (1) When a citizen complaint has been filed with the agency pursuant to WAC 390-37-040, neither the complainant nor any other person shall have special standing to participate or intervene in the investigation or consideration of the complaint by the commission. However, the staff shall give notice to the complainant of any open commission hearings on the matter and the complainant may be called as a witness in any enforcement hearing or investigative proceeding. The presiding officer has the discretion to allow comment by a person other than the respondent during the consideration of a complaint by the commission. Any person who wishes to comment should notify staff at least three business days before the proceeding.

(2) The complainant or any other person may submit documentary evidence and/or written factual or legal statements to the staff at any time up to and including the fifth calendar day before the date of any enforcement hearing or proceeding.

(3) A person not satisfied with the dismissal of a complaint by the commission or its executive director may pursue an appropriate remedy under RCW 42.17A.765(4).

NEW SECTION

WAC 390-37-061 Alternative responses to noncompliance—Goals and objectives—Factors to be considered.

(1) In considering appropriate responses to noncompliance with chapter 42.17A RCW or Title 390 WAC, the commission considers whether a formal investigation or adjudicative proceeding constitutes an efficient and effective use of public funds; or whether an alternative response better meets the commission's mission and public expectations by allowing the expedited resolution of minor and technical alleged violations, and the focusing of staff and commission resources on major alleged violations of chapter 42.17A RCW and Title 390 WAC.

A minor violation occurs when required information is not timely disclosed, however the public is not deprived of critical information.

A technical violation occurs when a good faith effort to comply with disclosure is made, but incomplete information is disclosed.

(2) In authorizing an alternative response to alleged noncompliance, the executive director may consider the nature of the alleged violation and any relevant circumstances including, but not limited to, the factors described in subsection (3) of this section: Provided, That, if after weighing the relevant circumstances and factors, the executive director determines that there is evidence that so warrants, the allegations shall be addressed through a formal investigation as provided by WAC 390-37-060.

(3) The factors the executive director may consider in permitting an alternative response to noncompliance, a formal investigation, or an adjudicative proceeding include, but are not limited to:

An alternative response to noncompliance may be appropriate if ...	A formal investigation and possible adjudicative hearing may be appropriate if ...
It appears that noncompliance resulted from a good-faith error, omission, or misunderstanding.	It appears that the noncompliance may have resulted from a knowing or intentional effort to conceal, deceive or mislead, or violate the law or rule, or from collusive behavior.
The respondent is a first-time filer.	The respondent has experience in complying with the applicable requirements.
The respondent's compliance history indicates the noncompliance was isolated or limited in nature, and not indicative of systematic or ongoing problems.	The noncompliance is part of a pattern of violations by the respondent, or in the case of a political committee or other entity, part of a pattern of violations by the respondent's officers, staff, principal decision makers, consultants, or sponsoring organization.
The impact of the noncompliance on the public was minimal.	The noncompliance deprived the public of timely or accurate information during a time-sensitive period in a campaign, legislative session, etc., or otherwise had a significant or material impact on the public.
The respondent's organization or campaign was relatively unsophisticated or small.	The respondent or the respondent's organization or campaign demonstrated a relatively high level of sophistication, or was well financed and staffed.

An alternative response to noncompliance may be appropriate if ...	A formal investigation and possible adjudicative hearing may be appropriate if ...
The total expenditures by the respondent in the campaign or statement period were relatively modest.	The campaign or statement period involved significant expenditures by the respondent.
The amount of late-reported activity, or the duration of the untimely disclosure, was small in proportion to the amount of activity that was timely reported by the respondent.	The late or unreported activity was significant in amount or duration under the circumstances, including in proportion to the total amount of expenditures by the respondent in the campaign or statement period.
There is no evidence that any person, including an entity or organization, benefited politically or economically from the noncompliance.	It appears the respondent or anyone else benefited politically or economically from the noncompliance.
Personal emergency or illness of the respondent or member of his or her immediate family contributed to the noncompliance.	There are no circumstances that appear to mitigate or appropriately explain the late reporting or other noncompliance.
Other emergencies such as fire, flood, or utility failure prevented compliance.	There are no circumstances that appear to mitigate or appropriately explain the late reporting or other noncompliance.
Commission staff or equipment error, including technical problems at the agency prevented or delayed electronic filing.	Commission staff or equipment error did not appear to contribute to the noncompliance.
The noncompliance resulted from the respondent's demonstrated good-faith uncertainty concerning staff guidance or instructions, a lack of clarity in the rule or statute, or uncertainty concerning the valid application of the commission's rules.	It appears the respondent understood the application of staff's guidance or instructions, and did not dispute the valid application of the commission's rules.
The respondent quickly took corrective action or initiated other remedial measures prior to any complaint, or when noncompliance was brought to respondent's attention (e.g., filing missing reports, amending incomplete or inaccurate reports, returning prohibited or over limit contributions).	The respondent appeared negligent or unwilling to address the noncompliance.
The respondent made a good-faith effort to comply, including by consulting with commission staff following a complaint and cooperating during any preliminary investigation, or demonstrated a wish to acknowledge and take responsibility for the alleged violation.	The respondent failed to provide a timely or adequate response to the complaint, or was otherwise uncooperative.
The alleged violation was or is being addressed under an analogous local ordinance, regulation, or policy.	The commission has primary jurisdiction over the alleged violation.
The alleged violation presents a new question or issue for the commission's interpretation.	The alleged violation does not present a case of first impression.
Other factors relevant to a particular case	

NEW SECTION

WAC 390-37-075 Deferred enforcement—Process.

(1) As provided by WAC 390-37-060, the chair or the chair's designee commissioner may authorize deferred enforcement:

- (a) Following a formal investigation, in lieu of a notice of administrative charges for an adjudicative proceeding; or
- (b) After a notice of administrative charges, prior to an adjudicative proceeding.

(2) The executive director will recommend to the chair the conditions of a deferred enforcement. The conditions shall be clearly defined and agreed to by the respondent, along with the consequences for failure to meet the conditions of the deferral. Negotiations regarding deferred

enforcement shall be informal and without prejudice to rights of a participant in the negotiations.

(3) With concurrence of the chair or the chair's designee commissioner, the executive director or designee (commission staff) shall memorialize the pertinent facts and the conditions of the deferral in writing to the respondent, together with the consequences for failure to meet the conditions of the deferral. The agreement shall be signed by staff and the respondent. Staff shall notify the respondent that any administrative charges issued in the matter are stayed pending satisfaction of the deferral conditions.

(4) Once the deferral conditions are met, the complaint shall be dismissed with no further investigation or action as provided by WAC 390-37-070.

(5) If the deferral conditions are not met, the complaint shall proceed in accordance with WAC 390-37-060.

WSR 15-21-098
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed October 21, 2015, 11:06 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-17-109.

Title of Rule and Other Identifying Information: The department is amending WAC 388-111-0001 Definitions.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on November 24, 2015, at 10:00 a.m.

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

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

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by November 10, 2015, phone (360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending WAC 388-111-0001 to ensure compliance with newly passed legislation, SB [SSB] 5600, modifying definitions concerning vulnerable adults.

Reasons Supporting Proposal: This amendment will ensure the department is in compliance with the newly passed law that changes the definitions of abuse and sexual abuse.

Statutory Authority for Adoption: Chapter 71A.20 RCW.

Statute Being Implemented: Chapter 71A.20 RCW.

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

Name of Proponent: Department of social and health services, aging and long-term support administration, governmental.

Name of Agency Personnel Responsible for Drafting: Christi Pederson, P.O. Box 45600, Olympia, WA 98513, (360) 725-2327; Implementation: Kathy Morgan, P.O. Box 45600, Olympia, WA 98513, (360) 725-2401; and Enforcement: Bett Schlemmer, P.O. Box 45600, Olympia, WA 98513, (360) 725-2404.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3) and 34.05.310 (4)(c), a small business economic impact statement is not required for rules adopting or incorporating by reference, without material change, Washington state statutes or federal statutes or regulations.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b)(iii), a cost-benefit analysis is not required for rules adopting or incorporating by reference, without material change, Washington state statutes or federal statutes or regulations.

October 16, 2015
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 14-10-034, filed 4/29/14, effective 5/30/14)

WAC 388-111-0001 Definitions. "Abandonment" means action or inaction by an individual or entity with a duty of care for a vulnerable adult that leaves the vulnerable individual without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and personal exploitation of a vulnerable adult, and improper use of restraint against a vulnerable adult, which have the following meanings:

(1) **"Mental abuse"** means ~~((any)) a willful ((action or inaction of mental or)) verbal ((abuse)) or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines or punishes a vulnerable adult.~~ Mental abuse ~~((includes, but is not limited to, coercion, harassment, inappropriately isolating a resident from family, friends, or regular activity, and verbal assault that includes))~~ may also include ridiculing, ~~((intimidating,))~~ yelling, or swearing.

(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical or physical restraints unless the restraint is consistent with certification requirements.

(3) **"Sexual abuse"** means any form of nonconsensual sexual ~~((contact))~~ conduct, including, but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse also includes any sexual ~~((contact))~~ conduct between a staff person and a resident, whether or not it is consensual.

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

(5) **"Improper use of restraint"** means inappropriate use of chemical, physical or mechanical restraints for the convenience or discipline or in a manner that:

(a) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under Chapter 71A.12 RCW;

(b) Is not medically authorized; or

(c) Otherwise constitutes abuse under this section.

(6) "Chemical restraint" means the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has the temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

"Administrative hearing" is a formal hearing proceeding before a state administrative law judge that gives an individual an opportunity to appeal a finding of abandonment, abuse, neglect or financial exploitation of a resident.

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

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

"Facility":

(1) Except as defined in subsection (2) of this definition, the term "facility" means an intermediate care facility for individuals with intellectual disabilities (ICF/IID).

(2) When used in the definition of "mandated reporter," the term "facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, assisted living facilities; chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36 RCW, soldiers' and veterans' homes; or chapter 71A.20 RCW, residential habilitation centers; or any other facility licensed by the department.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any individual or entity for any individual's or entity's profit or advantage other than the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020(6).

"Individual" means anyone used by the facility to provide services to residents, who is alleged to have abandoned, abused, neglected, misappropriated property of, or financially exploited a resident. "Individual" includes, but is not limited to, employees, contractors and volunteers. "Individual" also includes a person used by the certified nursing facility portion of a residential habilitation center operated under chapter 71A.20 RCW.

"Intermediate care facility for individuals with intellectual disabilities (ICF/IID)" means an institution certified under chapter 42 C.F.R., Part 483, Subpart I, unless the facility is licensed as a nursing home under chapter 18.51 RCW or as an assisted living facility under chapter 18.20 RCW.

"Mandated reporter" ~~((is))~~ means an employee of the department; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day

care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter 18.130 RCW.

"Mechanical Restraints" means any device attached or adjacent to the vulnerable adult's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body. "Mechanical restraint" does not include the use of devices, materials or equipment that are:

(1) Medically authorized, as required; and

(2) Used in a manner that is consistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW.

"Neglect" means that an individual or entity with a duty to care for residents has:

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

(2) Through conduct or inaction, or a pattern of conduct or inaction, failed to provide a resident with the goods and services that maintain physical or mental health of a vulnerable adult, or that failed to avoid or prevent physical harm, pain, mental anguish, or mental illness.

"Physical Restraints" means the application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include:

(1) Briefly holding without undue force a vulnerable adult in order to calm or comfort him or her; or

(2) Holding a vulnerable adult's hand to safely escort him or her from one area to another.

"Resident" means an individual residing in a facility or in the certified nursing facility portion of a residential habilitation center operated under chapter 71A.20 RCW.

"Willful" means the deliberate, or nonaccidental, action or inaction by an individual that he or she knew or reasonably should have known could cause a negative outcome, including harm, injury, pain or anguish.

WSR 15-21-100

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed October 21, 2015, 11:15 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 15-17-110.

Title of Rule and Other Identifying Information: The department is amending the following sections in chapter 388-76 WAC, Adult family home minimum licensing requirements: WAC 388-76-10064 Application—Forty-eight hour administration and business planning class training requirements, 388-76-10107 Change of ownership—Priority processing, 388-76-10535 Resident rights—Notice of change to services, and 388-76-10715 Doors—Ability to open.

Hearing Location(s): Office Building 2, DSHS Headquarters, 1115 Washington, Olympia, WA 98504, (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>), on November 24, 2015, at 10:00 a.m.

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

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

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, by November 10, 2015, phone (360) 664-6092, TTY (360) 664-6178, or e-mail KildaJA@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is amending these rules to ensure compliance with recently passed legislation, HB [SHB] 1132, and to protect the safety and well-being of residents.

Reasons Supporting Proposal: This amendment will ensure the department is in compliance with newly passed laws, and that rules are clear so that the rights and safety of residents are protected.

Statutory Authority for Adoption: Chapter 70.128 RCW.
Statute Being Implemented: Chapter 70.128 RCW.

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

Name of Proponent: Department of social and health services, aging and long-term support administration, governmental.

Name of Agency Personnel Responsible for Drafting: Christi Pederson, P.O. Box 45600, Olympia, WA 98513, (360) 725-2327; Implementation: Candace Goerhing, P.O. Box 45600, Olympia, WA 98513, (360) 725-2401; and Enforcement: Bett Schlemmer, P.O. Box 45600, Olympia, WA 98513, (360) 725-2404.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3) and 34.05.310 (4)(c), a small business economic impact statement is not required for rules adopting or incorporating by reference, without material change, Washington state statutes or federal statutes or regulations.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b)(iii), a cost-benefit analysis is not required for rules adopting or incorporating by reference, without material change, Washington state statutes or federal statutes or regulations.

October 14, 2015
Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 12-01-004, filed 12/7/11, effective 1/7/12)

WAC 388-76-10064 (~~(Application—Forty-eight hour administration and business planning class)~~) **Adult family home administrator training requirements.** (1) The applicant(;) and the entity representative must successfully complete the department approved (~~(forty-eight hour)~~) adult fam-

ily home administration (~~(and business planning)~~) class as required in chapter 388-112 WAC.

(2) An applicant and entity representative may not be required to take the (~~(forty-eight hour)~~) adult family home administrator class if there is a change in ownership and the applicant and entity representative are already participants in the operation of a currently licensed home.

(3) An applicant and entity representative must take the (~~(forty-eight hour)~~) adult family home administrator class when the application is for an additional licensed home and the (~~(forty-eight hour)~~) class has not already been successfully taken.

(4) The class must be a minimum of forty-eight hours of classroom time and approved by the department.

(5) Under exceptional circumstances, the department may waive the administrator training class for up to four months if the application meets all the other requirements for licensure and all the components of WAC 388-76-10074.

NEW SECTION

WAC 388-76-10074 Application—Waiver of fees The department may authorize a one-time waiver of the application fees for a change of ownership or relocation, if the situation meets all of the following conditions;

(1) The current provider has experienced an exceptional circumstance such as:

(a) The death or incapacity of a spouse who was also named on the license; or

(b) The diagnosis of a terminal or debilitating illness that prevents them from running the adult family home; and

(2) Residents will be forced to move if a new provider is not licensed; and

(3) Full payment of the licensing fee would cause the applicant a financial hardship; and

(4) The application has been approved for priority processing by the local field office per WAC 388-76-10107; and

(5) Neither the applicant nor the current provider has requested a waiver of fees in the past.

AMENDATORY SECTION (Amending WSR 10-14-058, filed 6/30/10, effective 7/31/10)

WAC 388-76-10107 (~~(Change of ownership—)~~)**Priority processing - Change of ownership and relocation.** In order to prevent disruption to residents, currently licensed providers may request in writing that the department give priority processing to an applicant seeking to be licensed as the new provider (~~(for the)~~) of an existing, licensed adult family home in the event of a change of ownership or relocation.

AMENDATORY SECTION (Amending WSR 15-03-037, filed 1/12/15, effective 2/12/15)

WAC 388-76-10535 Resident rights—Notice of change to services. (1) The adult family home must inform each resident:

(a) In writing; and

(b) In advance of changes in the availability of, or the charges for services, items, or activities, or of changes in the home's rules.

(2) The home must:

(a) Provide at least fourteen days advanced notice when there has been a substantial and continuing change in the resident's condition that necessitates substantially greater or lesser services, items or activities.

(b) Give residents a thirty day notice prior to the effective date of the change if the home decreases services due to circumstances beyond the home's control; and

~~((b))~~ (c) Give residents a ninety day notice prior to the effective date of the decrease if the home voluntarily decreases services or if the change results in the discharge of at least one resident.

(3) The home is not required to give notice:

(a) If the home gives each resident written notice of the availability and charges of services, items and activities before admission, when there are changes and every twenty-four months; and

(b) If the resident is provided different or additional services, items or activities from the home which do not result in an additional cost to the resident.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10715 Doors—Ability to open. The adult family home must ensure:

(1) Every bedroom and bathroom door opens from the inside and outside;

(2) Every closet door opens from the inside and outside; and

(3) ~~((All exit doors leading to the outside will open from the inside without))~~ One door leading to the outside must be designated as the primary egress and, effective January 1, 2016, must have hardware that allows residents to exit, even when the door is locked, and also allows reentry into the home without a key, tool or ~~((any))~~ special knowledge or effort by residents.

(4) Other external exit doors not designated as the primary egress, must open without any special skills or knowledge and they must remain accessible to residents unless doing so poses a risk to the health or safety of at least one resident.

(5) All internal and external doors must comply with local jurisdictional requirements as well as the building code requirements as contained in chapter 51.51 WAC.

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.